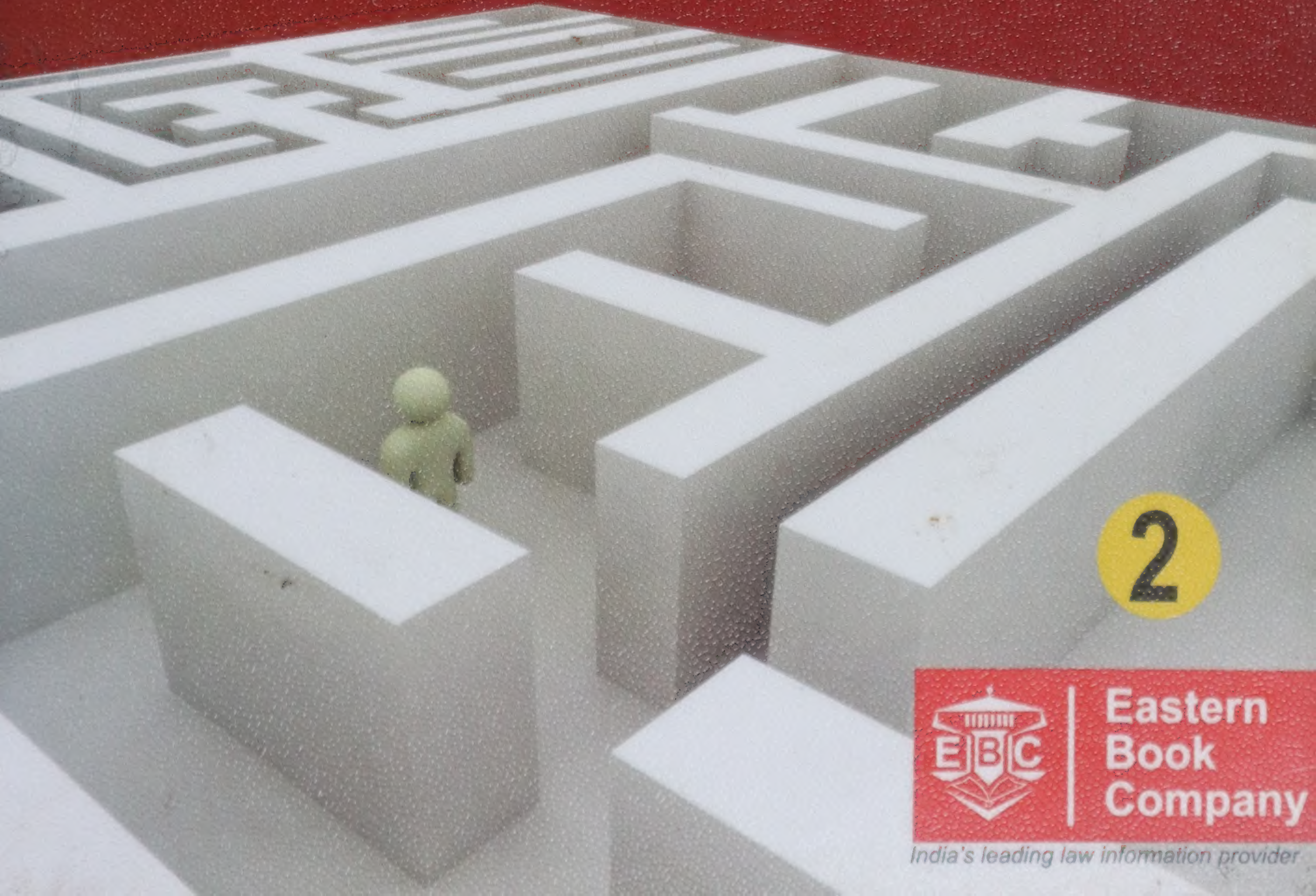
Supreme Court on

Criminal Procedure Code & Criminal Trial

Surendra Malik • Sudeep Malik



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About the Book

The present three volume Digest covers the law laid down on Criminal Procedure Code and Criminal Trial by the Supreme Court from its inception in1950 till date. It has been conceived and planned to enable the discovery of all the rulings, easily and quickly. It is based on the time-tested **SCC index system** that is now widely accepted and used.

Special Features

- The rulings are placed under both topic and **statutory headings**, interconnected by a well-planned **cross-reference** system supported by **synopses** wherever necessary.
- Rulings that could not be placed under the provisions of any particular statute have been placed under the non-statutory topic heading **Criminal Trial**.
- To enable **strict section-wise research**, an exhaustive section-wise list of docket numbers i.e. the unique case note number allotted to each ruling, has been provided at the beginning of sections treated collectively.
- **Table of Cases Digested** facilitate finding citations and cross-citations of any decision.
- The Digest also contains **annotations, editorial notes and comments and coram details.**

The Digest will prove to be an indispensable tool to a wide range of legal professionals as well as the Bench.

यतो धर्मस्ततो जयः

SUPREME COURT ON
CRIMINAL PROCEDURE CODE
&
CRIMINAL TRIAL

Case law since 1950 till date

VOLUME 2

§§ [5001] to [9392]

"The law is the last interpretation of the law given by the last Judge." **—Anon.**

"Precedents keep the law predictable and so more or less ascertainable." **—Lord Devlin**

"There is no such thing as a judicial precedent on facts though counsel, and even judges, are sometimes prone to argue and to act as if they were." **—Bose, J., (1955) 2 SCR 1140, 1169**

"The law declared by the Supreme Court is the law of the land; it is precedent for itself and for all the courts/tribunals and authorities in India." **—Syed Shah Mohammed Quadri, J., (2002) 4 SCC 388**

"The better wisdom of the Court below must yield to the higher wisdom of the Court above." **—O. Chinnappa Reddy, J., (1985) 1 SCC 260, 268**

"... the judicial system only works if someone is allowed to have the last word and if that last word, once spoken, is loyally accepted." **—Lord Diplock, (1972) 1 All ER 801, 874**

"Most of the decisions of the Supreme Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases."
—N. Santosh Hegde, J., (2002) 4 SCC 234, para 22

"... a decision is not an authority for a proposition which did not fall for its consideration."
—S.B. Sinha, J., (2005) 4 SCC 649, para 256

"The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided." **—Arijit Pasayat, J., (2003) 7 SCC 197**

"The trend of judicial opinion is that stare decisis is not a dogmatic rule allergic to logic and reason; it is a flexible principle of law operating in the province of precedents providing room to collaborate with the demands of changing times dictated by social needs, State policy and judicial conscience."
— R.C. Lahoti, C.J., (2005) 8 SCC 534, para 112

"The doctrine of stare decisis has no statutory sanction but it is a rule of convenience, expediency, prudence and above all public policy." **—Pattanaik, J., (2001) 1 SCC 91**

"The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs." **—Pathak, C.J., (1989) 2 SCC 754, 766**

"A decision is available as a precedent only if it decides a question of law."
—L.M. Sharma, J., (1992) 1 SCC 489, 491

"... the law is, what the judges say it is since the power to interpret the law vests in the judges."
—S. Ratnavel Pandian, J., (1994) 3 SCC 569, 625

"Precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts." **—N. Santosh Hegde, J., (2000) 1 SCC 644, para 12**

"The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of the Supreme Court." **—N. Santosh Hegde, J., (2002) 4 SCC 234, para 22**

"... a judgment should be understood in the light of facts of that case and no more should be read into it than what it actually says." **—B.P. Jeevan Reddy, J., (1993) 2 SCC 368, 393**

"Judicial propriety, dignity and decorum demand that being the highest judicial tribunal even *obiter dictum* of the Supreme Court should be accepted as binding. ... But statements on matters other than law have no binding force." **—Krishna Iyer, J., (1975) 1 SCC 794**

"Taking recourse to the doctrine of stare decisis would be an imperative necessity to avoid uncertainty and confusion." **—U.C. Banerjee, J., (1999) 4 SCC 11, para 16**

"It is not everything said by a Judge while giving judgment that constitutes a precedent. ... The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent" **—K. Ramaswamy, J., (1996) 6 SCC 44, 51, 52**

Supreme Court on Criminal Procedure Code & Criminal Trial

containing

case law since 1950 till date

in THREE VOLUMES

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Vol. 2

CRIMINAL PROCEDURE CODE, 1973

[From Section 378 to End]

CRIMINAL PROCEDURE CODE, 1898

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PREFACE

Amongst the abiding principles of our Constitution is the one stated in Article 141 that the law declared by the Hon'ble Supreme Court is binding on all courts. It is therefore imperative for everyone concerned with law within the legal system to know and understand what this binding law is. For this the rulings lying embedded in the learned judgments and orders of the Hon'ble Judges are to be culled out and made accessible, with proper citations to locate them in authentic law reports. Since one may discover many rulings on the same point, bench strength and the date of decision are also relevant under the doctrine of precedents.

Coverage and Method

The present volumes, covering the law laid down on CrPC and Criminal Trial by the Supreme Court from its inception in 1950 till date, has been designed particularly to meet the above need. It has been conceived and planned to enable the discovery of all the rulings, easily and quickly. It is based on the time-tested SCC index system that is now widely accepted and used.

Systematic arrangement

But the search for the relevant rulings would still be tedious if they were not systematically arranged. Much effort has therefore been directed towards the proper placement of the rulings under both topic and statutory headings, interconnected by a well-planned cross-reference system supported by synopses wherever necessary. Also no effort has been spared in making this digest most comprehensive and detailed.

Criminal Trial

Since many rulings and principles cannot be docketed under the provisions of any particular statute they have been placed under the non-statutory topic heading **Criminal Trial**.

Synopsisation under sections of CrPC

Where the number of rulings under any section or set of sections is large, for convenient research they have been placed under topic headings and a synopsis added for quick reference.

A few sections have been treated collectively as such collective treatment seemed more conducive to enabling systematic and convenient research on the provisions of law contained therein. Sections 125 to 128 which deal with a Magistrate's power to award maintenance have been dealt with collectively. So also Sections 155 to 159, which deal with the power and conduct of investigation by police. So also Sections 161 and 162.

However, to enable strict section-wise research, an exhaustive section-wise list of docket numbers i.e. the unique case note number allotted to each ruling, has been provided at the beginning of each such collective treatment of sections.

Table of Cases Digested: Looking at dockets nearby

It is also possible to conduct a search through the Table of Cases Digested. Since digest notes on the same or similar points are naturally placed close to each other, by locating the digest notes on any known case from the Table of Cases Digested, other relevant rulings on that point can easily be located nearby. For convenience the docket numbers are indicated at the top corners of pages. The Table of Cases Digested is also a convenient source for finding the citation and cross-citations of any decision.

Annotations, notes and comments

This Digest also contains annotations under some digest notes with respect to earlier connected cases of the Supreme Court and the High Courts, especially those appealed against, and some editorial notes and comments.

Coram details: Names of Hon'ble Judges and author(s) of the opinion(s)

Another feature of interest added is that below each ruling are given the names of the Hon'ble Judges who constituted the Bench which heard the matter, with the name of the Hon'ble Judge(s) who has/have given the opinion(s) indicated in bold. In case of several opinions in a case, the superscript numbers after the names of Judges indicate the sequence of the opinions as well as which other Judges signed each of those opinions.

Acknowledgement

An analytical, systematic and comprehensive work such as this necessarily involves the combined effort of several persons. Each one of them has contributed in his own way. The merit and accuracy of this work therefore is the result of their dedication, commitment, sustained effort and team work. We warmly appreciate their efforts and contribution and they can justly feel proud of this publication.

Appreciation and our commitment

We equally appreciate and value the goodwill and continued support received from our subscribers and readers. We are trying our best to publish the volumes as quickly as is expected of us but we prefer not to be hasty and instead make this Digest as comprehensive and neatly arranged as is possible, and also cover the case law up to the date of publication. We are beholden to our readers for their patience and understanding. Besides, in trying to provide through Supreme Court Cases™ (SCC) and various digests all the rulings of the Supreme Court we seek to fulfil our own commitment to serve the legal profession as well as the cause of justice.

— Authors and Publishers

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Agtamba Devi *v.* Hem Ram, (2008) 3 SCC 509: (2008) 2 SCC (Cri) 103: 2008 Cri LJ 1623 ≻≻**5953**

Ahammedkutty *v.* Abdullakoya, (2009) 6 SCC 660 ≻**3813**

Aharwa Deen ; Union of India *See* Union of India *v.* Aharwa Deen

Aher Maya Visa *v.* State of Gujarat, 1993 Supp (1) SCC 348: 1993 SCC (Cri) 214: AIR 1992 SC 2155 ≻≻**5210**

Aher Raja Khima *v.* State of Saurashtra, AIR 1956 SC 217: (1955) 2 SCR 1285: 1956 Cri LJ 426: (1956) 1 MLJ (SC) 135 ≻≻**8011, 8810, 8830**

Ahmadalieva Nodira ; Collector of Customs *See* Collector of Customs *v.* Ahmadalieva Nodira

Ahmadulla ; State of M. P. *See* State of M. P. *v.* Ahmadulla

Ahmed Hussein Vali Mohammed Saiyed *v.* State of Gujarat, (2009) 7 SCC 254: (2009) 3 SCC (Cri) 368: (2009) 79 AIC 229 (SC) ≻**149, 1753, 1754** ≻≻**6915**

Ahmed Jaan ; State (NCT of Delhi) *See* State (NCT of Delhi) *v.* Ahmed Jaan

Ahmed Noormohmed Bhatti *v.* State of Gujarat, (2005) 3 SCC 647: 2005 SCC (Cri) 794: AIR 2005 SC 2115: (2005) 2 KLT 769: 2005 Cri LJ 2157: (2005) 2 Guj LR 1402 ≻**582, 585** ≻≻**7370**

Ahmed Shaikh Babajan ; State of Maharashtra *See* State of Maharashtra *v.* Ahmed Shaikh Babajan

Ajab *v.* State of Maharashtra, 1989 Supp (1) SCC 601: 1989 SCC (Cri) 602: AIR 1989 SC 827: (1989) 1 Crimes 725: 1989 Cri LJ 954 ≻**4031**

Ajai Kumar ; State of U. P. *See* State of U. P. *v.* Ajai Kumar

Ajaib Singh *v.* Gurbachan Singh, AIR 1965 SC 1619: (1965) 2 SCR 845: (1965) 2 Cri LJ 553 ≻≻**7719, 7721**

Ajaib Singh *v.* Joginder Singh, AIR 1968 SC 1422: (1969) 1 SCR 145: 1969 Cri LJ 4 ≻≻**9106, 9128, 9352**

Ajaib Singh ; State of Punjab *See* State of Punjab *v.* Ajaib Singh

Ajay *v.* State of Haryana, (2001) 10 SCC 182 ≻≻**5687**

Ajay Agarwal ; SEBI *See* SEBI *v.* Ajay Agarwal

Ajay Aggarwal *v.* Union of India, (1993) 3 SCC 609: 1993 SCC (Cri) 961: AIR 1993 SC 1637: 1993 Cri LJ 2516: (1993) 2 ALT (Cri) 396 ≻**2162, 2163**

Ajay Kumar Sharma *v.* State of U. P., (2005) 7 SCC 507: 2005 SCC (Cri) 1702 ≻≻**6476, 6750, 7636**

Ajay Mehra *v.* Durgesh Babu, (2002) 9 SCC 709 ≻**2201**

Ajay Mitra *v.* State of M. P., (2003) 3 SCC 11: 2003 SCC (Cri) 703: AIR 2003 SC 1069: (2003) 3 MPLJ 49: 2003 Cri LJ 1249 ≻≻**7314**

Ajay Singh *v.* State of Maharashtra, (2007) 12 SCC 341: (2008) 1 SCC (Cri) 371: AIR 2007 SC 2188 ≻**3332**

Ajendranath *v.* State of M. P., AIR 1964 SC 170: (1964) 3 SCR 289: (1964) 1 Cri LJ 129: 1964 MLJ (Cri) 226 ≻≻**8847**

Ajit Kumar *v.* Union of India, 1987 Supp SCC 493: 1988 SCC (Cri) 101: AIR 1988 SC 283 ≻≻**6252, 6255**

Ajit Kumar Chaudhary *v.* State of Bihar, (1972) 2 SCC 451: 1972 SCC (Cri) 748: AIR 1972 SC 2058: 1972 Cri LJ 1315: (1972) 9 ACC 280 ≻≻**8634**

Ajit Kumar Kaviraj *v.* Distt. Magistrate, (1975) 3 SCC 264: 1974 SCC (Cri) 872: AIR 1974 SC 1917: (1975) 2 SCR 21: 1974 Cri LJ 1304 ≻≻**9152**

Ajit Kumar Palit *v.* State of W. B., AIR 1963 SC 765: 1963 Supp (1) SCR 953: (1963) 1 Cri LJ 797 ≻≻**8135**

Ajit Kumar Vasantlal Zaveri *v.* State of Gujarat, 1993 Supp (1) SCC 482: 1993 SCC (Cri) 226: AIR 1992 SC 2064 ≻≻**5251**

Ajit Savant Majagvai *v.* State of Karnataka, (1997) 7 SCC 110: 1997 SCC (Cri) 992: AIR 1997 SC 3255: 1997 Cri LJ 3964 ≻≻**5036**

Ajit Singh ; Mohan Lal *See* Mohan Lal *v.* Ajit Singh

Ajit Singh ; State of Rajasthan *See* State of Rajasthan *v.* Ajit Singh

Ajit Singh Thakur Singh *v.* State of Gujarat, (1981) 1 SCC 495: 1981 SCC (Cri) 184: AIR 1981 SC 733: (1981) 2 SCR 509: 1981 Cri LJ 293: 1981 MLJ (Cri) 357 ≻≻**5387**

Ajitsinh Andubha Parmal *v.* State of Gujarat, (2002) 7 SCC 625: 2003 SCC (Cri) 129: AIR 2002 SC 3469 ≻≻**5710**

Ajmer Singh *v.* State of Punjab, AIR 1953 SC 76: 1953 SCR 418: 1953 Cri LJ 521 ≻≻**8599, 8641, 8644**

Ajmer Singh *v.* State of Punjab, (1977) 1 SCC 659: 1977 SCC (Cri) 140: AIR 1977 SC 1078: 1977 Cri LJ 659 ≻**859**

Ajmer Singh *v.* State of Punjab, (2005) 6 SCC 633: 2005 SCC (Cri) 1481 ≻**153, 156, 158** ≻≻**5791**

Ajmer Singh *v.* Union of India, (1987) 3 SCC 340: 1987 SCC (Cri) 499: AIR 1987 SC 1646: 1987 Cri LJ 1877 ≻≻**6253**

Ajoy Kumar Ghose *v.* State of Jharkhand, (2009) 14 SCC 115: AIR 2009 SC 2282: 2009 Cri LJ 2824 ≻**2499, 2929, 2967, 2978**

Akalu Ahir *v.* Ramdeo Ram, (1973) 2 SCC 583: 1973 SCC (Cri) 903: AIR 1973 SC 2145: 1973 Cri LJ 1404 ≻≻**9028**

Akanti Gopala Rao *v.* State of A. P., (2002) 10 SCC 265 ≻≻**5782**

Akarapu Katta Mallu *v.* Purna Chandra Rao, AIR 1967 SC 1363: (1967) 2 SCR 309: (1967) 2 MLJ (SC) 65: 1967 Cri LJ 1212 ≻≻**9388**

Akbar Sheikh *v.* State of W. B., (2009) 7 SCC 415: (2009) 3 SCC (Cri) 431 ≻**917**

Akella Subrahmanyam *v.* State of A. P., (1980) 1 SCC 590: 1980 SCC (Cri) 299 ≻**1773**

Akhil Bharatiya Chah Mazdoor Sangh ; Krishnakali Tea Estate *See* Krishnakali Tea Estate *v.* Akhil Bharatiya Chah Mazdoor Sangh

Akhil Rai ; Deepti *See* Deepti *v.* Akhil Rai

Akhilesh Kumar Singh *v.* State of U. P., (2008) 4 SCC 449: (2008) 2 SCC (Cri) 428: AIR 2008 SC 1680: (2008) 3 All LJ 604: (2008) 64 AIC (SC) ≻≻**6492, 6509**

Akhilesh Kumar Sinha *v.* State of Bihar, (2000) 6 SCC 461: 2000 SCC (Cri) 1126 ≻**4085**

Akhilesh Prasad *v.* UT, Mizoram, (1981) 2 SCC 150: 1981 SCC (Cri) 337: AIR 1981 SC 806: (1981) 2 SCR 789: 1981 Cri LJ 407 ≻**2414, 2480** ≻≻**6199**

Akhilesh Singh ; CBI *See* CBI *v.* Akhilesh Singh

Akhlakali Hayatalli *v.* State of Bombay, AIR 1954 SC 173: 1954 SCR 435: 1954 Cri LJ 451 ≻≻**8531**

Akhlakh Ahmed ; State of Bihar *See* State of Bihar *v.* Akhlakh Ahmed

Akhtar *v.* State of Uttaranchal, (2009) 13 SCC 722: (2009) 78 AIC 172 (SC): (2009) 4 All LJ 544 ≻**3031**

Akula Ravinder *v.* State of A. P., 1991 Supp (2) SCC 99: 1991 SCC (Cri) 990: AIR 1991 SC 1142 ≻**3209**

Alagarsamy *v.* State, (2010) 12 SCC 427: AIR 2010 SC 849: 2010 Cri LJ 29: (2010) 2 ECrN 88: (2009) 84 AIC 192 ≻**661, 693, 716, 860**

Alamgir *v.* State (NCT, Delhi), (2003) 1 SCC 21: AIR 2003 SC 282 ≻**1614**

Alamgir *v.* State of Bihar, AIR 1959 SC 436: 1959 Supp (1) SCR 464: 1959 Cri LJ 527 ≻≻**9055**

Alamgir Sani *v.* State of Assam, (2002) 10 SCC 277: 2003 SCC (Cri) 1447: AIR 2003 SC 2108 ≻**1252**

Alamohan Das *v.* State of W. B., AIR 1970 SC 863: (1969) 2 SCR 520: (1970) All Cri Cas 114: (1970) 40 Comp Cas 643: 1970 Cri LJ 860 ≻≻**8292, 8303, 9037**

Alapati Srinivasa Rao ; S. L. Constructions *See* S. L. Constructions *v.* Alapati Srinivasa Rao

Alchemist Ltd. *v.* State Bank of Sikkim, (2007) 11 SCC 335: AIR 2007 SC 1812: (2007) 3 MPLJ 284: (2007) 136 Comp Cas 665: (2007) 4 Mah LJ 586 ≻**2140**

Aleque Padamsee *v.* Union of India, (2007) 6 SCC 171: (2007) 3 SCC (Cri) 1: 2007 Cri LJ 3729: (2007) 56 AIC 20 (SC) ≻**2218**

Ali Hussain Fidaalli Chothia ; Bai Tahira *See* Bai Tahira *v.* Ali Hussain Fidaalli Chothia

Alijan Nanhe Pehalwan Qureshi *v.* State of Maharashtra, (1981) 1 SCC 415: 1981 SCC (Cri) 164: AIR 1981 SC 645: (1981) 1 SCR 1194: 1981 Cri LJ 163 ≻**3642**

All Cargo Movers India (P) Ltd. *v.* Dhanesh Badarmal Jain, (2007) 14 SCC 776: AIR 2008 SC 247: (2007) 60 AIC 92 (SC) ≻≻**7443**

All India Institute of Medical Sciences Employees' Union (Regd.) *v.* Union of India, (1996) 11 SCC 582 ≻**1275**

All India Judges' Assn. (III) *v.* Union of India, (2002) 4 SCC 247: 2002 SCC (L&S) 508: AIR 2002 SC 1752: (2002) 3 SLR 271: (2002) 93 FLR 628 ≻**89**

Alla China Apparao *v.* State of A. P., (2002) 8 SCC 440: 2003 SCC (Cri) 87: AIR 2002 SC 3648 ≻**967**

Allarakha K. Mansuri *v.* State of Gujarat, (2002) 3 SCC 57: 2002 SCC (Cri) 519: AIR 2002 SC 1051: 2002 Cri LJ 1489 ≻**1445** ≻≻**5137**

Allauddin Mian *v.* State of Bihar, (1989) 3 SCC 5: 1989 SCC (Cri) 490: AIR 1989 SC 1456: 1989 Cri LJ 1466 ≻**2885, 2917, 3655, 3669, 3670**

Almitra H. Patel *v.* Union of India, (2000) 2 SCC 679: AIR 2000 SC 1256 ≻**94**

Alok Kumar Srivastav ; M. N. Ojha *See* M. N. Ojha *v.* Alok Kumar Srivastav

Aloke Nath Dutta *v.* State of W. B., (2007) 12 SCC 230: (2008) 2 SCC (Cri) 264 ≻**1730, 1770, 1803, 1805, 1806, 3188**

Alpic Finance Ltd. *v.* P. Sadasivan, (2001) 3 SCC 513: 2001 SCC (Cri) 565: AIR 2001 SC 1226: 2001 Cri LJ 1247 ≻≻**7405**

Amajappa ; State of Karnataka *See* State of Karnataka *v.* Amajappa

Amanullah *v.* State of U. P., (1973) 2 SCC 81: 1973 SCC (Cri) 747: AIR 1973 SC 1370: 1973 Cri LJ 1140 ≻≻**8922**

Amar Chand Agarwalla *v.* Shanti Bose, (1973) 4 SCC 10: 1973 SCC (Cri) 651: AIR 1973 SC 799: 1973 Cri LJ 577 ≻≻**9050, 9327, 9375**

Amar Malla *v.* State of Tripura, (2002) 7 SCC 91: 2002 SCC (Cri) 1608: AIR 2002 SC 3052 ≻**4068**

Amar Nath *v.* State of Haryana, (1977) 4 SCC 137: 1977 SCC (Cri) 585: AIR 1977 SC 2185: 1977 Cri LJ 1891: 1977 MLJ (Cri) 561 ≻≻**5972, 5973**

Amar Nath Shukla *v.* State of Uttaranchal, (2009) 9 SCC 390: (2009) 82 AIC 14 (SC) ≻**3464**

Amar Singh *v.* Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641: AIR 2003 SC 1164: 2003 Cri LJ 1282 ≻**1159, 1452, 1983, 2080** ≻≻**5616**

Amar Singh *v.* State of Rajasthan, 1987 Supp SCC 144: 1987 SCC (Cri) 670: AIR 1987 SC 2023 ≻≻**5518**

Amarendra Kumar Paul *v.* Maya Paul, (2009) 8 SCC 359: (2009) 3 SCC (Cri) 868 ≻**437, 489**

Amarinder Singh *v.* Parkash Singh Badal, (2009) 6 SCC 260 ≻**102, 3185** ≻≻**6090, 6115**

Amarinder Singh *v.* Punjab Vidhan Sabha, (2010) 6 SCC 113 ≻**1296**

Amarjit Singh ; Kulwant Singh *See* Kulwant Singh *v.* Amarjit Singh

Amarjit Singh *v.* State (NCT of Delhi), (2009) 13 SCC 769: (2002) 96 DLT 59 ≻≻**6663**

Amarjit Singh *v.* State of Punjab, (2010) 12 SCC 106 ≻**3962**

Amarmani Tripathi ; State of U. P. *See* State of U. P. *v.* Amarmani Tripathi

Ambaram *v.* State of M. P., (1976) 4 SCC 298: 1976 SCC (Cri) 610: AIR 1976 SC 2196: 1976 Cri LJ 1716 ≻**3667**

Ambika Mandal *v.* State of Bihar, (2008) 15 SCC 743: (2009) 3 SCC (Cri) 1185: (2008) 72 AIC 113 (SC) ≻≻**5559**

Ambika Prasad *v.* State (Delhi Admn.), (2000) 2 SCC 646: 2000 SCC (Cri) 522: AIR 2000 SC 718: 2000 Cri LJ 810 ≻**1465, 3133**

Ambika Yadav ; Ram Briksh Singh *See* Ram Briksh Singh *v.* Ambika Yadav

Amin Chand Khanna ; Inter Continental Agencies (P) Ltd. *See* Inter Continental Agencies (P) Ltd. *v.* Amin Chand Khanna

Amin Khan *v.* State of Rajasthan, (2009) 3 SCC 776 ≻≻**5866**

Amina *v.* Hassn Koya, (2003) 6 SCC 93: 2003 SCC (Cri) 1276: (2003) 2 KLT 738: 2003 Cri LJ 2540 ≻**367**

Amit J. Bhalla ; Rajneesh Aggarwal *See* Rajneesh Aggarwal *v.* Amit J. Bhalla

Amiya Kumar Biswas ; State of W. B. *See* State of W. B. *v.* Amiya Kumar Biswas

Amjad Ali ; Shahada Khatoon *See* Shahada Khatoon *v.* Amjad Ali

Ammavasai *v.* Inspector of Police, Valliyanur, (2000) 9 SCC 749: 2001 SCC (Cri) 1477: AIR 2000 SC 3544 ≻≻**6225**

Ammini *v.* State of Kerala, (1998) 2 SCC 301: 1998 SCC (Cri) 618: AIR 1998 SC 260: 1998 Cri LJ 481 ≻**1782, 3028**

Amresh Tiwari *v.* Lalta Prasad Dubey, (2000) 4 SCC 440: 2000 SCC (Cri) 806: AIR 2000 SC 1504: 2000 Cri LJ 2226: 2000 All LJ 1095 ≻**555** ≻≻**7168**

Amrik Singh *v.* State of Pepsu, AIR 1955 SC 309: (1955) 1 SCR 1302: 1955 Cri LJ 865 ≻≻**8201, 8206, 8236, 8237**

Amrik Singh *v.* State of Punjab, 1980 Supp SCC 315: 1981 SCC (Cri) 252: AIR 1981 SC 1171: 1981 Cri LJ 634 ≻**1144**

Amrik Singh *v.* State of Punjab, 1988 Supp SCC 685: 1989 SCC (Cri) 41 ≻**3709**
Amrik Singh *v.* State of Rajasthan, (1994) 1 SCC 563: 1994 SCC (Cri) 447 ≻≻**5095, 6953**
Amrit Singh *v.* State of Delhi, (2005) 10 SCC 386: 2005 SCC (Cri) 1543 ≻≻**6168**
Amrithalinga Nadar *v.* State of T. N., (1976) 2 SCC 194: 1976 SCC (Cri) 249: AIR 1976 SC 1133: 1976 Cri LJ 848 ≻≻**5467**
Amrutlal Someshwar Joshi *v.* State of Maharashtra (II), (1994) 6 SCC 200: 1994 SCC (Cri) 1604: AIR 1994 SC 2582 ≻**3328**
Anand Chintaman Dighe ; State of Maharashtra *See* State of Maharashtra *v.* Anand Chintaman Dighe
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Anand V. Nagarsheth ; Jaswantbhai M. Sheth *See* Jaswantbhai M. Sheth *v.* Anand V. Nagarsheth
Ananda Dagadu Jadhav *v.* Rukminibai Anand Jadav, 1993 Supp (3) SCC 68: 1993 SCC (Cri) 868 ≻**3786**
Anandwardhan *v.* Pandurang, (2005) 11 SCC 195 ≻**1358**
Anant Chintaman Lagu *v.* State of Bombay, AIR 1960 SC 500: (1960) 2 SCR 460: 1960 Cri LJ 682: 62 Bom LR 371 ≻≻**8612, 8713**
Anant Gopal Sheorey *v.* State of Bombay, AIR 1958 SC 915: 1959 SCR 919: 1958 Cri LJ 1429 ≻≻**7787, 8670**
Ananta Mohanta *v.* State of Orissa, (1979) 3 SCC 423: 1979 SCC (Cri) 523: AIR 1979 SC 1433: 1979 Cri LJ 1091: (1979) 48 Cut LT 515 ≻≻**5199**
Anantrao Shivram Adhav ; Yamunabai Anantrao Adhav *See* Yamunabai Anantrao Adhav *v.* Anantrao Shivram Adhav
Andhra Bank Financial Services Ltd. ; Standard Chartered Bank *See* Standard Chartered Bank *v.* Andhra Bank Financial Services Ltd.
Andhra Pradesh *See* A. P.
Andrews *v.* State of Kerala, (2002) 10 SCC 126 ≻**691**
Anees Noorani *v.* Jadav Dava Ghola, 1987 Supp SCC 70: 1987 SCC (Cri) 628 ≻**2983**
Angana *v.* State of Rajasthan, (2009) 3 SCC 767 ≻≻**5820**
Angnoo *v.* State of U. P., (1970) 3 SCC 208: 1971 SCC (Cri) 26: AIR 1971 SC 296: 1971 Cri LJ 285 ≻≻**7845**
Anguswamy *v.* State of T. N., (1989) 3 SCC 33: 1989 SCC (Cri) 481 ≻**2886**
Ani ; State of Rajasthan *See* State of Rajasthan *v.* Ani
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Anil *v.* State of Haryana, (2007) 10 SCC 274: (2007) 3 SCC (Cri) 641: 2007 Cri LJ 4294 ≻**1138**
Anil ; State of M. P. *See* State of M. P. *v.* Anil
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Anil Kripasagar Rangari ; Anjali Anil Rangari *See* Anjali Anil Rangari *v.* Anil Kripasagar Rangari
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Anil Kumar *v.* State of U. P., (2003) 3 SCC 569: 2003 SCC (Cri) 770: AIR 2003 SC 1596: 2003 Cri LJ 1524 ≻**773**
Anil Kumar *v.* State of U. P., (2004) 13 SCC 257: 2005 SCC (Cri) 178: AIR 2004 SC 4662: 2004 Cri LJ 4881: 2004 All LJ 3779 ≻**921, 922, 3299, 3300** ≻≻**5107, 5108**
Anil Kumar Agarwal ; Vir Prakash Sharma *See* Vir Prakash Sharma *v.* Anil Kumar Agarwal
Anil Kumar Bhunja ; Supdt. and Remembrancer of Legal Affairs *See* Supdt. and Remembrancer of Legal Affairs *v.* Anil Kumar Bhunja
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Anil Kumar Tulsiyani *v.* State of U. P., (2006) 9 SCC 425: (2006) 2 SCC (Cri) 565: (2006) 2 KLT 806 ≻≻**6721, 6722**
Anil Mahajan *v.* Bhor Industries Ltd., (2005) 10 SCC 228 ≻≻**7440**
Anil Rai *v.* State of Bihar, (2001) 7 SCC 318: 2001 SCC (Cri) 1009: AIR 2001 SC 3173 ≻**879, 949, 3618, 3619**

Anil Saran *v.* State of Bihar, (1995) 6 SCC 142: 1995 SCC (Cri) 1051: AIR 1996 SC 204 ≻**2254, 2553** ≻≻**7458**

Anil Sharma *v.* State of Jharkhand, (2004) 5 SCC 679: 2004 SCC (Cri) 1706: AIR 2004 SC 2294: 2004 Cri LJ 2527 ≻**910, 2650, 2865** ≻≻**5872**

Anil Sharma ; State rep. by the CBI *See* State rep. by the CBI *v.* Anil Sharma

Anil Singh *v.* State of Bihar, (2006) 13 SCC 421 ≻**3379**

Anil Singh ; State of U. P. *See* State of U. P. *v.* Anil Singh

Anil Triloknath Sharma ; Suneet Gupta *See* Suneet Gupta *v.* Anil Triloknath Sharma

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Anirudh Thakur ; State of Bihar *See* State of Bihar *v.* Anirudh Thakur

Anirudhsing ; State of Gujarat *See* State of Gujarat *v.* Anirudhsing

Anita Vyas ; Arun Vyas *See* Arun Vyas *v.* Anita Vyas

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Anjani K. Verma *v.* State of Bihar, (2004) 11 SCC 188 ≻≻**7169**

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Ankush Maruti Shinde *v.* State of Maharashtra, (2009) 6 SCC 667 ≻**1713**

Annaporna Dutt *v.* State of U. P., 1993 Supp (2) SCC 246: 1993 SCC (Cri) 502: AIR 1993 SC 1207: 1993 Cri LJ 490 ≻**4028**

Annareddy Sambasiva Reddy *v.* State of A. P., (2009) 12 SCC 546: AIR 2009 SC 2661: (2009) 78 AIC 222 (SC) ≻**621, 733, 2651** ≻≻**6919**

Anne Nageswara Rao *v.* Public Prosecutor, (1975) 4 SCC 106: 1975 SCC (Cri) 357: AIR 1975 SC 1387: 1975 Cri LJ 1119 ≻**1077** ≻≻**5189**

Anne Venkatesware ; Govt. of A. P. *See* Govt. of A. P. *v.* Anne Venkatesware

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Ansari Naseer Ahmed ; Sayeed Ishaque Memon *See* Sayeed Ishaque Memon *v.* Ansari Naseer Ahmed

Anshad *v.* State of Karnataka, (1994) 4 SCC 381: 1994 SCC (Cri) 1204 ≻**2889, 3671, 4114**

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Anukul Chandra Pradhan *v.* Union of India, (1996) 6 SCC 354: 1996 SCC (Cri) 1338 ≻**1965, 1966**

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Anupam J. Kulkarni ; CBI *See* CBI *v.* Anupam J. Kulkarni

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Anushree Halder ; Deb Narayan Halder *See* Deb Narayan Halder *v.* Anushree Halder

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Anwar Ahmad *v.* State of U. P., (1976) 1 SCC 154: 1975 SCC (Cri) 785: AIR 1976 SC 680: (1976) 1 SCR 779: 1976 Cri LJ 620 ≻≻**6867, 9219**

Anwar Ali *v.* State of Chhattisgarh, (2008) 16 SCC 501: (2009) 1 ECrN 360 (SC): 2008 Cri LJ 4572 ≻≻**6729**

Anwar Hussain *v.* State of U. P., (1982) 1 SCC 491: 1982 SCC (Cri) 263: AIR 1981 SC 2072: 1981 Cri LJ 1700 ≻≻**5327**

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Apares Bhattacharyya (Dr.) ; Sipra Bhattacharyya *See* Sipra Bhattacharyya *v.* Dr. Apares Bhattacharyya

Aparna Goyal *v.* Rakesh Goyal, (2009) 12 SCC 648: AIR 2009 SC 1836: (2009) 1 APLJ 71 (SC) ≻≻**6167**

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Apren Joseph *v.* State of Kerala, (1973) 3 SCC 114: 1973 SCC (Cri) 195: AIR 1973 SC 1: 1973 Cri LJ 185: (1973) 2 SCR 16 ≻≻**7839, 7854**

Aqeel Ahmad *v.* State of U. P., (2008) 16 SCC 372: AIR 2009 SC 1271: (2009) 2 All LJ 178: (2009) 75 AIC 248 (SC) ≻**962, 1041, 1439, 3904**

Aravapally Venkanna ; State of A. P. *See* State of A. P. *v.* Aravapally Venkanna

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Babubhai Jamnadas Patel *v.* State of Gujarat, (2009) 9 SCC 610 ≻**1368**

Babubhai Ratilal Patel *v.* State of Gujarat, (2005) 12 SCC 536 ≻≻**6756**

Babubhai Udesinh Parmar *v.* State of Gujarat, (2006) 12 SCC 268: (2007) 1 SCC (Cri) 702: AIR 2007 SC 420: (2007) 49 AIC 618 (SC): 2007 Cri LJ 786: (2007) 1 Guj LR 742 ≻**1740, 1747, 1769, 3099**

Babul Nath ; State of U. P. *See* State of U. P. *v.* Babul Nath

Babulal ; State of M. P. *See* State of M. P. *v.* Babulal

Babulal *v.* State of M. P., (2003) 12 SCC 490: AIR 2004 SC 846 ≻≻**5646**

Babulal Gupta ; S. N. Banerjee *See* S. N. Banerjee *v.* Babulal Gupta

Babulal Parate *v.* State of Maharashtra, AIR 1961 SC 884: (1961) 3 SCR 423: (1961) 2 Cri LJ 16 ≻≻**7801, 7802, 7803, 7804, 7805, 7807, 7810, 9019**

Baburao Bajirao Patil *v.* State of Maharashtra, (1971) 3 SCC 432: 1971 SCC (Cri) 680 ≻≻**8019**

Baburao Bhikanna Naidu ; Vasant Manga Nikumba *See* Vasant Manga Nikumba *v.* Baburao Bhikanna Naidu

Bacchudas ; State of M. P. *See* State of M. P. *v.* Bacchudas

Bachan ; Rajpati *See* Rajpati *v.* Bachan

Bachan Singh *v.* State of Bihar, (2008) 12 SCC 23 ≻**1991**

Bachan Singh *v.* State of Punjab, (1979) 3 SCC 727: 1979 SCC (Cri) 830 ≻**3682**

Bachan Singh *v.* State of Punjab, (1979) 4 SCC 754: 1980 SCC (Cri) 174: AIR 1980 SC 267 ≻≻**6032**

Bachan Singh *v.* State of Punjab, (1982) 3 SCC 24: 1982 SCC (Cri) 535: AIR 1982 SC 1325 ≻**3646, 3647, 3648**

Bachan Singh *v.* State of Punjab (Majority judgment), (1980) 2 SCC 684: 1980 SCC (Cri) 580: AIR 1980 SC 898: 1980 Cri LJ 636: 1980 MLJ (Cri) 827 ≻**3643, 3644, 3645**

Bachha Lal ; State of M. P. *See* State of M. P. *v.* Bachha Lal

Bachhu Singh *v.* State of U. P., (2002) 10 SCC 313 ≻**3450**

Bachubhai T. Pestonji ; Govinder Singh Verma *See* Govinder Singh Verma *v.* Bachubhai T. Pestonji

Badaku Joti Savant *v.* State of Mysore, AIR 1966 SC 1746: (1966) 3 SCR 698: 1966 Cri LJ 1353 ≻≻**8138**

Badam Singh *v.* State of M. P., (2003) 12 SCC 792: AIR 2004 SC 26: 2004 Cri LJ 22 ≻**1010** ≻≻**5637**

Badri ; State of M. P. *See* State of M. P. *v.* Badri

Badri *v.* State of Rajasthan, (1976) 1 SCC 442: 1976 SCC (Cri) 60: AIR 1976 SC 560: (1976) 2 SCR 339: 1976 Cri LJ 496 ≻**796, 1836**

Badri *v.* State of Rajasthan, 1995 Supp (3) SCC 521: 1995 SCC (Cri) 990 ≻**4059**

Badri *v.* State of Rajasthan, (2000) 10 SCC 246 ➢**3997**

Badri *v.* State of U. P., (1975) 4 SCC 609: 1975 SCC (Cri) 644: AIR 1975 SC 1985: 1975 Cri LJ 1739: 1976 MLJ (Cri) 317 ➢➢**5739**

Badri Prakash Soni *v.* Prahalad Soni, 1994 Supp (3) SCC 469 ➢**550**

Badri Prasad *v.* State of M. P., 1995 Supp (4) SCC 682: 1996 SCC (Cri) 79 ➢➢**6325**

Badri Yadav ; State of M. P. *See* State of M. P. *v.* Badri Yadav

Badrilal *v.* Chandan Singh, (2005) 9 SCC 221: 2005 SCC (Cri) 1224 ➢➢**5318**

Badrilal *v.* State of M. P., (2005) 7 SCC 55: 2005 SCC (Cri) 1597 ➢**3460**

Badrinath ; Govt. of T. N. *See* Govt. of T. N. *v.* Badrinath

Bahadur Singh *v.* State of M. P., (2002) 1 SCC 606: 2002 SCC (Cri) 172: AIR 2002 SC 289: (2002) 142 ELT 281: 2002 Cri LJ 579: (2002) 1 CHN (Supp) 34 ➢**218, 1982**

Bahadur Singh *v.* State of Punjab, (1992) 4 SCC 503: 1993 SCC (Cri) 94: AIR 1993 SC 70 ➢**1500**

Bahal Singh *v.* State of Haryana, (1976) 3 SCC 564: 1976 SCC (Cri) 461: AIR 1976 SC 2032: 1976 Cri LJ 1568 ➢➢**8838**

Bahuleyan ; State of Kerala *See* State of Kerala *v.* Bahuleyan

Bai Fatima ; State of Gujarat *See* State of Gujarat *v.* Bai Fatima

Bai Radha *v.* State of Gujarat, (1969) 1 SCC 43: AIR 1970 SC 1396: 1970 Cri LJ 1279 ➢➢**9278**

Bai Tahira *v.* Ali Hussain Fidaalli Chothia, (1979) 2 SCC 316: 1979 SCC (Cri) 473: AIR 1979 SC 362: 1979 Cri LJ 151: 1979 Mah LJ 95 ➢**397, 399**

Baidnath Prasad ; State of Bihar *See* State of Bihar *v.* Baidnath Prasad

Baidyanath Prasad Srivastava *v.* State of Bihar, AIR 1968 SC 1393: (1969) 1 SCR 172: 1968 Cri LJ 1650 ➢➢**8668, 8672**

Baij Nath Prasad Tripathi *v.* State of Bhopal, AIR 1957 SC 494: 1957 SCR 650: (1958) 2 LLJ 475: 1957 Cri LJ 597 ➢➢**8783**

Baij Nath Sah *v.* State of Bihar, (2010) 6 SCC 736 ➢**1790**

Baijnath *v.* State of M. P., AIR 1966 SC 220: (1966) 1 SCR 210: 1966 Cri LJ 179 ➢➢**8221, 8225**

Baijnath Jha *v.* Sita Ram, (2008) 8 SCC 77: (2008) 3 SCC (Cri) 428: AIR 2008 SC 2778 ➢➢**7365**

Baiju *v.* State of M. P., (1978) 1 SCC 588: 1978 SCC (Cri) 142: AIR 1978 SC 522: 1978 Cri LJ 646: 1978 MLJ (Cri) 300: (1978) 26 BLJR 54 ➢**656**

Baikunth Nath Dey ; Karpoori Thakur *See* Karpoori Thakur *v.* Baikunth Nath Dey

Baikunth Singh *v.* State of Bihar, (2008) 14 SCC 766 ➢➢**7672**

Bajjoori Kanthaiah ; State of A. P. *See* State of A. P. *v.* Bajjoori Kanthaiah

Bajwa *v.* State of U. P., (1973) 1 SCC 714: 1973 SCC (Cri) 596: AIR 1973 SC 1204: 1973 Cri LJ 769: (1973) 3 SCR 571 ➢➢**8954**

Bakhshish Singh *v.* State of Punjab, AIR 1957 SC 904: 1958 SCR 409: 1957 Cri LJ 1459 ➢➢**8469**

Bakhshish Singh Brar *v.* Gurmej Kaur, (1987) 4 SCC 663: 1988 SCC (Cri) 29: AIR 1988 SC 257 ➢**2377**

Bakhshish Singh Dhaliwal *v.* State of Punjab, AIR 1967 SC 752: (1967) 1 SCR 211: 1967 Cri LJ 656 ➢➢**8207, 8223, 8368, 8623**

Bakshish Ram *v.* State of Punjab, (2009) 6 SCC 561 ➢➢**5809**

Bakshish Singh ; Gurnam Kaur *See* Gurnam Kaur *v.* Bakshish Singh

Bakulabai *v.* Gangaram, (1988) 1 SCC 537: 1988 SCC (Cri) 189: (1988) 1 KLT 413: 1988 Mah LJ 330 ➢**390, 427, 456** ➢➢**5929, 5984**

Bal Kishan Das *v.* P. C. Nayar, 1991 Supp (2) SCC 412: 1991 SCC (Cri) 1055: AIR 1991 SC 1531: 1991 Cri LJ 1837 ➢➢**7441**

Bal Krishna Pandey *v.* State of U. P., (2003) 12 SCC 186 ➢➢**6710**

Bal Mukund ; Union of India *See* Union of India *v.* Bal Mukund

Bala ; State of M. P. *See* State of M. P. *v.* Bala

Bala Baine Linga Raju *v.* State of A. P., (2009) 6 SCC 706 ➢**2904**

Bala Bhagwan Raut *v.* State of Maharashtra, 1995 Cri LJ 2631 ➢➢**5027**

Bala Seetharamaiah *v.* Perike S. Rao, (2004) 4 SCC 557: 2004 SCC (Cri) 1332: AIR 2004 SC 2172: 2004 Cri LJ 2034: (2004) 17 AIC 126 (SC) ➢**2805**

Baladin *v.* State of U. P., AIR 1956 SC 181: 1956 Cri LJ 345 ➢➢**7969**

Balaji Cattle Feeds ; Dy. Commr. of Prohibition and Excise *See* Dy. Commr. of Prohibition and Excise *v.* Balaji Cattle Feeds

Balak Ram *v.* State of U. P., (1975) 3 SCC 219: 1974 SCC (Cri) 837: AIR 1974 SC 2165: 1974 Cri LR (SC) 530: 1974 Cri LJ 1486 ≻**1831, 2835** ≻≻**8026, 8734**

Balaka Singh *v.* State of Punjab, (1975) 4 SCC 511: 1975 SCC (Cri) 601: AIR 1975 SC 1962: 1975 Supp SCR 129: 1975 Cri LJ 1734 ≻**899**

Balakrishna Pillai *v.* Matha Medicals, (1991) 2 SCC 203: 1991 SCC (Cri) 461: 1991 Cri LJ 691: (1991) 1 Crimes 448 ≻≻**5776**

Balakrushna Swain *v.* State of Orissa, (1971) 3 SCC 192: 1971 SCC (Cri) 313: AIR 1971 SC 804: 1971 Cri LJ 670 ≻≻**7918**

Balasaheb K. Thackeray *v.* Venkat, (2006) 5 SCC 530: (2006) 2 SCC (Cri) 630: (2006) 102 Cut LT 323: (2006) 3 KLT 509 ≻**2994** ≻≻**9178**

Balasubramaniam *v.* State, (2002) 7 SCC 649: 2002 SCC (Cri) 1812 ≻**2302**

Balasubramanian *v.* State, (2010) 9 SCC 20: (2010) 3 SCC (Cri) 1125 ≻**3226**

Balbir *v.* State of Haryana, (2000) 1 SCC 285: 2000 SCC (Cri) 160: AIR 2000 SC 11: 2000 Cri LJ 169 ≻**2733**

Balbir Singh *v.* State, (1996) 11 SCC 139: 1997 SCC (Cri) 134 ≻**293**

Balbir Singh *v.* D. N. Kadian, (1986) 1 SCC 410: 1986 SCC (Cri) 80: AIR 1986 SC 345: 1986 Cri LJ 314: (1986) 1 PLR 296 ≻**2375, 2483**

Balbir Singh *v.* State of Delhi, (2007) 6 SCC 226: (2007) 3 SCC (Cri) 71: AIR 2007 SC 2397 ≻**3076**

Balbir Singh *v.* State of Haryana, (1987) 1 SCC 533: 1987 SCC (Cri) 193: AIR 1987 SC 1053: 1987 Cri LJ 853 ≻**872, 1420**

Balbir Singh ; State of Punjab *See* State of Punjab *v.* Balbir Singh

Balbir Singh *v.* State of Punjab, (1995) 1 SCC 90: 1995 SCC (Cri) 202 ≻≻**7010**

Balbir Singh *v.* State of Punjab, 1995 Supp (3) SCC 472: 1995 SCC (Cri) 951 ≻**1082**

Balbir Singh *v.* State of Punjab, (2006) 12 SCC 283: (2007) 1 SCC (Cri) 715: AIR 2006 SC 3221: 2006 Cri LJ 4646: (2006) 47 AIC 600 (SC) ≻**627, 2635**

Balbir Singh *v.* State of Punjab, (2009) 15 SCC 219 ≻**626**

Balbir Singh ; Surjit Singh *See* Surjit Singh *v.* Balbir Singh

Balchand ; State of Rajasthan *See* State of Rajasthan *v.* Balchand

Balchand Jain *v.* State of M. P., (1976) 4 SCC 572: 1976 SCC (Cri) 689: AIR 1977 SC 366: 1977 Cri LJ 225: (1977) 2 SCR 52 ≻≻**6682**

Baldev Krishan Singla ; Devender Kumar Singla *See* Devender Kumar Singla *v.* Baldev Krishan Singla

Baldev Raj Taneja *v.* Bimal Kumar Kejriwal (HUF), (2001) 9 SCC 67 ≻≻**5987**

Baldev Singh ; S. Kaur *See* S. Kaur *v.* Baldev Singh

Baldev Singh *v.* State of M. P., (2003) 9 SCC 45: AIR 2003 SC 2098: 2003 Cri LJ 880 ≻**1473**

Baldev Singh ; State of Punjab *See* State of Punjab *v.* Baldev Singh

Baldev Singh *v.* State of Punjab, (1990) 4 SCC 692: AIR 1991 SC 31 ≻**673, 1505, 1702**

Baldev Singh *v.* State of Punjab, (1995) 6 SCC 593: 1995 SCC (Cri) 1132: AIR 1996 SC 372 ≻**672, 3818**

Baleshwar Mandal *v.* State of Bihar, (1997) 7 SCC 219: 1997 SCC (Cri) 1042: AIR 1997 SC 3471: 1997 Cri LJ 4084 ≻**1074, 1976, 2100**

Baleshwar Rai *v.* State of Bihar, (1963) 2 SCR 433: (1964) 1 Cri LJ 564 ≻≻**7933, 7946**

Bali Ram Prasad *v.* State of Mysore, (1972) 3 SCC 681: 1972 SCC (Cri) 725: AIR 1973 SC 506: 1973 Cri LJ 3 ≻≻**8649**

Bali Ramu Pawar ; Union of India *See* Union of India *v.* Bali Ramu Pawar

Baliram Waman Hiray *v.* Justice B. Lentin, (1988) 4 SCC 419: 1988 SCC (Cri) 941: AIR 1988 SC 2267 ≻**2292, 2314**

Baljit Singh *v.* State of J&K, (1982) 1 SCC 501: 1982 SCC (Cri) 268: AIR 1982 SC 1558: 1982 Cri LJ 1944 ≻≻**6195**

Baljit Singh *v.* State of U. P., (1976) 4 SCC 590: 1977 SCC (Cri) 15: AIR 1976 SC 2273: 1976 Cri LJ 1745: 1976 CLR 396 (SC) ≻≻**5177**

Balkar Singh *v.* Jagdish Kumar, (2005) 3 SCC 186: 2005 SCC (Cri) 689: AIR 2005 SC 1567: 2005 Cri LJ 1712 ≻≻**7387**

Balkar Singh ; State of Haryana *See* State of Haryana *v.* Balkar Singh

Balkishan A. Devidayal *v.* State of Maharashtra, (1980) 4 SCC 600: 1981 SCC (Cri) 62: AIR 1981 SC 379: 1980 Cri LJ 1424: (1980) 17 ACC 300 ≻≻**7939**

Ballabh Das ; State of U. P. *See* State of U. P. *v.* Ballabh Das

Ballare ; State of M. P. *See* State of M. P. *v.* Ballare

Ballav Narain *v.* State of Bihar, (2004) 13 SCC 87 ≻≻**6438**

Ballu *v.* State of Haryana, 1997 SCC (Cri) 234 ≻**1816**

Balo Yadav *v.* State of Bihar, (1997) 5 SCC 360: 1997 SCC (Cri) 701: AIR 1997 SC 2678: 1997 Cri LJ 3395 ≻**1852**

Balraj *v.* State of U. P., (1994) 4 SCC 29: 1994 SCC (Cri) 823: AIR 1995 SC 1935 ≻**3707, 3810**

Balraj Khanna *v.* Moti Ram, (1971) 3 SCC 399: 1971 SCC (Cri) 647: AIR 1971 SC 1389: 1971 Cri LJ 1110 ≻≻**8267**

Balraj Singh ; State of Punjab *See* State of Punjab *v.* Balraj Singh

Balraje *v.* State of Maharashtra, (2010) 6 SCC 673 ≻**3281** ≻≻**6923**

Balram ; Kunjbihari *See* Kunjbihari *v.* Balram

Balram *v.* State of U. P., 1994 SCC (Cri) 37: (1993) 1 Crimes 1195: 1993 Cri LR (SC) 268 ≻**719**

Balram Mihani ; State of M. P. *See* State of M. P. *v.* Balram Mihani

Balram Prasad Agrawal *v.* State of Bihar, (1997) 9 SCC 338: 1997 SCC (Cri) 612: AIR 1997 SC 1830: 1997 Cri LJ 1640 ≻**2719**

Balram Prasad Sharma ; R. D. Saxena *See* R. D. Saxena *v.* Balram Prasad Sharma

Balram Singh *v.* State of Punjab, (2003) 11 SCC 286: 2004 SCC (Cri) 149: AIR 2003 SC 2213 ≻**1003, 1184**

Balu ; State of M. P. *See* State of M. P. *v.* Balu

Balwan ; State of Haryana *See* State of Haryana *v.* Balwan

Balwant Kaur *v.* UT, Chandigarh, (1988) 1 SCC 1: 1988 SCC (Cri) 1: AIR 1988 SC 139: 1988 Cri LJ 398 ≻**3239**

Balwant Singh *v.* L. C. Bharupal, (1968) 70 ITR 89 ≻≻**9104**

Balwant Singh *v.* Partap Singh, (2000) 9 SCC 352: 2001 SCC (Cri) 318 ≻**4047**

Balwant Singh *v.* State of Bihar, (1977) 4 SCC 448: 1977 SCC (Cri) 633: AIR 1977 SC 2265: 1977 Cri LJ 1935 ≻**3536**

Balwant Singh *v.* State of Punjab, (1976) 1 SCC 425: 1976 SCC (Cri) 43: AIR 1976 SC 230: (1976) 2 SCR 684: 1976 Cri LJ 291 ≻**3666** ≻≻**8719**

Balwant Singh *v.* State of Punjab, (1987) 2 SCC 27: 1987 SCC (Cri) 249: AIR 1987 SC 1080: 1987 Cri LJ 971 ≻**1385**

Balwant Singh *v.* State of Punjab, (1995) 3 SCC 214: 1995 SCC (Cri) 432: AIR 1995 SC 1785 ≻**216**

Balwinder Singh ; Amar Singh *See* Amar Singh *v.* Balwinder Singh

Balwinder Singh *v.* CCE, (2005) 4 SCC 146: 2005 SCC (Cri) 1092: AIR 2005 SC 2917: (2005) 181 ELT 203 ≻**3868**

Balwinder Singh ; Palwinder Singh *See* Palwinder Singh *v.* Balwinder Singh

Balwinder Singh *v.* State of Punjab, 1994 Supp (1) SCC 511: 1994 SCC (Cri) 591 ≻**3969**

Banamali Samal *v.* State of Orissa, 1980 Supp SCC 718: 1979 SCC (Cri) 646: AIR 1979 SC 1414: 1979 Cri LJ 1086: (1979) 48 Cut LT 469 ≻≻**8585**

Bandi Mallaiah *v.* State of A. P., (1980) 3 SCC 136: 1980 SCC (Cri) 672: AIR 1980 SC 1160: 1980 Cri LJ 914 ≻≻**5378**

Bandlamuddi Atchuta Ramaiah *v.* State of A. P., (1996) 11 SCC 133: 1997 SCC (Cri) 128: AIR 1997 SC 496 ≻**671**

Bandu ; State of Maharashtra *See* State of Maharashtra *v.* Bandu

Banhisikha Roy *v.* Somnath Roy, (2005) 12 SCC 500 ≻≻**7607**

Bani Kanta Das *v.* State of Assam, (2009) 15 SCC 206: (2009) 3 CTC 283 (SC) ≻≻**6321**

Bani Singh *v.* State of U. P., (1996) 4 SCC 720: 1996 SCC (Cri) 848: AIR 1996 SC 2439 ≻≻**5562, 5680**

Bank of Rajasthan *v.* Keshav Bangur, (2007) 13 SCC 145: AIR 2008 SC 202: 2008 Cri LJ 397 ≻**1251**

Bankat *v.* State of Maharashtra, (2005) 1 SCC 343: 2005 SCC (Cri) 316: AIR 2005 SC 368: 2005 Cri LJ 646: (2005) 2 Mah LJ 707 ≻**3499, 3783**

Banke Bihari Singh ; G. X. Francis *See* G. X. Francis *v.* Banke Bihari Singh

Bankey Lal *v.* State of U. P., (1971) 3 SCC 184: 1971 SCC (Cri) 253: AIR 1971 SC 2233: 1971 Cri LJ 1540 **➢➢7852, 7866**

Banne ; State of U. P. *See* State of U. P. *v.* Banne

Bansi Lal *v.* Chandan Lal, (1976) 1 SCC 421: 1976 SCC (Cri) 39: AIR 1976 SC 370: 1976 Cri LJ 328 **➢3514**

Bansi Lal *v.* Laxman Singh, (1986) 3 SCC 444: 1986 SCC (Cri) 342: AIR 1986 SC 1721: 1986 Cri LJ 1603 **➢➢6079, 9029**

Bansi Lal *v.* State of M. P., (1982) 3 SCC 370 (2): 1983 SCC (Cri) 51(2) **➢➢5695**

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Bansidhar Singh ; State of Orissa *See* State of Orissa *v.* Bansidhar Singh

Bansilal *v.* State of Rajasthan, (1971) 3 SCC 203: 1971 SCC (Cri) 376: AIR 1971 SC 1116: 1971 Cri LJ 828 **➢➢8491**

Bansropan Singh *v.* State of Bihar, (1983) 1 SCC 225: 1983 SCC (Cri) 183: AIR 1983 SC 166: 1983 Cri LJ 223 **➢➢5714**

Banti *v.* State of M. P., (2004) 1 SCC 414: 2004 SCC (Cri) 294: AIR 2004 SC 261: 2004 Cri LJ 372 **➢1673, 2736, 2738**

Banwari *v.* State of U. P., AIR 1962 SC 1198: 1962 Supp (3) SCR 180: (1962) 2 Cri LJ 278 **➢➢8380, 8381, 8382, 8383, 8455, 9281**

Banwari Ram *v.* State of U. P., (1998) 9 SCC 3: 1998 SCC (Cri) 835: AIR 1998 SC 674: 1998 Cri LJ 869 **➢2093 ➢➢5013**

Banwarilal Jhunjhunwala *v.* Union of India, AIR 1963 SC 1620: 1963 Supp (2) SCR 338: (1963) 2 Cri LJ 529 **➢2874 ➢➢8097, 8361, 8362**

Bapu Limbaji Kamble *v.* State of Maharashtra, (2005) 11 SCC 413 **➢➢5690**

Bar Council of India *v.* High Court of Kerala, (2004) 6 SCC 311: AIR 2004 SC 2227: (2004) 3 LLN 74: (2004) 2 KLT 485 **➢3608**

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Barati *v.* State of U. P., (1974) 4 SCC 258: 1974 SCC (Cri) 420: AIR 1974 SC 839: (1974) 3 SCR 570: 1974 Cri LJ 709 **➢➢5086, 8807**

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Barga Dewani ; State of Assam *See* State of Assam *v.* Barga Dewani

Barot Ram Vishram *v.* State of Gujarat, (1977) 1 SCC 194: 1977 SCC (Cri) 92: AIR 1976 SC 2597: 1976 Cri LJ 2001 **➢➢5455, 8927**

Basant Lal *v.* State of U. P., (1998) 8 SCC 589: 1998 SCC (Cri) 1548 **➢474**

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Bathula Nagamalleswara Rao *v.* State, (2008) 11 SCC 722: (2008) 3 SCC (Cri) 898 **➢689, 972**

Battan ; State of U. P. *See* State of U. P. *v.* Battan

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Bed Raj *v.* State of U. P., AIR 1955 SC 778: (1955) 2 SCR 583: 1955 Cri LJ 1642 ➢➢**8974, 9049**

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Bejoy Chand Patra *v.* State of W. B., AIR 1952 SC 105: 1952 SCR 202: 1952 Cri LJ 644 ➢➢**8398, 8607**

Bejoy Kumar Bose ; State of W. B. *See* State of W. B. *v.* Bejoy Kumar Bose

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Bhag Singh ; State of Punjab *See* State of Punjab *v.* Bhag Singh

Bhagat Ram *v.* State of Rajasthan, (1972) 2 SCC 466: 1972 SCC (Cri) 751: AIR 1972 SC 1502: (1972) 3 SCR 303: 1972 Cri LJ 909: (1972) 9 ACC 67 ➢➢**8782, 8991, 8995**

Bhagat Ram *v.* Surinder Kumar, (2004) 11 SCC 622 ➢**2244, 2522**

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Bhagheeratha Engg. Ltd. ; Mosaraf Hossain Khan *See* Mosaraf Hossain Khan *v.* Bhagheeratha Engg. Ltd.

Bhagirath *v.* Delhi Admn., (1985) 2 SCC 580: 1985 SCC (Cri) 280: AIR 1985 SC 1050: 1985 Cri LJ 1179 ➢➢**6245**

Bhagirath Kanoria *v.* State of M. P., (1984) 4 SCC 222: 1984 SCC (Cri) 590: AIR 1984 SC 1688: 1984 Lab IC 1578: (1984) 2 LLN 731 ➢➢**6988, 6998**

Bhagirath Singh *v.* State of Bihar, (1976) 1 SCC 614: 1976 SCC (Cri) 112: AIR 1976 SC 924: 1976 Cri LJ 685 ➢**802** ➢➢**5214, 8841**

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Bhagubhai Dhanabhai Khalasi *v.* State of Gujarat, (2007) 4 SCC 241: (2007) 2 SCC (Cri) 260: (2007) 53 AIC 8 (SC) ➢**2284**

Bhagwan Das Jagdish Chander *v.* Delhi Admn., (1975) 1 SCC 866: 1975 SCC (Cri) 410: AIR 1975 SC 1309: 1975 Cri LJ 1091 ➢**2624** ➢➢**8373, 8411**

Bhagwan Devi ; Surendra Gupta *See* Surendra Gupta *v.* Bhagwan Devi

Bhagwan Dutt *v.* Kamla Devi, (1975) 2 SCC 386: 1975 SCC (Cri) 563: AIR 1975 SC 83: (1975) 2 SCR 483: (1975) MLJ (Cri) 81 ➢**365** ➢➢**9130, 9137, 9140, 9142, 9146**

Bhagwan Prasad Srivastava *v.* N. P. Mishra, (1970) 2 SCC 56: 1970 SCC (Cri) 292: AIR 1970 SC 1661: 1970 Cri LJ 1401 ➢➢**8209**

Bhagwan Rama Shinde Gosai *v.* State of Gujarat, (1999) 4 SCC 421: 1999 SCC (Cri) 553: AIR 1999 SC 1859 ➢➢**5813**

Bhagwan Singh *v.* State of M. P., (2002) 4 SCC 85: 2002 SCC (Cri) 736: AIR 2002 SC 1621 ➢**599, 750** ➢➢**5176**

Bhagwan Singh *v.* State of M. P., (2003) 3 SCC 21: 2003 SCC (Cri) 712: AIR 2003 SC 1088: 2003 Cri LJ 1262: (2003) 3 MPLJ 297 ➢**1737** ➢➢**5153**

Bhagwan Singh *v.* State of Punjab, AIR 1952 SC 214: 1952 SCR 812: 1952 Cri LJ 1131 ➢➢**7993, 8488, 8489, 8702, 9290, 9335**

Bhagwan Singh *v.* State of Punjab, (1992) 3 SCC 249: 1992 SCC (Cri) 629: AIR 1992 SC 1689: 1992 Cri LJ 3144 ➢**1722**

Bhagwan Singh *v.* State of Rajasthan, (1976) 1 SCC 15: 1975 SCC (Cri) 737: AIR 1976 SC 985: 1976 Cri LJ 713 ➢**283, 1323** ➢➢**7775**

Bhagwan Tana Patil *v.* State of Maharashtra, (1974) 3 SCC 536: 1974 SCC (Cri) 11: AIR 1974 SC 21: 1974 Cri LJ 145 ➢➢**8467**

Bhagwanbhai Dulabhai Jadhav *v.* State of Maharashtra, (1963) 3 SCR 386: (1963) 2 Cri LJ 694: 1963 Mah LJ 134 ➢➢**7773, 8865**

Bhagwant Kishore Joshi ; State of U. P. *See* State of U. P. *v.* Bhagwant Kishore Joshi

Bhagwant Singh *v.* Commr. of Police, (1983) 3 SCC 344: 1983 SCC (Cri) 637: AIR 1983 SC 826: 1983 Cri LJ 1081 ➢**1463, 1981, 2214**

Bhagwant Singh *v.* Commr. of Police, (1985) 2 SCC 537: 1985 SCC (Cri) 267: AIR 1985 SC 1285: 1985 Cri LJ 1521 ➢**1295, 2018**

Bhagwati *v.* State of U. P., (1976) 3 SCC 235: 1976 SCC (Cri) 388: AIR 1976 SC 1449: 1976 Cri LJ 1171 ➢**824, 2740**

Bhagwati Prasad *v.* State of M. P., (2010) 1 SCC 697 ➢**851** ➢➢**5414**

Bhai Lal *v.* State of U. P., (1998) 9 SCC 66: 1998 SCC (Cri) 982 ➢**1992**

Bhajahari Mondal *v.* State of W. B., AIR 1959 SC 8: 1959 SCR 1276: 1959 Cri LJ 98 ➢➢**9259**

Bhajan Lal ; State of Haryana *See* State of Haryana *v.* Bhajan Lal

Bhajan Singh ; Avtar Singh *See* Avtar Singh *v.* Bhajan Singh

Bhajan Singh *v.* State of Punjab, (1978) 4 SCC 77: 1978 SCC (Cri) 515: AIR 1978 SC 1759: 1979 Cri LJ 7 ➢**1632** ➢➢**5474, 5770**

Bhakla and Ramadhin *v.* State of M. P., (1973) 3 SCC 672: 1973 SCC (Cri) 478: AIR 1972 SC 2576: 1973 Cri LJ 39 ➢➢**8815**

Bhalinder Singh *v.* State of Punjab, (1994) 1 SCC 726: 1994 SCC (Cri) 462: (1994) 1 An LT (Cri) 2 ➢**3207**

Bhanabhai Khalpabhai Patel ; Supdt. of Customs *See* Supdt. of Customs *v.* Bhanabhai Khalpabhai Patel

Bhanuprasad Hariprasad Dave *v.* State of Gujarat, AIR 1968 SC 1323: (1969) 1 SCR 22: (1970) 1 LLJ 643: 1968 Cri LJ 1505 ➢➢**7925**

Bhanwar Lal *v.* State of Rajasthan, 1984 Supp SCC 538: 1985 SCC (Cri) 91: AIR 1985 SC 336 ➢**4050**

Bhanwar Singh ; State of Rajasthan *See* State of Rajasthan *v.* Bhanwar Singh

Bhanwar Singh *v.* State of Rajasthan, AIR 1968 SC 709: (1968) 2 SCR 528: 1968 Cri LJ 867 ➢➢**8189, 8191**

Bhanwar Singh *v.* State of Rajasthan, (1969) 3 SCC 763 ➢➢**8895**

Bhanwarlal ; Mathuralal *See* Mathuralal *v.* Bhanwarlal

Bhappa Singh *v.* Ram Pal Singh, 1981 Supp SCC 12: 1981 SCC (Cri) 602: AIR 1982 SC 779 ➢**2980**

Bharat *v.* State of U. P., (1971) 3 SCC 950: 1972 SCC (Cri) 198 ➢➢**8014**

Bharat Amratlal Kothari *v.* Dosukhan Samadkhan Sindhi, (2010) 1 SCC 234 ➢**1288, 1289** ➢➢**6872, 6882, 6883, 7122**

Bharat Chaganlal Raghani ; State of Maharashtra *See* State of Maharashtra *v.* Bharat Chaganlal Raghani

Bharat Chaudhary *v.* State of Bihar, (2003) 8 SCC 77: 2003 SCC (Cri) 1953: AIR 2003 SC 4662 ➢➢**6562, 6595**

Bharat Coking Coal Ltd. *v.* Raghunath Balmiki, (1999) 1 SCC 177: 1999 SCC (L&S) 188 ➢**3588**

Bharat Damodar Kale *v.* State of A. P., (2003) 8 SCC 559: 2004 SCC (Cri) 39: AIR 2003 SC 4560 ➢➢**7001, 7129, 7334, 7573**

Bharat Heavy Electrical Ltd. *See* BHEL

Bharat K. Gupta *v.* Arun Kumar, (2000) 10 SCC 658: 2001 SCC (Cri) 1517 ➢➢**7518**

Bharat Parikh *v.* CBI, (2008) 10 SCC 109: (2008) 3 SCC (Cri) 609: (2008) 69 AIC 156 (SC): 2008 Cri LJ 3540 ➢**2602, 2942** ➢➢**7391**

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Bharat Singh *v.* State of M. P., 1990 Supp SCC 62: 1990 SCC (Cri) 617 ➢**3448**

Bharat Singh *v.* State of U. P., (1973) 3 SCC 896: 1973 SCC (Cri) 574: AIR 1972 SC 2478: 1972 Cri LJ 1705 ➢➢**7857**

Bharath Metha *v.* State, (2008) 5 SCC 752: (2008) 3 SCC (Cri) 72: AIR 2008 SC 1970: 2008 Cri LJ 2245 ➢➢**6894**

Bharati Chandmal Varma ; State of Maharashtra *See* State of Maharashtra *v.* Bharati Chandmal Varma

Bhargavan *v.* State of Kerala, (2004) 12 SCC 414: AIR 2004 SC 1058: (2004) 1 KLT 201: 2004 Cri LJ 646 ➢**1177**

Bharosi *v.* State of M. P., (2002) 7 SCC 239: 2002 SCC (Cri) 1686: AIR 2002 SC 3299 ➢➢**5609**

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Bharvad Bhikha Valu *v.* State of Gujarat, (1972) 4 SCC (N) 48: 1971 SCC (Cri) 500: AIR 1971 SC 1064: 1971 Cri LJ 927 ➢➢**7883**

Bharwad Jakshibhai Nagjibhai *v.* State of Gujarat, (1995) 5 SCC 602: 1995 SCC (Cri) 993: AIR 1995 SC 2505 ➢➢**5091**

Bharwad Mepa Dana *v.* State of Bombay, AIR 1960 SC 289: (1960) 2 SCR 172: 1960 Cri LJ 424 ➢➢**8351**

Bhaskar *v.* State, (1999) 9 SCC 551: 2000 SCC (Cri) 425: AIR 1999 SC 3539 ➢**3551, 3552, 3554**

Bhaskar Chattoraj *v.* State of W. B., 1991 Supp (2) SCC 574: 1991 SCC (Cri) 1077: AIR 1991 SC 317: 1991 Cri LJ 451 ➢➢**7651**

Bhaskar Industries Ltd. *v.* Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401: 2001 SCC (Cri) 1254: AIR 2001 SC 3625 ➢**2988, 3343** ➢➢**5962**

Bhaskar Kushali Kotharkar ; State of Karnataka *See* State of Karnataka *v.* Bhaskar Kushali Kotharkar

Bhaskar Lal Sharma *v.* Monica, (2009) 10 SCC 604: (2009) 161 DLT 739 ➢**658** ➢➢**7593**

Bhaskar Ramappa Madar *v.* State of Karnataka, (2009) 11 SCC 690: 2009 Cri LJ 2422 ➢**1328** ➢➢**5044**

Bhaskaran *v.* State of Kerala, (1998) 9 SCC 12: 1998 SCC (Cri) 843: AIR 1998 SC 476: 1998 Cri LJ 684 ➢**1080**

Bhavesh Jayanti Lakhani *v.* State of Maharashtra, (2009) 9 SCC 551 ➢**59, 194, 195, 196, 198, 319, 1867**

Bhavnagar University *v.* Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111: AIR 2003 SC 511: (2003) 2 Guj LR 1154 ➢**3928**

Bhawani ; State of Rajasthan *See* State of Rajasthan *v.* Bhawani

Bhawna Bhatla ; Aviral Bhatla *See* Aviral Bhatla *v.* Bhawna Bhatla

Bhaylubhai Chimanbhai Kukana *v.* State of Gujarat, (2003) 10 SCC 255 ➢➢**5676**

Bheemappa ; State of Karnataka *See* State of Karnataka *v.* Bheemappa

Bher Chand Tikaji Bora ; Enforcement Officer, TED *See* Enforcement Officer, TED *v.* Bher Chand Tikaji Bora

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Bheru Singh *v.* State of Rajasthan, (1994) 2 SCC 467: 1994 SCC (Cri) 555: (1994) 1 Crimes 630: (1994) 1 ALT (Cri) 695: (1994) 31 ACC 240 ➢**674, 1734, 1778**

Bhiaru Ram *v.* CBI, (2010) 7 SCC 799 ➢➢**6116**

Bhikan Choudhary ; Sumitra Devi *See* Sumitra Devi *v.* Bhikan Choudhary

Bhim Sen *v.* State of U. P., AIR 1955 SC 435: (1955) 1 SCR 1444: 1955 Cri LJ 1010 ➢➢**7709**

Bhim Singh *v.* State of Haryana, (2002) 10 SCC 461: 2003 SCC (Cri) 1469: AIR 2003 SC 693: 2003 Cri LJ 857 ➢➢**5094**

Bhim Singh *v.* State of J&K, (1985) 4 SCC 677: 1986 SCC (Cri) 47: AIR 1986 SC 494 ➢**235, 1897**

Bhim Singh Rup Singh *v.* State of Maharashtra, (1974) 3 SCC 762: 1974 SCC (Cri) 238: AIR 1974 SC 286 ➢➢**8854**

Bhimappa Basappa Bhu Sannavar *v.* Laxman Shivarayappa Samagouda, (1970) 1 SCC 665: 1970 SCC (Cri) 263: AIR 1970 SC 1153: 1970 Cri LJ 1132 ➢➢**7696, 7699, 8122, 8872**

Bhinka *v.* Charan Singh, AIR 1959 SC 960: 1959 Supp (2) SCR 798: 1959 Cri LJ 1223 ➢➢**7823, 7824, 7825, 7835**

Bhiwani Denim & Apparels Ltd. ; Bhaskar Industries Ltd. *See* Bhaskar Industries Ltd. *v.* Bhiwani Denim & Apparels Ltd.

Bhojappa Hanamanthappa Choudannavar *v.* State of Karnataka, (2004) 10 SCC 177: 2004 SCC (Cri) 1783 ➢**3796**

Bholanath Amritlal Purohit *v.* State of Gujarat, (1970) 2 SCC 414: 1970 SCC (Cri) 469: AIR 1971 SC 194: 1971 Cri LJ 258 **≻≻7698**

Bholu Ram *v.* State of Punjab, (2008) 9 SCC 140: (2008) 3 SCC (Cri) 710 **≻2373, 2405, 2572, 3359, 3360, 3368, 3369, 3376, 3399, 3406, 3408 ≻≻5989**

Bhoor Singh *v.* State of Punjab, (1974) 4 SCC 754: 1974 SCC (Cri) 664: AIR 1974 SC 1256: 1974 Cri LJ 929 **≻2655, 3062 ≻≻8349, 8590, 8764**

Bhooraji ; State of M. P. *See* State of M. P. *v.* Bhooraji

Bhopat Singh Kishan Singh *v.* State of Maharashtra, (1972) 3 SCC 367: 1972 SCC (Cri) 537: AIR 1973 SC 446: 1973 Cri LJ 343 **≻≻7863**

Bhor Industries Ltd. ; Anil Mahajan *See* Anil Mahajan *v.* Bhor Industries Ltd.

Bhubneshwar Mandal *v.* State of Bihar, (1973) 1 SCC 303: 1973 SCC (Cri) 323: AIR 1973 SC 399: 1973 Cri LJ 337 **≻≻8822**

Bhudeb Chandra Karmakar *v.* State of W. B., (2001) 9 SCC 226: 2001 SCC (Cri) 1571 **≻66, 3344**

Bhuneshwar Prasad Sinha ; Gopal Vijay Verma *See* Gopal Vijay Verma *v.* Bhuneshwar Prasad Sinha

Bhup Singh ; State of Haryana *See* State of Haryana *v.* Bhup Singh

Bhup Singh ; State of Rajasthan *See* State of Rajasthan *v.* Bhup Singh

Bhupendra Kumar Modi (Dr.) ; U. P. Pollution Control Board *See* U. P. Pollution Control Board *v.* Dr. Bhupendra Kumar Modi

Bhupendra Singh *v.* State of M. P., 1980 Supp SCC 352: 1981 SCC (Cri) 280: AIR 1981 SC 1240: 1981 Cri LJ 751 **≻3468**

Bhupendra Singh *v.* State of Punjab, AIR 1968 SC 1438: (1968) 3 SCR 404: 71 Punj LR 98: 1969 Cri LJ 6 **≻≻8746**

Bhupinder Singh *v.* Daljit Kaur, (1979) 1 SCC 352: 1979 SCC (Cri) 302: AIR 1979 SC 442: 1979 Cri LJ 198: 1979 MLJ (Cri) 446: 1979 ALJ 209 **≻481**

Bhupinder Singh *v.* Jarnail Singh, (2006) 6 SCC 277: (2006) 3 SCC (Cri) 101: AIR 2006 SC 2622: (2006) 4 KLT 460 **≻1891, 2024**

Bhupinder Singh *v.* State of Punjab, (1988) 3 SCC 513: 1988 SCC (Cri) 694: AIR 1988 SC 1011 **≻3022**

Bhupinder Singh *v.* State of Punjab, 1996 SCC (Cri) 103 **≻933**

Bhura Kunjda ; State of M. P. *See* State of M. P. *v.* Bhura Kunjda

Bhura Mogiya *v.* Satish Pagariya, (2001) 9 SCC 385 **≻568**

Bhura Ram *v.* State of Rajasthan, (2003) 9 SCC 205 **≻4090**

Bhura Ram *v.* State of Rajasthan, (2008) 11 SCC 103: AIR 2008 SC 2666: 2008 Cri LJ 3494 **≻2125**

Bhura Singh ; State of Punjab *See* State of Punjab *v.* Bhura Singh

Bhuri Bai *v.* State of M. P., 1987 Supp SCC 690 **≻306**

Bhuvaneshwar Yadav *v.* State of Bihar, (2008) 15 SCC 467: AIR 2009 SC 1452: (2008) 72 AIC 114 (SC) **≻≻5811**

Bhuwneshwar Singh *v.* Union of India, (1993) 4 SCC 327: 1994 SCC (Cri) 1 **≻≻6254**

Bibhuti Bhusan Chakravarty ; Somchand Sanghvi *See* Somchand Sanghvi *v.* Bibhuti Bhusan Chakravarty

Bibhuti Bhusan Das Gupta *v.* State of W. B., AIR 1969 SC 381: (1969) 2 SCR 104: 1969 Cri LJ 654 **≻≻8625, 8645, 9312, 9336**

Bibhuti Nath Jha *v.* State of Bihar, (2005) 12 SCC 286 **≻≻6415**

Bidyut Prava Dixit ; Dwarika Prasad Satpathy *See* Dwarika Prasad Satpathy *v.* Bidyut Prava Dixit

Bihar State Electricity Board *v.* Nand Kishore Tamakhuwala, (1986) 2 SCC 414: 1986 SCC (Cri) 179: AIR 1986 SC 1653: 1986 Cri LJ 1246 **≻≻7328, 7329**

Bihari Lal *v.* Kalyani, (1986) 1 SCC 132: 1986 SCC (Cri) 63 **≻495**

Bihari Nath Goswami *v.* Shiv Kumar Singh, (2004) 9 SCC 186: 2004 SCC (Cri) 1435 **≻1205 ≻≻5148**

Bihari Prasad Singh *v.* State of Bihar, (2000) 10 SCC 346 **≻≻6027**

Bihari Rai *v.* State of Bihar, (2008) 15 SCC 778: (2009) 3 SCC (Cri) 1209: AIR 2009 SC 18: 2009 Cri LJ 340: (2008) 71 AIC 156 (SC) **≻2113**

Bihari Singh Madho Singh *v.* State of Bihar, AIR 1954 SC 692: 1954 Cri LJ 1742 **≻≻8631**

Bijoy Singh *v.* State of Bihar, (2002) 9 SCC 147: AIR 2002 SC 1949: 2002 Cri LJ 2623 **≻610, 685, 965, 1195, 1307, 1498**

Bijoyanand Patnaik ; K. A. A. Brinnand *See* K. A. A. Brinnand *v.* Bijoyanand Patnaik

Bikau Pandey *v.* State of Bihar, (2003) 12 SCC 616: AIR 2004 SC 997 ≻**1484**

Bikkar Singh *v.* State of Punjab, 1989 Supp (1) SCC 265: 1989 SCC (Cri) 414: AIR 1989 SC 1440: (1989) 2 Crimes 1: 1989 Cri LJ 1457 ≻**4016**

Bilakchand Gyanchand Co. *v.* A. Chinnaswami, (1999) 5 SCC 693: 1999 SCC (Cri) 1034: AIR 1999 SC 2182: 1999 Cri LJ 3498: (1999) 98 Comp Cas 573 ≻≻**7492**

Bilash Gupta *v.* State of Jharkhand, (2005) 11 SCC 179 ≻≻**6677**

Bimal Chandra Saha ; Durgesh Chandra Saha *See* Durgesh Chandra Saha *v.* Bimal Chandra Saha

Bimal Debnath ; S. K. Zutshi *See* S. K. Zutshi *v.* Bimal Debnath

Bimal Krishna Kundu ; State of A. P. *See* State of A. P. *v.* Bimal Krishna Kundu

Bimal Krishna Sen ; Abinash Chandra Bose *See* Abinash Chandra Bose *v.* Bimal Krishna Sen

Bimal Kumar Kejriwal (HUF) ; Baldev Raj Taneja *See* Baldev Raj Taneja *v.* Bimal Kumar Kejriwal (HUF)

Bimal Kumar Kejriwal (HUF) ; Indseam Services Ltd. *See* Indseam Services Ltd. *v.* Bimal Kumar Kejriwal (HUF)

Biman Chatterjee *v.* Sanchita Chatterjee, (2004) 3 SCC 388: 2004 SCC (Cri) 814: AIR 2004 SC 1699: 2004 Cri LJ 1451 ≻≻**6441, 6809**

Bimbadhar Pradhan *v.* State of Orissa, AIR 1956 SC 469: 1956 SCR 206: 1956 Cri LJ 831: (1956) 2 MLJ (SC) 13 ≻≻**8330, 8346, 8646, 9294**

Bimla Agarwala *v.* State of U. P., (2008) 17 SCC 566: AIR 2009 SC 1657: 2009 Cri LJ 1533: (2009) 75 AIC 81 (SC) ≻≻**6159**

Bimla Devi *v.* State of Bihar, (1994) 2 SCC 8: 1994 SCC (Cri) 472: 1994 Cri LJ 638 ≻≻**6485, 6493**

Bimla Devi *v.* State of J&K, (2009) 6 SCC 629 ≻**3186** ≻≻**6928**

Bina Choudhary ; State of Tripura *See* State of Tripura *v.* Bina Choudhary

Binay Kumar Singh *v.* State of Bihar, (1997) 1 SCC 283: 1997 SCC (Cri) 333: AIR 1997 SC 322: 1997 Cri LJ 362 ≻**611**

Bindeshwar Jha ; Shrishti Narain Jha *See* Shrishti Narain Jha *v.* Bindeshwar Jha

Bindeshwari Prasad Singh *v.* Kali Singh, (1977) 1 SCC 57: 1977 SCC (Cri) 33: AIR 1977 SC 2432: 1978 Cri LJ 187 ≻≻**7711**

Bindeshwari Prasad Singh *v.* State of Bihar, (2002) 6 SCC 650: 2002 SCC (Cri) 1448: AIR 2002 SC 2907 ≻≻**6075, 6077**

Biological E. Ltd. ; Medchl Chemicals & Pharma (P) Ltd. *See* Medchl Chemicals & Pharma (P) Ltd. *v.* Biological E. Ltd.

Bipat Gope *v.* State of Bihar, AIR 1962 SC 1195: 1962 Supp (2) SCR 948: (1962) 2 Cri LJ 276 ≻≻**8291, 8296**

Bipen Kumar Tiwari ; S. N. Sharma *See* S. N. Sharma *v.* Bipen Kumar Tiwari

Bipin Behari Sarkar *v.* State of W. B., AIR 1959 SC 13: 1959 SCR 1324: 1959 Cri LJ 102 ≻≻**8553**

Bipin Shantilal Panchal *v.* State of Gujarat, (2001) 3 SCC 1: 2001 SCC (Cri) 417: AIR 2001 SC 1158: 2001 Cri LJ 1254 ≻**2857** ≻≻**6371**

Bipin Shantilal Panchal (Dr.) *v.* State of Gujarat, (1996) 1 SCC 718: 1996 SCC (Cri) 200: AIR 1996 SC 2897 ≻**1908**

Bipinbhai Vadilal Mehta ; Ashim Kumar Roy *See* Ashim Kumar Roy *v.* Bipinbhai Vadilal Mehta

Bipinchandra Parshottamdas Patel *v.* State of Gujarat, (2003) 4 SCC 642: 2003 SCC (Cri) 831: AIR 2003 SC 2256 ≻**2825**

Bir Singh *v.* State of U. P., (1977) 4 SCC 420: 1977 SCC (Cri) 640: AIR 1978 SC 59: 1978 Cri LJ 177: 1978 ALJ 365 ≻**2854** ≻≻**5579, 5873**

Birakishore Kar *v.* State of Orissa, (2000) 9 SCC 541: 2001 SCC (Cri) 645: AIR 2000 SC 3626 (1): (2000) 1 KLT 639 ≻**4045**

Biran Singh *v.* State of Bihar, (1975) 4 SCC 161: 1975 SCC (Cri) 454: AIR 1975 SC 87: 1975 Cri LJ 44 ≻≻**5459**

Birappa *v.* State of Karnataka, (2010) 12 SCC 182: AIR 2010 SC 3398 ≻**1092**

Birbal *v.* State of M. P., (2000) 10 SCC 212 ≻**4093**

Birendra K. Singh *v.* State of Bihar, (2000) 8 SCC 498: 2001 SCC (Cri) 17 ≻**2421, 2540**

Biri Singh *v.* State of U. P., 1992 Supp (2) SCC 264: 1992 SCC (Cri) 915: 1992 Cri LJ 1510 ≻≻**5492**

Birichh Bhujan *v.* State of Bihar, AIR 1963 SC 1120: 1963 Supp (2) SCR 328: (1963) 2 Cri LJ 190 ≻≻**8377, 9289**

Bishambhar Dayal Chandra Mohan *v.* State of U. P., (1982) 1 SCC 39: 1982 SCC (Cri) 53: AIR 1982 SC 33: (1982) 1 SCR 1137 ≻**305**

Bishan Dass *v.* State of Punjab, (1975) 3 SCC 700: 1975 SCC (Cri) 145: AIR 1975 SC 573: 1975 Cri LJ 461 ≻**822**

Bisheshwar Ganjhu *v.* State of Jharkhand, (2007) 15 SCC 736 ≻≻**6458**

Bishna *v.* State of W. B., (2005) 12 SCC 657 ≻**723**

Bishnu Deo Shaw *v.* State of W. B., (1979) 3 SCC 714: 1979 SCC (Cri) 817: AIR 1979 SC 964: 1979 Cri LJ 841: (1979) 16 ACC 175: 1979 MLJ (Cri) 565 ≻**3657**

Bishnu Prasad Sinha *v.* State of Assam, (2007) 11 SCC 467: AIR 2007 SC 848: (2007) 53 AIC 166 (SC): 2007 Cri LJ 1145 ≻**1784, 2918, 3245**

Bishnupada Sahoo ; Pravati Rani Sahoo *See* Pravati Rani Sahoo *v.* Bishnupada Sahoo

Bismillah Begum ; Chand Patel *See* Chand Patel *v.* Bismillah Begum

Bissu Mahgoo *v.* State of U. P., AIR 1954 SC 714: 1954 Cri LJ 1796 ≻≻**9039, 9042**

Biswabhan Das *v.* Gopen Chandra Hazarika, AIR 1967 SC 895: (1967) 1 SCR 447: 1967 Cri LJ 828 ≻≻**8688**

Biswanath Ghosh *v.* State of W. B., (1987) 2 SCC 55: 1987 SCC (Cri) 259: AIR 1987 SC 1155: 1987 Cri LJ 1052 ≻≻**5560**

Boddella Babul Reddy *v.* Public Prosecutor, (2010) 3 SCC 648 ≻**653, 896** ≻≻**5344**

Bodhraj *v.* State of J&K, (2002) 8 SCC 45: AIR 2002 SC 3164 ≻**964, 1646** ≻≻**5606, 5769**

Bogam Chandraiah ; State of A. P. *See* State of A. P. *v.* Bogam Chandraiah

Bolem Bhaskara Rao *v.* State of A. P., 1995 Supp (4) SCC 211: 1996 SCC (Cri) 49 ≻**1821**

Bolin Chetia *v.* Jogadish Bhuyan, (2005) 6 SCC 81: AIR 2005 SC 1872 ≻≻**5548**

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Borjahan Gorey *v.* State of W. B., (1972) 2 SCC 550: 1972 SCC (Cri) 888: AIR 1972 SC 2256: (1973) 1 SCR 751 ≻≻**7778**

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C. Muniappan *v.* State of T. N., (2010) 9 SCC 567: (2010) 5 CTC 794 ≻**184, 1258, 1449, 1998, 2271**

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CBI ; Chandraswami *See* Chandraswami *v.* CBI

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Dattu Genu Gaikwad *v.* State of Maharashtra, (1974) 3 SCC 678: 1974 SCC (Cri) 208: AIR 1974 SC 387: 1974 Cri LJ 446: 1975 MLJ (Cri) 619 ≻≻**5547, 8893**

Daulat Ram *v.* State of Punjab, AIR 1962 SC 1206: 1962 Supp (2) SCR 812: (1962) 2 Cri LJ 286 ≻≻**8153**

Daulat Ram ; State of Rajasthan *See* State of Rajasthan *v.* Daulat Ram

Davendra Prasad Tiwari *v.* State of U. P., (1978) 4 SCC 474: 1979 SCC (Cri) 95: AIR 1978 SC 1544: 1978 Cri LJ 1614 ≻**1774**

Dawalsab *v.* Khajasab, (2009) 14 SCC 660: (2009) 80 AIC 71 (SC) ≻**330, 446**

Dawood Ibrahim Kaskar ; State *See* State *v.* Dawood Ibrahim Kaskar

Daya Nand ; State of Haryana *See* State of Haryana *v.* Daya Nand

Daya Sapra ; Vishnu Dutt Sharma *See* Vishnu Dutt Sharma *v.* Daya Sapra

Daya Singh *v.* Union of India, (1991) 3 SCC 61: 1991 SCC (Cri) 523: AIR 1991 SC 1548: 1991 Cri LJ 1903 ≻≻**6214**

Dayachand *v.* Sahib Singh, (1991) 2 SCC 379: 1991 SCC (Cri) 438: AIR 1991 SC 930: 1991 Cri LJ 1370: (1991) 2 Crimes 31 ≻≻**6530**

Dayal Singh *v.* State of Maharashtra, (2007) 12 SCC 452: (2008) 3 SCC (Cri) 236: 2007 Cri LJ 3265 ≻**1520**

Dayaram ; State of M. P. *See* State of M. P. *v.* Dayaram

DCM Financial Services Ltd. *v.* J. N. Sareen, (2008) 8 SCC 1: (2008) 3 SCC (Cri) 401: AIR 2008 SC 2255: (2008) 2 KLT 762: (2008) 144 Comp Cas 55: 2008 Cri LJ 3178 ≻≻**7498**

Deb Narayan Halder *v.* Anushree Halder, (2003) 11 SCC 303: 2004 SCC (Cri) 164: AIR 2003 SC 3174 ≻**383** ≻≻**6003**

Debabrata Bandhopadhyaya *v.* State of W. B., AIR 1969 SC 189: (1969) 1 SCR 304: 1969 Cri LJ 401 ≻≻**7718, 9220, 9223**

Debaraj Tarini ; State of Orissa *See* State of Orissa *v.* Debaraj Tarini

Debendra Nath Padhi ; State of Orissa *See* State of Orissa *v.* Debendra Nath Padhi

Deena *v.* Union of India, (1983) 4 SCC 645: 1983 SCC (Cri) 879: AIR 1983 SC 1155: 1983 Cri LJ 1602 ≻**3756, 3757, 3758, 3759, 3760**

Deep Chand *v.* State of Rajasthan, AIR 1961 SC 1527: (1962) 1 SCR 662: (1961) 2 Cri LJ 705: (1962) 2 MLJ 1 (SC) ≻≻**8037**

Deepak Jain *v.* Charu Jain, (2007) 10 SCC 229: (2007) 54 AIC 149 (SC) ≻**467**

Deepak Mahajan ; Directorate of Enforcement *See* Directorate of Enforcement *v.* Deepak Mahajan

Deepak Mattu ; State of Punjab *See* State of Punjab *v.* Deepak Mattu

Deepak Rajak *v.* State of W. B., (2007) 15 SCC 305 ≻≻**5576**

Deepak Sarkar *v.* State of Bihar, (1977) 1 SCC 494: 1977 SCC (Cri) 128: AIR 1977 SC 1665: 1977 Cri LJ 1437 ≻≻**7174, 9373**

Deepak Singchi *v.* State of Rajasthan, (2007) 14 SCC 583: AIR 2007 SC 3064: (2007) 57 AIC 23 (SC): 2007 Cri LJ 4338 ≻≻**6718**

Deepika ; Naresh Chandra Singhania *See* Naresh Chandra Singhania *v.* Deepika

Deepti *v.* Akhil Rai, (1995) 5 SCC 751: 1995 SCC (Cri) 1020 ≻≻**7060, 7590**

Deepu *v.* State of M. P., (2007) 15 SCC 543 ≻**2758**

Dehal Singh *v.* State of H. P., (2010) 9 SCC 85: (2010) 3 SCC (Cri) 1139: AIR 2010 SC 3594 ≻**3293, 3326**

Delhi Admn. *See also* State (Delhi Admn.)

Delhi Admn. ; A. C. Sharma *See* A. C. Sharma *v.* Delhi Admn.

Delhi Admn. ; Bhagirath *See* Bhagirath *v.* Delhi Admn.

Delhi Admn. ; Bhagwan Das Jagdish Chander *See* Bhagwan Das Jagdish Chander *v.* Delhi Admn.

Delhi Admn. ; Duli Chand *See* Duli Chand *v.* Delhi Admn.

Delhi Admn. ; Hira Lal Jain *See* Hira Lal Jain *v.* Delhi Admn.

Dalip Kaur *v.* Jagnar Singh, (2009) 14 SCC 696: (2009) 80 AIC 212 (SC) ≻≻**7432**

Dalip Singh *v.* State of Punjab, AIR 1953 SC 364: 1954 SCR 145: 1953 Cri LJ 1465 ≻≻**7843**

Dalip Singh *v.* State of Punjab, (1979) 4 SCC 332: 1979 SCC (Cri) 968: AIR 1979 SC 1173: 1979 Cri LJ 700 ≻**1712, 2836, 3747**

Dalip Singh *v.* State of Punjab, (1997) 11 SCC 573: AIR 1997 SC 2985: 1997 Cri LJ 3647 ≻**1492**

Daljit Kaur ; Bhupinder Singh *See* Bhupinder Singh *v.* Daljit Kaur

Daljit Singh ; State of Punjab *See* State of Punjab *v.* Daljit Singh

Daljit Singh *v.* State of Punjab, (2006) 6 SCC 159: (2006) 3 SCC (Cri) 20 ≻**3832, 3840** ≻≻**8750**

Damji *v.* State of Gujarat, 1990 Supp SCC 143: 1990 SCC (Cri) 633: 1987 PLJR 78 (SC) ≻≻**6310**

Damodar *v.* State of Rajasthan, (2004) 12 SCC 336: AIR 2003 SC 4414: 2003 Cri LJ 5014 ≻**634, 3222**

Damodar H. Bajaj ; B. K. Gupta *See* B. K. Gupta *v.* Damodar H. Bajaj

Damodar S. Prabhu *v.* Sayed Babalal H., (2010) 5 SCC 663 ≻**3416**

Damodaran ; State of T. N. *See* State of T. N. *v.* Damodaran

Damodarprasad Chandrikaprasad *v.* State of Maharashtra, (1972) 1 SCC 107: 1972 SCC (Cri) 110: AIR 1972 SC 622: (1972) 2 SCR 622: 1972 Cri LJ 451 ≻≻**8832**

Damu ; State of Maharashtra *See* State of Maharashtra *v.* Damu

Dan Singh ; State of U. P. *See* State of U. P. *v.* Dan Singh

Dandu Lakshmi Reddy *v.* State of A. P., (1999) 7 SCC 69: 1999 SCC (Cri) 1176: AIR 1999 SC 3255 ≻**1548**

Dani Singh *v.* State of Bihar, (2004) 13 SCC 203: 2005 SCC (Cri) 127: AIR 2004 SC 4570: 2004 Cri LJ 3328 ≻**2670**

Danial Latifi *v.* Union of India, (2001) 7 SCC 740: AIR 2001 SC 3958 ≻**413**

Dappili Verma Reddy *v.* State of A. P., (1973) 3 SCC 89: 1973 SCC (Cri) 151: AIR 1973 SC 153: 1973 Cri LJ 223 ≻≻**8834**

Dara Gaddi *v.* State of Bihar, (1986) 4 SCC 564: 1986 SCC (Cri) 543 ≻≻**6766**

Dara Singh *v.* Republic of India, (2011) 2 SCC 490 ≻**1733, 1738, 1749, 1787, 1812**

Darasing Dhyansing *v.* State of Gujarat, (1972) 4 SCC 648: AIR 1972 SC 505: 1972 Cri LJ 311 ≻≻**8914**

Dargah Committee, Ajmer *v.* State of Rajasthan, AIR 1962 SC 574: (1962) 2 SCR 265: (1962) 1 Cri LJ 507 ≻≻**9033**

Daroga Singh *v.* B. K. Pandey, (2004) 5 SCC 26: 2004 SCC (Cri) 1521: 2004 Cri LJ 2084 ≻**2858**

Daroga Singh ; Sarvesh Narain Shukla *See* Sarvesh Narain Shukla *v.* Daroga Singh

Darshan *v.* State of Haryana, (2002) 9 SCC 755: AIR 2002 SC 2344 ≻**3306, 3930**

Darshan Kumari *v.* Surinder Kumar, 1995 Supp (4) SCC 137: 1996 SCC (Cri) 44 ≻**447**

Darshan Singh ; State of Punjab *See* State of Punjab *v.* Darshan Singh

Darshan Singh *v.* State of Punjab, (1983) 2 SCC 411: 1983 SCC (Cri) 523: AIR 1983 SC 554: 1983 Cri LJ 985 ≻**778**

Darshan Singh *v.* State of Punjab, (1988) 1 SCC 618: 1988 SCC (Cri) 214: AIR 1988 SC 747 ≻**1232, 1436**

Darshan Singh *v.* State of Punjab, (2010) 2 SCC 333 ≻**1016** ≻≻**5067**

Darshan Singh Balwant Singh *v.* State of Punjab, AIR 1953 SC 83: 1953 SCR 319: 19 Cut LT 419: ILR 1953 Punj 639: 1953 Cri LJ 525 ≻≻**8942**

Darshan Singh Ram Kishan *v.* State of Maharashtra, (1971) 2 SCC 654: 1971 SCC (Cri) 628: AIR 1971 SC 2372: 1971 Cri LJ 1697 ≻≻**8115, 8190**

Darya Singh *v.* State of Punjab, AIR 1965 SC 328: (1964) 3 SCR 397: (1965) 1 Cri LJ 350 ≻≻**8065, 8474, 9321, 9325**

Dasari Siva Prasad Reddy *v.* Public Prosecutor, High Court of A. P., (2004) 11 SCC 282: AIR 2004 SC 4383 ≻**1687** ≻≻**5591**

Dasharath Pandey *v.* State of Bihar, 1995 Supp (3) SCC 551: 1995 SCC (Cri) 991 ≻≻**6793**

Dashrath *v.* State of M. P., (2007) 12 SCC 487: (2008) 3 SCC (Cri) 254: AIR 2008 SC 316 ≻**1695**

Dashrath Singh *v.* State of U. P., (2004) 7 SCC 408: 2004 SCC (Cri) 1932: 2004 All LJ 3256 ≻**803, 884, 1458**

Dasrath Gond *v.* State of Orissa, AIR 1955 SC 583: 1955 Cri LJ 1297 ≻≻**8971**

Datar Singh *v.* State of Punjab, (1975) 4 SCC 272: 1975 SCC (Cri) 530: AIR 1974 SC 1193: 1974 Cri LJ 908: (1974) 11 ACC 262 ≻**712, 904, 1589**

Datar Switchgear Ltd. ; Maharashtra State Electricity Distribution Co. Ltd. *See* Maharashtra State Electricity Distribution Co. Ltd. *v.* Datar Switchgear Ltd.

Dattatray Krishnaji Ghule *v.* State of Maharashtra, (2007) 4 SCC 113: (2007) 2 SCC (Cri) 205: AIR 2007 SC 1133: (2007) 51 AIC 1 (SC): 2007 Cri LJ 1455 ➢➢**6544, 6545**

Dattatraya Dulaji Ghadigaonkar ; Vadilal Panchal *See* Vadilal Panchal *v.* Dattatraya Dulaji Ghadigaonkar

Dattatraya G. Hegde ; Krishna Janardhan Bhat *See* Krishna Janardhan Bhat *v.* Dattatraya G. Hegde

Dattu Genu Gaikwad *v.* State of Maharashtra, (1974) 3 SCC 678: 1974 SCC (Cri) 208: AIR 1974 SC 387: 1974 Cri LJ 446: 1975 MLJ (Cri) 619 ➢➢**5547, 8893**

Daulat Ram *v.* State of Punjab, AIR 1962 SC 1206: 1962 Supp (2) SCR 812: (1962) 2 Cri LJ 286 ➢➢**8153**

Daulat Ram ; State of Rajasthan *See* State of Rajasthan *v.* Daulat Ram

Davendra Prasad Tiwari *v.* State of U. P., (1978) 4 SCC 474: 1979 SCC (Cri) 95: AIR 1978 SC 1544: 1978 Cri LJ 1614 ➢**1774**

Dawalsab *v.* Khajasab, (2009) 14 SCC 660: (2009) 80 AIC 71 (SC) ➢**330, 446**

Dawood Ibrahim Kaskar ; State *See* State *v.* Dawood Ibrahim Kaskar

Daya Nand ; State of Haryana *See* State of Haryana *v.* Daya Nand

Daya Sapra ; Vishnu Dutt Sharma *See* Vishnu Dutt Sharma *v.* Daya Sapra

Daya Singh *v.* Union of India, (1991) 3 SCC 61: 1991 SCC (Cri) 523: AIR 1991 SC 1548: 1991 Cri LJ 1903 ➢➢**6214**

Dayachand *v.* Sahib Singh, (1991) 2 SCC 379: 1991 SCC (Cri) 438: AIR 1991 SC 930: 1991 Cri LJ 1370: (1991) 2 Crimes 31 ➢➢**6530**

Dayal Singh *v.* State of Maharashtra, (2007) 12 SCC 452: (2008) 3 SCC (Cri) 236: 2007 Cri LJ 3265 ➢**1520**

Dayaram ; State of M. P. *See* State of M. P. *v.* Dayaram

DCM Financial Services Ltd. *v.* J. N. Sareen, (2008) 8 SCC 1: (2008) 3 SCC (Cri) 401: AIR 2008 SC 2255: (2008) 2 KLT 762: (2008) 144 Comp Cas 55: 2008 Cri LJ 3178 ➢➢**7498**

Deb Narayan Halder *v.* Anushree Halder, (2003) 11 SCC 303: 2004 SCC (Cri) 164: AIR 2003 SC 3174 ➢**383** ➢➢**6003**

Debabrata Bandhopadhyaya *v.* State of W. B., AIR 1969 SC 189: (1969) 1 SCR 304: 1969 Cri LJ 401 ➢➢**7718, 9220, 9223**

Debaraj Tarini ; State of Orissa *See* State of Orissa *v.* Debaraj Tarini

Debendra Nath Padhi ; State of Orissa *See* State of Orissa *v.* Debendra Nath Padhi

Deena *v.* Union of India, (1983) 4 SCC 645: 1983 SCC (Cri) 879: AIR 1983 SC 1155: 1983 Cri LJ 1602 ➢**3756, 3757, 3758, 3759, 3760**

Deep Chand *v.* State of Rajasthan, AIR 1961 SC 1527: (1962) 1 SCR 662: (1961) 2 Cri LJ 705: (1962) 2 MLJ 1 (SC) ➢➢**8037**

Deepak Jain *v.* Charu Jain, (2007) 10 SCC 229: (2007) 54 AIC 149 (SC) ➢**467**

Deepak Mahajan ; Directorate of Enforcement *See* Directorate of Enforcement *v.* Deepak Mahajan

Deepak Mattu ; State of Punjab *See* State of Punjab *v.* Deepak Mattu

Deepak Rajak *v.* State of W. B., (2007) 15 SCC 305 ➢➢**5576**

Deepak Sarkar *v.* State of Bihar, (1977) 1 SCC 494: 1977 SCC (Cri) 128: AIR 1977 SC 1665: 1977 Cri LJ 1437 ➢➢**7174, 9373**

Deepak Singchi *v.* State of Rajasthan, (2007) 14 SCC 583: AIR 2007 SC 3064: (2007) 57 AIC 23 (SC): 2007 Cri LJ 4338 ➢➢**6718**

Deepika ; Naresh Chandra Singhania *See* Naresh Chandra Singhania *v.* Deepika

Deepti *v.* Akhil Rai, (1995) 5 SCC 751: 1995 SCC (Cri) 1020 ➢➢**7060, 7590**

Deepu *v.* State of M. P., (2007) 15 SCC 543 ➢**2758**

Dehal Singh *v.* State of H. P., (2010) 9 SCC 85: (2010) 3 SCC (Cri) 1139: AIR 2010 SC 3594 ➢**3293, 3326**

Delhi Admn. *See also* State (Delhi Admn.)

Delhi Admn. ; A. C. Sharma *See* A. C. Sharma *v.* Delhi Admn.

Delhi Admn. ; Bhagirath *See* Bhagirath *v.* Delhi Admn.

Delhi Admn. ; Bhagwan Das Jagdish Chander *See* Bhagwan Das Jagdish Chander *v.* Delhi Admn.

Delhi Admn. ; Duli Chand *See* Duli Chand *v.* Delhi Admn.

Delhi Admn. ; Hira Lal Jain *See* Hira Lal Jain *v.* Delhi Admn.

Delhi Admn. ; Jehan Singh *See* Jehan Singh *v.* Delhi Admn.
Delhi Admn. ; K. C. Aggarwal *See* K. C. Aggarwal *v.* Delhi Admn.
Delhi Admn. ; Kanta Prashad *See* Kanta Prashad *v.* Delhi Admn.
Delhi Admn. ; Kashmeri Devi *See* Kashmeri Devi *v.* Delhi Admn.
Delhi Admn. ; Kishan Chand *See* Kishan Chand *v.* Delhi Admn.
Delhi Admn. ; Krishan Lal Dhawan *See* Krishan Lal Dhawan *v.* Delhi Admn.
Delhi Admn. ; M. R. Dhawan *See* M. R. Dhawan *v.* Delhi Admn.
Delhi Admn. ; Mahesh Chander *See* Mahesh Chander *v.* Delhi Admn.
Delhi Admn. *v.* Manohar Lal, (2002) 7 SCC 222: 2002 SCC (Cri) 1670: AIR 2002 SC 3088 ≻≻**6328**
Delhi Admn. ; Muni Lal *See* Muni Lal *v.* Delhi Admn.
Delhi Admn. ; Munshi Ram *See* Munshi Ram *v.* Delhi Admn.
Delhi Admn. ; Prem Shankar Shukla *See* Prem Shankar Shukla *v.* Delhi Admn.
Delhi Admn. ; R. K. Dalmia *See* R. K. Dalmia *v.* Delhi Admn.
Delhi Admn. *v.* Ram Singh, AIR 1962 SC 63: (1962) 2 SCR 694: (1962) 1 Cri LJ 106 ≻≻**7705**
Delhi Admn. ; Sanjay Suri *See* Sanjay Suri *v.* Delhi Admn.
Delhi Admn. ; Sat Paul *See* Sat Paul *v.* Delhi Admn.
Delhi Admn. ; Satish Mehra *See* Satish Mehra *v.* Delhi Admn.
Delhi Admn. ; Sunil Batra *See* Sunil Batra *v.* Delhi Admn.
Delhi Admn. ; Surinder Pal Jain *See* Surinder Pal Jain *v.* Delhi Admn.
Delhi Admn. *v.* Tribhuvan Nath, (1996) 8 SCC 250 ≻**1538**
Delhi Cloth & General Mills Co. Ltd. *v.* State of M. P., (1995) 6 SCC 62: 1995 SCC (Cri) 1024: AIR 1996 SC 283 ≻**3410**
Delhi Development Authority *See* DDA
Delhi High Court ; R. K. Anand *See* R. K. Anand *v.* Delhi High Court
Delhi Judicial Service Assn. *v.* State of Gujarat, (1991) 4 SCC 406: AIR 1991 SC 2176 ≻**61, 200**
Delhi Municipal Corpn. *See* MCD
Delhi Special Police Establishment *v.* Lt. Col. S. K. Loraiya, (1972) 2 SCC 692: 1973 SCC (Cri) 1101: AIR 1972 SC 2548: 1973 Cri LJ 33: (1973) 1 SCR 1010 ≻≻**9344, 9345, 9346**
Delhi Transport Corpn. *See* DTC
Democratic Youth Federation of India ; Maharashtra Antibiotics & Pharmaceuticals Ltd. *See* Maharashtra Antibiotics & Pharmaceuticals Ltd. *v.* Democratic Youth Federation of India
Deo Kuer *v.* Sheo Prasad Singh, AIR 1966 SC 359: (1965) 3 SCR 655: 1966 Mah LJ 120: (1966) 1 MLJ (SC) 12 ≻≻**7813**
Deo Narain *v.* State of U. P., (1973) 1 SCC 347: 1973 SCC (Cri) 330: AIR 1973 SC 473: 1973 Cri LJ 677 ≻≻**8833**
Deochand *v.* State of Maharashtra, (1974) 4 SCC 610: 1974 SCC (Cri) 646: AIR 1974 SC 1488 ≻**369** ≻≻**9143**
Deoman Upadhyaya ; State of U. P. *See* State of U. P. *v.* Deoman Upadhyaya
Deonandan Mishra *v.* State of Bihar, AIR 1955 SC 801: (1955) 2 SCR 570: 1955 Cri LJ 1647 ≻≻**8614**
Department *See* Deptt.
Deptt. of Income Tax (Investigation) *v.* S. R. Batliboi & Co., (2009) 17 SCC 767 ≻**219**
Deputy *See* Dy.
Derha ; State of Chhattisgarh *See* State of Chhattisgarh *v.* Derha
Desaji Wadia Samkaiah *v.* State of A. P., 1988 Supp SCC 531: 1988 SCC (Cri) 879: 1988 BLJR 382 ≻**876, 2090**
Desraj ; A. K. K. Nambiar *See* A. K. K. Nambiar *v.* Desraj
Destruction of Public & Private Properties *v.* State of A. P., (2009) 5 SCC 212 ≻**523, 586**
Destruction of Public & Private Properties, In re, (2007) 4 SCC 474: (2007) 2 SCC (Cri) 351 ≻**587**
Dev Raj Vijh ; Raj Kumari Vijh *See* Raj Kumari Vijh *v.* Dev Raj Vijh
Devadas ; State of M. P. *See* State of M. P. *v.* Devadas
Devahari Devasingh Pawar ; State of Maharashtra *See* State of Maharashtra *v.* Devahari Devasingh Pawar
Devaki Vijayamma ; A. Raveendrababu *See* A. Raveendrababu *v.* Devaki Vijayamma

Devarapally Lakshminarayana Reddy *v.* V. Narayana Reddy, (1976) 3 SCC 252: 1976 SCC (Cri) 380: AIR 1976 SC 1672: 1976 Cri LJ 1361 ➢**1398, 2240, 2535**

Devatha Venkataswamy *v.* Public Prosecutor, High Court of A. P., (2003) 10 SCC 700: AIR 2003 SC 3217: 2003 Cri LJ 4332 ➢➢**5567, 5658**

Devender Kumar *v.* State of Haryana, (2010) 6 SCC 753 ➢**1887** ➢➢**6822**

Devender Kumar Sharma *v.* State of M. P., 1994 SCC (Cri) 145 ➢**3475**

Devender Kumar Singla *v.* Baldev Krishan Singla, (2005) 9 SCC 15: 2005 SCC (Cri) 1185: AIR 2004 SC 3084: 2004 Cri LJ 1778 ➢**3271, 3272**

Devender Pal Singh *v.* State (NCT of Delhi), (2002) 5 SCC 234: 2002 SCC (Cri) 978: AIR 2002 SC 1661: 2002 Cri LJ 2034: (2002) 97 DLT 57 ➢➢**6279**

Devender Roy *v.* Union of India, (2008) 17 SCC 476 ➢➢**7011**

Devendra ; State of M. P. *See* State of M. P. *v.* Devendra

Devendra *v.* State of U. P., (2009) 7 SCC 495: (2009) 3 SCC (Cri) 461 ➢**544, 553, 2173, 2186, 2187** ➢➢**7120, 7415, 7426, 7428**

Devendra Singh ; State of U. P. *See* State of U. P. *v.* Devendra Singh

Devi Lal *v.* Chandan Singh, 1994 SCC (Cri) 157 ➢➢**6903**

Devi Lal *v.* State of Rajasthan, (1971) 3 SCC 471: 1971 SCC (Cri) 719: AIR 1971 SC 1444: 1971 Cri LJ 1132 ➢➢**8496**

Devi Singh *v.* State of M. P., (2002) 9 SCC 631: AIR 2002 SC 2389: 2002 Cri LJ 2977 ➢➢**5617**

Devi Singh *v.* State of Rajasthan, (2005) 10 SCC 453: 2005 SCC (Cri) 1580 ➢**1786**

Devinder *v.* State of Haryana, 1997 SCC (Cri) 570: AIR 1997 SC 454: 1996 Cri LJ 4461 ➢**937**

Devinder Kumar ; State of Punjab *See* State of Punjab *v.* Devinder Kumar

Devinder Singh ; Harpal Singh *See* Harpal Singh *v.* Devinder Singh

Devinder Singh *v.* State of H. P., (2003) 11 SCC 488: 2004 SCC (Cri) 185: AIR 2003 SC 3365 ➢**1174**

Devinder Singh Kanwar ; Neelam Kanwar *See* Neelam Kanwar *v.* Devinder Singh Kanwar

Devinderpal Singh *v.* Govt. of National Capital Territory of Delhi, (1996) 1 SCC 44 ➢**1936**

Dhan Singh ; CBI *See* CBI *v.* Dhan Singh

Dhan Singh *v.* State of Haryana, (2010) 12 SCC 277 ➢**1705**

Dhanabal *v.* State of T. N., (1980) 2 SCC 84: 1980 SCC (Cri) 340: AIR 1980 SC 628: 1980 Cri LJ 439: (1980) 17 ACC 115 ➢➢**8017, 8492**

Dhanaj Singh *v.* State of Punjab, (2004) 3 SCC 654: 2004 SCC (Cri) 851: AIR 2004 SC 1920: 2004 Cri LJ 1807 ➢**1446**

Dhanajaya Reddy *v.* State of Karnataka, (2001) 4 SCC 9: 2001 SCC (Cri) 652: AIR 2001 SC 1512: 2001 Cri LJ 1712 ➢**1763, 1768, 3023**

Dhanalakshmi *v.* R. Prasanna Kumar, 1990 Supp SCC 686: AIR 1990 SC 494: 1990 Cri LJ 320: 1990 Mah LJ 32 ➢➢**7586**

Dhananjay *v.* State of Bihar, (2007) 14 SCC 768: (2007) 51 AIC 54 (SC): 2007 Cri LJ 1440: (2007) 2 KLJ 294 (SC) ➢**710, 3476**

Dhananjay Kumar Pandey *v.* State of Bihar, (2000) 9 SCC 209: 2000 SCC (Cri) 1207 ➢➢**6895**

Dhananjay Sharma *v.* State of Haryana, (1995) 3 SCC 757: 1995 SCC (Cri) 608: AIR 1995 SC 1795 ➢**3828**

Dhananjaya Mishra ; Jyoti Mishra *See* Jyoti Mishra *v.* Dhananjaya Mishra

Dhananjoy Chatterjee *v.* State of W. B., (1994) 2 SCC 220: 1994 SCC (Cri) 358 ➢**640, 3664, 3727**

Dhanapal *v.* State, (2009) 10 SCC 401: (2009) 82 AIC 160 (SC) ➢➢**5046, 5050**

Dhanendra Shriram Bhurle ; State of Maharashtra *See* State of Maharashtra *v.* Dhanendra Shriram Bhurle

Dhanesh Badarmal Jain ; All Cargo Movers India (P) Ltd. *See* All Cargo Movers India (P) Ltd. *v.* Dhanesh Badarmal Jain

Dhaniram Luhar ; State of Orissa *See* State of Orissa *v.* Dhaniram Luhar

Dhanna *v.* State of M. P., (1996) 10 SCC 79: 1996 SCC (Cri) 1192: AIR 1996 SC 2478 ➢➢**5073**

Dhannjay Ram Sharma *v.* M. S. Uppadaya, AIR 1960 SC 745: 1960 Cri LJ 1153: (1960) 2 MLJ 98 (SC) ➢➢**8232**

Dhanraj Jain *v.* B. N. Biswas, 1984 Supp SCC 646: 1983 SCC (Cri) 394 ➢**2633**

Dhanwant Singh ; State of H. P. *See* State of H. P. *v.* Dhanwant Singh

Dhanwanti Vaswani (Dr.) *v.* State, 1991 Supp (2) SCC 329: 1991 SCC (Cri) 1040: AIR 1993 SC 1206 **≻≻7525**

Dharam Chand *v.* State of Punjab, (2008) 15 SCC 513: (2009) 3 SCC (Cri) 1107: AIR 2009 SC 1304 **≻≻6273**

Dharam Das *v.* State of U. P., (1973) 2 SCC 216: 1973 SCC (Cri) 765: AIR 1973 SC 2195: 1973 Cri LJ 1181 **≻≻8857**

Dharam Dutt *v.* Union of India, (2004) 1 SCC 712: AIR 2004 SC 1295 **≻3069**

Dharam Pal ; R. N. Aggarwal *See* R. N. Aggarwal *v.* Dharam Pal

Dharam Pal *v.* State of Haryana, (2004) 13 SCC 9 **≻2262**

Dharam Pal *v.* State of Punjab, 1993 Supp (1) SCC 517: 1993 SCC (Cri) 292: AIR 1992 SC 1852 **≻≻5528**

Dharam Pal *v.* State of U. P., 1981 Supp SCC 20: 1981 SCC (Cri) 640 **≻≻5093**

Dharam Pal *v.* State of U. P., (2008) 17 SCC 337: AIR 2008 SC 920: (2008) 62 AIC 65 (SC): (2008) 1 All LJ 721: 2008 Cri LJ 1016 **≻628 ≻≻5557, 5558**

Dharam Singh ; Chandigarh Admn. *See* Chandigarh Admn. *v.* Dharam Singh

Dharam Singh ; State of Punjab *See* State of Punjab *v.* Dharam Singh

Dharam Singh *v.* State of Punjab, 1993 Supp (3) SCC 532: 1993 SCC (Cri) 1059: AIR 1993 SC 319: 1993 Cri LJ 150 **≻927 ≻≻5174**

Dharam Singh *v.* State of U. P., 1962 Supp (3) SCR 769: (1964) 1 Cri LJ 78 **≻≻8992**

Dharam Vir Singh Jethi ; State of Punjab *See* State of Punjab *v.* Dharam Vir Singh Jethi

Dharamanand Pant *v.* State of U. P., AIR 1957 SC 594: 1957 SCR 321: 1957 Cri LJ 894 **≻≻9199, 9200, 9201, 9202**

Dharamdas Hukamatrai Dorwani *v.* State of Bombay, AIR 1960 SC 734: 1960 Cri LJ 1148: (1960) 2 Ker LR 32 **≻≻8851**

Dharamdeo Singh *v.* State of Bihar, (1976) 1 SCC 610: 1976 SCC (Cri) 108: AIR 1976 SC 832: 1976 Cri LJ 638 **≻≻5188**

Dharampal *v.* Ramshri, (1993) 1 SCC 435: 1993 SCC (Cri) 333: AIR 1993 SC 1361: (1993) 1 Crimes 304: (1993) 1 An WR 60 (SC): (1993) 1 BLJR 361 **≻579 ≻≻5976, 7058**

Dharampal ; State (Delhi Admn.) *See* State (Delhi Admn.) *v.* Dharampal

Dharampal Singh *v.* State of Punjab, (2010) 9 SCC 608 **≻3248**

Dharamveer *v.* State of U. P., (2010) 4 SCC 469 **≻1001**

Dhariwal Tobacco Products Ltd. *v.* State of Maharashtra, (2009) 2 SCC 370 **≻≻5902, 7064, 7065**

Dharkole ; State of M. P. *See* State of M. P. *v.* Dharkole

Dharma Rama Bhagare *v.* State of Maharashtra, (1973) 1 SCC 537: 1973 SCC (Cri) 421: AIR 1973 SC 476: 1973 Cri LJ 680 **≻≻7861**

Dharmdeo Narain Singh ; Swarth Mahto *See* Swarth Mahto *v.* Dharmdeo Narain Singh

Dharmendra Bafna ; Kishan Lal *See* Kishan Lal *v.* Dharmendra Bafna

Dharmendra Singh ; State of U. P. *See* State of U. P. *v.* Dharmendra Singh

Dharmendrasinh *v.* State of Gujarat, (2002) 4 SCC 679: AIR 2002 SC 1937 **≻848**

Dharmesh *v.* State of Gujarat, (2002) 6 SCC 370: 2002 SCC (Cri) 1327: AIR 2002 SC 2784 **≻2318**

Dharmeshbhai Vasudevbhai *v.* State of Gujarat, (2009) 6 SCC 576 **≻33, 65, 1387, 1388 ≻≻7673**

Dharminder *v.* State of H. P., (2002) 7 SCC 488: 2003 SCC (Cri) 58: AIR 2002 SC 3097 **≻777, 1464 ≻≻5333**

Dharmpal ; Sharda *See* Sharda *v.* Dharmpal

Dharnidhar *v.* State of U. P., (2010) 7 SCC 759 **≻3215, 3267**

Dheemant Singh ; Subhash Chandra Singh *See* Subhash Chandra Singh *v.* Dheemant Singh

Dheeraj Singh ; Nira Radia *See* Nira Radia *v.* Dheeraj Singh

Dhian Singh *v.* Municipal Board, (1969) 2 SCC 371: AIR 1970 SC 318: 1970 Cri LJ 492 **≻≻8874**

Dhirajbhai Gorakhbhai Nayak *v.* State of Gujarat, (2003) 9 SCC 322: 2003 SCC (Cri) 1809: AIR 2003 SC 2855: 2003 Cri LJ 3723 **≻785**

Dhirendra Kumar ; State of M. P. *See* State of M. P. *v.* Dhirendra Kumar

Dhirendra Kumar *v.* Superintendent and Remembrancer of Legal Affairs, Govt. of W. B., AIR 1954 SC 424: (1955) 1 SCR 224: (1954) 2 MLJ 128: 1954 Cri LJ 1036 **≻≻8454, 9274, 9275**

Dhirendra Nath Mitra *v.* Mukanda Lal Sen, AIR 1955 SC 584: 1955 Cri LJ 1299 ≻≻**9047**

Dhondiba Gundu Pomaje *v.* State of Maharashtra, (1976) 1 SCC 162: 1975 SCC (Cri) 793: AIR 1976 SC 1151: 1976 Cri LJ 856 ≻≻**5538, 8903**

Dhool Singh ; State of Rajasthan *See* State of Rajasthan *v.* Dhool Singh

Dhruv K. Jaiswal *v.* State of Bihar, (2000) 10 SCC 84: AIR 2000 SC 209 ≻≻**6447**

Dhuk Singh *v.* State of Rajasthan, (2009) 11 SCC 369: (2009) 3 SCC (Cri) 1382: (2009) 76 AIC 208 (SC) ≻≻**6702**

Dhyan Investments & Trading Co. Ltd. *v.* CBI, (2001) 6 SCC 607: 2001 SCC (Cri) 1193: AIR 2001 SC 2456: (2001) 107 Comp Cas 1 ≻≻**6187**

Dhyan Singh *v.* Chandradip Singh, CA No. 139 of 1966 ≻≻**7821**

Dhyan Singh *v.* State of U. P., 1986 Supp SCC 694: 1987 SCC (Cri) 222 ≻≻**6306**

Diamondstar Exports Ltd. ; Director General of Income Tax *See* Director General of Income Tax *v.* Diamondstar Exports Ltd.

Didigam Bikshapathi *v.* State of A. P., (2008) 2 SCC 403: (2008) 1 SCC (Cri) 434: AIR 2008 SC 527: 2008 Cri LJ 724: (2008) 106 Cut LT 313 ≻≻**7040, 7634**

Digambar Mishra ; Panchanan Mishra *See* Panchanan Mishra *v.* Digambar Mishra

Dila *v.* State of U. P., (2002) 7 SCC 450: 2002 SCC (Cri) 1782: AIR 2002 SC 3387 ≻≻**5607, 6319**

Dilawar Balu Kurane *v.* State of Maharashtra, (2002) 2 SCC 135: 2002 SCC (Cri) 310: AIR 2002 SC 564: 2002 Cri LJ 980: (2002) 1 LLN 671 ≻**2745**

Dilawar Singh *v.* Parvinder Singh, (2005) 12 SCC 709 ≻**2223, 3412**

Dilawar Singh *v.* State of Delhi, (2007) 12 SCC 641: (2008) 3 SCC (Cri) 330: AIR 2007 SC 3234: (2007) 58 AIC 72 (SC): 2007 Cri LJ 4709 ≻**1132, 1136, 1337, 2617**

Dilbag Singh *v.* State of Punjab, (1979) 2 SCC 103: 1979 SCC (Cri) 376: AIR 1979 SC 680: 1979 GLR (SC) 390: 1979 Cri LJ 636: 1979 MLJ (Cri) 534: 16 ACC 104 (II) ≻**2924, 3869**

Dildar Singh *v.* State of Punjab, (2006) 10 SCC 531: (2007) 1 SCC (Cri) 129: AIR 2006 SC 3084: 2006 Cri LJ 3914 ≻**1069**

Dilip *v.* State of M. P., (2007) 1 SCC 450: (2007) 1 SCC (Cri) 377: AIR 2007 SC 369: 2007 Cri LJ 880: (2007) 49 AIC 715 (SC) ≻≻**5367**

Dilip K. Basu *v.* State of W. B., (2003) 11 SCC 725 ≻**2117**

Dilip Nathumal Chordia ; Stree Atyachar Virodhi Parishad *See* Stree Atyachar Virodhi Parishad *v.* Dilip Nathumal Chordia

Dilip Pralhad Namade ; Narcotics Control Bureau *See* Narcotics Control Bureau *v.* Dilip Pralhad Namade

Dilip Premnarayan Tiwari *v.* State of Maharashtra, (2010) 1 SCC 775 ≻**756, 3899**

Dilip S. Dahanukar *v.* Kotak Mahindra Co. Ltd., (2007) 6 SCC 528: (2007) 3 SCC (Cri) 209: (2007) 137 Comp Cas 1: (2007) 2 KLT 488: 2007 Cri LJ 2417: (2007) 55 AIC 244 (SC) ≻**3762, 3763, 3769, 3798, 3811, 3933** ≻≻**6221**

Dimbeswari Saikia ; Mohan Raj *See* Mohan Raj *v.* Dimbeswari Saikia

Dimple Gupta *v.* Rajiv Gupta, (2007) 10 SCC 30: (2007) 59 AIC 46 (SC) ≻**432**

Din Dayal Sharma *v.* State of U. P., AIR 1959 SC 831: 1959 Supp (2) SCR 776: 1959 Cri LJ 1120 ≻≻**7717**

Dinanath Singh *v.* State of Bihar, (1980) 1 SCC 674: 1980 SCC (Cri) 320: AIR 1980 SC 1199: 1980 Cri LJ 921: 1980 MLJ (Cri) 719 ≻≻**5033**

Dinesh *v.* State of Rajasthan, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1: AIR 2006 SC 1267: 2006 Cri LJ 1679: (2006) 1 KLT 1006 ≻**3782**

Dinesh ; State of U. P. *See* State of U. P. *v.* Dinesh

Dinesh B. Patel *v.* State of Gujarat, (2010) 11 SCC 125 ≻≻**7556**

Dinesh Borthakur *v.* State of Assam, (2008) 5 SCC 697: (2008) 3 SCC (Cri) 39: AIR 2008 SC 2205 ≻**1024, 1025, 1491**

Dinesh Dalmia *v.* CBI, (2007) 8 SCC 770: (2007) 59 AIC 145 (SC) ≻**1903, 1924, 1995, 2001, 2003, 2063, 2211, 2213**

Dinesh Dalmia ; State of W. B. *See* State of W. B. *v.* Dinesh Dalmia

Dinesh Dutt Joshi *v.* State of Rajasthan, (2001) 8 SCC 570: 2002 SCC (Cri) 24 ≻≻**7043, 7175**

Dinesh Kumar ; State of Haryana *See* State of Haryana *v.* Dinesh Kumar

Dinesh Kumar Sinha *v.* State of Jharkhand, (2009) 6 SCC 628 ≻≻**5857**

Dinesh Kumar Verma ; Union of India *See* Union of India *v.* Dinesh Kumar Verma

Dinesh M. N. (S. P.) *v.* State of Gujarat, (2008) 5 SCC 66: (2008) 2 SCC (Cri) 508: AIR 2008 SC 2318: 2008 Cri LJ 3008: (2008) 3 Guj LR 2310 ≻≻**6701, 6730, 6797, 6801**

Dinesh Mishra ; Abhinandan Jha *See* Abhinandan Jha *v.* Dinesh Mishra

Dinesh Seth *v.* State (NCT of Delhi), (2008) 14 SCC 94 ≻**2693, 2694**

Dineshchandra Jamnadas Gandhi *v.* State of Gujarat, (1989) 1 SCC 420: 1989 SCC (Cri) 194: AIR 1989 SC 1011: (1989) 1 SCR 138: 1989 Cri LJ 889 ≻≻**6294**

Dipesh Chandak *v.* Union of India, (2004) 8 SCC 511: (2004) 270 ITR 85 ≻**3102, 3103, 3104**

Director *See under* name of company, institution, organisation or body

Director General *See* DG

Director General of Income Tax *v.* Diamondstar Exports Ltd., (2006) 5 SCC 564 ≻≻**6911**

Director of Enforcement *v.* M. C. T. M. Corpn. (P) Ltd., (1996) 2 SCC 471: 1996 SCC (Cri) 344: AIR 1996 SC 1100 ≻**26**

Director of Enforcement *v.* New Central Jute Mills Co. Ltd., 1991 Supp (2) SCC 34: 1991 SCC (Cri) 843: AIR 1991 SC 719 ≻≻**5889**

Director of Enforcement ; P. Philip *See* P. Philip *v.* Director of Enforcement

Director of Enforcement ; Partap Singh (Dr.) *See* Partap Singh (Dr.) *v.* Director of Enforcement

Director of Inspection & Audit *v.* C. L. Subramaniam, 1994 Supp (3) SCC 615: 1995 SCC (Cri) 121: AIR 1995 SC 866 ≻**2388**

Directorate of Enforcement *v.* Ashok Kumar Jain, (1998) 2 SCC 105: 1998 SCC (Cri) 510: AIR 1998 SC 631 ≻≻**6841**

Directorate of Enforcement *v.* Deepak Mahajan, (1994) 3 SCC 440: 1994 SCC (Cri) 785: AIR 1994 SC 1775: 1994 Cri LJ 2269: (1994) 2 BLJR 912: (1994) 2 An LT(Cri) 173: (1994) 70 ELT 12 ≻**1871, 1873, 1875, 1877, 1878, 1879, 1883, 1905, 1944, 1947, 1948, 1949, 1950, 1951** ≻≻**6588**

Directorate of Enforcement *v.* Guru Swarup Srivastava, (2006) 6 SCC 350: (2006) 3 SCC (Cri) 211 ≻**1370**

Directorate of Enforcement *v.* P. V. Prabhakar Rao, (1997) 6 SCC 647: 1997 SCC (Cri) 978: AIR 1997 SC 3868 ≻≻**6599**

Directorate of Revenue *v.* Mohd. Nisar Holia, (2008) 2 SCC 370: (2008) 1 SCC (Cri) 415 ≻**1857**

District & Sessions Judge, Thiruvananthapuram ; T. C. Mathai *See* T. C. Mathai *v.* District & Sessions Judge, Thiruvananthapuram

District Registrar and Collector *v.* Canara Bank, (2005) 1 SCC 496: AIR 2005 SC 186: (2005) 126 Comp Cas 356 ≻**256, 316**

Distt. Board, Gaya *v.* Suleman Mian, (1983) 2 SCC 269: 1983 SCC (Cri) 397 ≻≻**5386**

Distt. Judge *See also* ADJ

Distt. Magistrate ; Ajit Kumar Kaviraj *See* Ajit Kumar Kaviraj *v.* Distt. Magistrate

Distt. Magistrate ; Ramakrishna Rawat (Dr.) *See* Ramakrishna Rawat (Dr.) *v.* Distt. Magistrate

Divine Retreat Centre *v.* State of Kerala, (2008) 3 SCC 542: (2008) 2 SCC (Cri) 9: AIR 2008 SC 1614: (2008) 1 KLT 1042: 2008 Cri LJ 1891: (2008) 64 AIC (SC) 44 ≻**1310, 1359, 1381** ≻≻**7020, 7024, 7080, 7086, 7131, 7133, 7141, 7158**

Divisional *See* Divl.

Divisional Manager *See under* name of company, institution, organisation or body

Divl. Forest Officer *v.* G. V. Sudhakar Rao, (1985) 4 SCC 573: 1986 SCC (Cri) 34: AIR 1986 SC 328 ≻≻**7088, 7544**

Diwakara Bhat ; State of Karnataka *See* State of Karnataka *v.* Diwakara Bhat

Diwan Naubat Rai *v.* State (Delhi Admn.), (1989) 1 SCC 297: 1989 SCC (Cri) 142: AIR 1989 SC 542: 1989 Cri LJ 802 ≻**2606**

Dnyaneshwar Laxman Rao Wankhede ; State of Maharashtra *See* State of Maharashtra *v.* Dnyaneshwar Laxman Rao Wankhede

Dnyanoba Bajirao Khot ; Kiranmal Zumerlal Borana Marwadi *See* Kiranmal Zumerlal Borana Marwadi *v.* Dnyanoba Bajirao Khot

Dnyanu Hariba Mali *v.* State of Maharashtra, (1970) 3 SCC 7: 1970 SCC (Cri) 357: AIR 1970 SC 979: 1970 Punj LR 992: 1970 Cri LJ 893 ≻≻**8798**

Dolat Ram *v.* State of Haryana, (1995) 1 SCC 349: 1995 SCC (Cri) 237: (1994) 3 Crimes 1013: (1995) 32 ACC 149: (1995) 1 Andh LT (Cri) 37 ➢➢**6607, 6813**

Dolley Mukherjee ; Simrikhia *See* Simrikhia *v.* Dolley Mukherjee

Dorai *v.* State of T. N., (2004) 11 SCC 742 ➢**614**

Dosukhan Samadkhan Sindhi ; Bharat Amratlal Kothari *See* Bharat Amratlal Kothari *v.* Dosukhan Samadkhan Sindhi

Dr. *See under* actual name

Drug Inspector ; Medicamen Biotech Ltd. *See* Medicamen Biotech Ltd. *v.* Drug Inspector

Dudh Nath Pandey *v.* State of U. P., (1981) 2 SCC 166: 1981 SCC (Cri) 379: AIR 1981 SC 911: (1981) 2 SCR 771: 1981 Cri LJ 618: 1981 ALJ 228 ➢**623, 3746**

Dukhishyam Benupani *v.* Arun Kumar Bajoria, (1998) 1 SCC 52: 1998 SCC (Cri) 261: AIR 1998 SC 696: (1998) 91 Comp Cas 413: 1998 Cri LJ 841 ➢**1364** ➢➢**6686**

Dukhmochan Pandey *v.* State of Bihar, (1997) 8 SCC 405: AIR 1998 SC 40 ➢**870, 1678**

Dukhtar Jahan *v.* Mohd. Farooq, (1987) 1 SCC 624: 1987 SCC (Cri) 237: AIR 1987 SC 1049: 1987 Cri LJ 849: (1987) 1 HLR 362 ➢**426, 430, 431, 433, 434** ➢➢**7219**

Dulal Ghosh ; Chittaranjan Mirdha *See* Chittaranjan Mirdha *v.* Dulal Ghosh

Duli Chand *v.* Delhi Admn., (1975) 4 SCC 649: 1975 SCC (Cri) 663: AIR 1975 SC 1960: 1975 Cri LJ 1732: 1976 MLJ (Cri) 345 ➢➢**6007**

Duman Singh ; Kashmira Singh *See* Kashmira Singh *v.* Duman Singh

Dumpala Chandra Reddy *v.* Nimakayala Balireddy, (2008) 8 SCC 339: (2008) 3 SCC (Cri) 493: AIR 2008 SC 3069: 2008 Cri LJ 3936 ➢➢**6918**

Duncan Agro Industries Ltd. ; CCE *See* CCE *v.* Duncan Agro Industries Ltd.

Duncans Agro Industries Ltd. ; CBI *See* CBI *v.* Duncans Agro Industries Ltd.

Dundayya Gurushiddaiah Hiremath ; Gokak Patel Volkart Ltd. *See* Gokak Patel Volkart Ltd. *v.* Dundayya Gurushiddaiah Hiremath

Duni Chand ; Sriniwas *See* Sriniwas *v.* Duni Chand

Duraipandi Thevar *v.* State of T. N., (1973) 3 SCC 680: 1973 SCC (Cri) 486: AIR 1973 SC 659: 1973 Cri LJ 602 ➢➢**7869**

Durand Didier *v.* UT, Goa, (1990) 1 SCC 95: 1990 SCC (Cri) 65: AIR 1989 SC 1966: (1990) 25 ECC 289 ➢**300**

Durbal *v.* State of U. P., (2011) 2 SCC 676 ➢➢**5147**

Durga Prasad ; State of U. P. *See* State of U. P. *v.* Durga Prasad

Durga Prasad Gupta *v.* State of Rajasthan, (2003) 12 SCC 257: (2004) 97 Cut LT 489 ➢**1579**

Durgacharan Naik *v.* State of Orissa, AIR 1966 SC 1775: (1966) 3 SCR 636: 1966 Cri LJ 1491 ➢➢**8151**

Durgesh Babu ; Ajay Mehra *See* Ajay Mehra *v.* Durgesh Babu

Durgesh Chandra Saha *v.* Bimal Chandra Saha, (1996) 1 SCC 341: 1996 SCC (Cri) 109: AIR 1996 SC 740 ➢**1929**

Durgo Bai *v.* State of Punjab, (2004) 7 SCC 144: 2004 SCC (Cri) 1865: AIR 2004 SC 4170 ➢➢**6925**

Dwarika Prasad Satpathy *v.* Bidyut Prava Dixit, (1999) 7 SCC 675: 1999 SCC (Cri) 1345: AIR 1999 SC 3348 ➢**337, 355, 358, 359, 422**

Dwarka Dass *v.* State of Haryana, (2003) 1 SCC 204: 2003 SCC (Cri) 264: AIR 2003 SC 185 ➢**144, 3944** ➢➢**5128, 5278, 5679**

Dwarka Prasad ; Central Talkies Ltd. *See* Central Talkies Ltd. *v.* Dwarka Prasad

Dwarka Prasad *v.* State of U. P., 1993 Supp (3) SCC 141: 1993 SCC (Cri) 882: (1993) 1 Crimes 975 ➢**3262**

Dwarka Prasad Agarwal *v.* Ramesh Chander Agarwal, (2003) 6 SCC 220: AIR 2003 SC 2696 ➢**570**

Dy. CCT *See* CCT

Dy. CGT *See* CGT

Dy. Chief Controller of Imports & Exports *v.* Roshanlal Agarwal, (2003) 4 SCC 139: 2003 SCC (Cri) 788: AIR 2003 SC 1900: 2003 Cri LJ 1698: (2003) 155 ELT 216 ➢**87, 2514** ➢➢**7349, 7464**

Dy. CIT *See* CIT

Dy. CIT ; Rajesh Kumar *See* Rajesh Kumar *v.* Dy. CIT

Dy. Commr. ; V. L. Rohlua *See* V. L. Rohlua *v.* Dy. Commr.

Dy. Commr. of Prohibition and Excise *v.* Balaji Cattle Feeds, (2004) 7 SCC 274: 2004 SCC (Cri) 1925: AIR 2004 SC 4260 ≻≻**7574**

Dy. CST *See* CST

Dy. CST (Law) *See* CST

Dy. CWT *See* CWT

Dy. Director of Collegiate Education (Admn.) *v.* S. Nagoor Meera, (1995) 3 SCC 377: 1995 SCC (L&S) 686: (1995) 29 ATC 574: AIR 1995 SC 1364: (1995) 2 SLR 379 ≻≻**5796**

Dy. Director of Consolidation *See* Director of Consolidation

Dy. Director of Consolidation ; Ram Nath *See* Ram Nath *v.* Dy. Director of Consolidation

E

E. K. Chandrasenan *v.* State of Kerala, (1995) 2 SCC 99: 1995 SCC (Cri) 329: AIR 1995 SC 1066: 1995 Cri LJ 2060: (1995) 1 Crimes 421 ≻**1479**

E. Koyakunju ; S. K. Viswambaran *See* S. K. Viswambaran *v.* E. Koyakunju

E. Krishnan Nayanar ; M. A. Kuttappan *See* M. A. Kuttappan *v.* E. Krishnan Nayanar

Eastern Spg. Mills *v.* Rajiv Poddar, 1989 Supp (2) SCC 385: AIR 1985 SC 1668 ≻**1319** ≻≻**7176**

Ediga Anamma *v.* State of A. P., (1974) 4 SCC 443: 1974 SCC (Cri) 479: AIR 1974 SC 799: 1974 Cri LJ 683: (1974) 3 SCR 329 ≻**3672** ≻≻**7937**

Ediga Sanjanna *v.* State of A. P., (1976) 2 SCC 210: 1976 SCC (Cri) 265: AIR 1977 SC 785: 1977 Cri LJ 585 ≻≻**5182**

Eicher Tractor Ltd. *v.* Harihar Singh, (2008) 16 SCC 763: (2009) 1 ECrN 422 (SC): (2009) 73 AIC 198 (SC) ≻≻**7353**

Eknath Shankarrao Mukkawar *v.* State of Maharashtra, (1977) 3 SCC 25: 1977 SCC (Cri) 410: AIR 1977 SC 1177: (1977) 3 SCR 513: 1977 MLJ (Cri) 421: 1977 Cri LJ 964 ≻**4104, 4115** ≻≻**5925**

Eknath Yeshwant Pagar ; State of Maharashtra *See* State of Maharashtra *v.* Eknath Yeshwant Pagar

Electrical Mfg. Co. Ltd. *v.* D. D. Bhargava, AIR 1968 SC 247: (1968) 1 SCR 394: 1968 Cri LJ 236 ≻≻**8208**

Eliamma *v.* State of Karnataka, (2009) 11 SCC 42: (2009) 3 SCC (Cri) 1227 ≻**3838**

Employees' State Insurance Corpn. *See* ESI Corpn.

Enforcement Officer, TED *v.* Bher Chand Tikaji Bora, (1999) 5 SCC 720: 1999 SCC (Cri) 1045 ≻≻**6685**

Engineering *See* Engg.

Erimmal Ebrahim Hajee ; Collector of Malabar *See* Collector of Malabar *v.* Erimmal Ebrahim Hajee

Erram Santosh Reddy *v.* State of A. P., (1991) 3 SCC 206: 1991 SCC (Cri) 510: AIR 1991 SC 1672: (1991) 2 Crimes 671 ≻**1187**

Escorts Finance Ltd. ; A. E. Premanand *See* A. E. Premanand *v.* Escorts Finance Ltd.

Escorts Ltd. ; Vikram Tractors *See* Vikram Tractors *v.* Escorts Ltd.

Escorts Yamaha Motors Ltd. ; Sunil Kumar *See* Sunil Kumar *v.* Escorts Yamaha Motors Ltd.

Esher Singh *v.* State of A. P., (2004) 11 SCC 585: AIR 2004 SC 3030 ≻**12, 1640**

Eslian ; State *See* State *v.* Eslian

Everest Advertising (P) Ltd. *v.* State (Govt. of NCT of Delhi), (2007) 5 SCC 54: (2007) 2 SCC (Cri) 444: AIR 2007 SC 1650: (2007) 137 Comp Cas 32: 2007 Cri LJ 2442: (2007) 6 Mah LJ 49: (2007) 3 KLT 821 ≻**2574**

Everest Construction Co. ; Harnam Singh *See* Harnam Singh *v.* Everest Construction Co.

F

Faddi *v.* State of M. P., AIR 1964 SC 1850: (1964) 6 SCR 312: (1964) 2 Cri LJ 744 ≻≻**7870, 7938**

Fahimuddin *v.* State of U. P., (1982) 2 SCC 174 (2): 1982 SCC (Cri) 378(2): AIR 1981 SC 2008(3) ≻**3491**

Fajlor Rahman *v.* State of Punjab, (2006) 9 SCC 714: (2006) 3 SCC (Cri) 374: 2006 Cri LJ 3281 ≻≻**6136**

Fakhruddin Ahmad *v.* State of Uttaranchal, (2008) 17 SCC 157: (2008) 6 All LJ 249: (2009) 1 ECrN 455 (SC): 2008 Cri LJ 4377: (2008) 3 APLJ 163 (SC) ≻**2165, 2249** ≻≻**7184, 7429**

Fakir Chand *v.* Komal Prasad, (1964) 2 Cri LJ 74 ≻≻**9046**

Falguni Dutta ; State of W. B. *See* State of W. B. *v.* Falguni Dutta

Farmers Service Coop. Society ; State of A. P. *See* State of A. P. *v.* Farmers Service Coop. Society

Farook Mohammed Kasim Mapkar ; State of Maharashtra *See* State of Maharashtra *v.* Farook Mohammed Kasim Mapkar

Farooq *v.* State of Kerala, (2002) 4 SCC 697: 2002 SCC (Cri) 876: AIR 2002 SC 1825 ≻≻**5499**

Fateh Chand *v.* State of Haryana, (2009) 15 SCC 543: AIR 2009 SC 2729: (2009) 81 AIC 216 (SC): 2009 Cri LJ 3942 ≻**1108**

Fatehsinh Mohansinh Chauhan ; UT, Dadra & Nagar Haveli *See* UT, Dadra & Nagar Haveli *v.* Fatehsinh Mohansinh Chauhan

Fatima A. Kindasa ; R. C. Patuck *See* R. C. Patuck *v.* Fatima A. Kindasa

Fatima Riswana *v.* State, (2005) 1 SCC 582: 2005 SCC (Cri) 427: AIR 2005 SC 712: 2005 Cri LJ 900: (2005) 116 DLT 382: (2005) 26 AIC 73 (SC): (2005) 1 KLT 502 ≻**3560** ≻≻**6201**

Fatma Bibi Ahmed Patel *v.* State of Gujarat, (2008) 6 SCC 789: (2008) 3 SCC (Cri) 151: AIR 2008 SC 2392: (2008) 2 KLT 907: 2008 Cri LJ 3065 ≻**2159**

Fatta *v.* State of U. P., 1980 Supp SCC 159: 1979 SCC (Cri) 629: AIR 1979 SC 1504: 1980 Cri LJ 829: 1979 ALJ 901 ≻**3773**

Fazru ; Poonam Chand Jain *See* Poonam Chand Jain *v.* Fazru

FCI *See* Fertilizer Corpn. of India and Food Corporation of India

Felix Ambrose D'Souza *v.* State of Karnataka, (2009) 16 SCC 361 ≻≻**5410**

Fida Hussain Bohra *v.* State of Maharashtra, (2009) 5 SCC 150 ≻≻**6520, 6670**

Food Inspector ; Ibrahim Haji Moidee *See* Ibrahim Haji Moidee *v.* Food Inspector

Food Inspector ; M. Sainuddin *See* M. Sainuddin *v.* Food Inspector

Food Inspector *v.* Madanlal Ramlal Sharma, (1983) 1 SCC 135: 1983 SCC (Cri) 131: AIR 1983 SC 176: 1983 Cri LJ 337 ≻≻**5390, 5508**

Food Inspector ; N. Sukumaran Nair *See* N. Sukumaran Nair *v.* Food Inspector

Food Inspector ; Pepsico India Holdings (P) Ltd. *See* Pepsico India Holdings (P) Ltd. *v.* Food Inspector

Food Inspector, Cherukole ; Hari Shankar Jalan *See* Hari Shankar Jalan *v.* Food Inspector, Cherukole

Food Inspector, Ernakulam *v.* P. S. Sreenivasa Shenoy, (2000) 6 SCC 348: 2000 SCC (Cri) 1116: AIR 2000 SC 2577: 2000 Cri LJ 3498 ≻**2676**

Free Legal Aid Committee *v.* State of Bihar, (1982) 3 SCC 378: 1983 SCC (Cri) 53: AIR 1982 SC 1463: 1982 Cri LJ 1943 ≻≻**6500, 6529**

Fuzlunbi *v.* K. Khader Vali, (1980) 4 SCC 125: 1980 SCC (Cri) 916: AIR 1980 SC 1730: 1980 Cri LJ 1249 ≻**349, 462**

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G. D. Mehrotra ; Kishore Kumar Gyanchandani *See* Kishore Kumar Gyanchandani *v.* G. D. Mehrotra

G. D. Sharma *v.* State of U. P., AIR 1960 SC 400: 1960 Cri LJ 541 ≻≻**8390, 8948**

G. K. Builders ; Global Infrastructure & Technologies Ltd. *See* Global Infrastructure & Technologies Ltd. *v.* G. K. Builders

G. K. Ghosh ; State of U. P. *See* State of U. P. *v.* G. K. Ghosh

G. L. Didwania *v.* ITO, 1995 Supp (2) SCC 724 ≻≻**7539**

G. M. Morey *v.* Govt. of A. P., (1982) 2 SCC 433: 1982 SCC (Cri) 462: AIR 1982 SC 1163: 1982 Cri LJ 1249 ≻≻**6355**

G. M. Morey ; State of A. P. *See* State of A. P. *v.* G. M. Morey

G. Narasimhan *v.* T. V. Chokkappa, (1972) 2 SCC 680: 1972 SCC (Cri) 777: AIR 1972 SC 2609: (1972) 2 MLJ 61 (SC): 1973 Cri LJ 52 ≻≻**8242, 8243**

G. Prem Raj ; State *See* State *v.* G. Prem Raj

G. Raj Mallaiah *v.* State of A. P., (1998) 5 SCC 123: 1998 SCC (Cri) 1281: AIR 1998 SC 2315 ≻≻**5554**

G. S. Bajwa (Ex Flt. Lt.) ; Union of India *See* Union of India *v.* G. S. Bajwa (Ex Flt. Lt.)

G. S. Walia *v.* State of Punjab, (1998) 5 SCC 150: 1998 SCC (Cri) 1283: AIR 1998 SC 2857 ≻**1641**

G. Sagar Suri *v.* State of U. P., (2000) 2 SCC 636: 2000 SCC (Cri) 513: AIR 2000 SC 754: 2000 Cri LJ 824: 2000 All LJ 496 ≻≻**7077, 7209**

G. Soman Pillai ; Union of India *See* Union of India *v.* G. Soman Pillai

G. Someshwar Rao *v.* Samineni Nageshwar Rao, (2009) 14 SCC 677 ≻**2957**

G. V. Ramanaiah *v.* Supdt. of Central Jail, (1974) 3 SCC 531: 1974 SCC (Cri) 6: AIR 1974 SC 31: 1974 Cri LJ 150: (1974) MLJ (Cri) 263: (1974) 1 SCR 852: 1973 CrLR (SC) 754 ≻≻**8757**

G. V. Sudhakar Rao ; Divl. Forest Officer *See* Divl. Forest Officer *v.* G. V. Sudhakar Rao

G. Vivekanandan *v.* Sriramulu, (2009) 11 SCC 281: (2009) 3 SCC (Cri) 1326 ≻**3981**

G. X. Francis *v.* Banke Bihari Singh, AIR 1958 SC 309: 1958 Cri LJ 569 ≻≻**9249, 9251**

Gagan Bihari Samal *v.* State of Orissa, (1991) 3 SCC 562: 1991 SCC (Cri) 893: (1991) 2 GLH 30: (1991) 72 CLT 322: (1991) 28 ACC 435 ≻≻**6009**

Gagan Kanojia *v.* State of Punjab, (2006) 13 SCC 516: (2008) 1 SCC (Cri) 109: (2007) 49 AIC 119 (SC) ≻**1461**

Gajanan ; State of Maharashtra *See* State of Maharashtra *v.* Gajanan

Gajanan *v.* State of Maharashtra, (1997) 9 SCC 94: 1997 SCC (Cri) 605 ≻≻**5244**

Gajanan Amrut Gaykwad *v.* State of Maharashtra, 1995 Supp (3) SCC 607: 1995 SCC (Cri) 1081: AIR 1996 SC 3332 ≻≻**5096**

Gajanand ; Satya Narain Yadav *See* Satya Narain Yadav *v.* Gajanand

Gajanand *v.* State of U. P., AIR 1954 SC 695: 1954 Cri LJ 1746 ≻≻**9292**

Gajanand Agarwal *v.* State of Orissa, (2006) 12 SCC 131: (2007) 1 SCC (Cri) 568: AIR 2006 SC 3248: 2006 Cri LJ 4618: (2006) 4 KLT 143: (2006) 46 AIC 1 (SC) ≻≻**6613, 6627**

Gajanand Agarwal *v.* State of Orissa, (2007) 14 SCC 537: (2007) 56 AIC 151 (SC): 2007 Cri LJ 2752 ≻≻**6615**

Gajanand Goyal *v.* Asiya Begum, (2005) 12 SCC 331 ≻**2595**

Gajendra Singh *v.* State of Rajasthan, (1998) 8 SCC 612: 1998 SCC (Cri) 1608 ≻**3338**

Gajendra Singh *v.* State of U. P., (1975) 4 SCC 241: 1975 SCC (Cri) 499: AIR 1975 SC 1703: 1975 Cri LJ 1494 ≻**625, 1524** ≻≻**7915**

Gajjan Singh *v.* State of M. P., AIR 1965 SC 1921: (1965) 2 Cri LJ 822 ≻≻**8099**

Gajjan Singh *v.* State of Punjab, (1999) 1 SCC 233: 1998 SCC (Cri) 1603: AIR 1998 SC 2417 ≻**2925**

Gajraj Yadav *v.* Rajendra Singh, (2008) 15 SCC 573: (2009) 3 SCC (Cri) 1120: (2008) 71 AIC 1 (SC) ≻≻**5806**

Gajula Venkateswara Rao *v.* State of A. P., (2002) 6 SCC 487: 2002 SCC (Cri) 1432: AIR 2002 SC 2775 ≻**970**

Gama Singh *v.* State of Bihar, (2002) 10 SCC 263 ≻≻**6623**

Gamini Bala Koteswara Rao *v.* State of A. P., (2009) 10 SCC 636: (2009) 83 AIC 166 (SC) ≻≻**5068, 5401**

Ganapathy Velar ; Murugesan *See* Murugesan *v.* Ganapathy Velar

Ganesh *v.* State of Maharashtra, (2007) 15 SCC 587 ≻≻**5556**

Ganesh Bhavan Patel *v.* State of Maharashtra, (1978) 4 SCC 371: 1979 SCC (Cri) 1: AIR 1979 SC 135: 1979 Cri LJ 51 ≻**1116, 1675** ≻≻**5132**

Ganesh Chandra Jew ; State of Orissa *See* State of Orissa *v.* Ganesh Chandra Jew

Ganesh Choudhary ; State of Bihar *See* State of Bihar *v.* Ganesh Choudhary

Ganesh Gogoi *v.* State of Assam, (2009) 7 SCC 404: (2009) 3 SCC (Cri) 421: (2009) 80 AIC 267 (SC) ≻**1602, 1694, 3257**

Ganesh K. Gulve *v.* State of Maharashtra, (2002) 7 SCC 71: 2002 SCC (Cri) 1589: AIR 2002 SC 3068 ≻≻**5247**

Ganesh Lal *v.* State of Rajasthan, (2002) 1 SCC 731: 2002 SCC (Cri) 247: 2002 Cri LJ 967 ≻**3208, 3246**

Ganesh Narayan Hegde *v.* S. Bangarappa, (1995) 4 SCC 41: 1995 SCC (Cri) 634: 1995 Cri LJ 2935 ≻≻**7061, 7341**

Ganeshbhai Sankarbhai *v.* State of Gujarat, (1972) 2 SCC 73: 1972 SCC (Cri) 647: AIR 1972 SC 1618: 1972 Cri LJ 1029 ≻≻**8704**

Ganeshlal *v.* State of Maharashtra, (1992) 3 SCC 106: 1992 Cri LJ 1545 ≻**675, 1679, 3321**

Ganeshmal Jashraj *v.* Govt. of Gujarat, (1980) 1 SCC 363: 1980 SCC (Cri) 239: AIR 1980 SC 264: 1980 MLJ (Cri) 474: (1980) 21 GLR 429: (1980) 1 SCR 1114 ≻**2826, 3282, 3317**

Ganga Prasad *v.* State of U. P., (1987) 2 SCC 232: 1987 SCC (Cri) 345 ≻**3490**

Ganga Ram ; State of U. P. *See* State of U. P. *v.* Ganga Ram

Gangadhar Janardan Mhatre *v.* State of Maharashtra, (2004) 7 SCC 768: (2004) 114 DLT 193 ≻**1960, 2023, 2219, 2232**

Gangadhar Pande ; State of Orissa *See* State of Orissa *v.* Gangadhar Pande
Gangadharaiah ; State of Karnataka *See* State of Karnataka *v.* Gangadharaiah
Gangaram ; Bakulabai *See* Bakulabai *v.* Gangaram
Gangula Ashok *v.* State of A. P., (2000) 2 SCC 504: 2000 SCC (Cri) 488: AIR 2000 SC 740: 2000 Cri LJ 819: (2000) 1 KLT 609 ➢**54, 2257, 2264, 2748**
Gangula Satya Murthy ; State of A. P. *See* State of A. P. *v.* Gangula Satya Murthy
Ganpat ; State of Haryana *See* State of Haryana *v.* Ganpat
Ganpat Shankar Mhatre *v.* State of Maharashtra, (2005) 12 SCC 279 ➢➢**6463**
Ganpatrao Shrinivasrao Chavan ; P. R. Behere *See* P. R. Behere *v.* Ganpatrao Shrinivasrao Chavan
Garasia Ratubha Hanubha *v.* State of Gujarat, 1997 SCC (Cri) 195: 1995 Cri LJ 3607 ➢➢**5167**
Garib Singh *v.* State of Punjab, (1972) 3 SCC 418: 1972 SCC (Cri) 568: AIR 1973 SC 460: 1972 Cri LJ 1286 ➢➢**7847, 7848**
Gauri Shankar Prasad *v.* State of Bihar, (2000) 5 SCC 15: 2000 SCC (Cri) 872: AIR 2000 SC 3517 ➢**2394**
Gauri Shanker Sharma *v.* State of U. P., 1990 Supp SCC 656: AIR 1990 SC 709: (1990) 1 Crimes 196 ➢**1185, 2122** ➢➢**5771**
Gautam Sinha *v.* State of Bihar, (2002) 10 SCC 148 ➢➢**7281**
Gaya Prasad *v.* State of M. P., (2009) 17 SCC 757 ➢**3440**
Gaya Yadav *v.* State of Bihar, (2003) 9 SCC 122: AIR 2003 SC 1759: 2003 Cri LJ 1564 ➢**800, 1193**
Gayadin *v.* State of M. P., (2005) 12 SCC 267 ➢➢**5429**
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Gentela Vijayavardhan Rao *v.* State of A. P., (1996) 6 SCC 241: 1996 SCC (Cri) 1290: AIR 1996 SC 2791 ➢**1820, 3718**
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George Thomas *v.* State of Kerala, 1995 Cri LJ 3645 ➢➢**6028**
Ghamandiram Kewalji Gowani ; Union of India *See* Union of India *v.* Ghamandiram Kewalji Gowani
Ghanchi Rubina Salimbhai *v.* Metubha Diwansingh Solanki, (2003) 7 SCC 183: 2003 SCC (Cri) 1600: 2003 Cri LJ 3759 ➢➢**6752, 6759**
Ghanshyam *v.* State of M. P., (2006) 10 SCC 473: (2006) 3 SCC (Cri) 602 ➢**1284, 1365, 2206, 3524, 3535**
Ghanshyam Dass Jain *v.* State of U. P., (1982) 3 SCC 389(1): 1983 SCC (Cri) 62(1) ➢➢**6568, 6678**
Ghanshyam Singh ; State of M. P. *See* State of M. P. *v.* Ghanshyam Singh
Ghashiram Kanhyalal Solanki ; Narcotics Control Bureau *See* Narcotics Control Bureau *v.* Ghashiram Kanhyalal Solanki
Ghasita Sahu *v.* State of M. P., (2008) 3 SCC 52: (2008) 1 SCC (Cri) 605: AIR 2008 SC 1425: (2008) 64 AIC 252 (SC): 2008 Cri LJ 2060 ➢**281, 2864** ➢➢**5622**
Ghulam Din Buch *v.* State of J&K, (1996) 9 SCC 239: AIR 1996 SC 1568 ➢**3205**
Ghulam Mehdi *v.* State of Rajasthan, AIR 1960 SC 1185: 1960 Cri LJ 1527 ➢➢**9214**
Ghurey Lal *v.* State of U. P., (2008) 10 SCC 450 ➢➢**3301, 5024, 5034, 5099, 5111, 5225**
Gian Chand ; State of H. P. *See* State of H. P. *v.* Gian Chand
Gian Devi *v.* Supdt., Nari Niketan, Delhi, (1976) 3 SCC 234: 1976 SCC (Cri) 387 ➢➢**9151**
Giani Pratap Singh *v.* State of Rajasthan, (1995) 5 SCC 591: 1995 SCC (Cri) 992: AIR 1996 SC 74 ➢➢**6533**
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Gir Prasad *v.* State of U. P., (2005) 13 SCC 372: (2006) 2 SCC (Cri) 250 ➢➢**7280**
Girdhari Lal *v.* State of Punjab, (1982) 1 SCC 608: 1982 SCC (Cri) 325: AIR 1982 SC 1229(2): 1982 Cri LJ 1742(1) ➢**3797**
Girdhari Sharma ; Harishankar Rastogi *See* Harishankar Rastogi *v.* Girdhari Sharma
Girdharilal Sapru ; MCD *See* MCD *v.* Girdharilal Sapru

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Girishbhai Dahyabhai Shah *v.* C. C. Jani, (2009) 15 SCC 64: (2009) 3 KLT 596 ≻≻**7553**

Girja Prasad *v.* State of M. P., (2007) 7 SCC 625: (2007) 3 SCC (Cri) 475: (2007) 4 KLT 99: (2007) 58 AIC 230 (SC) ≻≻**5593, 5900, 9002**

Gita Ram ; State of H. P. *See* State of H. P. *v.* Gita Ram

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Gobarbhai Naranbhai Singala *v.* State of Gujarat, (2008) 3 SCC 775: (2008) 2 SCC (Cri) 743: AIR 2008 SC 1134: (2008) 3 Guj LR 2192: 2008 Cri LJ 1618 ≻≻**6714, 6744, 6783**

Gobind Singh *v.* Krishna Singh, (2008) 17 SCC 93: (2009) 74 AIC 267 (SC) ≻≻**5641**

Gobind Singh *v.* Shanti Sarup, (1979) 2 SCC 267: 1979 SCC (Cri) 444: AIR 1979 SC 143: 1979 Cri LJ 59 ≻≻**7797**

Godrej Pacific Tech. Ltd. *v.* Computer Joint India Ltd., (2008) 11 SCC 108: (2008) 228 ELT 507 ≻**3161**

Gogineni Venkateshwara Rao ; Chaganti Kotaiah *See* Chaganti Kotaiah *v.* Gogineni Venkateshwara Rao

Gohar Begum *v.* Suggi, AIR 1960 SC 93: (1960) 1 SCR 597: 1960 Cri LJ 164 ≻≻**9154, 9155, 9156**

Gokak Patel Volkart Ltd. *v.* Dundayya Gurushiddaiah Hiremath, (1991) 2 SCC 141: 1991 SCC (Cri) 315: (1991) 1 LLN 970: (1991) 71 Comp Cas 403 ≻≻**6989, 6991**

Gokaraju Rangaraju *v.* State of A. P., (1981) 3 SCC 132: 1981 SCC (Cri) 652: AIR 1981 SC 1473: (1981) 3 SCR 474: 1981 MLJ (Cri) 528 ≻**68**

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Gokul Bhagaji Patil *v.* State of Maharashtra, (2007) 2 SCC 475: (2007) 1 SCC (Cri) 597: (2007) 49 AIC 27 (SC): 2007 Cri LJ 776 ≻≻**6395, 6428, 6543**

Gokul Saikia ; Ashok Sahu *See* Ashok Sahu *v.* Gokul Saikia

Golapi Sahoo ; Purandar Sahoo *See* Purandar Sahoo *v.* Golapi Sahoo

Golconda Linga Swamy ; State of A. P. *See* State of A. P. *v.* Golconda Linga Swamy

Golla Devavaram *v.* Karanam Balarama Krishna Murthy, (2007) 15 SCC 665 ≻**3354**

Golla Jalla Reddy *v.* State of A. P., (1996) 8 SCC 565: 1996 SCC (Cri) 713: AIR 1996 SC 3244 ≻**647, 1608**

Golla Pullanna *v.* State of A. P., (1996) 10 SCC 223: 1996 SCC (Cri) 1235: AIR 1996 SC 2727 ≻**863**

Gomti *v.* Thakurdas, (2007) 11 SCC 160: (2007) 53 AIC 48 (SC): (2007) 3 All LJ 614: 2007 Cri LJ 2431 ≻≻**5824**

Gonchi Rajashekhar Reddy *v.* State of A. P., (2006) 9 SCC 535: (2006) 3 SCC (Cri) 332: 2006 Cri LJ 2378 ≻**854**

Goondla Venkateswarlu *v.* State of A. P., (2008) 9 SCC 613: (2008) 3 SCC (Cri) 829: (2008) 230 ELT 202 ≻**2467**

Gopal *v.* State of T. N., (1986) 2 SCC 93: 1986 SCC (Cri) 111: AIR 1986 SC 702: 1986 Cri LJ 801 ≻**4018**

Gopal *v.* State of U. P., (2002) 9 SCC 744 ≻**928**

Gopal Ansal ; Assn. of Victims of Uphaar Tragedy *See* Assn. of Victims of Uphaar Tragedy *v.* Gopal Ansal

Gopal Das Sindhi *v.* State of Assam, AIR 1961 SC 986: (1961) 2 Cri LJ 39 ≻≻**8123, 8124, 8140, 8415**

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Gopal Mukherjee, ITO ; General Sales (P) Ltd. *See* General Sales (P) Ltd. *v.* Gopal Mukherjee, ITO

Gopal Sarkar *v.* Pashupati Ghosh, (1971) 3 SCC 231: 1971 SCC (Cri) 431 ≻≻**8932**

Gopal Singh ; Kaushalya Rani *See* Kaushalya Rani *v.* Gopal Singh

Gopal Singh *v.* State of M. P., (2010) 6 SCC 407 ≻**1472** ≻≻**5084**

Gopal Vijay Verma *v.* Bhuneshwar Prasad Sinha, (1982) 3 SCC 510: 1983 SCC (Cri) 110 ≻**2229**

Gopal Vinayak Godse *v.* State of Maharashtra, AIR 1961 SC 600: (1961) 3 SCR 440: (1961) 1 Cri LJ 736 ≻≻**8759**

Gopala Krishnan ; Thankappan Nadar *See* Thankappan Nadar *v.* Gopala Krishnan

Gopalakrishna Menon *v.* D. Raja Reddy, (1983) 4 SCC 240: 1983 SCC (Cri) 822: AIR 1983 SC 1053: 1983 Cri LJ 1599 ≻**2306**

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Gopalsingh *v.* State of M. P., (1972) 3 SCC 268: 1972 SCC (Cri) 513: AIR 1972 SC 1557: 1972 Cri LJ 1045 ➤➤**8814**

Gopen Chandra Hazarika ; Biswabhan Das *See* Biswabhan Das *v.* Gopen Chandra Hazarika

Gopi ; State of U. P. *See* State of U. P. *v.* Gopi

Gopi *v.* State of U. P., (1970) 2 SCC 68: 1970 SCC (Cri) 304: 1970 ALJ 1164 ➤➤**8057**

Gopi Nath Ganga Ram Surve *v.* State of Maharashtra, (1970) 3 SCC 627 ➤➤**8816**

Gopi Singh ; Murari Lal Gupta *See* Murari Lal Gupta *v.* Gopi Singh

Gopikant Choudhary *v.* State of Bihar, (2000) 9 SCC 53: 2000 SCC (Cri) 1158 ➤**2430**

Gorantla Venkateswara Rao ; Kolla Veera Raghav Rao *See* Kolla Veera Raghav Rao *v.* Gorantla Venkateswara Rao

Gorige Pentaiah *v.* State of A. P., (2008) 12 SCC 531 ➤➤**7036, 7579**

Gorle S. Naidu *v.* State of A. P., (2003) 12 SCC 449: AIR 2004 SC 1169: 2004 Cri LJ 924 ➤**721, 1089, 1644** ➤➤**5500**

Gour Chandra Rout *v.* Public Prosecutor, Cuttack, AIR 1963 SC 1198: 1963 Supp (2) SCR 447: (1963) 2 Cri LJ 194 ➤➤**8250, 8251, 8252**

Goura Venkata Reddy *v.* State of A. P., (2003) 12 SCC 469 ➤**772, 877, 1169**

Gouri Shankar Jha *v.* State of Bihar, (1972) 1 SCC 564: 1972 SCC (Cri) 328: AIR 1972 SC 711: (1972) 3 SCR 129: 1972 Cri LJ 505 ➤➤**8059, 8060, 8679**

Gourishetty Mahesh ; State of A. P. *See* State of A. P. *v.* Gourishetty Mahesh

Goutam Kundu *v.* State of W. B., (1993) 3 SCC 418: 1993 SCC (Cri) 928: AIR 1993 SC 2295: 1993 Cri LJ 3233: 1993 (2) ALT (Cri) 356 ➤**424**

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Goverdhan Raoji Ghyare *v.* State of Maharashtra, 1993 Supp (4) SCC 316: 1994 SCC (Cri) 15 ➤**1823** ➤➤**5065**

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Govind Das ; State of U. P. *See* State of U. P. *v.* Govind Das

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Govind Narain *v.* State of Rajasthan, 1993 Supp (3) SCC 343: 1993 SCC (Cri) 1012: AIR 1993 SC 2457: 1993 Cri LJ 2598 ➤**794**

Govind Ramji Jadhav *v.* State of Maharashtra, (1990) 4 SCC 718: 1991 SCC (Cri) 33: (1990) 2 Crimes 256 ➤➤**5956**

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Govind Singh Rawat ; Savitri *See* Savitri *v.* Govind Singh Rawat

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Govindaswamy ; Suryamoorthi *See* Suryamoorthi *v.* Govindaswamy

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Govt. (NCT of Delhi) ; Harpreet Singh *See* Harpreet Singh *v.* Govt. (NCT of Delhi)

Govt. (NCT of Delhi) ; Inspector Prem Chand *See* Inspector Prem Chand *v.* Govt. (NCT of Delhi)

Govt. (NCT of Delhi) *v.* Jaspal Singh, (2003) 10 SCC 586 ➤➤**5767**

Govt. (NCT of Delhi) ; Kishan Swaroop *See* Kishan Swaroop *v.* Govt. (NCT of Delhi)

Govt. (NCT of Delhi) ; Krishan Gopal Sharma *See* Krishan Gopal Sharma *v.* Govt. (NCT of Delhi)

Govt. (NCT of Delhi) ; Mohd. Zahid *See* Mohd. Zahid *v.* Govt. (NCT of Delhi)

Govt. (NCT of Delhi) ; Rishi Anand *See* Rishi Anand *v.* Govt. (NCT of Delhi)

Govt. (NCT of Delhi) ; Suresh Gupta (Dr.) *See* Suresh Gupta (Dr.) *v.* Govt. (NCT of Delhi)

Govt. of A. P. *v.* Anne Venkatesware, (1977) 3 SCC 298: 1977 SCC (Cri) 508: AIR 1977 SC 1096: (1977) 3 SCR 7: 1977 Cri LJ 935 ≻≻**6218, 6251**

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Govt. of A. P. ; K. Aruna Kumari *See* K. Aruna Kumari *v.* Govt. of A. P.

Govt. of A. P. ; M. T. Khan *See* M. T. Khan *v.* Govt. of A. P.

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Govt. of Karnataka ; Som Mittal *See* Som Mittal *v.* Govt. of Karnataka

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Govt. of W. B. ; Lalit Kumar Sharma *See* Lalit Kumar Sharma *v.* Govt. of W. B.

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Gowthu Ranghunayakulu ; State of A. P. *See* State of A. P. *v.* Gowthu Ranghunayakulu

Goyal Enterprises *v.* State of Jharkhand, (2008) 13 SCC 570: AIR 2008 SC 1510: 2008 Cri LJ 1923 ≻≻**5303**

Green Earth Asphalt & Power (P) Ltd. *v.* State of Maharashtra, (2008) 8 SCC 278: (2008) 3 SCC (Cri) 481: (2008) 69 AIC 13 (SC): (2008) 106 Cut LT 696 ≻≻**7499**

Grindlays Bank Ltd. ; S. Guin *See* S. Guin *v.* Grindlays Bank Ltd.

Gubbala Venugopalaswamy *v.* State of A. P., (2004) 10 SCC 120: 2004 SCC (Cri) 1764: AIR 2004 SC 2477 ≻**892, 1272**

Gudikanti Narasimhulu *v.* Public Prosecutor, High Court of A. P., (1978) 1 SCC 240: 1978 SCC (Cri) 115: AIR 1978 SC 429: 1978 Cri LJ 502 ≻≻**6368**

Gujarat State Fertilizer Co. Ltd. ; S. V. Muzumdar *See* S. V. Muzumdar *v.* Gujarat State Fertilizer Co. Ltd.

Gulab *v.* State of Maharashtra, (1977) 1 SCC 495: 1977 SCC (Cri) 129: AIR 1977 SC 1913: 1977 Cri LJ 1556 ≻≻**5541, 8919**

Gulab Singh ; State of Rajasthan *See* State of Rajasthan *v.* Gulab Singh

Gulab Singh *v.* Yuvraj Singh, 1995 Supp (4) SCC 623: 1996 SCC (Cri) 68 ≻**3817**

Gulab Sonba *v.* State of Maharashtra, (1971) 3 SCC 931(1): 1972 SCC (Cri) 179(1) ≻≻**8901**

Gulam Abbas *v.* State of U. P., (1982) 1 SCC 71: 1982 SCC (Cri) 82: AIR 1981 SC 2198: (1982) 1 SCR 1077 ≻**526, 529**

Gulam Abbas *v.* State of U. P., (1984) 1 SCC 81: 1984 SCC (Cri) 35: AIR 1983 SC 1268 ≻**2124**

Gulam Hussain Shaikh Chougule *v.* S. Reynolds, Supdt. of Customs, (2002) 1 SCC 155: 2002 SCC (Cri) 116: AIR 2001 SC 2930 ≻**1756**

Gulam Mahmood A. Malek *v.* State of Gujarat, 1980 Supp SCC 684: 1981 SCC (Cri) 586: AIR 1980 SC 1558: 1980 Cri LJ 1096: (1980) 21 GLR 965 ≻≻**5236, 5397**

Gulam Mohammed *v.* State of Gujarat, (2008) 15 SCC 402: AIR 2009 SC 509 ≻≻**6831**

Gulwant Singh ; Mohinder Singh *See* Mohinder Singh *v.* Gulwant Singh

Gulzar *v.* State of M. P., (2007) 1 SCC 619: (2007) 1 SCC (Cri) 395: (2007) 50 AIC 123 (SC) ≻**3831**

Gunnana Pentayya *v.* State of A. P., (2009) 16 SCC 59 ≻**727, 1653**

Guntabai ; State of Maharashtra *See* State of Maharashtra *v.* Guntabai

Gunwantlal *v.* State of M. P., (1972) 2 SCC 194: 1972 SCC (Cri) 678: AIR 1972 SC 1756: 1972 Cri LJ 1187 ≻≻**9391**

Gupta Chemicals (P) Ltd. *v.* State of Rajasthan, (2010) 7 SCC 735 ≻≻**7570**

Gurbachan Singh ; Ajaib Singh *See* Ajaib Singh *v.* Gurbachan Singh

Gurbachan Singh *v.* Satpal Singh, (1990) 1 SCC 445: 1990 SCC (Cri) 151: AIR 1990 SC 209: 1990 Cri LJ 562 ➢**1079** ➢➢**5574**

Gurbachan Singh *v.* State of Punjab, AIR 1957 SC 623: 1957 Cri LJ 1009 ➢➢**7921, 7930, 7953, 8081, 8083, 8085, 8282, 9296, 9303**

Gurbaksh Singh Sibbia *v.* State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465: AIR 1980 SC 1632: 1980 Cri LJ 1125 ➢**209** ➢➢**6555, 6581, 6594**

Gurbax Singh *v.* State of Haryana, (2001) 3 SCC 28: 2001 SCC (Cri) 426: AIR 2001 SC 1002: (2001) 1 Crimes 235 (SC) ➢**278**

Gurcharan Das Chadha *v.* State of Rajasthan, AIR 1966 SC 1418: (1966) 2 SCR 678: 1966 Cri LJ 1071 ➢➢**9244, 9245, 9252, 9253**

Gurcharan Singh *v.* State (Delhi Admn.), (1978) 1 SCC 118: 1978 SCC (Cri) 41: AIR 1978 SC 179: 1978 Cri LJ 129 ➢➢**6392, 6519, 9185**

Gurcharan Singh *v.* State of Punjab, AIR 1963 SC 340: (1963) 3 SCR 585: (1963) 1 Cri LJ 323 ➢➢**8540, 8741, 8771**

Gurcharan Singh ; Union of India *See* Union of India *v.* Gurcharan Singh

Gurcharandas Chadha ; State of Rajasthan *See* State of Rajasthan *v.* Gurcharandas Chadha

Gurdev Raj *v.* State of Punjab, (2007) 13 SCC 380: 2008 Cri LJ 382: (2007) 59 AIC 124 (SC) ➢**1161**

Gurdev Singh *v.* State of Bihar, (2005) 13 SCC 286: (2006) 2 SCC (Cri) 177: 2000 Cri LJ 4686 ➢➢**6811**

Gurdev Singh *v.* State of Punjab, (2003) 7 SCC 258: 2003 SCC (Cri) 1616: AIR 2003 SC 4187: 2003 Cri LJ 3764 ➢**1000, 2916, 3705**

Gurdip Kaur ; State of Punjab *See* State of Punjab *v.* Gurdip Kaur

Guria, Swayam Sevi Sansthan *v.* State of U. P., (2009) 15 SCC 75 ➢➢**6396**

Guriya *v.* State of Bihar, (2007) 8 SCC 224: (2007) 3 SCC (Cri) 521 ➢**3388**

Gurkirat Singh ; Navpreet Kaur *See* Navpreet Kaur *v.* Gurkirat Singh

Gurmej Kaur ; Bakhshish Singh Brar *See* Bakhshish Singh Brar *v.* Gurmej Kaur

Gurmej Kaur *v.* State of Haryana, 1995 SCC (Cri) 167 ➢➢**5168**

Gurmej Singh ; State of Punjab *See* State of Punjab *v.* Gurmej Singh

Gurmej Singh *v.* State of Punjab, (2009) 12 SCC 440: AIR 2009 SC 2699 ➢**2172**

Gurmit Kaur *v.* Surjit Singh, (1996) 1 SCC 39 ➢**407**

Gurmit Singh ; State of Punjab *See* State of Punjab *v.* Gurmit Singh

Gurmit Singh *v.* State of Punjab, 1995 Supp (4) SCC 146: 1996 SCC (Cri) 45 ➢**1149**

Gurmukh Singh *v.* State of Haryana, (2009) 15 SCC 635: (2009) 82 AIC 83 (SC) ➢**3624**

Gurmukh Singh *v.* State of Punjab, (1972) 4 SCC 805: AIR 1972 SC 824: 1972 Cri LJ 654 ➢➢**8429**

Gurnam Kaur *v.* Bakshish Singh, 1980 Supp SCC 567: 1981 SCC (Cri) 496: AIR 1981 SC 631: 1981 Cri LJ 34 ➢**804, 1585**

Gurnam Kaur ; State of Punjab *See* State of Punjab *v.* Gurnam Kaur

Gurnam Singh ; State of Punjab *See* State of Punjab *v.* Gurnam Singh

Gurnam Singh *v.* State of Punjab, (1998) 7 SCC 722: AIR 1998 SC 2673: 1998 Cri LJ 4024 ➢**3697**

Gurnam Singh *v.* State of Punjab, (2000) 10 SCC 359 ➢**3603**

Gumek Singh *v.* State of Punjab, 1988 Supp SCC 807: 1989 SCC (Cri) 10: AIR 1988 SC 2249 ➢**1158** ➢➢**7748**

Gurpal Singh ; Kishan Singh *See* Kishan Singh *v.* Gurpal Singh

Gurpreet Kaur *v.* Vipin Kumar Gupta, (2008) 1 SCC 231: (2008) 1 SCC (Cri) 186: (2007) 60 AIC 39 (SC): (2008) 2 Mah LJ 484: (2008) 2 MPLJ 210 ➢➢**6120**

Gurpreet Singh *v.* State of Haryana, (2002) 8 SCC 18: AIR 2002 SC 3217 ➢**1603**

Gurpreet Singh *v.* State of Punjab, (2005) 12 SCC 615 ➢**735, 993** ➢➢**6935**

Gurram Chakravarthy (2) *v.* State of A. P., (2008) 16 SCC 799: (2008) 72 AIC 106 (SC) ➢**3950**

Gurshinder Singh *v.* Joga Singh, 1999 SCC (Cri) 1311: AIR 2000 SC 3418 ➢➢**5948**

Guru Bipin Singh *v.* Chongtham Manihar Singh, (1996) 11 SCC 622: AIR 1997 SC 1448 ➢➢**7523**

Guru Charan ; State of U. P. *See* State of U. P. *v.* Guru Charan

Guru Swarup Srivastava ; Directorate of Enforcement *See* Directorate of Enforcement *v.* Guru Swarup Srivastava

Gurubachan Singh Gill *v.* J. S. Bagga, (2005) 13 SCC 381: (2006) 2 SCC (Cri) 249 ➢➢**6960**

Gurucharan Singh *v.* Kamla Singh, (1976) 2 SCC 152: AIR 1977 SC 5: (1976) 1 SCR 739 **≻≻7820**

Gurunath Donkappa Keri *v.* State of Karnataka, (2009) 13 SCC 34: 2009 Cri LJ 2995 **≻1049**

Guvala China Venkatesu *v.* State of A. P., 1991 Supp (2) SCC 727: AIR 1991 SC 1926: 1991 Cri LJ 2326 **≻3620**

Gyan Devi ; State of Delhi *See* State of Delhi *v.* Gyan Devi

Gyan Singh *v.* State of U. P., 1995 Supp (4) SCC 658: 1996 SCC (Cri) 73 **≻280**

Gyarsi ; Ramkaran *See* Ramkaran *v.* Gyarsi

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H. C. Bhari ; Matajog Dobey *See* Matajog Dobey *v.* H. C. Bhari

H. M. Ranganatha Bhatta ; Vanamala *See* Vanamala *v.* H. M. Ranganatha Bhatta

H. N. Jagadish ; R. Rajeshwari *See* R. Rajeshwari *v.* H. N. Jagadish

H. N. Rishbud *v.* State of Delhi, AIR 1955 SC 196: (1955) 1 SCR 1150: 1955 Cri LJ 526 **≻≻7888, 7890, 7891, 7892, 7901, 8072, 8116, 8264, 9286, 9287**

H. P. Admn. *v.* Om Prakash, (1972) 1 SCC 249: 1972 SCC (Cri) 88: AIR 1972 SC 975: (1972) 2 MLJ 16 (SC): 1972 Cri LJ 606 **≻≻7908, 9208**

H. P. Gupta *v.* Manohar Lal, (1979) 2 SCC 486: 1979 SCC (Cri) 530: AIR 1979 SC 443: 1979 Cri LJ 199: 1979 MLJ (Cri) 322: (1978) 15 ACC 427 **≻≻6907, 9229**

H. R. Barge ; Ashok Manikchand Chankeshwara *See* Ashok Manikchand Chankeshwara *v.* H. R. Barge

H. S. Bains, Director, Small Saving-cum-Dy. Secy. Finance *v.* State (UT, Chandigarh), (1980) 4 SCC 631: 1981 SCC (Cri) 93: AIR 1980 SC 1883: 1980 Cri LJ 1308 **≻2010**

H. S. Chowdhary ; Janata Dal *See* Janata Dal *v.* H. S. Chowdhary

H. V. Jayaram *v.* Industrial Credit & Investment Corpn. of India Ltd., (2000) 2 SCC 202: AIR 2000 SC 579: 2000 Cri LJ 736 **≻2156**

Habeeb Mohammad *v.* State of Hyderabad, AIR 1954 SC 51: 1954 SCR 475: 1954 Cri LJ 338 **≻≻7958, 8066, 8433, 8443, 8445, 8449**

Habib Usman *v.* State of Gujarat, (1979) 3 SCC 358: 1979 SCC (Cri) 671: AIR 1979 SC 1181: 1979 Cri LJ 708 **≻≻5217**

Habibullah ; Imran Ali *See* Imran Ali *v.* Habibullah

Habibullah Khan ; State of Orissa *See* State of Orissa *v.* Habibullah Khan

Hafizunnisa Yasinkhan ; Sirajmohmedkhan Janmohamadkhan *See* Sirajmohmedkhan Janmohamadkhan *v.* Hafizunnisa Yasinkhan

Haji Khan *v.* State of U. P., (2005) 13 SCC 353: (2006) 2 SCC (Cri) 336 **≻≻5112**

Haji Mastan Mirza ; Union of India *See* Union of India *v.* Haji Mastan Mirza

Hakam Singh ; State of Punjab *See* State of Punjab *v.* Hakam Singh

Hakim Singh ; State of U. P. *See* State of U. P. *v.* Hakim Singh

Halappa *v.* State of Karnataka, (2009) 9 SCC 366: (2009) 3 SCC (Cri) 1068 **≻3837**

Hallu *v.* State of M. P., (1974) 4 SCC 300: 1974 SCC (Cri) 462: AIR 1974 SC 1936: (1974) 3 SCR 652: 1974 Cri LJ 1385 **≻624, 842 ≻≻5603**

Hamida *v.* Rashid, (2008) 1 SCC 474: (2008) 1 SCC (Cri) 234: (2007) 54 AIC 19 (SC): 2007 Cri LJ 3422: (2008) 105 Cut LT 410: (2007) 4 All LJ 206 **≻≻7035, 7091, 7092**

Hanif Khan ; State of Rajasthan *See* State of Rajasthan *v.* Hanif Khan

Hans Raj *v.* State of Haryana, (2004) 12 SCC 257: AIR 2004 SC 2790: 2004 Cri LJ 1759 **≻≻5761**

Hanuman ; State of Rajasthan *See* State of Rajasthan *v.* Hanuman

Hanuman Prasad Ojha ; Asit Bhattacharjee *See* Asit Bhattacharjee *v.* Hanuman Prasad Ojha

Hanuman Ram *v.* State of Rajasthan, (2008) 15 SCC 652: (2009) 3 SCC (Cri) 1149: AIR 2009 SC 69 **≻3171**

Hanumant Dass *v.* Vinay Kumar, (1982) 2 SCC 177: 1982 SCC (Cri) 379(2): AIR 1982 SC 1052: 1982 Cri LJ 977 **≻≻5561, 6164, 6943**

Hanumant Govind Nargundkar *v.* State of M. P., AIR 1952 SC 343: 1952 SCR 1091: 1953 Cri LJ 129 **≻≻8009**

Hanumanthu Santha Rao ; State of A. P. *See* State of A. P. *v.* Hanumanthu Santha Rao

Hanwant Das *v.* Vinay Kumar, (1982) 1 SCC 475: 1982 SCC (Cri) 257 ≻≻**6121**
Har Gobind *v.* State of Haryana, (1979) 4 SCC 482: 1980 SCC (Cri) 98: AIR 1979 SC 1760: 1979 Cri LJ 1334 ≻≻**8175**
Har Prasad *v.* Ranveer Singh, (2008) 11 SCC 431: AIR 2008 SC 1265: 2008 Cri LJ 1655: (2008) 2 All LJ 792 ≻**2210**
Har Prasad *v.* State of M. P., (1971) 3 SCC 455: 1971 SCC (Cri) 703: AIR 1971 SC 1450: 1971 Cri LJ 1135 ≻≻**8486**
Harban Sahai ; State of U. P. *See* State of U. P. *v.* Harban Sahai
Harbans Kaur *v.* State of Haryana, (2005) 9 SCC 195: 2005 SCC (Cri) 1213: AIR 2005 SC 2989: 2005 Cri LJ 2199 ≻**1157**
Harbans Lal ; Kapil Corepacks (P) Ltd. *See* Kapil Corepacks (P) Ltd. *v.* Harbans Lal
Harbans Lal *v.* State of Haryana, (1998) 8 SCC 319: AIR 1999 SC 326 ≻**2146**
Harbans Lal & Sons *v.* Ramson Cycles (P) Ltd., (2009) 4 SCC 16 ≻≻**6125**
Harbans Singh *v.* State of Punjab, AIR 1962 SC 439: 1962 Supp (1) SCR 104: (1962) 1 Cri LJ 479 ≻≻**8864**
Harbans Singh *v.* State of U. P., (1982) 2 SCC 101: 1982 SCC (Cri) 361: AIR 1982 SC 849: 1982 Cri LJ 795: 1982 MLJ (Cri) 409 ≻≻**6217**
Harbhajan Singh *v.* State of Punjab, AIR 1966 SC 97: (1965) 2 SCR 235: 1966 Cri LJ 82 ≻≻**8444, 8662**
Harbhajan Singh *v.* State of Punjab, (2009) 13 SCC 608: (2009) 82 AIC 29 (SC): 2009 Cri LJ 4429 ≻**3349, 3355** ≻≻**6038**
Harbhajan Singh Bajwa ; Hari Singh Mann *See* Hari Singh Mann *v.* Harbhajan Singh Bajwa
Harbhej Singh ; Hardev Singh *See* Hardev Singh *v.* Harbhej Singh
Hardan Singh ; State of Punjab *See* State of Punjab *v.* Hardan Singh
Hardayal *v.* State of U. P., (1976) 2 SCC 812: 1976 SCC (Cri) 317: AIR 1976 SC 2055: 1976 Cri LJ 1578 ≻**3710**
Hardeep Singh *v.* State of Punjab, (2009) 16 SCC 785 ≻**1997, 3348, 3353**
Hardeo Sharma Trivedi ; Govind Sharan Aggarwal *See* Govind Sharan Aggarwal *v.* Hardeo Sharma Trivedi
Hardeo Singh *v.* State of Bihar, (2000) 5 SCC 623: 2000 SCC (Cri) 1008: AIR 2000 SC 2245: 2000 Cri LJ 2978 ≻≻**7460**
Hardev Singh *v.* Harbhej Singh, (1997) 1 SCC 80: 1997 SCC (Cri) 5: AIR 1997 SC 1487: 1997 Cri LJ 727 ≻**1233**
Hardev Singh *v.* State of Punjab, (1975) 3 SCC 731: 1975 SCC (Cri) 186: AIR 1975 SC 179: 1975 MLJ (Cri) 369: (1975) Cri LJ 243 ≻≻**6249**
Hardev Singh *v.* State of Punjab, 1994 Supp (2) SCC 282: 1994 SCC (Cri) 1234 ≻**3820**
Hardip Singh *v.* State of Punjab, 1994 Supp (1) SCC 183: 1994 SCC (Cri) 384 ≻**2620**
Hare Krishna Singh *v.* State of Bihar, (1988) 2 SCC 95: 1988 SCC (Cri) 279: AIR 1988 SC 863: (1988) 2 Crimes 927 ≻**3307**
Harendra Arora ; State of U. P. *See* State of U. P. *v.* Harendra Arora
Harendra Nath Chakraborty *v.* State of W. B., (2009) 2 SCC 758 ≻**3254**
Harendra Nath Mishra *v.* State of Bihar, (2009) 17 SCC 542 ≻**843**
Harendrajit Singh ; Jagdish *See* Jagdish *v.* Harendrajit Singh
Hareram Satpathy *v.* Premlal Suna, 1984 Supp SCC 685: 1985 SCC (Cri) 143 ≻≻**5304**
Hareram Satpathy *v.* Tikaram Agarwala, (1978) 4 SCC 58: 1978 SCC (Cri) 496: AIR 1978 SC 1568: 1978 Cri LJ 1687 ≻**2224** ≻≻**7075, 7373**
Hari *v.* State of Maharashtra, (2009) 11 SCC 96: (2009) 3 SCC (Cri) 1254 ≻**1022** ≻≻**5010**
Hari Chand *v.* State of Delhi, (1996) 9 SCC 112: 1996 SCC (Cri) 950: AIR 1996 SC 1477 ≻**1073** ≻≻**5075**
Hari Chand Aggarwal *v.* Batala Engg. Co. Ltd., AIR 1969 SC 483: (1969) 2 SCR 201: 1969 Cri LJ 803 ≻≻**7713, 7714, 7715, 7716, 7720**
Hari Dev Sharma *v.* State (Delhi Admn.), (1977) 3 SCC 352: 1977 SCC (Cri) 516: AIR 1976 SC 1489: 1976 Cri LJ 1176 ≻**4057**
Hari Dusadh ; Chhotan Prasad Singh *See* Chhotan Prasad Singh *v.* Hari Dusadh
Hari Har Singh *v.* State of U. P., (1975) 4 SCC 148: 1975 SCC (Cri) 405: AIR 1975 SC 1501: 1975 Cri LJ 1315 ≻≻**8740**

Hari Nath *v.* State of U. P., (1988) 1 SCC 14: 1988 SCC (Cri) 14: AIR 1988 SC 345: 1988 Cri LJ 422 **≻≻5758**

Hari Nath Singh ; Kamla Prasad Singh *See* Kamla Prasad Singh *v.* Hari Nath Singh

Hari Om ; State of U. P. *See* State of U. P. *v.* Hari Om

Hari Om *v.* State of U. P., 1993 Supp (2) SCC 1: 1993 SCC (Cri) 396: 1993 Cri LJ 1383: (1993) 1 Crimes 294 **≻711, 900**

Hari Prasad ; State of U. P. *See* State of U. P. *v.* Hari Prasad

Hari Prasad Chhapolia *v.* Union of India, (2008) 7 SCC 690: (2008) 3 SCC (Cri) 220: (2008) 227 ELT 345: (2008) 68 AIC 129 (SC): 2008 Cri LJ 3198 **≻≻5897**

Hari Ram ; Lala Ram *See* Lala Ram *v.* Hari Ram

Hari Ram *v.* State of Rajasthan, (2000) 9 SCC 136: 2000 SCC (Cri) 1178: AIR 2000 SC 1647: 2000 Cri LJ 2312 **≻≻5114**

Hari Ram ; State of U. P. *See* State of U. P. *v.* Hari Ram

Hari Shankar Jalan *v.* Food Inspector, Cherukole, 1997 SCC (Cri) 968 **≻≻7563**

Hari Singh *v.* State of M. P., (2010) 12 SCC 108: AIR 2010 SC 3630 **≻855, 1235**

Hari Singh ; State of Punjab *See* State of Punjab *v.* Hari Singh

Hari Singh *v.* State of Rajasthan, (1996) 11 SCC 551: AIR 1997 SC 1505 **≻1622**

Hari Singh *v.* State of U. P., (2006) 5 SCC 733: (2006) 3 SCC (Cri) 63: AIR 2006 SC 2464: (2006) 130 DLT 591: (2006) 3 KLT 269: (2006) 5 All LJ 345: 2006 Cri LJ 3283 **≻1283, 1326, 2207**

Hari Singh *v.* State of U. P., (2010) 13 SCC 756 **≻1238**

Hari Singh *v.* Sukhbir Singh, (1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127 **≻3807, 3809, 3867**

Hari Singh Mann *v.* Harbhajan Singh Bajwa, (2001) 1 SCC 169: 2001 SCC (Cri) 113: AIR 2001 SC 43: 2001 Cri LJ 128: (2001) 1 Mah LJ 465 **≻3881**

Hari Yadav *v.* State of Bihar, (2007) 15 SCC 266 **≻1986**

Haridas Mundra ; Legal Remembrancer of Govt. of W. B. *See* Legal Remembrancer of Govt. of W. B. *v.* Haridas Mundra

Harihar Chakravarty *v.* State of W. B., AIR 1954 SC 266: 1954 Cri LJ 724 **≻≻8357, 8452, 9060**

Harihar Prasad *v.* State of Bihar, (1972) 3 SCC 89: 1972 SCC (Cri) 409: 1972 Cri LJ 707 **≻≻8212**

Harihar Singh ; Eicher Tractor Ltd. *See* Eicher Tractor Ltd. *v.* Harihar Singh

Harijan Magha Jesha *v.* State of Gujarat, (1979) 3 SCC 474: 1979 SCC (Cri) 652: AIR 1979 SC 1566: 1979 Cri LJ 1137 **≻≻5195**

Harijana Sunkunha *v.* State of A. P., 1991 Supp (2) SCC 287: 1991 SCC (Cri) 1036 **≻≻5713**

Harijana Thirupala *v.* Public Prosecutor, High Court of A. P., (2002) 6 SCC 470: 2002 SCC (Cri) 1370: AIR 2002 SC 2821 **≻≻5101**

Harijinder Kaur *v.* State of Jharkhand, (2001) 8 SCC 394: 2002 SCC (Cri) 88: AIR 2001 SC 3716 **≻2200**

Harinarayan G. Bajaj *v.* State of Maharashtra, (2010) 11 SCC 520: (2010) 1 ECrN 920: (2010) 94 AIC 196 **≻3390, 3400**

Haripada Das *v.* State of W. B., (1998) 9 SCC 678: AIR 1999 SC 1482 **≻≻5394**

Haripada Dey *v.* State of W. B., AIR 1956 SC 757: 1956 SCR 639: (1956) 2 MLJ (SC) 65: 1957 ALJ 70 **≻≻8441**

Haripal Singh ; State of U. P. *See* State of U. P. *v.* Haripal Singh

Harish Kumar *v.* State (Delhi Admn.), 1994 Supp (1) SCC 462: 1994 SCC (Cri) 581: AIR 1993 SC 973 **≻1832**

Harish Mohan ; Mahant Ram Saran Dass *See* Mahant Ram Saran Dass *v.* Harish Mohan

Harishankar Rastogi *v.* Girdhari Sharma, (1978) 2 SCC 165: 1978 SCC (Cri) 168: AIR 1978 SC 1019: 1978 Cri LJ 778: (1978) 4 ALR 353 **≻29**

Harishchandra Prasad Mani *v.* State of Jharkhand, (2007) 15 SCC 494 **≻2168 ≻≻7294**

Harisingh M. Vasava *v.* State of Gujarat, (2002) 3 SCC 475: 2002 SCC (Cri) 654: AIR 2002 SC 1212: 2002 Cri LJ 1771 **≻≻5157**

Harivallabha *v.* State of M. P., (2005) 10 SCC 330: 2005 SCC (Cri) 1518 **≻3866**

Harjagdev Singh ; State of Punjab *See* State of Punjab *v.* Harjagdev Singh

Harjeet Singh *v.* State of Punjab, (2002) 1 SCC 649: 2002 SCC (Cri) 225: AIR 2002 SC 281: 2002 Cri LJ 571: (2002) 1 CHN (Supp) 127 ➢➢**6760**

Harjinder Singh *v.* State of Punjab, (1985) 1 SCC 422: 1985 SCC (Cri) 93: AIR 1985 SC 404 ➢**2728, 3070**

Harjinder Singh *v.* State of Punjab, (2004) 11 SCC 253: AIR 2004 SC 3962: (2004) 21 AIC 887 (SC): 2004 Cri LJ 3854 ➢**1688**

Harjinder Singh *v.* State of Punjab, (2010) 13 SCC 533 ➢➢**5555**

Harkirat Singh *v.* State of Punjab, (1997) 11 SCC 215: 1997 SCC (Cri) 1068: AIR 1997 SC 3231 ➢**678, 1550**

Harmanpreet Singh Ahluwalia *v.* State of Punjab, (2009) 7 SCC 712: (2009) 3 SCC (Cri) 620: 2009 Cri LJ 3462 ➢➢**7596**

Harmit Kaur ; Ram Kishan Singh *See* Ram Kishan Singh *v.* Harmit Kaur

Harnam Das *v.* State of U. P., AIR 1961 SC 1662: (1962) 2 SCR 487: (1962) 1 MLJ (SC) 112: ILR (1961) 2 All 437: (1962) 1 AWR (SC) 112 ➢➢**7764**

Harnam Singh *v.* Everest Construction Co., (2004) 6 SCC 754: 2004 SCC (Cri) 1828 ➢**2276** ➢➢**7346, 7471**

Harnam Singh *v.* State of H. P., (1975) 3 SCC 343: 1974 SCC (Cri) 951: AIR 1975 SC 236: 1975 Cri LJ 276: 1975 MLJ (Cri) 493 ➢➢**5893, 8753, 9003**

Harnath Singh *v.* State of M. P., AIR 1970 SC 1619: (1969) 2 SCR 289: 1970 Cri LJ 1422 ➢➢**8041**

Haroon Haji Abdulla *v.* State of Maharashtra, AIR 1968 SC 832: (1968) 2 SCR 641: 1968 Cri LJ 1017 ➢➢**7997, 7998**

Harpal ; State of Haryana *See* State of Haryana *v.* Harpal

Harpal *v.* State of Haryana, (2009) 16 SCC 371 ➢➢**5553**

Harpal Singh *v.* Devinder Singh, (1997) 6 SCC 660: 1997 SCC (Cri) 981: AIR 1997 SC 2914: 1997 Cri LJ 3561 ➢**976, 1081, 1544**

Harpal Singh ; State of Haryana *See* State of Haryana *v.* Harpal Singh

Harpal Singh *v.* State of Punjab, (2007) 13 SCC 387: AIR 2008 SC 743 ➢**34, 2462**

Harpal Singh Chauhan *v.* State of U. P., (1993) 3 SCC 552: 1993 SCC (Cri) 938: AIR 1993 SC 2436: 1993 Cri LJ 3140: (1993) 4 SLR 639: (1993) 3 SLJ 128 ➢**110**

Harpreet Singh *v.* Govt. (NCT of Delhi), (2005) 11 SCC 551 ➢➢**6602**

Harsh Gupta ; State of M. P. *See* State of M. P. *v.* Harsh Gupta

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Jagdish *v.* State of M. P., (2007) 13 SCC 12: 2008 Cri LJ 350: (2007) 59 AIC 155 (SC) **≻≻5022**

Jagdish *v.* State of M. P., (2009) 9 SCC 495: (2009) 4 APLJ 1 (SC): (2009) 82 AIC 65 (SC) **≻3912**

Jagdish *v.* State of Rajasthan, 1989 Supp (1) SCC 20: 1989 SCC (Cri) 126 **≻3917**

Jagdish Bagri *v.* Rajendra Kumar Luhariwala, (2009) 4 SCC 218 **≻≻6072**

Jagdish Budhroji Purohit *v.* State of Maharashtra, (1998) 7 SCC 270: 1998 SCC (Cri) 1578: AIR 1998 SC 3328 **≻3294**

Jagdish Chanana *v.* State of Haryana, (2008) 15 SCC 704: (2009) 3 SCC (Cri) 1157: AIR 2008 SC 1968 (2008) 65 AIC 111 (SC): 2008 Cri LJ 2237 **≻≻7418**

Jagdish Chandra Nijhawan *v.* S. K. Saraf, (1999) 1 SCC 119: 1999 SCC (Cri) 20: AIR 1999 SC 217: (1999 95 Comp Cas 48: (1999) 1 LLJ 295 **≻2780**

Jagdish Jugtawat *v.* Manju Lata, (2002) 5 SCC 422: 2002 SCC (Cri) 1147 **≻346, 436**

Jagdish Kumar ; Balkar Singh *See* Balkar Singh *v.* Jagdish Kumar

Jagdish Murav *v.* State of U. P., (2006) 12 SCC 626: (2007) 2 SCC (Cri) 234: (2006) 46 AIC 641 (SC) **≻940**

Jagdish Narain *v.* Krishna, (2005) 13 SCC 255: (2006) 2 SCC (Cri) 168: AIR 2005 SC 4341: 2005 All LJ 3639: 2005 Cri LJ 4513 >>**5469**

Jagdish Narain *v.* State of U. P., (1996) 8 SCC 199: 1996 SCC (Cri) 565: AIR 1996 SC 3136 >**1533**

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Jagdish Ram *v.* State of Rajasthan, (2004) 4 SCC 432: 2004 SCC (Cri) 1294: AIR 2004 SC 1734 >**2242, 2552** >>**7332**

Jagdish Singh ; Baban Singh *See* Baban Singh *v.* Jagdish Singh

Jagdish Singh ; State of U. P. *See* State of U. P. *v.* Jagdish Singh

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Jagdish Yadav *v.* Ram Nandan Yadav, 1990 Supp SCC 55(2): 1990 SCC (Cri) 648 >**1257**

Jagdish Yadav *v.* State of Bihar, (1999) 9 SCC 99: 1999 SCC (Cri) 464 >**3702**

Jageshwar ; State of U. P. *See* State of U. P. *v.* Jageshwar

Jageshwar Tanti *v.* State of Bihar, (2005) 12 SCC 178 >>**6610**

Jaggo ; State of U. P. *See* State of U. P. *v.* Jaggo

Jagir Kaur *v.* Jaswant Singh, AIR 1963 SC 1521: (1964) 2 SCR 73: (1963) 2 Cri LJ 413 >**443** >>**9044, 9144, 9145**

Jagir Singh *v.* Ranbir Singh, (1979) 1 SCC 560: 1979 SCC (Cri) 348: AIR 1979 SC 381: 1979 Cri LJ 318: (1979) 16 ACC 74 >>**5975, 7679, 7680, 9131**

Jagir Singh *v.* State of Punjab, AIR 1968 SC 43: (1967) 3 SCR 256: 1968 Cri LJ 89 >>**8399, 9285**

Jagjit Kaur ; Nazar Singh *See* Nazar Singh *v.* Jagjit Kaur

Jagjit Singh ; State (Delhi Admn.) *See* State (Delhi Admn.) *v.* Jagjit Singh

Jagjit Singh *v.* State of Punjab, (2005) 3 SCC 689: 2005 SCC (Cri) 893: AIR 2005 SC 913: 2005 Cri LJ 955 >**1623, 1668**

Jagmohan Singh *v.* State of U. P., (1973) 1 SCC 20: 1973 SCC (Cri) 169: AIR 1973 SC 947: 1973 Cri LJ 370: (1973) 2 SCR 541 >>**8722**

Jagmohan Singh Kuldip Singh Anand ; State of Maharashtra *See* State of Maharashtra *v.* Jagmohan Singh Kuldip Singh Anand

Jagnar Singh ; Dalip Kaur *See* Dalip Kaur *v.* Jagnar Singh

Jagtar Singh *v.* State of Punjab, (1988) 1 SCC 712: 1988 SCC (Cri) 254: AIR 1988 SC 628: 1988 Cri LJ 866 >**742, 771**

Jagtar Singh *v.* State of Punjab, 1994 Supp (1) SCC 65: 1994 SCC (Cri) 226: AIR 1993 SC 2448: 1993 Cri LJ 2886 >**2631**

Jagtar Singh *v.* State of Punjab, (2004) 13 SCC 289: 2005 SCC (Cri) 208 >>**6728, 6774**

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Jai Dev *v.* State of Punjab, AIR 1963 SC 612: (1963) 3 SCR 489: (1963) 1 Cri LJ 495 >>**8658, 8860**

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Jai Durga Enterprises ; Indo Automobiles *See* Indo Automobiles *v.* Jai Durga Enterprises

Jai Govind Mishra ; Sarvesh Kumar Singh *See* Sarvesh Kumar Singh *v.* Jai Govind Mishra

Jai Inder Singh ; R. C. Paul *See* R. C. Paul *v.* Jai Inder Singh

Jai Kumar *v.* State of M. P., (1999) 5 SCC 1: 1999 SCC (Cri) 638: AIR 1999 SC 1860 >**2897, 3688, 3725**

Jai Narain Mishra *v.* State of Bihar, (1971) 3 SCC 762: 1972 SCC (Cri) 40: AIR 1972 SC 1764: 1972 Cri LJ 469 >>**8360**

Jai Pal *v.* State of U. P., (2003) 9 SCC 41: AIR 2003 SC 1012: 2003 Cri LJ 1243 >**1681**

Jai Pal *v.* State (UT, Chandigarh), (1999) 1 SCC 218: 1998 SCC (Cri) 1593: AIR 1998 SC 2787 >>**5097**

Jai Parkash ; State of Haryana *See* State of Haryana *v.* Jai Parkash

Jai Prakash ; State of U. P. *See* State of U. P. *v.* Jai Prakash

Jai Ram *v.* State of U. P., (1976) 2 SCC 191: 1976 SCC (Cri) 246: AIR 1976 SC 1005: 1976 Cri LJ 725 ≻≻**5461**

Jai Shanker *v.* State of H. P., (1973) 3 SCC 83: 1973 SCC (Cri) 145: AIR 1972 SC 2267: 1972 Cri LJ 1526: (1973) 2 SCR 1: (1973) 10 ACC 109 ≻≻**9089**

Jai Singh ; Rajpal Singh *See* Rajpal Singh *v.* Jai Singh

Jai Singh *v.* Sarwan Singh, (1984) 1 SCC 165: 1984 SCC (Cri) 42: AIR 1983 SC 1326 ≻**3996**

Jai Singh ; State of Haryana *See* State of Haryana *v.* Jai Singh

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Jakia Nasim Ahesan *v.* State of Gujarat, (2009) 17 SCC 615 ≻**1506**

Jal Singh *v.* State of Haryana, (2000) 2 SCC 119: 2000 SCC (Cri) 337 ≻**288**

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Jamal Haq *v.* State of Tripura, (2006) 9 SCC 757 ≻**3835**

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Jameel Ahmed *v.* State of Rajasthan, (2003) 9 SCC 673 ≻**2827**

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Jamuna Singh *v.* Bhadai Shah, AIR 1964 SC 1541: (1964) 5 SCR 37: (1964) 2 Cri LJ 468 ≻≻**7895, 8112, 8121, 8259, 8876**

Janak C. Mehta ; R. Kalyani *See* R. Kalyani *v.* Janak C. Mehta

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Janki Devi Pal ; State of U. P. *See* State of U. P. *v.* Janki Devi Pal

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Jaswant Singh *v.* State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991: AIR 2000 SC 1833: 2000 Cri LJ 2212 ➢**1597** ➢➢**5122**

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K. Kalimuthu *v.* State, (2005) 4 SCC 512: 2005 SCC (Cri) 1291: AIR 2005 SC 2257: 2005 Cri LJ 2190 **>2331, 2359, 2406, 2409**

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K. Satwant Singh *v.* State of Punjab, AIR 1960 SC 266: (1960) 2 SCR 89: 1960 Cri LJ 410 ≻≻**8098, 8101, 8204, 8231, 8413**

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K. Srinivasulu Reddy ; State of A. P. *See* State of A. P. *v.* K. Srinivasulu Reddy

K. Sudhakaran *v.* State of Kerala, (2009) 4 SCC 168 ≻**3570**

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K. Vidya Sagar *v.* State of U. P., (2005) 5 SCC 581: 2005 SCC (Cri) 1345: AIR 2005 SC 2911: 2005 All LJ 2450 ≻**1383**

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Kabita Laha ; Jayanta Kumar Laha *See* Jayanta Kumar Laha *v.* Kabita Laha

Kachrulal Bhagirath Agrawal *v.* State of Maharashtra, (2005) 9 SCC 36: 2005 SCC (Cri) 1191: AIR 2004 SC 4818: 2004 Cri LJ 4634: (2005) 4 Mah LJ 963 ≻**500, 501, 502, 503, 504, 506, 507, 520, 521, 522**

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Kailash Chandra Pandey ; State of W. B. *See* State of W. B. *v.* Kailash Chandra Pandey

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Kamal *v.* State of Haryana, (2004) 13 SCC 526 ≻≻**5844**

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Kamarujjama ; State of U. P. *See* State of U. P. *v.* Kamarujjama

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Kanhaiya Lal Misra ; Nand Lal Misra *See* Nand Lal Misra *v.* Kanhaiya Lal Misra

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Kanti Bhadra Shah *v.* State of W. B., (2000) 1 SCC 722: 2000 SCC (Cri) 303: AIR 2000 SC 522: 2000 Cri LJ 746 ➢**2563, 2933** ➢➢**7222, 7270**

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Kapil Corepacks (P) Ltd. *v.* Harbans Lal, (2010) 8 SCC 452 ➢**3576**

Kapil Deo Shukla ; State of U. P. *See* State of U. P. *v.* Kapil Deo Shukla

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Kapil Singh ; State of Bihar *See* State of Bihar *v.* Kapil Singh

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Kaptan Singh *v.* State of M. P., (1997) 6 SCC 185: 1997 SCC (Cri) 870: AIR 1997 SC 2485: 1997 Cri LJ 2987 ≻≻**6076**

Kapur Chand Pokhraj *v.* State of Bombay, AIR 1958 SC 993: 1958 Cri LJ 1558: (1958) 9 STC 455: 1959 SCR 250 ≻≻**7702, 8972**

Kapurchand Kesrimal Jain *v.* State of Maharashtra, (1973) 3 SCC 299: 1973 SCC (Cri) 253: AIR 1973 SC 243: 1973 Cri LJ 284 ≻≻**8900**

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Karanvir ; State of H. P. *See* State of H. P. *v.* Karanvir

Kari Choudhary *v.* Sita Devi, (2002) 1 SCC 714: 2002 SCC (Cri) 269: AIR 2002 SC 441: 2002 Cri LJ 923: (2002) 1 CHN (Supp) 108 ≻**897, 1259, 1302, 2035**

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Karma Phuntsok ; Narcotics Control Bureau *See* Narcotics Control Bureau *v.* Karma Phuntsok

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Karpoori Thakur *v.* Baikunth Nath Dey, 1990 Supp SCC 136: 1990 SCC (Cri) 642 ≻≻**7277, 7388, 7421**

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Kartar Singh *v.* State of Haryana, (1982) 3 SCC 1: 1982 SCC (Cri) 522: AIR 1982 SC 1439: 1982 Cri LJ 1772 ≻≻**6242, 6281**

Kartar Singh *v.* State of Punjab, AIR 1961 SC 1787: (1962) 2 SCR 395: (1961) 2 Cri LJ 853 ≻≻**8399**

Kartar Singh *v.* State of Punjab, (1976) 3 SCC 478: 1976 SCC (Cri) 436: AIR 1977 SC 349: 1977 Cri LJ 214 ≻**1253**

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Karuppanna Thevar *v.* State of T. N., (1976) 1 SCC 31: 1975 SCC (Cri) 753: AIR 1976 SC 980: 1976 Cri LJ 708 ≻≻**5178, 5230**

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Kaushailiya ; State of U. P. *See* State of U. P. *v.* Kaushailiya

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Kedar Narayan Parida *v.* State of Orissa, (2009) 9 SCC 538 ➢**1999** ➢➢**7123**

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Mohd. Atik ; State of Gujarat *See* State of Gujarat *v.* Mohd. Atik

Mohd. Ayub Dar *v.* State of J&K, (2010) 9 SCC 312: AIR 2010 SC 2864: (2010) 93 AIC 88 (SC) ≻**1574, 2658**

Mohd. Azeem *v.* A. Venkatesh, (2002) 7 SCC 726 ≻**2992**

Mohd. Chaman *v.* State (NCT of Delhi), (2001) 2 SCC 28: 2001 SCC (Cri) 278: 2001 Cri LJ 725 ≻**3677, 3679**

Mohd. Chand Mulani *v.* Union of India, (2006) 13 SCC 143: (2007) 2 SCC (Cri) 658: AIR 2006 SC 3403: (2006) 46 AIC 108 (SC) ≻≻**6846**

Mohd. Dastagir *v.* State of Madras, AIR 1960 SC 756: (1960) 3 SCR 116: 1960 Cri LJ 1159 ≻≻**8924**

Mohd. Farooq ; Dukhtar Jahan *See* Dukhtar Jahan *v.* Mohd. Farooq

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Mohd. Hadi Raja *v.* State of Bihar, (1998) 5 SCC 91: 1998 SCC (Cri) 1265: AIR 1998 SC 1945: 1998 Cri LJ 2826 ≻**2340, 2399**

Mohd. Hoshan *v.* State of A. P., (2002) 7 SCC 414: 2002 SCC (Cri) 1765: AIR 2002 SC 3270 ≻≻**5736**

Mohd. Husain *v.* State of Rajasthan, (2003) 10 SCC 295 ≻**3528**

Mohd. Husain Umar Kochra *v.* K. S. Dalipsinghji, (1969) 3 SCC 429: 1970 SCC (Cri) 99: AIR 1970 SC 45: 1970 Cri LJ 9 ≻≻**9198, 9355**

Mohd. Ibocha ; T. Bijando Singh *See* T. Bijando Singh *v.* Mohd. Ibocha

Mohd. Ibrahim *v.* B. Rama Rao, (1976) 2 SCC 33: 1976 SCC (Cri) 233: AIR 1976 SC 1822: 1976 Cri LJ 1385 ≻**3599** ≻≻**9115**

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Mohd. Ibrahim *v.* State of Bihar, (2009) 8 SCC 751: (2009) 3 SCC (Cri) 929 ≻≻**7413**

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Mohd. Ikram Hussain *v.* State of U. P., AIR 1964 SC 1625: (1964) 5 SCR 86: (1964) 2 Cri LJ 590: (1964) All Cri R 252 ≻≻**9157, 9158, 9159**

Mohd. Iqbal Bhatti ; State of Punjab *See* State of Punjab *v.* Mohd. Iqbal Bhatti

Mohd. Iqbal M. Shaikh *v.* State of Maharashtra, (1998) 4 SCC 494: 1998 SCC (Cri) 1064: AIR 1998 SC 2864 ≻**1671**

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Mohd. Khalid ; State of W. B. *See* State of W. B. *v.* Mohd. Khalid

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Mohd. Nisar Holia ; Directorate of Revenue *See* Directorate of Revenue *v.* Mohd. Nisar Holia

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Mohd. Salim Khan ; State of Maharashtra *See* State of Maharashtra *v.* Mohd. Salim Khan

Mohd. Samsuddin ; Supdt. and Remembrancer of Legal Affairs *See* Supdt. and Remembrancer of Legal Affairs *v.* Mohd. Samsuddin

Mohd. Sayeed ; State of U. P. *See* State of U. P. *v.* Mohd. Sayeed

Mohd. Serajuddin *v.* R. C. Misra, AIR 1962 SC 759: 1962 Supp (1) SCR 545: (1962) 1 Cri LJ 692 ≻≻**7760**

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Mohd. Sharaful Haque ; Zandu Pharmaceutical Works Ltd. *See* Zandu Pharmaceutical Works Ltd. *v.* Mohd. Sharaful Haque

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Navjot Singh Sidhu *v.* State of Punjab, (2007) 2 SCC 574: (2007) 1 SCC (Cri) 627: AIR 2007 SC 1003: 2007 Cri LJ 1427: (2007) 52 AIC 174 (SC) ≻≻**5800**

Navnit Lal Manilal Bhatt ; K. N. Shukla *See* K. N. Shukla *v.* Navnit Lal Manilal Bhatt

Navnitbhai Nathubhai Patel ; Vijaybhai Bhanabhai Patel *See* Vijaybhai Bhanabhai Patel *v.* Navnitbhai Nathubhai Patel

Navpreet Kaur *v.* Gurkirat Singh, (2008) 17 SCC 485: (2009) 73 AIC 18 (SC) ≻**410**

Navraj Singh ; State of Punjab *See* State of Punjab *v.* Navraj Singh

Nawab Ali *v.* State of Meghalaya, 1990 Supp SCC 653: 1991 SCC (Cri) 155 ≻**3545**

Nawab Ali Akhtar ; D. Paul *See* D. Paul *v.* Nawab Ali Akhtar

Nawab Singh ; State of U. P. *See* State of U. P. *v.* Nawab Singh

Nawab Singh *v.* State of U. P., AIR 1954 SC 278: 1954 Cri LJ 738 ≻≻**8762**

Nawal Kishore ; Kanwal Sood *See* Kanwal Sood *v.* Nawal Kishore

Nawratan Mahton *v.* State of Bihar, (1979) 3 SCC 488: 1979 SCC (Cri) 665: 1979 Cri LJ 1295 ≻≻**5194**

Nazar ; State of Kerala *See* State of Kerala *v.* Nazar

Nazar Singh *v.* Jagjit Kaur, (1996) 1 SCC 35: AIR 1996 SC 855 ≻**339** ≻≻**9132**

Nazidalishah *v.* State of M. P., 1988 Supp SCC 427: 1988 SCC (Cri) 853 ≻**3489**

Nazir Ahmad Bhatt *v.* State of Delhi, (2002) 1 SCC 674: 2002 SCC (Cri) 234: AIR 2002 SC 30: 2002 Cri LJ 213 ≻≻**6914**

NCT of Delhi ; Ashok Dhingra *See* Ashok Dhingra *v.* NCT of Delhi

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Neelam Kanwar *v.* Devinder Singh Kanwar, (2000) 10 SCC 589: 2001 SCC (Cri) 1507 ≻≻**6129**

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Neelu Chopra *v.* Bharti, (2009) 10 SCC 184 ≻≻**7302**

Neeraj Kumar *v.* Sonu (Minor), (2005) 12 SCC 345 ≻≻**6122**

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Neeta Bhalla ; S. M. S. Pharmaceuticals Ltd. *See* S. M. S. Pharmaceuticals Ltd. *v.* Neeta Bhalla

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Nemichand Jain *v.* Roshanlal, (2004) 13 SCC 461 ≻≻**6063**

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NEPC India Ltd. ; Indian Oil Corpn. *See* Indian Oil Corpn. *v.* NEPC India Ltd.

Netai Dutta *v.* State of W. B., (2005) 2 SCC 659: 2005 SCC (Cri) 543: AIR 2005 SC 1775: 2005 Cri LJ 1737 ≻≻**7650**

Neti Sreeramulu *v.* State of A. P., (1974) 3 SCC 314: 1973 SCC (Cri) 940: AIR 1973 SC 2551: 1973 Cri LJ 1775: (1973) 3 SCR 844 ≻≻**8730**

Netra Pal Singh ; State of U. P. *See* State of U. P. *v.* Netra Pal Singh

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New Central Jute Mills Co. Ltd. ; Director of Enforcement *See* Director of Enforcement *v.* New Central Jute Mills Co. Ltd.

New Delhi Municipal Council *See* NDMC

News Item "38 Yrs In Jail Without Trial" Published in The Hindustan Times, In Re, (2007) 15 SCC 18 ≻**3565**

NHRC *v.* State of Gujarat, (2009) 6 SCC 767 ≻**62, 69, 107, 143, 1333, 3149, 3561**

Nidhan Singh *v.* State of Punjab, 1980 Supp SCC 211: 1980 SCC (Cri) 902: AIR 1981 SC 376: 1980 Cri LJ 1421 ≻**3920**

Nihal Singh ; Lok Ram *See* Lok Ram *v.* Nihal Singh

Nijjer Agro Foods Ltd. ; State Farm Corpn. of India Ltd. *See* State Farm Corpn. of India Ltd. *v.* Nijjer Agro Foods Ltd.

Nika Ram *v.* State of H. P., (1972) 2 SCC 80: 1972 SCC (Cri) 635: AIR 1972 SC 2077: 1972 Cri LJ 1317: (1973) 1 SCR 428 ≻≻**8013**

Nikhil Merchant *v.* CBI, (2008) 9 SCC 677: (2008) 3 SCC (Cri) 858: (2008) 3 KLT 769: (2008) 69 AIC 34 (SC) ≻**3417**

Nikka Singh *v.* State of Punjab, (1996) 11 SCC 283: 1997 SCC (Cri) 67: AIR 1997 SC 3676 ≻**1056**

Nilabati Behera *v.* State of Orissa, (1993) 2 SCC 746: 1993 SCC (Cri) 527: AIR 1993 SC 1960: 1993 Cri LJ 2899: (1993) 76 CLT 98: 1993 ACJ 787 ≻**2116, 3824**

Nilamani Routray *v.* Bennett Coleman & Co. Ltd., (1998) 8 SCC 594: 1998 SCC (Cri) 1551 ≻**2573**

Nilgiris Bar Assn. *v.* T. K. Mahalingam, (1998) 1 SCC 550: 1998 SCC (Cri) 450: AIR 1998 SC 398: 1998 Cri LJ 398 ≻**3844**

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Nimakayala Balireddy ; Dumpala Chandra Reddy *See* Dumpala Chandra Reddy *v.* Nimakayala Balireddy

Nimeon Sangma *v.* Govt. of Meghalaya, (1980) 1 SCC 700: 1980 SCC (Cri) 328: AIR 1979 SC 1518: 1979 Cri LJ 941 ≻**1880**

Nimesh B. Thakore ; Mandvi Cooperative Bank Ltd. *See* Mandvi Cooperative Bank Ltd. *v.* Nimesh B. Thakore

Ningappa ; State of Karnataka *See* State of Karnataka *v.* Ningappa

Nira Radia *v.* Dheeraj Singh, (2006) 9 SCC 760: (2006) 3 SCC (Cri) 397 ≻≻**6745**

Niranjan Lal *v.* Attar Singh, 1990 Supp SCC 57: 1990 SCC (Cri) 607 ≻≻**6026**

Niranjan Mohapatra ; State of Orissa *See* State of Orissa *v.* Niranjan Mohapatra

Niranjan Patnaik *v.* Sashibhusan Kar, (1986) 2 SCC 569: 1986 SCC (Cri) 196: AIR 1986 SC 819: 1986 Cri LJ 911 ≻≻**7164**

Niranjan Prasad *v.* State of M. P., 1996 SCC (Cri) 503: AIR 1996 SC 3010 ≻≻**5393**

Niranjan Singh *v.* Prabhakar Rajaram Kharote, (1980) 2 SCC 559: 1980 SCC (Cri) 508: AIR 1980 SC 785: 1980 Cri LJ 426: 1980 MLJ (Cri) 573 ≻≻**6692, 6741, 6772, 6830, 9187, 9188, 9189**

Niranjan Singh *v.* State of U. P., AIR 1957 SC 142: 1956 SCR 734: 1957 Cri LJ 294 ≻≻**9300**

Niranjan Singh Karam Singh Punjabi *v.* Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76: 1991 SCC (Cri) 47: AIR 1990 SC 1962: 1990 Cri LJ 1869 ≻**2793**

Nirbhay Singh *v.* State of M. P., (1969) 2 SCR 569 ≻≻**8837, 8898**

Nirmal Jeet Kaur *v.* State of M. P., (2004) 7 SCC 558: 2004 SCC (Cri) 1989: (2004) 3 KLT 391 ≻≻**6693**

Nirmal Kanti Roy *v.* State of W. B., (1998) 4 SCC 590: 1998 SCC (Cri) 1100: AIR 1998 SC 2322 ≻**1928, 1933** ≻≻**6978**

Nirmal Singh *v.* State of Bihar, (2005) 9 SCC 725: 2005 SCC (Cri) 1461: AIR 2005 SC 1265: 2005 Cri LJ 672 ≻**893**

Nirmal Singh *v.* State of Haryana, (1996) 6 SCC 126: 1996 SCC (Cri) 1122: AIR 1996 SC 2759 ≻≻**6190**

Nirmal Singh *v.* State of Haryana, (2000) 4 SCC 41: 2000 SCC (Cri) 740: AIR 2000 SC 1416: 2000 Cri LJ 1803 ≻**3041**

Nirmal Singh Kahlon *v.* State of Punjab, (2009) 1 SCC 441 ≻**183, 2044, 2052, 2058, 2059, 2060**

Nirmal Sinha ; Lalsai Khunte *See* Lalsai Khunte *v.* Nirmal Sinha

Nirmaljit Singh Hoon *v.* State of W. B., (1973) 3 SCC 753: 1973 SCC (Cri) 521: AIR 1972 SC 2639 ≻≻**7886, 8169, 8258, 8270, 8276**

Nirpal Singh *v.* State of Haryana, (1977) 2 SCC 131: 1977 SCC (Cri) 262: AIR 1977 SC 1066: (1977) 2 SCR 901: 1977 Cri LJ 642 ≻**775, 1494, 2830, 2887, 2906**

Nisar *v.* State of U. P., (1995) 2 SCC 23: 1995 SCC (Cri) 306: 1995 Cri LJ 2118: (1995) 32 ACC 148 ≻**2259, 3382**

Nisar Ali *v.* State of U. P., AIR 1957 SC 366: 1957 SCR 657: 1957 Cri LJ 550 ≻≻**7879**

Nisar Khan *v.* State of Uttaranchal, (2006) 9 SCC 386: (2006) 2 SCC (Cri) 568 ≻**3169**

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Nishi Kant Jha *v.* State of Bihar, (1969) 1 SCC 347: AIR 1969 SC 422: 1969 Cri LJ 671: 1969 ALJ 638 ≻≻**7996**

Nitin Agnihotri ; State of U. P. *See* State of U. P. *v.* Nitin Agnihotri

Nityanand Rai *v.* State of Bihar, (2005) 4 SCC 178: 2005 SCC (Cri) 1159: AIR 2005 SC 2239: 2005 Cri LJ 2187 ≻≻**6814**

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Nohar Chand ; State of Punjab *See* State of Punjab *v.* Nohar Chand

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Om Parkash *v.* State of Haryana, (2006) 2 SCC 250: (2006) 1 SCC (Cri) 493: AIR 2006 SC 894: 2006 Cri LJ 972 ➢**1186**

Om Parkash ; State of Punjab *See* State of Punjab *v.* Om Parkash

Om Parkash Gupta *v.* State of U. P., AIR 1957 SC 458: 1957 SCR 423: (1958) 2 LLJ 645: 1957 Cri LJ 575 ➢➢**8217**

Om Parkash Sharma *v.* CBI, (2000) 5 SCC 679: 2000 SCC (Cri) 1014: AIR 2000 SC 2335: 2000 Cri LJ 3478 ➢**254, 2937**

Om Prakash ; H. P. Admn. *See* H. P. Admn. *v.* Om Prakash

Om Prakash *v.* State (NCT of Delhi), (2007) 5 SCC 370: (2007) 2 SCC (Cri) 512: (2007) 55 AIC 26 (SC) ➢➢**6320**

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Om Prakash *v.* State of M. P., (1982) 3 SCC 224: 1982 SCC (Cri) 702: AIR 1982 SC 783(2): 1982 Cri LJ 628(2) ➢**3871**

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Om Prakash *v.* State of U. P., (1983) 2 SCC 358: 1983 SCC (Cri) 475: AIR 1983 SC 431: 1983 Cri LJ 831: 1983 ALJ 830 ➢**1221**

Om Prakash *v.* State of U. P., AIR 1960 SC 409: 1960 Cri LJ 544 ➢➢**8355, 9311**

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Om Prakash Chugh *v.* State of Haryana, (2000) 10 SCC 612: 2001 SCC (Cri) 1515: AIR 2000 SC 2477 ≻≻**7170**

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Om Wati *v.* State, (2001) 4 SCC 333: 2001 SCC (Cri) 685: AIR 2001 SC 1507 ≻**2756, 2763, 2764**

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Omkar Namdeo Jadhao *v.* Second Additional Sessions Judge, (1996) 7 SCC 498: AIR 1997 SC 331 ≻**1521, 3578**

Omparkash Shivprakash *v.* K. I. Kuriakose, (1999) 8 SCC 633: 2000 SCC (Cri) 1: AIR 1999 SC 3870 ≻**3003**

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P. Arulswami *v.* State of Madras, AIR 1967 SC 776: (1967) 1 SCR 201: 1967 Cri LJ 665 ≻≻**8238**

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P. C. Nayar ; Bal Kishan Das *See* Bal Kishan Das *v.* P. C. Nayar

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P. D. Lakhani *v.* State of Punjab, (2008) 5 SCC 150: (2008) 2 SCC (Cri) 553: (2008) 2 KLT 575 ≻**2288, 2290**

P. Jagannadhan ; State of A. P. *See* State of A. P. *v.* P. Jagannadhan

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P. K. Choudhury *v.* Commander, 48 Brtf (Gref), (2008) 13 SCC 229: AIR 2008 SC 1937 ≻**2349, 2385** ≻≻**7002**

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P. M. Nalini *v.* K. M. Mathew, 1990 Supp SCC 683: 1991 SCC (Cri) 221 ≻≻**7666**

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P. P. Fathima *v.* State of Kerala, (2003) 8 SCC 726 ≻**301, 1855**

P. P. Sharma ; State of Bihar *See* State of Bihar *v.* P. P. Sharma

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P. Satyanarayana Murthy ; State of A. P. *See* State of A. P. *v.* P. Satyanarayana Murthy

P. Shankar Lal *v.* Collector of Customs, 1968 SCD 385 ≻≻**8800, 8801**

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P. Venkataswarlu *v.* State of A. P., (2002) 10 SCC 46: 2003 SCC (Cri) 1414: AIR 2003 SC 574: 2003 Cri LJ 837 ≻**1062**

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Paltan Mallah ; State of M. P. *See* State of M. P. *v.* Paltan Mallah

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Pandey Ajay Bhushan ; Suresh Kumar Bhikamchand Jain *See* Suresh Kumar Bhikamchand Jain *v.* Pandey Ajay Bhushan

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Pandurang *v.* State of Hyderabad, AIR 1955 SC 216: (1955) 1 SCR 1083: 1955 Cri LJ 572 ≻≻**7851, 8087, 8743**

Pandurang Baliramji Kharad *v.* State of Maharashtra, (2004) 13 SCC 521 ≻≻**6423**

Pandurang Chandrakant Mhatre *v.* State of Maharashtra, (2009) 10 SCC 773: (2009) 83 AIC 38 (SC) ≻**606, 608, 665, 724, 956** ≻≻**5059**

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Pangambam Kalanjoy Singh *v.* State of Manipur, AIR 1956 SC 9: 1956 Cri LJ 126 ≻≻**8028**

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Raj Kumar ; Narsingh Prasad Singh *See* Narsingh Prasad Singh *v.* Raj Kumar

Raj Kumar *v.* State of H. P., (2008) 11 SCC 76 ≻≻**6035**

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Ram Dayal *v.* MCD, (1969) 3 SCC 35: AIR 1970 SC 366: 1970 Cri LJ 515 ➢➢**8448**

Ram Devi *v.* State of U. P., AIR 1955 SC 574: 1955 Cri LJ 1296 ➢➢**8594**

Ram Diya ; State of Haryana *See* State of Haryana *v.* Ram Diya

Ram Ekbak Missir *v.* Ram Niwash Pandey, (2002) 8 SCC 161: 2002 SCC (Cri) 1870: AIR 2002 SC 3523 ➢**2221**

Ram Ekbal Upadhya *v.* State of Bihar, (2001) 10 SCC 233 ➢**3474**

Ram Gopal *v.* State of Rajasthan, (1998) 6 SCC 441: 1998 SCC (Cri) 1464: AIR 1998 SC 2598 ➢**832**

Ram Gopal Poddar ; Manoj Mahavir Prasad Khaitan *See* Manoj Mahavir Prasad Khaitan *v.* Ram Gopal Poddar

Ram Govind Upadhyay *v.* Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688: AIR 2002 SC 1475 ➢➢**6456, 6481, 6495**

Ram Jag *v.* State of U. P., (1974) 4 SCC 201: AIR 1974 SC 606 ➢**1026** ➢➢**5123, 7855**

Ram Kali ; A. C. Aggarwal, Sub-Divisional Magistrate *See* A. C. Aggarwal, Sub-Divisional Magistrate *v.* Ram Kali

Ram Karan *v.* State of Rajasthan, 1990 Supp SCC 604: 1991 SCC (Cri) 162 ➢**4082**

Ram Kishan ; Chander Kala *See* Chander Kala *v.* Ram Kishan

Ram Kishan Rohtagi ; MCD *See* MCD *v.* Ram Kishan Rohtagi

Ram Kishan Singh *v.* Harmit Kaur, (1972) 3 SCC 280: 1972 SCC (Cri) 493: AIR 1972 SC 468: 1972 Cri LJ 267 ➢➢**8042, 8813**

Ram Kishna Balothia ; State of M. P. *See* State of M. P. *v.* Ram Kishna Balothia

Ram Kishun ; State of U. P. *See* State of U. P. *v.* Ram Kishun

Ram Krishan ; State of H. P. *See* State of H. P. *v.* Ram Krishan

Ram Kumar ; Ramesh Kumar *See* Ramesh Kumar *v.* Ram Kumar

Ram Kumar *v.* State of Haryana, 1995 Supp (1) SCC 248: 1995 SCC (Cri) 355: AIR 1995 SC 280: (1995) 32 ACC 47 ➢**920, 983, 1075** ➢➢**5015**

Ram Kumar *v.* State of Haryana, (1987) 1 SCC 476: 1987 SCC (Cri) 190: AIR 1987 SC 735: 1987 Cri LJ 703 ➢**2461, 2481**

Ram Kumar *v.* State of Haryana, 1997 SCC (Cri) 1087 ➢**1114**

Ram Kumar *v.* State of Haryana, (1998) 9 SCC 1: 1998 SCC (Cri) 833: AIR 1999 SC 1491 ➢**2846**

Ram Kumar ; State of M. P. *See* State of M. P. *v.* Ram Kumar

Ram Kumar *v.* State of U. P., 1992 Supp (1) SCC: 1992 SCC (Cri) 297: AIR 1992 SC 1602: 1992 ALJ 629: 1992 Cri LJ 2421 ➢➢**5425**

Ram Kumar Gupta ; Ashok Kumar Mittal *See* Ashok Kumar Mittal *v.* Ram Kumar Gupta

Ram Kumar Laharia *v.* State of M. P., (2001) 2 SCC 626: 2001 SCC (Cri) 375: AIR 2001 SC 556 ≻≻**5634**

Ram Kumar Pandey *v.* State of M. P., (1975) 3 SCC 815: 1975 SCC (Cri) 225: AIR 1975 SC 1026: (1975) 3 SCR 519: 1975 Cri LJ 870 ≻**808** ≻≻**5360, 5489**

Ram Lakhan Singh *v.* State of U. P., (1977) 3 SCC 268: 1977 SCC (Cri) 474: AIR 1977 SC 1936: 1977 Cri LJ 1566 ≻**713, 871, 1429, 2856**

Ram Lal *See also* Ramlal

Ram Lal *v.* State of Haryana, (2003) 9 SCC 242 ≻≻**6228**

Ram Lal *v.* State of J&K, (1999) 2 SCC 213: 1999 SCC (Cri) 123: AIR 1999 SC 895: 1999 Cri LJ 1342 ≻**3497**

Ram Lal *v.* State of U. P., (1979) 2 SCC 192: 1979 SCC (Cri) 418: AIR 1979 SC 1498: 1979 ALJ 899: 1980 Cri LJ 826: 1979 MLJ (Cri) 518: (1979) 16 ACC 145 ≻≻**9195**

Ram Lal Narang *v.* State (Delhi Admn.), (1979) 2 SCC 322: 1979 SCC (Cri) 479: AIR 1979 SC 1791: 1979 Cri LJ 1346 ≻≻**8075**

Ram Manorath *v.* State of U. P., (1981) 2 SCC 654: 1981 SCC (Cri) 581: (1981) 3 SCR 195 ≻**810**

Ram Milan *v.* State of U. P., 1993 Supp (1) SCC 561: 1993 SCC (Cri) 348: AIR 1992 SC 1577 ≻≻**5118**

Ram Nandan Yadav ; Jagdish Yadav *See* Jagdish Yadav *v.* Ram Nandan Yadav

Ram Narain ; Central Bank of India *See* Central Bank of India *v.* Ram Narain

Ram Narain *v.* Murat, (2002) 9 SCC 705: AIR 2002 SC 2417 ≻≻**7582**

Ram Narain ; Satyendra Nath Dutta *See* Satyendra Nath Dutta *v.* Ram Narain

Ram Narain *v.* State of Punjab, AIR 1955 SC 322: 1955 Cri LJ 871 ≻≻**8622**

Ram Narain *v.* State of Rajasthan, (1973) 3 SCC 805: 1973 SCC (Cri) 545: AIR 1973 SC 1188: (1973) 3 SCR 463: 1973 Cri LJ 914 ≻≻**9363**

Ram Narain *v.* State of U. P., (1970) 3 SCC 493: 1971 SCC (Cri) 99: AIR 1971 SC 757: 1971 Cri LJ 649 ≻≻**9059**

Ram Narain Singh *v.* State of Bihar, (1972) 2 SCC 532: 1972 SCC (Cri) 870: AIR 1972 SC 2225: 1972 Cri LJ 1444: (1972) 9 ACC 195 ≻≻**7784**

Ram Narain Singh *v.* State of Punjab, (1975) 4 SCC 497: 1975 SCC (Cri) 571: AIR 1975 SC 1727: 1975 Cri LJ 1500: (1975) 12 ACC 273 ≻**779**

Ram Narayan *v.* State of U. P., (2009) 12 SCC 538: (2009) 4 All LJ 635: 2009 Cri LJ 2987: (2009) 78 AIC 216 (SC) ≻≻**5418**

Ram Narayan Singh *v.* State of Bihar, (2000) 9 SCC 55: 2000 SCC (Cri) 1157: AIR 2000 SC 1945 ≻≻**6460**

Ram Narayan Singh *v.* State of Delhi, AIR 1953 SC 277: 1953 SCR 652: 1953 Cri LJ 1113 ≻≻**8676, 8677**

Ram Naresh Pandey ; State of Bihar *See* State of Bihar *v.* Ram Naresh Pandey

Ram Naresh Prasad *v.* State of Jharkhand, (2009) 11 SCC 299: (2009) 3 SCC (Cri) 1336: (2009) 77 AIC 221 (SC) ≻**2170** ≻≻**5910, 5923**

Ram Naresh Yadav *v.* State of Bihar, AIR 1987 SC 1500: 1986 Pat LJR (SC) 52: 1987 Cri LJ 1856 ≻**3978**

Ram Nath *v.* Director of Consolidation, 1987 Supp SCC 683 ≻**569**

Ram Nath ; State of U. P. *See* State of U. P. *v.* Ram Nath

Ram Niranjan Sahai ; Premlata Sahai *See* Premlata Sahai *v.* Ram Niranjan Sahai

Ram Niwas ; Ram Singh *See* Ram Singh *v.* Ram Niwas

Ram Niwash Pandey ; Ram Ekbak Missir *See* Ram Ekbak Missir *v.* Ram Niwash Pandey

Ram Padarath Singh ; State of Bihar *See* State of Bihar *v.* Ram Padarath Singh

Ram Pal ; State of Haryana *See* State of Haryana *v.* Ram Pal

Ram Pal *v.* State of U. P., (2007) 15 SCC 79 ≻**1230**

Ram Pal Singh ; Bhappa Singh *See* Bhappa Singh *v.* Ram Pal Singh

Ram Pal Singh *v.* State of U. P., (2009) 4 SCC 423 ≻≻**6037**

Ram Parkash *v.* State of Punjab, AIR 1959 SC 1: 1959 SCR 1219: 1959 Cri LJ 90 ≻≻**8034**

Ram Parkash Sharma *v.* State of Haryana, (1978) 2 SCC 491: 1978 SCC (Cri) 309: AIR 1978 SC 1282: (1978) Cri LJ 1120 ≻≻**6908**

Ram Pat *v.* State of Haryana, (2009) 7 SCC 614: (2009) 3 SCC (Cri) 488: (2009) 79 AIC 98 (SC) ≻**916** ≻≻**5045**

Ram Prakash Pandey ; Pawan *See* Pawan *v.* Ram Prakash Pandey

Ram Prakash Pandey *v.* State of U. P., (2001) 9 SCC 121: AIR 2001 SC 3592 ≻≻**6442**

Ram Prasad *v.* State of U. P., (1974) 3 SCC 388: 1973 SCC (Cri) 953: AIR 1973 SC 2673: 1973 Cri LJ 1807: (1974) 1 SCR 650 ≻≻**8472**

Ram Prasad *v.* State of U. P., (1982) 2 SCC 149: 1982 SCC (Cri) 375 ≻**3438**

Ram Pratap Yadav *v.* Mitra Sen Yadav, (2003) 1 SCC 15: 2003 SCC (Cri) 1 ≻≻**6740**

Ram Pujan *v.* State of U. P., (1973) 2 SCC 456: 1973 SCC (Cri) 870: AIR 1973 SC 2418: 1973 Cri LJ 1612 ≻≻**8685**

Ram Ratan *v.* State of Rajasthan, (2010) 13 SCC 509 ≻**3974**

Ram Sagar Pandit *v.* State of Bihar, 1963 Supp (2) SCR 652: (1964) 2 Cri LJ 65 ≻≻**8229, 8341, 8347**

Ram Sagar Yadav ; State of U. P. *See* State of U. P. *v.* Ram Sagar Yadav

Ram Sajivan ; State of U. P. *See* State of U. P. *v.* Ram Sajivan

Ram Samujh ; Union of India *See* Union of India *v.* Ram Samujh

Ram Sanjiwan Singh *v.* State of Bihar, (1996) 8 SCC 552: 1996 SCC (Cri) 701: AIR 1996 SC 3265 ≻**919, 975, 2096, 2840, 2845** ≻≻**5625**

Ram Saran ; State (Union of India) *See* State (Union of India) *v.* Ram Saran

Ram Saran Mahto ; Mohd. Ataullah *See* Mohd. Ataullah *v.* Ram Saran Mahto

Ram Sarup ; MCD *See* MCD *v.* Ram Sarup

Ram Sarup ; State of Haryana *See* State of Haryana *v.* Ram Sarup

Ram Sewak *v.* State of U. P., (2005) 12 SCC 143 ≻≻**5156**

Ram Shankar *v.* State of M. P., 1980 Supp SCC 470: 1981 SCC (Cri) 378: AIR 1981 SC 644: 1981 Cri LJ 162 ≻≻**6290, 6292**

Ram Shankar Singh *v.* State of U. P., AIR 1956 SC 441: 1956 Cri LJ 822 ≻≻**8944**

Ram Shanker *v.* State of U. P., (1982) 3 SCC 388(1): 1983 SCC (Cri) 60 ≻**3423**

Ram Sharan Yadav *v.* Thakur Muneshwar Nath Singh, (1984) 4 SCC 649: AIR 1985 SC 24 ≻≻**5760**

Ram Singh ; Delhi Admn. *See* Delhi Admn. *v.* Ram Singh

Ram Singh *v.* Ram Niwas, (2009) 14 SCC 25: (2009) 78 AIC 32 (SC) ≻**3350, 3356**

Ram Singh *v.* Sonia, (2007) 3 SCC 1: (2007) 2 SCC (Cri) 1: AIR 2007 SC 1218: 2007 Cri LJ 1642 ≻**1736, 3749**

Ram Singh *v.* State of H. P., (2010) 2 SCC 445 ≻≻**5415**

Ram Singh ; State of Haryana *See* State of Haryana *v.* Ram Singh

Ram Singh ; State of M. P. *See* State of M. P. *v.* Ram Singh

Ram Singh *v.* State of U. P., (1999) 9 SCC 146: 1999 SCC (Cri) 572: AIR 1999 SC 1754: 1999 All LJ 1264 ≻≻**5427**

Ram Sumer Puri Mahant *v.* State of U. P., (1985) 1 SCC 427: 1985 SCC (Cri) 98: AIR 1985 SC 472: 1985 Cri LJ 752 ≻**551**

Ram Sumer Singh ; Ayodhya Dube *See* Ayodhya Dube *v.* Ram Sumer Singh

Ram Swaroop *v.* State of Rajasthan, (2004) 13 SCC 134: 2005 SCC (Cri) 61: AIR 2004 SC 2943: 2004 Cri LJ 5043 ≻**883, 1509** ≻≻**5587**

Ram Swarup *v.* Mohd. Javed Razack, (2005) 10 SCC 393: 2005 SCC (Cri) 1549: AIR 2005 SC 2005: 2005 Cri LJ 1725 ≻**2193, 2488**

Ram Swarup ; State of U. P. *See* State of U. P. *v.* Ram Swarup

Ram Veer Singh ; State of U. P. *See* State of U. P. *v.* Ram Veer Singh

Rama *v.* State of Rajasthan, (2002) 4 SCC 571: AIR 2002 SC 1814 ≻**3942**

Rama Chaudhary *v.* State of Bihar, (2009) 6 SCC 346 ≻**2046, 2850**

Rama Devi *v.* State of Bihar, (2010) 12 SCC 273 ≻≻**7303**

Rama Kant Verma *v.* State of U. P., (2008) 17 SCC 257: AIR 2009 SC 1093: (2009) 74 AIC 238 (SC): (2009) 2 All LJ 122 ≻**3963**

Rama Narang *v.* Ramesh Narang, (1995) 2 SCC 513: (1995) 83 Comp Cas 194 ≻**3628** ≻≻**5862**

Rama Paswan *v.* State of Jharkhand, (2007) 11 SCC 191: 2007 Cri LJ 2750: (2007) 53 AIC 4 (SC) ≻**3184**

Rama Raghuraman ; S. Ganesan *See* S. Ganesan *v.* Rama Raghuraman

Rama Rao *v.* Narayan, (1969) 1 SCC 167: AIR 1969 SC 724: 1969 Cri LJ 1064 ≻≻**8142**

Rama Reddy ; State of Karnataka *See* State of Karnataka *v.* Rama Reddy

Rama Shankar Singh *v.* State of W. B., AIR 1962 SC 1239: 1962 Supp (1) SCR 49: (1962) 2 Cri LJ 296 **≻≻8599, 8617, 8630, 8744, 8747, 8977**

Ramachandran *v.* R. Udhayakumar, (2008) 5 SCC 413: (2008) 2 SCC (Cri) 631: (2008) 67 AIC 52 (SC) **≻2073 ≻≻7137**

Ramadugu Anantha Krishna Sastry ; R. Annapurna *See* R. Annapurna *v.* Ramadugu Anantha Krishna Sastry

Ramakant Rai *v.* Madan Rai, (2003) 12 SCC 395: AIR 2004 SC 77: 2004 Cri LJ 36 **≻≻5677**

Ramakrishna Rawat (Dr.) *v.* Distt. Magistrate, (1975) 4 SCC 164: 1975 SCC (Cri) 457: AIR 1975 SC 90: 1975 Cri LJ 46 **≻584**

Ramakrishnan ; V. S. Kuttan Pillai *See* V. S. Kuttan Pillai *v.* Ramakrishnan

Raman Kalia *v.* State of Gujarat, (1979) 4 SCC 641: 1980 SCC (Cri) 153: AIR 1979 SC 1261: 1979 Cri LJ 1074 **≻765**

Ramanand Chaudhary *v.* State of Bihar, (2002) 1 SCC 153: AIR 1994 SC 948: 1994 Cri LJ 1221 **≻≻7331, 7336**

Ramanand Yadav *v.* Prabhu Nath Jha, (2003) 12 SCC 606: AIR 2004 SC 1053: 2004 Cri LJ 640 **≻1648 ≻≻5169**

Ramanbhai Naranbhai Patel *v.* State of Gujarat, (2000) 1 SCC 358: 2000 SCC (Cri) 113: 1999 Cri LJ 5013 **≻825, 1442**

Ramaphupala Reddy *v.* State of A. P., (1970) 3 SCC 474: 1971 SCC (Cri) 80: AIR 1971 SC 460: 1971 Cri LJ 422 **≻≻8831**

Ramappa Halappa Pujar *v.* State of Karnataka, (2007) 13 SCC 31: (2007) 55 AIC 191 (SC) **≻1438 ≻≻5434, 5512**

Ramaswami Ayyangar *v.* State of T. N., (1976) 3 SCC 779: 1976 SCC (Cri) 518: AIR 1976 SC 2027: 1976 Cri LJ 1563 **≻≻5377**

Ramaswamy Nadar *v.* State of Madras, AIR 1958 SC 56: 1958 SCR 739: 1958 Cri LJ 228 **≻≻8391, 8951**

Ramathal *v.* Inspector of Police, (2009) 12 SCC 721: (2009) 77 AIC 215 (SC): 2009 Cri LJ 2271 **≻≻6662**

Ramayan Singh ; Jagannath Choudhary *See* Jagannath Choudhary *v.* Ramayan Singh

Rambachan Hardwar *v.* State of Gujarat, (1975) 3 SCC 139: 1974 SCC (Cri) 763: AIR 1974 SC 855 **≻≻5329**

Rambhai Nathabhai Gadhvi *v.* State of Gujarat, (1997) 7 SCC 744: 1997 SCC (Cri) 1169: AIR 1997 SC 3475: 1997 Cri LJ 4086 **≻2463**

Rambhau *v.* State of Maharashtra, (2001) 4 SCC 759: 2001 SCC (Cri) 812: AIR 2001 SC 2120: 2001 Cri LJ 2343 **≻≻5874**

Rambilas ; Puran *See* Puran *v.* Rambilas

Ramchandra Singh *v.* State of Bihar, (2003) 10 SCC 234 **≻3436**

Ramcharan *v.* State of M. P., (2004) 13 SCC 617 **≻≻6775, 6782**

Ramdas *v.* State of Maharashtra, (2007) 2 SCC 170: (2007) 1 SCC (Cri) 546: AIR 2007 SC 155: (2007) 49 AIC 418 (SC) **≻1032**

Ramdas Shrinivas Nayak ; State of Maharashtra *See* State of Maharashtra *v.* Ramdas Shrinivas Nayak

Ramdas Sriniwas Nayak ; A. R. Antulay *See* A. R. Antulay *v.* Ramdas Sriniwas Nayak

Ramdeen ; State of M. P. *See* State of M. P. *v.* Ramdeen

Ramdeen ; State of Rajasthan *See* State of Rajasthan *v.* Ramdeen

Ramdeo ; Rajesh *See* Rajesh *v.* Ramdeo

Ramdeo Chauhan *v.* State of Assam, (2001) 5 SCC 714: 2001 SCC (Cri) 915: AIR 2001 SC 2231: 2001 Cri LJ 2902 **≻3153 ≻≻6283**

Ramdeo Kahar *v.* State of Bihar, (2008) 17 SCC 517: AIR 2009 SC 1803: 2009 Cri LJ 1715: (2009) 75 AIC 195 (SC) **≻1223**

Ramdeo Rai Yadav *v.* State of Bihar, (1990) 2 SCC 675: 1990 SCC (Cri) 413: AIR 1990 SC 1180: 1990 Cri LJ 1183: (1990) 2 Crimes 47 **≻≻5741**

Ramdeo Ram ; Akalu Ahir *See* Akalu Ahir *v.* Ramdeo Ram

Ramdev Singh ; State of Punjab *See* State of Punjab *v.* Ramdev Singh

Ramekbal Tiwary *v.* Madan Mohan Tiwary, AIR 1967 SC 1156: (1967) 2 SCR 368: 1967 Cri LJ 1076 **≻≻8286, 8309, 8790, 9022, 9023, 9061**

Ramendri ; Rohtash Singh *See* Rohtash Singh *v.* Ramendri

Ramesh *v.* Laxmi Bai, (1998) 9 SCC 266: 1998 SCC (Cri) 999 ➢**277**

Ramesh ; State of M. P. *See* State of M. P. *v.* Ramesh

Ramesh *v.* State of M. P., (2000) 1 SCC 243: 2000 SCC (Cri) 206: AIR 1999 SC 3759: 1999 Cri LJ 4603 ➢**1216, 1674, 4034, 4035**

Ramesh *v.* State of T. N., (2005) 3 SCC 507: 2005 SCC (Cri) 735: AIR 2005 SC 1989: 2005 Cri LJ 1732 ➢➢**6157, 7008, 7605**

Ramesh Babulal Doshi *v.* State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972: AIR 1996 SC 2035 ➢➢**5249**

Ramesh Baburao Devaskar *v.* State of Maharashtra, (2007) 13 SCC 501: 2008 Cri LJ 372: (2007) 59 AIC 54(SC) ➢**729, 973, 1134, 1192**

Ramesh C. Sharma ; State of M. P. *See* State of M. P. *v.* Ramesh C. Sharma

Ramesh Chand ; Leelawati *See* Leelawati *v.* Ramesh Chand

Ramesh Chand Jain *v.* State of Haryana, (2007) 15 SCC 126 ➢➢**6876**

Ramesh Chander *v.* State (Delhi Admn.), 1992 Supp (2) SCC 477: 1992 SCC (Cri) 759: AIR 1992 SC 1987: 1992 Cri LJ 3584 ➢➢**5527**

Ramesh Chander Agarwal ; Dwarka Prasad Agarwal *See* Dwarka Prasad Agarwal *v.* Ramesh Chander Agarwal

Ramesh Chander Singh *v.* High Court of Allahabad, (2007) 4 SCC 247: (2007) 2 SCC (Cri) 266: (2007) 3 All LJ 502: (2007) 53 AIC 66 (SC): (2007) 113 FLR 841: (2007) 2 SLR 880 ➢➢**6719, 6720**

Ramesh Chandra *v.* State of U. P., (1971) 3 SCC 689: 1972 SCC (Cri) 30: AIR 1972 SC 16: 1972 Cri LJ 5: 1972 ALJ 971 ➢➢**9051, 9218**

Ramesh Chandra J. Thakkar *v.* Assandas Parmanand Jhaveri, (1973) 3 SCC 884: 1973 SCC (Cri) 566: AIR 1973 SC 84: 1973 Cri LJ 201: 1973 Bom LR 364 ➢➢**8687, 9053**

Ramesh Chandra Sharma ; State of U. P. *See* State of U. P. *v.* Ramesh Chandra Sharma

Ramesh Chandra Sinha *v.* State of Bihar, (2003) 7 SCC 254: 2003 SCC (Cri) 1613: AIR 2003 SC 3635 ➢➢**7007, 7337**

Ramesh Dass *v.* Raghu Nath, (2008) 4 SCC 588: (2008) 2 SCC (Cri) 470: AIR 2008 SC 1298: (2008) 64 AIC 238 (SC): 2008 Cri LJ 1945: (2008) 3 KLT 250 ➢**3843**

Ramesh Dutt *v.* State of Punjab, (2009) 15 SCC 429: (2009) 81 AIC 183 (SC) ➢➢**7431**

Ramesh Kumar *v.* Ram Kumar, (1984) 3 SCC 90: 1984 SCC (Cri) 387: AIR 1984 SC 1029: 1984 Cri LJ 832 ➢**4070**

Ramesh Kumar ; Union of India *See* Union of India *v.* Ramesh Kumar

Ramesh Kumar Singh *v.* Jhabbar Singh, (2003) 10 SCC 195 ➢➢**5838**

Ramesh Kumari *v.* State (NCT of Delhi), (2006) 2 SCC 677: (2006) 1 SCC (Cri) 678: AIR 2006 SC 1322: 2006 Cri LJ 1622: (2006) 127 DLT 636: (2006) 2 KLT 404 ➢**1260, 1281, 1336**

Ramesh Maruti Patil *v.* State of Maharashtra, 1995 SCC (Cri) 149: AIR 1994 SC 28: 1994 Cri LJ 8 ➢**662**

Ramesh Narang ; Rama Narang *See* Rama Narang *v.* Ramesh Narang

Ramesh Singh *v.* State of A. P., (2004) 11 SCC 305: 2004 Cri LJ 3354 ➢**1834**

Ramesh Singh ; State of Bihar *See* State of Bihar *v.* Ramesh Singh

Ramesh Taurani ; State of Maharashtra *See* State of Maharashtra *v.* Ramesh Taurani

Rameshan P. O. *v.* Rakesh Kumar Yadav, (2009) 13 SCC 546: (2009) 5 All LJ 505: (2009) 2 APLJ 62 (SC) ➢➢**5955**

Rameshbhai Chandubhai Rathod *v.* State of Gujarat, (2009) 5 SCC 740 ➢**2919, 2920, 3260, 3261, 3900, 3910**

Rameshbhai Chandubhai Rathod (2) *v.* State of Gujarat, (2011) 2 SCC 764 ➢**3901**

Rameshbhai Pandurao Hedau *v.* State of Gujarat, (2010) 4 SCC 185 ➢**1339**

Rameshchandra Nandlal Parikh *v.* State of Gujarat, (2006) 1 SCC 732: (2006) 1 SCC (Cri) 481: AIR 2006 SC 915: (2006) 194 ELT 140: (2006) 2 Guj LR 1365: 2006 Cri LJ 964 ➢➢**6725, 7135**

Rameshchandra Shivratan Kosar ; State of Gujarat *See* State of Gujarat *v.* Rameshchandra Shivratan Kosar

Rameshwar ; State of M. P. *See* State of M. P. *v.* Rameshwar

Rameshwar Bhartia *v.* State of Assam, AIR 1952 SC 405: 1953 SCR 126: 1953 Cri LJ 163 ➢➢**9212, 9351**

Rameshwar Dass *v.* State of Punjab, (2007) 14 SCC 696: AIR 2008 SC 890: 2008 Cri LJ 1400: (2008) 62 AIC 242 (SC) ➢**3481**

Rameshwar Dayal *v.* State of U. P., (1978) 2 SCC 518: 1978 SCC (Cri) 311: AIR 1978 SC 1558: 1978 ALJ 1011: (1978) 15 ACC 276 ➢**760, 3190** ➢➢**7910, 7952, 7985, 9328, 9329**

Rameshwar Prasad ; Hazari Lal Gupta *See* Hazari Lal Gupta *v.* Rameshwar Prasad

Rameshwar Prasad *v.* State of Rajasthan, (2009) 4 SCC 471 ➢➢**6019**

Rameshwar Rathod ; State of M. P. *See* State of M. P. *v.* Rameshwar Rathod

Rameshwar Sahai *v.* State of U. P., Cri. A. No. 144 of 1954 ➢➢**8235**

Rameshwar Singh *v.* State of J&K, (1971) 2 SCC 715: 1971 SCC (Cri) 638: AIR 1972 SC 102: 1972 Cri LJ 15 ➢➢**7960, 7991**

Rameshwari Devi ; Pratibha *See* Pratibha *v.* Rameshwari Devi

Ramgopal *v.* State of M. P., (2010) 13 SCC 540 ➢**3427**

Ramgopal Ganpatrai Ruia *v.* State of Bombay, AIR 1958 SC 97: 1958 SCR 618: 1958 Cri LJ 244 ➢➢**8306, 8307, 8308, 8313, 8939, 9015, 9069, 9087**

Ramjee Prasad *v.* State of Bihar, (2009) 14 SCC 197 ➢**2674**

Ramji Lal *v.* State of Haryana, (1983) 1 SCC 368: 1983 SCC (Cri) 189 ➢**3443**

Ramji Prasad *v.* Rattan Kumar Jaiswal, (2002) 9 SCC 366: 2003 SCC (Cri) 1197: AIR 2000 SC 3564 ➢➢**5825**

Ramji Rai *v.* State of Bihar, (1999) 8 SCC 389: 1999 SCC (Cri) 1446: AIR 1999 SC 3857 ➢**3743, 3891**

Ramji Singh *v.* State of Bihar, (2001) 9 SCC 528: AIR 2001 SC 3853 ➢**2672** ➢➢**5649**

Ramji Surjya Padvi *v.* State of Maharashtra, (1983) 3 SCC 629: 1983 SCC (Cri) 748: AIR 1983 SC 810: 1983 Cri LJ 1105: 1983 MLJ (Cri) 520 ➢**1076** ➢➢**5100**

Ramji Tiwari ; Chandrawati *See* Chandrawati *v.* Ramji Tiwari

Ramkaran *v.* Gyarsi, (2005) 12 SCC 341 ➢➢**7221, 7614**

Ramkishan *v.* State of Rajasthan, (1997) 7 SCC 518: 1997 SCC (Cri) 1106: AIR 1997 SC 3997 ➢➢**6931**

Ramkishan Mithanlal Sharma *v.* State of Bombay, AIR 1955 SC 104: (1955) 1 SCR 903: 1955 Cri LJ 196 ➢➢**7693, 7694, 7973, 7974, 7984, 8478, 8497, 8512, 8515, 8979**

Ramkishan Shrikishan Jhaver ; CCT *See* CCT *v.* Ramkishan Shrikishan Jhaver

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Sankaran Moitra *v.* Sadhna Das, (2006) 4 SCC 584: (2006) 2 SCC (Cri) 358: AIR 2006 SC 1599 ≻**2395, 2413, 2618**

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Sk. Meheboob *v.* State of Maharashtra, (2005) 10 SCC 387: 2005 SCC (Cri) 1544: AIR 2005 SC 1805: 2005 Cri LJ 2136 ➢**1624, 2603**

Sk. Mohammad Abdullah, Chief Minister, J&K ; Uday Chand *See* Uday Chand *v.* Sk. Mohammad Abdullah, Chief Minister, J&K

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Sk. Piru Bux *v.* Kalandi Pati, AIR 1970 SC 1885: (1969) 2 SCR 563 ➢➢**7765, 7783**

Sk. Saheblal Mardan ; Rashida Kamaluddin Syed *See* Rashida Kamaluddin Syed *v.* Sk. Saheblal Mardan

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Sohan *v.* State of Haryana, (2001) 3 SCC 620: 2001 SCC (Cri) 587: AIR 2001 SC 1380: 2001 Cri LJ 1707 ≻**4026**

Sohan Lal *v.* State of Punjab, (2003) 11 SCC 534: 2004 SCC (Cri) 226: AIR 2003 SC 4466 ≻**690, 889, 1626** ≻≻**6933**

Sohan Lal ; State of Rajasthan *See* State of Rajasthan *v.* Sohan Lal

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Sohan Lal Juneja *v.* State of Punjab, (2006) 12 SCC 433: (2007) 2 SCC (Cri) 90: AIR 2007 SC 136: 2007 Cri LJ 303: (2007) 49 AIC 268 (SC) ≻≻**6626**

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Som Mittal *v.* Govt. of Karnataka, (2008) 3 SCC 574: (2008) 1 SCC (L&S) 910: (2008) 2 SCC (Cri) 1: AIR 2008 SC 1528: 2008 Cri LJ 1927: (2008) 63 AIC 42 (SC) ≻**3621** ≻≻**7178, 7313**

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Som Nath Thapa ; State of Maharashtra *See* State of Maharashtra *v.* Som Nath Thapa

Som Raj ; Kunti Devi *See* Kunti Devi *v.* Som Raj

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Soma Chakravarty *v.* State, (2007) 5 SCC 403: (2007) 2 SCC (Cri) 514: AIR 2007 SC 2149 ≻**2800, 2806, 2807, 2809, 2811, 2813**

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Somchand Sanghvi *v.* Bibhuti Bhusan Chakravarty, AIR 1965 SC 588: (1964) 6 SCR 275: (1965) 1 Cri LJ 499 ≻≻**8219**

Somnath Roy ; Banhisikha Roy *See* Banhisikha Roy *v.* Somnath Roy

Sompal Singh *v.* Sunil Rathi, (2005) 1 SCC 1: AIR 2005 SC 1483: (2004) 3 KLT 992 ≻≻**6825, 6835, 6836**

Sone Lal *v.* State of U. P., (1978) 4 SCC 302: 1978 SCC (Cri) 587: AIR 1978 SC 1142: 1978 Cri LJ 1122: 1978 ALJ 530 ≻**618, 836, 905, 1013, 1052, 3309** ≻≻**5428**

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Sonti Shanti Sree ; Sonti Rama Krishna *See* Sonti Rama Krishna *v.* Sonti Shanti Sree

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State *v.* Hiralal Girdharilal Kothari, AIR 1960 SC 360: (1960) 2 SCR 355: 1960 Cri LJ 524: 1960 All Cr R 133 ≻≻**8562**

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State ; Kootha Perumal *See* Kootha Perumal *v.* State

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State *v.* Dr. Narayan Waman Nerukar, (2002) 7 SCC 6: 2002 SCC (Cri) 1542: AIR 2002 SC 2977: (2002) 99 DLT 464 ≻≻**7321, 7340**

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State (NCT of Delhi) ; Everest Advertising (P) Ltd. *See* Everest Advertising (P) Ltd. *v.* State (NCT of Delhi)

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State (NCT of Delhi) ; J. K. International *See* J. K. International *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Kishori *See* Kishori *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Mahavir Prashad Gupta *See* Mahavir Prashad Gupta *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Manu Sharma *See* Manu Sharma *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Mohd. Chaman *See* Mohd. Chaman *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Mukhtiar Ahmed Ansari *See* Mukhtiar Ahmed Ansari *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Munish Bhasin *See* Munish Bhasin *v.* State (NCT of Delhi)

State (NCT of Delhi) ; National Small Industries Corpn. Ltd. *See* National Small Industries Corpn. Ltd. *v.* State (NCT of Delhi)

State (NCT of Delhi) *v.* Navjot Sandhu, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194 ≻**311, 748, 1424, 1425, 1426, 1427, 1428, 1430, 1431, 1527, 1572, 1573, 1587, 1728, 1752, 1779, 1801, 1804, 1807, 1810, 1819, 2317, 2319, 2320, 2673, 2803, 3010, 3086, 3197** ≻≻**7226**

State (NCT of Delhi) ; Om Prakash *See* Om Prakash *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Onkar Nath Mishra *See* Onkar Nath Mishra *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Paul George *See* Paul George *v.* State (NCT of Delhi)

State (NCT of Delhi) *v.* Prem Raj, (2003) 7 SCC 121: 2003 SCC (Cri) 1586 ≻≻**6256, 6270, 6276, 6285, 6323, 6346**

State (NCT of Delhi) ; Pusai *See* Pusai *v.* State (NCT of Delhi)

State (NCT of Delhi) ; R. M. Tewari *See* R. M. Tewari *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Rajeev Chaudhary *See* Rajeev Chaudhary *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Rajender Saini *See* Rajender Saini *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Rajesh Bajaj *See* Rajesh Bajaj *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Rajesh Kumar *See* Rajesh Kumar *v.* State (NCT of Delhi)

State (NCT of Delhi) *v.* Rajiv Khurana, (2010) 11 SCC 469: AIR 2010 SC 2986: (2010) 158 Comp Cas 151: (2010) 171 DLT 769: (2010) 93 AIC 28 ≻≻**7486**

State (NCT of Delhi) ; Ramesh Kumari *See* Ramesh Kumari *v.* State (NCT of Delhi)

State (NCT of Delhi) *v.* Ravi Kant Sharma, (2007) 2 SCC 764: (2007) 1 SCC (Cri) 640: AIR 2007 SC 1135: 2007 Cri LJ 1674: (2007) 137 DLT 577: (2007) 53 AIC 98 (SC): (2007) 2 KLT 349 ≻**1513**

State (NCT of Delhi) ; Satvinder Kaur *See* Satvinder Kaur *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Shariff Ahmed *See* Shariff Ahmed *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Shiv Kumar *See* Shiv Kumar *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Sidhartha Vashisht *See* Sidhartha Vashisht *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Sukhjinder Singh *See* Sukhjinder Singh *v.* State (NCT of Delhi)

State (NCT of Delhi) *v.* Sunil, (2001) 1 SCC 652: 2001 SCC (Cri) 248: 2001 Cri LJ 504 ≻**304**

State (NCT of Delhi) ; Sunil Kumar *See* Sunil Kumar *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Suresh Kumar *See* Suresh Kumar *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Vijay Kumar Arora *See* Vijay Kumar Arora *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Vijay Pal Singh *See* Vijay Pal Singh *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Vijeta Gajra *See* Vijeta Gajra *v.* State (NCT of Delhi)

State (NCT of Delhi) ; Vikas Chaudhary *See* Vikas Chaudhary *v.* State (NCT of Delhi)

State (Union of India) *v.* Ram Saran, (2003) 12 SCC 578: AIR 2004 SC 481: (2004) 101 FLR 447 ≻**60** ≻≻**5566**

State (UT, Chandigarh) ; H. S. Bains, Director, Small Saving-cum-Dy. Secy. Finance *See* H. S. Bains, Director, Small Saving-cum-Dy. Secy. Finance *v.* State (UT, Chandigarh)

State of . . . *See also* Govt. of . . .

State of A. P. ; A. Jayaram *See* A. Jayaram *v.* State of A. P.

State of A. P. *v.* A. S. Peter, (2008) 2 SCC 383: (2008) 1 SCC (Cri) 427: AIR 2008 SC 1052 ➢**85, 182, 1334, 2042, 2070**

State of A. P. ; Adabala Parsuramudu *See* Adabala Parsuramudu *v.* State of A. P.

State of A. P. ; Akanti Gopala Rao *See* Akanti Gopala Rao *v.* State of A. P.

State of A. P. ; Akella Subrahmanyam *See* Akella Subrahmanyam *v.* State of A. P.

State of A. P. ; Akula Ravinder *See* Akula Ravinder *v.* State of A. P.

State of A. P. ; Alla China Apparao *See* Alla China Apparao *v.* State of A. P.

State of A. P. ; Annareddy Sambasiva Reddy *See* Annareddy Sambasiva Reddy *v.* State of A. P.

State of A. P. *v.* Aravapally Venkanna, (2009) 13 SCC 443: AIR 2009 SC 1863: (2009) 78 AIC 65 (SC) ➢➢**7555**

State of A. P. ; B. Jagdish *See* B. Jagdish *v.* State of A. P.

State of A. P. *v.* B. Satya Rao, (2004) 11 SCC 332 ➢➢**6052**

State of A. P. *v.* Bajjoori Kanthaiah, (2009) 1 SCC 114 ➢➢**7568**

State of A. P. ; Bala Baine Linga Raju *See* Bala Baine Linga Raju *v.* State of A. P.

State of A. P. ; Bandi Mallaiah *See* Bandi Mallaiah *v.* State of A. P.

State of A. P. ; Bandlamuddi Atchuta Ramaiah *See* Bandlamuddi Atchuta Ramaiah *v.* State of A. P.

State of A. P. ; Bharat Damodar Kale *See* Bharat Damodar Kale *v.* State of A. P.

State of A. P. *v.* Bimal Krishna Kundu, (1997) 8 SCC 104: 1997 SCC (Cri) 1245: AIR 1997 SC 3589: 1997 Cri LJ 4056 ➢➢**6589, 6601**

State of A. P. *v.* Bogam Chandraiah, (1986) 3 SCC 637: 1986 SCC (Cri) 357: AIR 1986 SC 1899: 1986 Cri LJ 1903 ➢➢**5507**

State of A. P. ; Bolem Bhaskara Rao *See* Bolem Bhaskara Rao *v.* State of A. P.

State of A. P. ; Bollavaram Pedda Narsi Reddy *See* Bollavaram Pedda Narsi Reddy *v.* State of A. P.

State of A. P. ; Bondada Gajapathi Rao *See* Bondada Gajapathi Rao *v.* State of A. P.

State of A. P. ; Boya Ganganna *See* Boya Ganganna *v.* State of A. P.

State of A. P. ; C. Chenga Reddy *See* C. Chenga Reddy *v.* State of A. P.

State of A. P. *v.* C. Uma Maheswara Rao, (2004) 4 SCC 399: 2004 SCC (Cri) 1276: AIR 2004 SC 2042: 2004 Cri LJ 2040 ➢**4095**

State of A. P. ; Ch. Madusudhana Reddy *See* Ch. Madusudhana Reddy *v.* State of A. P.

State of A. P. ; Chaganti Satyanarayana *See* Chaganti Satyanarayana *v.* State of A. P.

State of A. P. *v.* Cheemalapati Ganeswara Rao, AIR 1963 SC 1850: (1964) 3 SCR 297: (1963) 2 Cri LJ 671 ➢➢**8329, 8374, 8385, 8404, 8405, 8406, 8407, 8559, 8560, 8561, 8610, 8639, 8701, 9299**

State of A. P. ; D. Bhuvan Mohan Patnaik *See* D. Bhuvan Mohan Patnaik *v.* State of A. P.

State of A. P. ; Dandu Lakshmi Reddy *See* Dandu Lakshmi Reddy *v.* State of A. P.

State of A. P. ; Dappili Verma Reddy *See* Dappili Verma Reddy *v.* State of A. P.

State of A. P. ; Desaji Wadia Samkaiah *See* Desaji Wadia Samkaiah *v.* State of A. P.

State of A. P. ; Destruction of Public & Private Properties *See* Destruction of Public & Private Properties *v.* State of A. P.

State of A. P. ; Didigam Bikshapathi *See* Didigam Bikshapathi *v.* State of A. P.

State of A. P. ; Ediga Anamma *See* Ediga Anamma *v.* State of A. P.

State of A. P. ; Ediga Sanjanna *See* Ediga Sanjanna *v.* State of A. P.

State of A. P. ; Erram Santosh Reddy *See* Erram Santosh Reddy *v.* State of A. P.

State of A. P. ; Esher Singh *See* Esher Singh *v.* State of A. P.

State of A. P. *v.* Farmers Service Coop. Society, (2004) 6 SCC 683: 2004 SCC (Cri) 1826 ➢➢**7347, 7562**

State of A. P. *v.* G. M. Morey, (1982) 2 SCC 436: 1982 SCC (Cri) 464: AIR 1982 SC 1195: 1982 Cri LJ 1571 ➢➢**6352**

State of A. P. ; G. Raj Mallaiah *See* G. Raj Mallaiah *v.* State of A. P.

State of A. P. ; Gajula Venkateswara Rao *See* Gajula Venkateswara Rao *v.* State of A. P.

State of A. P. ; Gamini Bala Koteswara Rao *See* Gamini Bala Koteswara Rao *v.* State of A. P.

State of A. P. ; Gangula Ashok *See* Gangula Ashok *v.* State of A. P.

State of A. P. *v.* Gangula Satya Murthy, (1997) 1 SCC 272: 1997 SCC (Cri) 325: AIR 1997 SC 1588: 1997 Cri LJ 774 ≻**3020**

State of A. P. ; General Insurance Council *See* General Insurance Council *v.* State of A. P.

State of A. P. ; Gentela Vijayavardhan Rao *See* Gentela Vijayavardhan Rao *v.* State of A. P.

State of A. P. ; Gokaraju Rangaraju *See* Gokaraju Rangaraju *v.* State of A. P.

State of A. P. *v.* Golconda Linga Swamy, (2004) 6 SCC 522: 2004 SCC (Cri) 1805: AIR 2004 SC 3967 ≻**722, 2798** ≻≻**7029, 7245, 7360**

State of A. P. ; Golla Jalla Reddy *See* Golla Jalla Reddy *v.* State of A. P.

State of A. P. ; Golla Pullanna *See* Golla Pullanna *v.* State of A. P.

State of A. P. ; Gonchi Rajashekhar Reddy *See* Gonchi Rajashekhar Reddy *v.* State of A. P.

State of A. P. ; Goondla Venkateswarlu *See* Goondla Venkateswarlu *v.* State of A. P.

State of A. P. ; Gorige Pentaiah *See* Gorige Pentaiah *v.* State of A. P.

State of A. P. ; Gorle S. Naidu *See* Gorle S. Naidu *v.* State of A. P.

State of A. P. ; Goura Venkata Reddy *See* Goura Venkata Reddy *v.* State of A. P.

State of A. P. *v.* Gourishetty Mahesh, (2010) 11 SCC 226: 2010 Cri LJ 3844: (2010) 92 AIC 98 ≻≻**7298, 7554**

State of A. P. *v.* Gowthu Ranghunayakulu, (1986) 4 SCC 764: 1986 SCC (Cri) 540: AIR 1987 SC 40 ≻**3627**

State of A. P. ; Gubbala Venugopalaswamy *See* Gubbala Venugopalaswamy *v.* State of A. P.

State of A. P. ; Gunnana Pentayya *See* Gunnana Pentayya *v.* State of A. P.

State of A. P. ; Gurram Chakravarthy (2) *See* Gurram Chakravarthy (2) *v.* State of A. P.

State of A. P. ; Guvala China Venkatesu *See* Guvala China Venkatesu *v.* State of A. P.

State of A. P. *v.* Hanumanthu Santha Rao, (2000) 10 SCC 603: 2001 SCC (Cri) 1513 ≻**3152**

State of A. P. ; Harijana Sunkunha *See* Harijana Sunkunha *v.* State of A. P.

State of A. P. ; K. Chinnaswamy Reddy *See* K. Chinnaswamy Reddy *v.* State of A. P.

State of A. P. ; K. Gopal Reddy *See* K. Gopal Reddy *v.* State of A. P.

State of A. P. *v.* K. Srinivasulu Reddy, (2003) 12 SCC 660: AIR 2004 SC 3305 ≻**2702**

State of A. P. ; Kaki Ramesh *See* Kaki Ramesh *v.* State of A. P.

State of A. P. ; Kanchy Komuramma *See* Kanchy Komuramma *v.* State of A. P.

State of A. P. *v.* Kandimalla Subbaiah, AIR 1961 SC 1241: (1962) 1 SCR 194: (1961) 2 Cri LJ 302 ≻≻**8192, 8376**

State of A. P. ; Karipi Rasheed Ahmed *See* Karipi Rasheed Ahmed *v.* State of A. P.

State of A. P. ; Kavuluri Vivekananda Reddy *See* Kavuluri Vivekananda Reddy *v.* State of A. P.

State of A. P. ; Kilari Malakondiaah *See* Kilari Malakondiaah *v.* State of A. P.

State of A. P. ; Kojja Sreenu *See* Kojja Sreenu *v.* State of A. P.

State of A. P. *v.* Kokkiliagada Meerayya, (1969) 1 SCC 161: AIR 1970 SC 771: 1970 Cri LJ 759 ≻≻**7782, 8765**

State of A. P. ; Koppisetti Subbharao *See* Koppisetti Subbharao *v.* State of A. P.

State of A. P. ; Kosanapu Ramreddy *See* Kosanapu Ramreddy *v.* State of A. P.

State of A. P. ; Kotikalapudi Subba Rao *See* Kotikalapudi Subba Rao *v.* State of A. P.

State of A. P. ; Kovvuri Surya Bhaskara Reddy *See* Kovvuri Surya Bhaskara Reddy *v.* State of A. P.

State of A. P. *v.* Kuna Satyanarayana, (1998) 8 SCC 268 ≻**3819** ≻≻**6031**

State of A. P. *v.* M. Madhusudhan Rao, (2008) 15 SCC 582: (2009) 3 SCC (Cri) 1123: (2009) 1 ECrN 489 (SC): (2008) 71 AIC 8 (SC) ≻**1014** ≻≻**5578**

State of A. P. ; M. Nageshwar Rao *See* M. Nageshwar Rao *v.* State of A. P.

State of A. P. *v.* M. Narasimha Rao, (2010) 9 SCC 166: (2010) 3 SCC (Cri) 1165: AIR 2010 SC 3776 ≻**1163, 4022**

State of A. P. *v.* M. Poshetty, (2001) 10 SCC 629 ≻≻**6011**

State of A. P. ; M. R. Kudva *See* M. R. Kudva *v.* State of A. P.

State of A. P. *v.* M. Satyanarayana, (2000) 10 SCC 288 ≻≻**6005**

State of A. P. ; Macherla Hanumantha Rao *See* Macherla Hanumantha Rao *v.* State of A. P.

State of A. P. ; Mallela Seetharmaiah *See* Mallela tharmaiah *v.* State of A. P.

State of A. P. ; Mohd. Giasuddin *See* Mohd. Giasuddin *v.* State of A. P.

State of A. P. ; Mohd. Hoshan *See* Mohd. Hoshan *v.* State of A. P.

State of A. P. ; Mohd. Shakeel *See* Mohd. Shakeel *v.* State of A. P.

State of A. P. ; Mondri Sreenu *See* Mondri Sreenu *v.* State of A. P.

State of A. P. ; Monica Bedi *See* Monica Bedi *v.* State of A. P.

State of A. P. ; Muzaffar Ali Sajjad *See* Muzaffar Ali Sajjad *v.* State of A. P.

State of A. P. ; N. Naveen Kumar *See* N. Naveen Kumar *v.* State of A. P.

State of A. P. *v.* N. Venugopal, AIR 1964 SC 33: (1964) 3 SCR 742: (1964) 1 Cri LJ 16: (1965) 2 MLJ (SC) 87 **≻≻7913, 7922**

State of A. P. ; Nalamolu Appala Swamy *See* Nalamolu Appala Swamy *v.* State of A. P.

State of A. P. ; Nallabothu Venkaiah *See* Nallabothu Venkaiah *v.* State of A. P.

State of A. P. ; Nallamsetty Yanadaiah *See* Nallamsetty Yanadaiah *v.* State of A. P.

State of A. P. ; Narayan Rao *See* Narayan Rao *v.* State of A. P.

State of A. P. ; Neti Sreeramulu *See* Neti Sreeramulu *v.* State of A. P.

State of A. P. ; Ongole Ravikanth *See* Ongole Ravikanth *v.* State of A. P.

State of A. P. ; Orsu Venkat Rao *See* Orsu Venkat Rao *v.* State of A. P.

State of A. P. *v.* P. Anjaneyulu, (1984) 2 SCC 445: 1984 SCC (Cri) 269: AIR 1982 SC 1598 **≻3513** **≻≻5753**

State of A. P. *v.* P. Jagannadhan, (1982) 3 SCC 365: 1983 SCC (Cri) 47 **≻3924** **≻≻5786**

State of A. P. *v.* P. Satyanarayana Murthy, (2008) 9 SCC 674: (2008) 3 SCC (Cri) 855 **≻3218**

State of A. P. *v.* P. T. Appaiah, (1980) 4 SCC 316: 1980 SCC (Cri) 960: AIR 1981 SC 365: 1980 Cri LJ 1410 **≻≻5885, 8996**

State of A. P. *v.* P. V. Narayana, (1971) 1 SCC 483: 1971 SCC (Cri) 186: AIR 1971 SC 811: 1971 Cri LJ 676 **≻≻9293**

State of A. P. *v.* P. V. Pavithran, (1990) 2 SCC 340: AIR 1990 SC 1266: 1990 Cri LJ 1306 **≻1290, 1485, 1487, 1488**

State of A. P. ; P. Venkataswarlu *See* P. Venkataswarlu *v.* State of A. P.

State of A. P. ; Pagoti Sreeramulu *See* Pagoti Sreeramulu *v.* State of A. P.

State of A. P. ; Pamula Saraswathi *See* Pamula Saraswathi *v.* State of A. P.

State of A. P. ; Parasa Raja Manikyala Rao *See* Parasa Raja Manikyala Rao *v.* State of A. P.

State of A. P. *v.* Patnam Anandam, (2005) 9 SCC 237: 2005 SCC (Cri) 1225: AIR 2005 SC 764: 2005 Cri LJ 894 **≻1150, 3235**

State of A. P. ; Pattipati Venkaiah *See* Pattipati Venkaiah *v.* State of A. P.

State of A. P. ; Pedda Narayana *See* Pedda Narayana *v.* State of A. P.

State of A. P. ; Perla Somasekhara Reddy *See* Perla Somasekhara Reddy *v.* State of A. P.

State of A. P. *v.* Pituhuk Sreeinvanasa Rao, (2000) 9 SCC 537: 2001 SCC (Cri) 642: AIR 2000 SC 3515 (2) **≻≻6013**

State of A. P. ; Pothakamuri Srinivasulu *See* Pothakamuri Srinivasulu *v.* State of A. P.

State of A. P. ; Pravin Chandra Mody *See* Pravin Chandra Mody *v.* State of A. P.

State of A. P. ; Pulicherla Nagaraju *See* Pulicherla Nagaraju *v.* State of A. P.

State of A. P. *v.* Punati Ramulu, 1994 Supp (1) SCC 590: 1994 SCC (Cri) 734: AIR 1993 SC 2644: 1993 Cri LJ 3684 **≻703, 1271**

State of A. P. ; R. D. Upadhyay *See* R. D. Upadhyay *v.* State of A. P.

State of A. P. *v.* Rajagopala Rao, (2000) 10 SCC 338 **≻≻5938**

State of A. P. ; Ramaphupala Reddy *See* Ramaphupala Reddy *v.* State of A. P.

State of A. P. ; Ramesh Singh *See* Ramesh Singh *v.* State of A. P.

State of A. P. ; Ramoji Rao *See* Ramoji Rao *v.* State of A. P.

State of A. P. ; Ramreddy Rajesh Khanna Reddy *See* Ramreddy Rajesh Khanna Reddy *v.* State of A. P.

State of A. P. ; Ravulappalli Kondaiah *See* Ravulappalli Kondaiah *v.* State of A. P.

State of A. P. *v.* Rayaneedi Sitharamaiah, (2008) 16 SCC 179 **≻≻5055**

State of A. P. ; Retti Deenabandhu *See* Retti Deenabandhu *v.* State of A. P.

State of A. P. *v.* S. Eshar Singh, (1993) 1 SCC 440: 1993 SCC (Cri) 338: AIR 1993 SC 1374: 1993 Cri LJ 1028 ≻**2779**

State of A. P. *v.* S. Narasimha Kumar, (2006) 5 SCC 683: (2006) 3 SCC (Cri) 54: AIR 2006 SC 2924: (2006) 3 KLT 505 ≻≻**5896, 9001**

State of A. P. ; S. Raghu Ramaiah *See* S. Raghu Ramaiah *v.* State of A. P.

State of A. P. ; S. Sudershan Reddy *See* S. Sudershan Reddy *v.* State of A. P.

State of A. P. *v.* S. Swarnalatha, (2009) 8 SCC 383: (2009) 3 SCC (Cri) 873: (2009) 81 AIC 60 (SC) ≻**1658**

State of A. P. ; Sabbi Mallesu *See* Sabbi Mallesu *v.* State of A. P.

State of A. P. ; Sanapareddy Maheedhar Seshagiri *See* Sanapareddy Maheedhar Seshagiri *v.* State of A. P.

State of A. P. ; Sangaraboina Sreenu *See* Sangaraboina Sreenu *v.* State of A. P.

State of A. P. ; Sannaia Subba Rao *See* Sannaia Subba Rao *v.* State of A. P.

State of A. P. *v.* Sayyaad Siraj Mohammed, (2009) 13 SCC 417: AIR 2009 SC 2446 ≻≻**5353**

State of A. P. ; Shabad Pulla Reddy *See* Shabad Pulla Reddy *v.* State of A. P.

State of A. P. ; Shah Noor *See* Shah Noor *v.* State of A. P.

State of A. P. ; Shaik China Brahmam *See* Shaik China Brahmam *v.* State of A. P.

State of A. P. *v.* Shaik Mazhar, AIR 2001 SC 2427 ≻**1818**

State of A. P. ; Shankar Finance & Investments *See* Shankar Finance & Investments *v.* State of A. P.

State of A. P. ; Sheelam Ramesh *See* Sheelam Ramesh *v.* State of A. P.

State of A. P. ; Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj *See* Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj *v.* State of A. P.

State of A. P. ; Sri Krishna Agencies *See* Sri Krishna Agencies *v.* State of A. P.

State of A. P. ; Sudheer Singh *See* Sudheer Singh *v.* State of A. P.

State of A. P. ; T. Shankar Prasad *See* T. Shankar Prasad *v.* State of A. P.

State of A. P. *v.* Thadi Narayana, AIR 1962 SC 240: (1962) 2 SCR 904: (1962) 1 Cri LJ 207: (1963) 1 MLJ (SC) 77 ≻≻**8943, 8958, 8962, 8964, 8965**

State of A. P. *v.* Thakkidiram Reddy, (1998) 6 SCC 554: 1998 SCC (Cri) 1488: AIR 1998 SC 2702 ≻**2638**

State of A. P. *v.* V. Sarma Rao, (2007) 2 SCC 159: (2007) 1 SCC (Cri) 535: AIR 2007 SC 137: 2007 Cri LJ 289 ≻**2293, 2316, 3574**

State of A. P. ; V. Srinivasa Reddy *See* V. Srinivasa Reddy *v.* State of A. P.

State of A. P. *v.* V. V. Panduranga Rao, (2009) 15 SCC 211: 2009 Cri LJ 2972: (2009) 2 APLJ 171 (SC) ≻**631, 1600**

State of A. P. ; Vajja Srinivasu *See* Vajja Srinivasu *v.* State of A. P.

State of A. P. *v.* Vallabhapuram Ravi, (1984) 4 SCC 410: 1984 SCC (Cri) 635: AIR 1985 SC 870 ≻≻**6359, 6360**

State of A. P. *v.* Vangaveeti Nagaiah, (2009) 12 SCC 466: AIR 2009 SC 2646: (2009) 78 AIC 201 (SC) ≻≻**7558**

State of A. P. ; Varada Rama Mohana Rao *See* Varada Rama Mohana Rao *v.* State of A. P.

State of A. P. ; Y. Suresh Babu *See* Y. Suresh Babu *v.* State of A. P.

State of A. P. *v.* Yelamati Venkaataraju, (2001) 10 SCC 728 ≻≻**6047**

State of A. P. ; Yerneni Raja Ramchandar *See* Yerneni Raja Ramchandar *v.* State of A. P.

State of Ajmer ; Hem Raj Devilal *See* Hem Raj Devilal *v.* State of Ajmer

State of Assam ; Abbas Ahmad Choudhary *See* Abbas Ahmad Choudhary *v.* State of Assam

State of Assam *v.* Abdul Halim, 1993 Supp (1) SCC 505: 1993 SCC (Cri) 281: AIR 1992 SC 2068 ≻**3401**

State of Assam ; Abdul Mannan *See* Abdul Mannan *v.* State of Assam

State of Assam *v.* Abdul Noor, (1970) 3 SCC 10: 1970 SCC (Cri) 360: AIR 1970 SC 1365: 1970 Cri LJ 1264: 72 Punj LR 585 ≻≻**8127**

State of Assam ; Alamgir Sani *See* Alamgir Sani *v.* State of Assam

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State of Haryana *v.* Ram Diya, (1990) 2 SCC 701: 1990 SCC (Cri) 426: AIR 1990 SC 1336: (1990) 3 Crimes 35 **≻≻6341, 6357**
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State of Haryana ; Ram Lal *See* Ram Lal *v.* State of Haryana
State of Haryana *v.* Ram Pal, (2005) 3 SCC 347: 2005 SCC (Cri) 731: AIR 2005 SC 1552: 2005 Cri LJ 1718 **≻≻5308**
State of Haryana ; Ram Parkash Sharma *See* Ram Parkash Sharma *v.* State of Haryana
State of Haryana ; Ram Pat *See* Ram Pat *v.* State of Haryana
State of Haryana *v.* Ram Sarup, (2002) 7 SCC 250: 2002 SCC (Cri) 1691: AIR 2002 SC 3114 **≻776, 1166, 2875 ≻≻5654**
State of Haryana *v.* Ram Singh, (2002) 2 SCC 426: 2002 SCC (Cri) 350: AIR 2002 SC 620: 2002 Cri LJ 987 **≻295**
State of Haryana ; Ramesh Chand Jain *See* Ramesh Chand Jain *v.* State of Haryana
State of Haryana ; Ramji Lal *See* Ramji Lal *v.* State of Haryana
State of Haryana ; Ran Singh *See* Ran Singh *v.* State of Haryana
State of Haryana ; Randhir Singh *See* Randhir Singh *v.* State of Haryana
State of Haryana ; Ranvir Singh *See* Ranvir Singh *v.* State of Haryana
State of Haryana ; Ravinder Singh *See* Ravinder Singh *v.* State of Haryana
State of Haryana ; Rohtas *See* Rohtas *v.* State of Haryana
State of Haryana ; Ronald Kiprono Ramkat *See* Ronald Kiprono Ramkat *v.* State of Haryana
State of Haryana ; Sahab Singh *See* Sahab Singh *v.* State of Haryana
State of Haryana ; Sahib Singh *See* Sahib Singh *v.* State of Haryana
State of Haryana ; Sakatar Singh *See* Sakatar Singh *v.* State of Haryana
State of Haryana ; Sampat Singh *See* Sampat Singh *v.* State of Haryana
State of Haryana ; Sant Ram *See* Sant Ram *v.* State of Haryana
State of Haryana *v.* Santra, (2000) 5 SCC 182: AIR 2000 SC 1888 **≻421**
State of Haryana ; Sardul Singh *See* Sardul Singh *v.* State of Haryana
State of Haryana ; Sarup Singh *See* Sarup Singh *v.* State of Haryana
State of Haryana ; Sarvsheel Mago *See* Sarvsheel Mago *v.* State of Haryana
State of Haryana ; Sat Kumar *See* Sat Kumar *v.* State of Haryana
State of Haryana ; Sat Pal *See* Sat Pal *v.* State of Haryana
State of Haryana ; Satbir *See* Satbir *v.* State of Haryana
State of Haryana ; Satpal *See* Satpal *v.* State of Haryana

State of Haryana ; Satpal Singh *See* Satpal Singh *v.* State of Haryana

State of Haryana ; Satyapal *See* Satyapal *v.* State of Haryana

State of Haryana ; Sham Lal *See* Sham Lal *v.* State of Haryana

State of Haryana *v.* Sher Singh, (1981) 2 SCC 300: 1981 SCC (Cri) 421: AIR 1981 SC 1021: 1981 Cri LJ 714 ➢**806**

State of Haryana *v.* Sher Singh, (2002) 9 SCC 356: AIR 2002 SC 3223 ➢➢**5766**

State of Haryana *v.* Shibu, (2008) 11 SCC 377 ➢➢**5589**

State of Haryana ; Shingara Singh *See* Shingara Singh *v.* State of Haryana

State of Haryana ; Silak Ram *See* Silak Ram *v.* State of Haryana

State of Haryana ; Sohan *See* Sohan *v.* State of Haryana

State of Haryana ; Sube Singh *See* Sube Singh *v.* State of Haryana

State of Haryana ; Subhash *See* Subhash *v.* State of Haryana

State of Haryana ; Sukhdev Singh *See* Sukhdev Singh *v.* State of Haryana

State of Haryana ; Sultan *See* Sultan *v.* State of Haryana

State of Haryana ; Suraj Pal *See* Suraj Pal *v.* State of Haryana

State of Haryana *v.* Surender, (2007) 11 SCC 281: (2008) 1 SCC (Cri) 137: AIR 2007 SC 2312: (2007) 55 AIC 12 (SC) ➢➢**5106, 5446**

State of Haryana ; Surinder *See* Surinder *v.* State of Haryana

State of Haryana *v.* Surinder Kumar, (2000) 10 SCC 337 ➢➢**5965**

State of Haryana *v.* Surjit Singh, (2008) 17 SCC 196: AIR 2009 SC 1480: (2008) 72 AIC 100 (SC) ➢➢**5293**

State of Haryana ; Sushil Kumar *See* Sushil Kumar *v.* State of Haryana

State of Haryana ; Tarachand *See* Tarachand *v.* State of Haryana

State of Haryana *v.* Tek Singh, (1999) 4 SCC 682: 1999 SCC (Cri) 622: AIR 1999 SC 1742 ➢**1236**

State of Haryana ; Umrao *See* Umrao *v.* State of Haryana

State of Haryana *v.* Unique Farmaid (P) Ltd., (1999) 8 SCC 190: 1999 SCC (Cri) 1404 ➢➢**7572**

State of Haryana ; Usha Ahuja *See* Usha Ahuja *v.* State of Haryana

State of Haryana ; Ved Prakash *See* Ved Prakash *v.* State of Haryana

State of Haryana ; Veerpal *See* Veerpal *v.* State of Haryana

State of Haryana ; Vijay Pal *See* Vijay Pal *v.* State of Haryana

State of Himachal Pradesh ; Kalawati *See* Kalawati *v.* State of Himachal Pradesh

State of Hyderabad ; Aftab Ahmad Khan *See* Aftab Ahmad Khan *v.* State of Hyderabad

State of Hyderabad ; Chinna Baliga *See* Chinna Baliga *v.* State of Hyderabad

State of Hyderabad ; Habeeb Mohammad *See* Habeeb Mohammad *v.* State of Hyderabad

State of Hyderabad ; Janardhan Reddy *See* Janardhan Reddy *v.* State of Hyderabad

State of Hyderabad ; Machander *See* Machander *v.* State of Hyderabad

State of Hyderabad ; Mathurala Adi Reddy *See* Mathurala Adi Reddy *v.* State of Hyderabad

State of Hyderabad ; Pandurang *See* Pandurang *v.* State of Hyderabad

State of Hyderabad ; Rawalpenta Venkalu *See* Rawalpenta Venkalu *v.* State of Hyderabad

State of J&K ; Baljit Singh *See* Baljit Singh *v.* State of J&K

State of J&K ; Bhim Singh *See* Bhim Singh *v.* State of J&K

State of J&K ; Bimla Devi *See* Bimla Devi *v.* State of J&K

State of J&K ; Bodhraj *See* Bodhraj *v.* State of J&K

State of J&K *v.* Charan Dass Puri, (1999) 5 SCC 738: 1999 SCC (Cri) 1050 ➢**2456**

State of J&K ; Ghulam Din Buch *See* Ghulam Din Buch *v.* State of J&K

State of J&K ; Madan Lal *See* Madan Lal *v.* State of J&K

State of J&K ; Manohar Nath Kaul *See* Manohar Nath Kaul *v.* State of J&K

State of J&K *v.* Mazhar Ali, 1989 Supp (2) SCC 181: 1990 SCC (Cri) 28 ➢**4020**

State of J&K ; Mohd. Akbar Dar *See* Mohd. Akbar Dar *v.* State of J&K

State of J&K ; Mohd. Ayub Dar *See* Mohd. Ayub Dar *v.* State of J&K

State of J&K ; Mohd. Maqbool Damnoo *See* Mohd. Maqbool Damnoo *v.* State of J&K

State of J&K ; Naba Parray *See* Naba Parray *v.* State of J&K

State of J&K ; Narinder Kumar *See* Narinder Kumar *v.* State of J&K

State of J&K ; Ram Lal *See* Ram Lal *v.* State of J&K

State of J&K ; Rameshwar Singh *See* Rameshwar Singh *v.* State of J&K

State of J&K ; Rattanlal *See* Rattanlal *v.* State of J&K

State of J&K *v.* Romesh Chander, (1997) 1 SCC 90: 1997 SCC (Cri) 44: AIR 1997 SC 2401: 1997 Cri LJ 2976 ➢➢**7268**

State of J&K *v.* S. Mohan Singh, (2006) 9 SCC 272: (2006) 2 SCC (Cri) 484: AIR 2006 SC 1410: 2006 Cri LJ 1691 ➢**977**

State of J&K *v.* Sudershan Chakkar, (1995) 4 SCC 181: 1995 SCC (Cri) 664: AIR 1995 SC 1954: 1995 Cri LJ 3606 ➢**2821**

State of Jharkhand ; Ajoy Kumar Ghose *See* Ajoy Kumar Ghose *v.* State of Jharkhand

State of Jharkhand ; Anil Sharma *See* Anil Sharma *v.* State of Jharkhand

State of Jharkhand ; Bilash Gupta *See* Bilash Gupta *v.* State of Jharkhand

State of Jharkhand ; Bisheshwar Ganjhu *See* Bisheshwar Ganjhu *v.* State of Jharkhand

State of Jharkhand ; Dinesh Kumar Sinha *See* Dinesh Kumar Sinha *v.* State of Jharkhand

State of Jharkhand ; Goyal Enterprises *See* Goyal Enterprises *v.* State of Jharkhand

State of Jharkhand ; Harijinder Kaur *See* Harijinder Kaur *v.* State of Jharkhand

State of Jharkhand ; Harishchandra Prasad Mani *See* Harishchandra Prasad Mani *v.* State of Jharkhand

State of Jharkhand ; Hem Chand *See* Hem Chand *v.* State of Jharkhand

State of Jharkhand ; Hitesh Verma *See* Hitesh Verma *v.* State of Jharkhand

State of Jharkhand ; Lal Suraj *See* Lal Suraj *v.* State of Jharkhand

State of Jharkhand ; Lallu Manjhi *See* Lallu Manjhi *v.* State of Jharkhand

State of Jharkhand ; Laloo Prasad *See* Laloo Prasad *v.* State of Jharkhand

State of Jharkhand ; Lalu Prasad *See* Lalu Prasad *v.* State of Jharkhand

State of Jharkhand ; Louis Peter Surin *See* Louis Peter Surin *v.* State of Jharkhand

State of Jharkhand ; Mukul Mahto *See* Mukul Mahto *v.* State of Jharkhand

State of Jharkhand ; Preeti Gupta *See* Preeti Gupta *v.* State of Jharkhand

State of Jharkhand ; Rabindra Mahto *See* Rabindra Mahto *v.* State of Jharkhand

State of Jharkhand ; Ram Naresh Prasad *See* Ram Naresh Prasad *v.* State of Jharkhand

State of Jharkhand ; Rama Paswan *See* Rama Paswan *v.* State of Jharkhand

State of Jharkhand ; Ravishwar Manjhi *See* Ravishwar Manjhi *v.* State of Jharkhand

State of Jharkhand ; Sarfu Khan *See* Sarfu Khan *v.* State of Jharkhand

State of Jharkhand ; Shiv Nandan Prasad *See* Shiv Nandan Prasad *v.* State of Jharkhand

State of Jharkhand ; Sitaram Sao *See* Sitaram Sao *v.* State of Jharkhand

State of Jharkhand ; Subrata Das *See* Subrata Das *v.* State of Jharkhand

State of Jharkhand ; Sunita Jha *See* Sunita Jha *v.* State of Jharkhand

State of Jharkhand ; Suresh Kumar Tekriwal *See* Suresh Kumar Tekriwal *v.* State of Jharkhand

State of Jharkhand ; Sushil Murmu *See* Sushil Murmu *v.* State of Jharkhand

State of Jharkhand ; Tutul Kumari Sen *See* Tutul Kumari Sen *v.* State of Jharkhand

State of Jharkhand ; U. Dhar *See* U. Dhar *v.* State of Jharkhand

State of Karnataka ; A. K. Subbaiah *See* A. K. Subbaiah *v.* State of Karnataka

State of Karnataka ; A. N. Venkatesh *See* A. N. Venkatesh *v.* State of Karnataka

State of Karnataka ; Abdul Karim *See* Abdul Karim *v.* State of Karnataka

State of Karnataka ; Abdul Rehman *See* Abdul Rehman *v.* State of Karnataka

State of Karnataka ; Ajit Savant Majagvai *See* Ajit Savant Majagvai *v.* State of Karnataka

State of Karnataka *v.* Amajappa, (2003) 9 SCC 468: 2003 SCC (Cri) 1911 ➢➢**5700**

State of Karnataka ; Angappa *See* Angappa *v.* State of Karnataka

State of Karnataka *v.* Annegowda, (2006) 5 SCC 716: (2006) 3 SCC (Cri) 59: AIR 2006 SC 2641: (2006) 5 All LJ 403 ➢**2947**

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State of Karnataka ; Avinash Shetty *See* Avinash Shetty *v.* State of Karnataka

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State of Karnataka ; Baragur Ramachandrappa *See* Baragur Ramachandrappa *v.* State of Karnataka

State of Karnataka ; Basavaraj R. Patil *See* Basavaraj R. Patil *v.* State of Karnataka

State of Karnataka ; Basavaraja *See* Basavaraja *v.* State of Karnataka

State of Karnataka ; Basayya Prabhayya Hallur *See* Basayya Prabhayya Hallur *v.* State of Karnataka

State of Karnataka ; Beere Gowda *See* Beere Gowda *v.* State of Karnataka

State of Karnataka *v.* Bhaskar Kushali Kotharkar, (2004) 7 SCC 487: 2004 SCC (Cri) 1963: AIR 2004 SC 4333 ➢**1155**

State of Karnataka ; Bhaskar Ramappa Madar *See* Bhaskar Ramappa Madar *v.* State of Karnataka

State of Karnataka *v.* Bheemappa, 1994 Supp (1) SCC 103: 1994 SCC (Cri) 198: 1993 Cri LJ 2609 ➢**1202, 4058**

State of Karnataka ; Bhojappa Hanamanthappa Choudannavar *See* Bhojappa Hanamanthappa Choudannavar *v.* State of Karnataka

State of Karnataka ; Birappa *See* Birappa *v.* State of Karnataka

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State of Karnataka *v.* C. Nagarajaswamy, (2005) 8 SCC 370: AIR 2005 SC 4308 ➢**3067, 3068**

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State of Karnataka ; Dhanajaya Reddy *See* Dhanajaya Reddy *v.* State of Karnataka

State of Karnataka *v.* Diwakara Bhat, (1996) 11 SCC 148: 1997 SCC (Cri) 146 ➢**1070**

State of Karnataka *v.* Dr. Praveen Bhai Thogadia, (2004) 4 SCC 684: 2004 SCC (Cri) 1387: AIR 2004 SC 2081: (2004) 2 KLT 342: 2004 Cri LJ 1825 ➢**92**

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State of Karnataka ; Felix Ambrose D'Souza *See* Felix Ambrose D'Souza *v.* State of Karnataka

State of Karnataka *v.* Gangadharaiah, 1998 SCC (Cri) 372: AIR 1997 SC 3787 ➢➢**5730**

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State of Karnataka ; Halappa *See* Halappa *v.* State of Karnataka

State of Karnataka *v.* Hemareddy, (1981) 2 SCC 185: 1981 SCC (Cri) 395: AIR 1981 SC 1417: (1981) 2 SCR 695: 1981 Cri LJ 1019 ➢**2291** ➢➢**5661**

State of Karnataka ; Huchappa *See* Huchappa *v.* State of Karnataka

State of Karnataka ; India Carat (P) Ltd. *See* India Carat (P) Ltd. *v.* State of Karnataka

State of Karnataka ; Jaisingh *See* Jaisingh *v.* State of Karnataka

State of Karnataka ; Jaya Simha *See* Jaya Simha *v.* State of Karnataka

State of Karnataka *v.* K. A. Kunchindammed, (2002) 9 SCC 90: AIR 2002 SC 1875: 2002 Cri LJ 2565 ➢➢**6881**

State of Karnataka *v.* K. Gopalakrishna, (2005) 9 SCC 291: 2005 SCC (Cri) 1237: AIR 2005 SC 1014: 2005 Cri LJ 1436 ➢➢**5035**

State of Karnataka *v.* K. H. Annegowda, (1977) 1 SCC 417: 1977 SCC (Cri) 106: AIR 1977 SC 357: 1977 Cri LJ 220: (1977) 2 SCR 350 ➢**2787** ➢➢**7674, 8293, 9176**

State of Karnataka *v.* K. Krishnan, (2000) 7 SCC 80: 2000 SCC (Cri) 1289: AIR 2000 SC 2729: 2000 Cri LJ 3971 ➢➢**7541**

State of Karnataka ; K. M. Ravi *See* K. M. Ravi *v.* State of Karnataka

State of Karnataka *v.* K. Yarappa Reddy, (1999) 8 SCC 715: AIR 2000 SC 185 ➢**874, 1988**

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State of Karnataka *v.* Khaja Hussain, (1982) 3 SCC 456: 1983 SCC (Cri) 82 ➢**2777**

State of Karnataka *v.* Krishna, (1987) 1 SCC 538: 1987 SCC (Cri) 198: AIR 1987 SC 861: 1987 Cri LJ 776 ➢**4105**

State of Karnataka ; Krishna Reddy *See* Krishna Reddy *v.* State of Karnataka

State of Karnataka ; Krishnappa *See* Krishnappa *v.* State of Karnataka

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State of Karnataka ; M. A. A. Annamalai *See* M. A. A. Annamalai *v.* State of Karnataka

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State of Karnataka ; M. Krishna *See* M. Krishna *v.* State of Karnataka

State of Karnataka *v.* M. N. Ramdas, (2002) 7 SCC 639: 2003 SCC (Cri) 134: AIR 2002 SC 3109 ➢➢**5655**

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State of Karnataka ; Manjunath Ganesh Hegde *See* Manjunath Ganesh Hegde *v.* State of Karnataka

State of Karnataka *v.* Mapilla P. P. Soopi, (2003) 8 SCC 202: 2003 SCC (Cri) 1977 ➢**1173**

State of Karnataka *v.* Marigowda, (1981) 4 SCC 429: 1981 SCC (Cri) 849: AIR 1982 SC 1171 ➢➢**6004**

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State of Karnataka *v.* Moin Patel, (1996) 8 SCC 167: 1996 SCC (Cri) 632: AIR 1996 SC 3041 ➢**617, 834, 974, 1630**

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State of Karnataka ; Narendra Bhat *See* Narendra Bhat *v.* State of Karnataka

State of Karnataka *v.* Narsa Reddy, (1987) 4 SCC 170: 1987 SCC (Cri) 744: AIR 1987 SC 2104: 1987 Cri LJ 1929 ➢➢**7218**

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State of Karnataka *v.* Pastor P. Raju, (2006) 6 SCC 728: (2006) 3 SCC (Cri) 179: AIR 2006 SC 2825: (2006) 102 Cut LT 612: (2006) 3 KLT 830 ➢**2199, 2322** ➢➢**7134**

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State of Kerala *v.* Babu, (1999) 4 SCC 621: 1999 SCC (Cri) 611: AIR 1999 SC 2161 ≻**1525**
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State of Kerala *v.* C. A. Jabbar, (2009) 15 SCC 92: (2009) 2 KLT 709 ≻≻**6910**
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State of M. P. ; Ishwar Singh *See* Ishwar Singh *v.* State of M. P.
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State of M. P. ; Mohan Singh *See* Mohan Singh *v.* State of M. P.

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State of M. P. ; Mohd. Shahid *See* Mohd. Shahid *v.* State of M. P.

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State of M. P. ; Mukund *See* Mukund *v.* State of M. P.

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State of M. P. ; Onkar Lal *See* Onkar Lal *v.* State of M. P.

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State of M. P. ; Parichhat *See* Parichhat *v.* State of M. P.

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State of M. P. ; Rajmata Vijaya Raje Scindia *See* Rajmata Vijaya Raje Scindia *v.* State of M. P.

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State of M. P. *v.* Ram Kumar, (2009) 17 SCC 372: AIR 2006 SC 643: (2005) 35 AIC 61 **➢➢5671**

State of M. P. ; Ram Kumar Laharia *See* Ram Kumar Laharia *v.* State of M. P.

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State of M. P. ; Ram Shankar *See* Ram Shankar *v.* State of M. P.

State of M. P. *v.* Ram Singh, (2000) 5 SCC 88: 2000 SCC (Cri) 886: AIR 2000 SC 870: 2000 Cri LJ 1401 **➢1483 ➢➢7114, 7617**

State of M. P. ; Ramcharan *See* Ramcharan *v.* State of M. P.

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State of M. P. *v.* Ramesh C. Sharma, (2005) 12 SCC 628 **➢1476**

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State of M. P. ; Ramkishore Patel *See* Ramkishore Patel *v.* State of M. P.

State of M. P. *v.* Ramkrishna Ganpatrao Limsey, AIR 1954 SC 20: 1954 Cri LJ 244 **➢➢8820**

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State of M. P. ; Ramphal *See* Ramphal *v.* State of M. P.

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State of M. P. ; Ranveer Singh *See* Ranveer Singh *v.* State of M. P.

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State of M. P. ; Ravir Godbole *See* Ravir Godbole *v.* State of M. P.

State of M. P. ; Raza Pasha *See* Raza Pasha *v.* State of M. P.

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State of M. P. *v.* Rustam, 1995 Supp (3) SCC 221: 1995 SCC (Cri) 830 **➢1910, 1912**

State of M. P. *v.* S. B. Johari, (2000) 2 SCC 57: 2000 SCC (Cri) 311: AIR 2000 SC 665: 2000 Cri LJ 944 **≻2772 ≻≻6058**
State of M. P. ; Sadaram *See* Sadaram *v.* State of M. P.
State of M. P. ; Sajjan Singh *See* Sajjan Singh *v.* State of M. P.
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State of M. P. ; Salim *See* Salim *v.* State of M. P.
State of M. P. *v.* Sangram, (2009) 17 SCC 370: AIR 2006 SC 48: 2005 Cri LJ 4642: (2005) 36 AIC 443 **≻≻5672**
State of M. P. ; Sanjay Kumar *See* Sanjay Kumar *v.* State of M. P.
State of M. P. *v.* Sanjay Rai, (2004) 10 SCC 570: 2004 SCC (Cri) 1913: AIR 2004 SC 2174: 2004 Cri LJ 2006 **≻≻5019**
State of M. P. ; Sanju *See* Sanju *v.* State of M. P.
State of M. P. *v.* Santosh Kumar, (2006) 6 SCC 1: (2006) 3 SCC (Cri) 1: AIR 2006 SC 2648 **≻4098**
State of M. P. ; Shambhu *See* Shambhu *v.* State of M. P.
State of M. P. ; Shamsuddin *See* Shamsuddin *v.* State of M. P.
State of M. P. ; Shankar Lal *See* Shankar Lal *v.* State of M. P.
State of M. P. ; Shantilal *See* Shantilal *v.* State of M. P.
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State of M. P. ; Shyam Lal Sharma *See* Shyam Lal Sharma *v.* State of M. P.
State of M. P. *v.* Shyamsunder Trivedi, (1995) 4 SCC 262: 1995 SCC (Cri) 715 **≻3232**
State of M. P. ; Siriya *See* Siriya *v.* State of M. P.
State of M. P. ; Sita Ram *See* Sita Ram *v.* State of M. P.
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State of M. P. ; Sk. Abdul Hamid *See* Sk. Abdul Hamid *v.* State of M. P.
State of M. P. ; Sk. Ayub *See* Sk. Ayub *v.* State of M. P.
State of M. P. ; Sohrab *See* Sohrab *v.* State of M. P.
State of M. P. ; Sudhir *See* Sudhir *v.* State of M. P.
State of M. P. ; Sukhpal *See* Sukhpal *v.* State of M. P.
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State of M. P. ; Suratlal *See* Suratlal *v.* State of M. P.
State of M. P. *v.* Surbhan, (1996) 9 SCC 46: 1996 SCC (Cri) 919: AIR 1996 SC 3345 **≻669**
State of M. P. ; Surendra Chauhan *See* Surendra Chauhan *v.* State of M. P.
State of M. P. ; Suresh Chand Jain *See* Suresh Chand Jain *v.* State of M. P.
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State of M. P. ; Tara Singh *See* Tara Singh *v.* State of M. P.
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State of M. P. ; Tika Ram *See* Tika Ram *v.* State of M. P.
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State of M. P. ; Trimbak *See* Trimbak *v.* State of M. P.
State of M. P. ; Tulsi Ram *See* Tulsi Ram *v.* State of M. P.
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State of Punjab ; Jaswant Singh *See* Jaswant Singh *v.* State of Punjab

State of Punjab ; Jaswinder Singh *See* Jaswinder Singh *v.* State of Punjab

State of Punjab ; Jawahar Lal *See* Jawahar Lal *v.* State of Punjab

State of Punjab ; Jit Singh *See* Jit Singh *v.* State of Punjab

State of Punjab ; Joginder Singh *See* Joginder Singh *v.* State of Punjab

State of Punjab *v.* Joginder Singh, (1990) 2 SCC 661: 1990 SCC (Cri) 419: AIR 1990 SC 1396: 1990 Cri LJ 1464 ➢➢**6268, 6282, 6300**

State of Punjab *v.* Joginder Singh, (2003) 12 SCC 179 ➢**1002, 1170**

State of Punjab *v.* Jugraj Singh, (2002) 3 SCC 234: 2002 SCC (Cri) 630: AIR 2002 SC 1083: 2002 Cri LJ 1503 ➢**4000**

State of Punjab ; Jumman *See* Jumman *v.* State of Punjab

State of Punjab ; K. Satwant Singh *See* K. Satwant Singh *v.* State of Punjab

State of Punjab ; Kamaljit Singh *See* Kamaljit Singh *v.* State of Punjab

State of Punjab ; Karamjit Singh *See* Karamjit Singh *v.* State of Punjab

State of Punjab ; Karnail Singh *See* Karnail Singh *v.* State of Punjab

State of Punjab *v.* Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135: AIR 2003 SC 3609 ≻**971, 3229** ≻≻**5717**

State of Punjab ; Kartar Singh *See* Kartar Singh *v.* State of Punjab

State of Punjab ; Kashmira Singh *See* Kashmira Singh *v.* State of Punjab

State of Punjab *v.* Kasturi Lal, (2004) 12 SCC 195: AIR 2004 SC 4087: 2004 Cri LJ 3866 ≻**2648** ≻≻**7028, 7296**

State of Punjab ; Kaur Sain *See* Kaur Sain *v.* State of Punjab

State of Punjab *v.* Kesar Singh, (1996) 5 SCC 495: 1996 SCC (Cri) 1034: AIR 1996 SC 2512 ≻≻**6318**

State of Punjab *v.* Kewal Singh, 1990 Supp SCC 147: 1990 SCC (Cri) 640 ≻≻**6837**

State of Punjab *v.* Kuldip Prakash, (1981) 3 SCC 207: 1981 SCC (Cri) 713: AIR 1981 SC 1008: 1981 Cri LJ 713 ≻≻**5382**

State of Punjab ; Kuldip Singh *See* Kuldip Singh *v.* State of Punjab

State of Punjab *v.* Kuldip Singh, (2007) 6 SCC 218: (2007) 3 SCC (Cri) 68: 2007 Cri LJ 3751: (2007) 56 AIC 265 (SC) ≻≻**7104**

State of Punjab *v.* Kulwant Singh, (2008) 16 SCC 290: AIR 2008 SC 3279: (2008) 3 APLJ 61 (SC): (2008) 68 AIC 1 (SC): 2008 Cri LJ 4322 ≻**4042**

State of Punjab ; Kulwinder Singh *See* Kulwinder Singh *v.* State of Punjab

State of Punjab ; Labh Singh *See* Labh Singh *v.* State of Punjab

State of Punjab ; Lachman Dass *See* Lachman Dass *v.* State of Punjab

State of Punjab ; Lakhjit Singh *See* Lakhjit Singh *v.* State of Punjab

State of Punjab ; Lakhwinder Singh *See* Lakhwinder Singh *v.* State of Punjab

State of Punjab *v.* Lakhwinder Singh, (2010) 4 SCC 402 ≻≻**5183**

State of Punjab ; Machhi Singh *See* Machhi Singh *v.* State of Punjab

State of Punjab ; Madan Lal *See* Madan Lal *v.* State of Punjab

State of Punjab *v.* Madan Lal, (2009) 5 SCC 238 ≻≻**6227**

State of Punjab ; Madan Mohan Abbot *See* Madan Mohan Abbot *v.* State of Punjab

State of Punjab ; Maghar Singh *See* Maghar Singh *v.* State of Punjab

State of Punjab ; Major S. J. Dubey *See* Major S. J. Dubey *v.* State of Punjab

State of Punjab ; Makhan Singh Tarsikka *See* Makhan Singh Tarsikka *v.* State of Punjab

State of Punjab ; Maktool Singh *See* Maktool Singh *v.* State of Punjab

State of Punjab ; Malkiat Singh *See* Malkiat Singh *v.* State of Punjab

State of Punjab ; Mangat Singh *See* Mangat Singh *v.* State of Punjab

State of Punjab ; Manjit Kaur *See* Manjit Kaur *v.* State of Punjab

State of Punjab *v.* Manjit Singh, (2009) 14 SCC 31: AIR 2009 SC 2888: (2009) 79 AIC 9 (SC) ≻≻**7681**

State of Punjab *v.* Mann Singh, (1983) 1 SCC 207: 1983 SCC (Cri) 165: AIR 1983 SC 172: 1983 Cri LJ 229 ≻≻**5644**

State of Punjab ; Mathri *See* Mathri *v.* State of Punjab

State of Punjab ; Megh Singh *See* Megh Singh *v.* State of Punjab

State of Punjab *v.* Mela Singh, (2003) 12 SCC 464: AIR 2004 SC 257: 2004 Cri LJ 368 ≻**1085**

State of Punjab ; Mithu *See* Mithu *v.* State of Punjab

State of Punjab *v.* Mohd. Iqbal Bhatti, (2009) 17 SCC 92: 2010 Cri LJ 1436: (2010) 4 CTC 458 (SC): (2009) 4 CHN 65 (SC): (2009) 82 AIC 114 (SC) ≻**2391, 2437, 2444, 2476**

State of Punjab ; Mohinder Kaur *See* Mohinder Kaur *v.* State of Punjab

State of Punjab ; Mohinder Singh *See* Mohinder Singh *v.* State of Punjab

State of Punjab *v.* Mohinder Singh, (2007) 13 SCC 560: AIR 2008 SC 92 ≻**1126**

State of Punjab *v.* Mohinder Singh, (2009) 17 SCC 751: (2009) 1 APLJ 171: (2009) 80 AIC 182 ≻**3952**

State of Punjab ; Mohindro *See* Mohindro *v.* State of Punjab

State of Punjab *v.* Mohri Ram, 1994 Supp (1) SCC 632: 1994 SCC (Cri) 737 ≻**670**

State of Punjab ; Mukhtiar Singh *See* Mukhtiar Singh *v.* State of Punjab

State of Punjab *v.* Mukhtiar Singh, (1975) 4 SCC 590: 1975 SCC (Cri) 625: AIR 1975 SC 2001: 1975 Cri LJ 1745 ≻≻**8606**

State of Punjab ; Nachhattar Singh *See* Nachhattar Singh *v.* State of Punjab

State of Punjab *v.* Naib Din, (2001) 8 SCC 578: 2002 SCC (Cri) 33: AIR 2001 SC 3955 ➢**3032, 3034, 3038, 3040, 3327, 3329** ➢➢**5911**

State of Punjab ; Naib Singh *See* Naib Singh *v.* State of Punjab

State of Punjab ; Nanak Chand *See* Nanak Chand *v.* State of Punjab

State of Punjab ; Nand Singh *See* Nand Singh *v.* State of Punjab

State of Punjab ; Narain *See* Narain *v.* State of Punjab

State of Punjab ; Narain Singh *See* Narain Singh *v.* State of Punjab

State of Punjab ; Narinder Singh *See* Narinder Singh *v.* State of Punjab

State of Punjab ; Narinder Singh Bogarh *See* Narinder Singh Bogarh *v.* State of Punjab

State of Punjab ; Narotam Singh *See* Narotam Singh *v.* State of Punjab

State of Punjab ; Narwinder Singh *See* Narwinder Singh *v.* State of Punjab

State of Punjab *v.* National Organic Chemical Industries Ltd., (1996) 11 SCC 613 ➢➢**7571, 7653**

State of Punjab ; Navjot Singh Sidhu *See* Navjot Singh Sidhu *v.* State of Punjab

State of Punjab *v.* Navraj Singh, (2008) 11 SCC 71: AIR 2008 SC 2962: 2008 Cri LJ 3864 ➢➢**5805**

State of Punjab ; Nidhan Singh *See* Nidhan Singh *v.* State of Punjab

State of Punjab ; Nikka Singh *See* Nikka Singh *v.* State of Punjab

State of Punjab ; Nirmal Singh Kahlon *See* Nirmal Singh Kahlon *v.* State of Punjab

State of Punjab ; Nishan Singh *See* Nishan Singh *v.* State of Punjab

State of Punjab *v.* Nohar Chand, (1984) 3 SCC 512: 1984 SCC (Cri) 432: AIR 1984 SC 1492: 1984 Cri LJ 1153: (1984) 76 PLR 694 ➢**2155**

State of Punjab *v.* Om Parkash, 1995 Cri LJ 3655 ➢➢**5361**

State of Punjab ; P. D. Lakhani *See* P. D. Lakhani *v.* State of Punjab

State of Punjab ; Pal Singh *See* Pal Singh *v.* State of Punjab

State of Punjab ; Pala Singh *See* Pala Singh *v.* State of Punjab

State of Punjab ; Palvinder Kaur *See* Palvinder Kaur *v.* State of Punjab

State of Punjab ; Paramjit Singh *See* Paramjit Singh *v.* State of Punjab

State of Punjab ; Parkash Singh Badal *See* Parkash Singh Badal *v.* State of Punjab

State of Punjab ; Parshotam Lal *See* Parshotam Lal *v.* State of Punjab

State of Punjab ; Parvinder Singh *See* Parvinder Singh *v.* State of Punjab

State of Punjab ; Pashaura Singh *See* Pashaura Singh *v.* State of Punjab

State of Punjab *v.* Phola Singh, (2003) 11 SCC 58: 2004 SCC (Cri) 276: AIR 2003 SC 4407 ➢**999, 1189** ➢➢**5596**

State of Punjab ; Piara Singh *See* Piara Singh *v.* State of Punjab

State of Punjab ; Prem Lata *See* Prem Lata *v.* State of Punjab

State of Punjab *v.* Prem Sagar, (2008) 7 SCC 550: (2008) 3 SCC (Cri) 183: 2008 Cri LJ 3533 ➢**2909**

State of Punjab ; Pritam Nath *See* Pritam Nath *v.* State of Punjab

State of Punjab ; Pritam Singh *See* Pritam Singh *v.* State of Punjab

State of Punjab ; Punjab & Haryana High Court Bar Assn. *See* Punjab & Haryana High Court Bar Assn. *v.* State of Punjab

State of Punjab ; Puran *See* Puran *v.* State of Punjab

State of Punjab ; Pyare Lal *See* Pyare Lal *v.* State of Punjab

State of Punjab ; R. P. Kapur *See* R. P. Kapur *v.* State of Punjab

State of Punjab ; Rachhpal Singh *See* Rachhpal Singh *v.* State of Punjab

State of Punjab *v.* Raj Kumar, (1988) 1 SCC 701: 1988 SCC (L&S) 441: 1988 SCC (Cri) 243: AIR 1988 SC 805 ➢**44**

State of Punjab *v.* Raj Singh, (1998) 2 SCC 391: 1998 SCC (Cri) 642: AIR 1998 SC 768 ➢**2277**

State of Punjab *v.* Rajesh Syal, (2002) 8 SCC 158: 2002 SCC (Cri) 1867: AIR 2002 SC 3687 ➢**2683, 2685** ➢➢**7066**

State of Punjab *v.* Rajwinder Singh, (2009) 16 SCC 778 ➢➢**5266**

State of Punjab ; Ram Narain *See* Ram Narain *v.* State of Punjab

State of Punjab ; Ram Narain Singh *See* Ram Narain Singh *v.* State of Punjab

State of Punjab ; Ram Parkash *See* Ram Parkash *v.* State of Punjab

State of Punjab *v.* Ramdev Singh, (2004) 1 SCC 421: 2004 SCC (Cri) 307: AIR 2004 SC 1290 ➢**1105** ➢➢**5722**

State of Punjab ; Ramesh Dutt *See* Ramesh Dutt *v.* State of Punjab

State of Punjab ; Rameshwar Dass *See* Rameshwar Dass *v.* State of Punjab

State of Punjab ; Ranbir *See* Ranbir *v.* State of Punjab

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State of Punjab ; Ranjha *See* Ranjha *v.* State of Punjab

State of Punjab ; Ranjit Singh *See* Ranjit Singh *v.* State of Punjab

State of Punjab ; Ravi Kumar *See* Ravi Kumar *v.* State of Punjab

State of Punjab ; Ravinder Kaur *See* Ravinder Kaur *v.* State of Punjab

State of Punjab ; Ravinder Kumar *See* Ravinder Kumar *v.* State of Punjab

State of Punjab ; Resham Singh *See* Resham Singh *v.* State of Punjab

State of Punjab ; Reshma Devi *See* Reshma Devi *v.* State of Punjab

State of Punjab ; Roop Singh *See* Roop Singh *v.* State of Punjab

State of Punjab ; Sahib Singh *See* Sahib Singh *v.* State of Punjab

State of Punjab ; Sampuran Singh *See* Sampuran Singh *v.* State of Punjab

State of Punjab ; Sanjeev Kumar *See* Sanjeev Kumar *v.* State of Punjab

State of Punjab ; Santa Singh *See* Santa Singh *v.* State of Punjab

State of Punjab ; Sarabjit Singh *See* Sarabjit Singh *v.* State of Punjab

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State of Punjab ; Sarwan Singh *See* Sarwan Singh *v.* State of Punjab

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State of Punjab ; Sat Pal *See* Sat Pal *v.* State of Punjab

State of Punjab ; Satbir Singh *See* Satbir Singh *v.* State of Punjab

State of Punjab ; Satguru Singh *See* Satguru Singh *v.* State of Punjab

State of Punjab ; Satish Kumar *See* Satish Kumar *v.* State of Punjab

State of Punjab ; Satnam Agro Industries *See* Satnam Agro Industries *v.* State of Punjab

State of Punjab ; Sher Singh *See* Sher Singh *v.* State of Punjab

State of Punjab ; Shree Baidyanath Ayurved Bhawan (P) Ltd. *See* Shree Baidyanath Ayurved Bhawan (P) Ltd. *v.* State of Punjab

State of Punjab ; Sohan Lal *See* Sohan Lal *v.* State of Punjab

State of Punjab ; Sohan Lal Juneja *See* Sohan Lal Juneja *v.* State of Punjab

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State of Punjab ; Sucha Singh *See* Sucha Singh *v.* State of Punjab

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State of Punjab *v.* Sucha Singh, (2003) 3 SCC 153: 2003 SCC (Cri) 856: AIR 2003 SC 1471: 2003 Cri LJ 1210 ➢➢**5703**

State of Punjab ; Sudarshana Devi *See* Sudarshana Devi *v.* State of Punjab

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State of Punjab ; Sukhwant Singh *See* Sukhwant Singh *v.* State of Punjab

State of Punjab ; Sunder Singh *See* Sunder Singh *v.* State of Punjab

State of Punjab ; Surat Singh *See* Surat Singh *v.* State of Punjab

State of Punjab ; Surinder Singh *See* Surinder Singh *v.* State of Punjab

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State of Punjab ; Surjit Singh *See* Surjit Singh *v.* State of Punjab

State of Punjab *v.* Surjit Singh, AIR 1967 SC 1214: (1967) 2 SCR 347: 1967 Cri LJ 1084 ≻≻**9161, 9169**

State of Punjab ; Sushil Kumar *See* Sushil Kumar *v.* State of Punjab

State of Punjab ; Swaran Singh *See* Swaran Singh *v.* State of Punjab

State of Punjab *v.* Swaran Singh, (2005) 6 SCC 101: 2005 SCC (Cri) 1359: AIR 2005 SC 3114: 2005 Cri LJ 3445 ≻**3249, 3250**

State of Punjab ; Tapinder Singh *See* Tapinder Singh *v.* State of Punjab

State of Punjab ; Tara Singh *See* Tara Singh *v.* State of Punjab

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State of Punjab ; Tarsem Singh *See* Tarsem Singh *v.* State of Punjab

State of Punjab ; Tota Singh *See* Tota Singh *v.* State of Punjab

State of Punjab ; Tulsi Singh *See* Tulsi Singh *v.* State of Punjab

State of Punjab ; Ujjagar Singh *See* Ujjagar Singh *v.* State of Punjab

State of Punjab *v.* Union of India, (1986) 4 SCC 335: 1986 SCC (Cri) 441: AIR 1987 SC 188 ≻**3503** ≻≻**9173**

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State of Punjab ; Vikramjit Singh *See* Vikramjit Singh *v.* State of Punjab

State of Punjab *v.* Vinod Kumar, (2000) 9 SCC 742: 2001 SCC (Cri) 695 ≻**2478**

State of Punjab ; Virindar Kumar Satyawadi *See* Virindar Kumar Satyawadi *v.* State of Punjab

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State of Rajasthan ; Amar Singh *See* Amar Singh *v.* State of Rajasthan

State of Rajasthan ; Amin Khan *See* Amin Khan *v.* State of Rajasthan

State of Rajasthan ; Amrik Singh *See* Amrik Singh *v.* State of Rajasthan

State of Rajasthan ; Angana *See* Angana *v.* State of Rajasthan

State of Rajasthan *v.* Ani, (1997) 6 SCC 162: 1997 SCC (Cri) 851: AIR 1997 SC 1023: 1997 Cri LJ 1529 ≻**743, 875**

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State of Rajasthan ; Ashok Kumar *See* Ashok Kumar *v.* State of Rajasthan

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State of Rajasthan ; Bansilal *See* Bansilal *v.* State of Rajasthan

State of Rajasthan ; Bhagat Ram *See* Bhagat Ram *v.* State of Rajasthan

State of Rajasthan ; Bhagwan Singh *See* Bhagwan Singh *v.* State of Rajasthan

State of Rajasthan ; Bhanwar Lal *See* Bhanwar Lal *v.* State of Rajasthan

State of Rajasthan ; Bhanwar Singh *See* Bhanwar Singh *v.* State of Rajasthan

State of Rajasthan *v.* Bhanwar Singh, (2004) 13 SCC 147: 2005 SCC (Cri) 73: AIR 2004 SC 4660: 2004 Cri LJ 4886 ≻**1067**

State of Rajasthan *v.* Bhanwar Singh, (2006) 6 SCC 9: (2006) 3 SCC (Cri) 9 ≻**4038**

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State of Rajasthan *v.* Bhawani, (2003) 7 SCC 291: 2003 SCC (Cri) 1628: AIR 2003 SC 4230 ≻**1532** ≻≻**5721**

State of Rajasthan ; Bheru Lal *See* Bheru Lal *v.* State of Rajasthan

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State of Rajasthan *v.* Bhup Singh, (1997) 10 SCC 675: 1997 SCC (Cri) 1032: (1997) 1 An LT (Cri) 588 ≻**1824, 3024**

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State of Rajasthan *v.* Kartar Singh, (1970) 2 SCC 61: 1970 SCC (Cri) 297: AIR 1970 SC 1305: 1970 Cri LJ 1144 ➢➢**8040, 8481**

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State of Rajasthan ; Magga *See* Magga *v.* State of Rajasthan

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State of U. P. *v.* Nahar Singh, (1998) 3 SCC 561: 1998 SCC (Cri) 850: AIR 1998 SC 1328 ➢**828, 907, 1063** ➢➢**5158**

State of U. P. ; Nain Singh *See* Nain Singh *v.* State of U. P.

State of U. P. ; Naiz Ahmed *See* Naiz Ahmed *v.* State of U. P.

State of U. P. *v.* Nand Kishore Misra, 1991 Supp (2) SCC 473: AIR 1991 SC 763: 1991 Cri LJ 456 ➢**4108**

State of U. P. *v.* Nandu Vishwakarma, (2009) 14 SCC 501: 2009 Cri LJ 4157: (2009) 80 AIC 215 (SC) **≻≻5071**

State of U. P. ; Nanhey *See* Nanhey *v.* State of U. P.

State of U. P. *v.* Nankau Prasad Misra, (2005) 10 SCC 503: 2005 SCC (Cri) 1615 **≻≻5630**

State of U. P. ; Narain Das *See* Narain Das *v.* State of U. P.

State of U. P. ; Narendra Singh *See* Narendra Singh *v.* State of U. P.

State of U. P. ; Naresh *See* Naresh *v.* State of U. P.

State of U. P. ; Nathi Rai *See* Nathi Rai *v.* State of U. P.

State of U. P. ; Natthu Singh *See* Natthu Singh *v.* State of U. P.

State of U. P. ; Naunidh *See* Naunidh *v.* State of U. P.

State of U. P. ; Nawab Singh *See* Nawab Singh *v.* State of U. P.

State of U. P. *v.* Nawab Singh, (2005) 9 SCC 84: 2005 SCC (Cri) 33: AIR 2004 SC 1511: 2004 Cri LJ 1367 **≻780 ≻≻5653, 5694**

State of U. P. ; Neeraj Pathak *See* Neeraj Pathak *v.* State of U. P.

State of U. P. *v.* Netra Pal Singh, (2004) 4 SCC 748: 2004 SCC (L&S) 680: AIR 2004 SC 3513: (2004) 102 FLR 177: 2004 All LJ 2151: (2004) 3 LLN 59: (2004) 5 SLR 364 **≻122**

State of U. P. ; Niranjan Singh *See* Niranjan Singh *v.* State of U. P.

State of U. P. ; Nisar *See* Nisar *v.* State of U. P.

State of U. P. ; Nisar Ali *See* Nisar Ali *v.* State of U. P.

State of U. P. *v.* Nitin Agnihotri, (2008) 8 SCC 31: (2008) 3 SCC (Cri) 412: 2008 Cri LJ 3907: (2008) 5 All LJ 785: (2008) 3 KLT 478 **≻3830**

State of U. P. *v.* Niyamat, (1987) 3 SCC 434: 1987 SCC (Cri) 565: AIR 1987 SC 1652: 1987 Cri LJ 1881 **≻207**

State of U. P. *v.* O. P. Sharma, (1996) 7 SCC 705: 1996 SCC (Cri) 497: AIR 1996 SC 2983 **≻≻7249**

State of U. P. ; Om Hemrajani *See* Om Hemrajani *v.* State of U. P.

State of U. P. ; Om Parkash Gupta *See* Om Parkash Gupta *v.* State of U. P.

State of U. P. ; Om Prakash *See* Om Prakash *v.* State of U. P.

State of U. P. ; Omwati *See* Omwati *v.* State of U. P.

State of U. P. *v.* P. A. Madhu, (1984) 4 SCC 83: 1984 SCC (Cri) 598: AIR 1984 SC 1523: 1984 Cri LJ 1438 **≻629 ≻≻5491**

State of U. P. ; P. C. Joshi *See* P. C. Joshi *v.* State of U. P.

State of U. P. ; Padam Singh *See* Padam Singh *v.* State of U. P.

State of U. P. ; Pal *See* Pal *v.* State of U. P.

State of U. P. ; Pal Singh *See* Pal Singh *v.* State of U. P.

State of U. P. ; Panchhi *See* Panchhi *v.* State of U. P.

State of U. P. *v.* Pappu, (2005) 3 SCC 594: 2005 SCC (Cri) 780: AIR 2005 SC 1248: 2005 Cri LJ 331 **≻3972**

State of U. P. *v.* Paras Nath Singh, (2009) 6 SCC 372 **≻2398 ≻≻6927**

State of U. P. ; Parminder Kaur *See* Parminder Kaur *v.* State of U. P.

State of U. P. *v.* Parshottam, 1991 Supp (2) SCC 124: 1991 SCC (Cri) 1016: AIR 1991 SC 1015: 1991 Cri LJ 741 **≻≻7326, 9364**

State of U. P. ; Partap *See* Partap *v.* State of U. P.

State of U. P. ; Patai *See* Patai *v.* State of U. P.

State of U. P. ; Pati Ram *See* Pati Ram *v.* State of U. P.

State of U. P. *v.* Pheru Singh, 1989 Supp (1) SCC 288: 1989 SCC (Cri) 420: AIR 1989 SC 1205: 1989 Cri LJ 1135 **≻≻5497**

State of U. P. *v.* Poosu, (1976) 3 SCC 1: 1976 SCC (Cri) 368: AIR 1976 SC 1750: (1976) 3 SCR 1005: 1976 Cri LJ 1373 **≻≻5867, 8981**

State of U. P. ; Pratap *See* Pratap *v.* State of U. P.

State of U. P. *v.* Premi, (2003) 9 SCC 12: AIR 2003 SC 1750: 2003 Cri LJ 1554 **≻839 ≻≻5718**

State of U. P. *v.* Punni, (2008) 11 SCC 153: AIR 2008 SC 932: (2008) 62 AIC 122 (SC): 2008 Cri LJ 1028: (2008) 105 Cut LT 361 **≻≻5029**

State of U. P. *v.* Pussu, (1983) 3 SCC 502: 1983 SCC (Cri) 713: AIR 1983 SC 867: 1983 Cri LJ 1356 **➢➢5476**

State of U. P. *v.* R. B. Agarwal, AIR 1966 SC 1135: (1966) 3 SCR 462: 1966 Cri LJ 815 **➢➢8819**

State of U. P. *v.* R. K. Srivastava, (1989) 4 SCC 59: 1989 SCC (Cri) 713: AIR 1989 SC 2222: 1989 Cri LJ 2301 **➢➢7151, 7472**

State of U. P. ; R. R. Chari *See* R. R. Chari *v.* State of U. P.

State of U. P. ; Radha Kishan *See* Radha Kishan *v.* State of U. P.

State of U. P. ; Radha Mohan Singh *See* Radha Mohan Singh *v.* State of U. P.

State of U. P. ; Raghav Prapanna Tripathi *See* Raghav Prapanna Tripathi *v.* State of U. P.

State of U. P. ; Raghubir Singh *See* Raghubir Singh *v.* State of U. P.

State of U. P. ; Raghunandan *See* Raghunandan *v.* State of U. P.

State of U. P. ; Raghunath *See* Raghunath *v.* State of U. P.

State of U. P. ; Raghuvir Saran Agarwal *See* Raghuvir Saran Agarwal *v.* State of U. P.

State of U. P. ; Rahim Beg *See* Rahim Beg *v.* State of U. P.

State of U. P. ; Raj Kumar Khemka *See* Raj Kumar Khemka *v.* State of U. P.

State of U. P. *v.* Raj Narain Pandey, (2005) 13 SCC 444: (2006) 2 SCC (Cri) 343 **➢➢5563**

State of U. P. ; Raj Narain Singh *See* Raj Narain Singh *v.* State of U. P.

State of U. P. *v.* Raj Nath, (1983) 1 SCC 204: 1983 SCC (Cri) 162: AIR 1983 SC 187: 1983 Cri LJ 347: 1983 ALJ 817 **➢➢5780**

State of U. P. ; Raja Ram Kashyap *See* Raja Ram Kashyap *v.* State of U. P.

State of U. P. ; Rajbir Singh *See* Rajbir Singh *v.* State of U. P.

State of U. P. ; Rajendra Prasad *See* Rajendra Prasad *v.* State of U. P.

State of U. P. ; Rajendra Singh *See* Rajendra Singh *v.* State of U. P.

State of U. P. *v.* Rajvir, (2007) 15 SCC 545 **➢➢5042**

State of U. P. ; Rakesh *See* Rakesh *v.* State of U. P.

State of U. P. ; Rakesh Ranjan Gupta *See* Rakesh Ranjan Gupta *v.* State of U. P.

State of U. P. ; Ram Abhilakh *See* Ram Abhilakh *v.* State of U. P.

State of U. P. ; Ram Anjore *See* Ram Anjore *v.* State of U. P.

State of U. P. ; Ram Asrey *See* Ram Asrey *v.* State of U. P.

State of U. P. ; Ram Autar *See* Ram Autar *v.* State of U. P.

State of U. P. ; Ram Autar Shastri Tantrik *See* Ram Autar Shastri Tantrik *v.* State of U. P.

State of U. P. ; Ram Bali *See* Ram Bali *v.* State of U. P.

State of U. P. ; Ram Bharosey *See* Ram Bharosey *v.* State of U. P.

State of U. P. ; Ram Chandra *See* Ram Chandra *v.* State of U. P.

State of U. P. ; Ram Chandra Aggarwal *See* Ram Chandra Aggarwal *v.* State of U. P.

State of U. P. ; Ram Charan *See* Ram Charan *v.* State of U. P.

State of U. P. ; Ram Devi *See* Ram Devi *v.* State of U. P.

State of U. P. ; Ram Jag *See* Ram Jag *v.* State of U. P.

State of U. P. *v.* Ram Kishun, (1976) 3 SCC 449: 1976 SCC (Cri) 443: AIR 1976 SC 2016: (1976) 3 SCR 379: 1976 Cri LJ 1559 **➢2706** **➢➢6260, 8402**

State of U. P. ; Ram Kumar *See* Ram Kumar *v.* State of U. P.

State of U. P. ; Ram Lakhan Singh *See* Ram Lakhan Singh *v.* State of U. P.

State of U. P. ; Ram Lal *See* Ram Lal *v.* State of U. P.

State of U. P. ; Ram Manorath *See* Ram Manorath *v.* State of U. P.

State of U. P. ; Ram Milan *See* Ram Milan *v.* State of U. P.

State of U. P. ; Ram Narain *See* Ram Narain *v.* State of U. P.

State of U. P. ; Ram Narayan *See* Ram Narayan *v.* State of U. P.

State of U. P. *v.* Ram Nath, (1972) 1 SCC 130: 1972 SCC (Cri) 74: AIR 1972 SC 232: 1972 Cri LJ 52 **➢➢7688**

State of U. P. ; Ram Pal *See* Ram Pal *v.* State of U. P.

State of U. P. ; Ram Pal Singh *See* Ram Pal Singh *v.* State of U. P.

State of U. P. ; Ram Prakash Pandey *See* Ram Prakash Pandey *v.* State of U. P.

State of U. P. ; Ram Prasad *See* Ram Prasad *v.* State of U. P.

State of U. P. ; Ram Pujan *See* Ram Pujan *v.* State of U. P.

State of U. P. *v.* Ram Sagar Yadav, (1985) 1 SCC 552: 1985 SCC (Cri) 127: AIR 1985 SC 416 ≻**1896** ≻≻**5481**

State of U. P. *v.* Ram Sajivan, (2010) 1 SCC 529 ≻**1656, 4006** ≻≻**5070**

State of U. P. ; Ram Sewak *See* Ram Sewak *v.* State of U. P.

State of U. P. ; Ram Shankar Singh *See* Ram Shankar Singh *v.* State of U. P.

State of U. P. ; Ram Shanker *See* Ram Shanker *v.* State of U. P.

State of U. P. ; Ram Singh *See* Ram Singh *v.* State of U. P.

State of U. P. ; Ram Sumer Puri Mahant *See* Ram Sumer Puri Mahant *v.* State of U. P.

State of U. P. *v.* Ram Swarup, 1988 Supp SCC 262: 1988 SCC (Cri) 552: AIR 1988 SC 1028: 1988 ALJ 555: (1988) 1 Crimes 994 ≻**1127, 2099** ≻≻**5787**

State of U. P. *v.* Ram Veer Singh, (2007) 13 SCC 102: AIR 2007 SC 3075: (2007) 58 AIC 111 (SC): (2007) 5 All LJ 705 ≻**4075**

State of U. P. ; Rama Kant Verma *See* Rama Kant Verma *v.* State of U. P.

State of U. P. ; Ramesh Chandra *See* Ramesh Chandra *v.* State of U. P.

State of U. P. *v.* Ramesh Chandra Sharma, (1995) 6 SCC 527: 1996 SCC (L&S) 46: (1995) 31 ATC 750: AIR 1996 SC 864 ≻**112, 113, 133**

State of U. P. ; Rameshwar Dayal *See* Rameshwar Dayal *v.* State of U. P.

State of U. P. ; Rameshwar Sahai *See* Rameshwar Sahai *v.* State of U. P.

State of U. P. ; Ramvir *See* Ramvir *v.* State of U. P.

State of U. P. ; Rang Bahadur Singh *See* Rang Bahadur Singh *v.* State of U. P.

State of U. P. *v.* Ranjha Ram, (1986) 4 SCC 99: 1986 SCC (Cri) 374: AIR 1986 SC 1959: 1986 Cri LJ 1906 ≻**837, 935, 3955**

State of U. P. *v.* Ranjit Singh, (1999) 2 SCC 617: 1999 SCC (Cri) 293: AIR 1999 SC 1201: 1999 All LJ 970: 1999 Cri LJ 1830 ≻≻**6022**

State of U. P. *v.* Rashid, (2010) 1 SCC 153 ≻≻**5403**

State of U. P. *v.* Rasid, (2003) 9 SCC 449: AIR 2003 SC 1243: 2003 All LJ 1152: 2003 Cri LJ 2011 ≻≻**5657**

State of U. P. ; Reshma Bano *See* Reshma Bano *v.* State of U. P.

State of U. P. ; Rizwan-Ul-Hasan *See* Rizwan-Ul-Hasan *v.* State of U. P.

State of U. P. ; S. A. Dange *See* S. A. Dange *v.* State of U. P.

State of U. P. ; S. Dutt (Dr.) *See* S. Dutt (Dr.) *v.* State of U. P.

State of U. P. ; S. K. Bhatt *See* S. K. Bhatt *v.* State of U. P.

State of U. P. ; S. K. Shukla *See* S. K. Shukla *v.* State of U. P.

State of U. P. *v.* Sabir Ali, AIR 1964 SC 1673: (1964) 7 SCR 435: (1964) 2 Cri LJ 606 ≻≻**7730, 7731, 9261**

State of U. P. ; Sachchey Lal Tiwari *See* Sachchey Lal Tiwari *v.* State of U. P.

State of U. P. ; Sadhu Singh *See* Sadhu Singh *v.* State of U. P.

State of U. P. ; Saeed Ahmed *See* Saeed Ahmed *v.* State of U. P.

State of U. P. *v.* Sahai, (1982) 1 SCC 352: 1982 SCC (Cri) 223: AIR 1981 SC 1442: 1981 Cri LJ 1034 ≻≻**5484**

State of U. P. ; Sahaj Ram *See* Sahaj Ram *v.* State of U. P.

State of U. P. ; Sahdeo *See* Sahdeo *v.* State of U. P.

State of U. P. ; Sahib Singh Mehra *See* Sahib Singh Mehra *v.* State of U. P.

State of U. P. *v.* Sahrunnisa, (2009) 15 SCC 452: 2009 Cri LJ 4151: (2009) 80 AIC 147 (SC) ≻≻**5054**

State of U. P. ; Sakiri Vasu *See* Sakiri Vasu *v.* State of U. P.

State of U. P. ; Saktu *See* Saktu *v.* State of U. P.

State of U. P. ; Salim Zia *See* Salim Zia *v.* State of U. P.

State of U. P. *v.* Samman Dass, (1972) 3 SCC 201: 1972 SCC (Cri) 275: AIR 1972 SC 677: 1972 Cri LJ 487: 1973 ALJ 489 ≻≻**7849, 8737, 8855**

State of U. P. ; Sangita Rani *See* Sangita Rani *v.* State of U. P.

State of U. P. *v.* Sanjay Singh (Dr.), 1994 Supp (2) SCC 707: 1994 SCC (Cri) 1701 ≻**2936**

State of U. P. ; Sankatha Singh *See* Sankatha Singh *v.* State of U. P.

State of U. P. ; Santosh *See* Santosh *v.* State of U. P.
State of U. P. ; Sarju *See* Sarju *v.* State of U. P.
State of U. P. ; Satbir Singh *See* Satbir Singh *v.* State of U. P.
State of U. P. *v.* Satish, (2005) 3 SCC 114: 2005 SCC (Cri) 642: AIR 2005 SC 1000: 2005 Cri LJ 1428 ➢**165, 1647** ➢➢**5017**
State of U. P. *v.* Sattan, (2009) 4 SCC 736 ➢**3902**
State of U. P. ; Satto *See* Satto *v.* State of U. P.
State of U. P. ; Satyavir Singh *See* Satyavir Singh *v.* State of U. P.
State of U. P. ; Shailendra Pratap *See* Shailendra Pratap *v.* State of U. P.
State of U. P. ; Shakil Ahmed *See* Shakil Ahmed *v.* State of U. P.
State of U. P. ; Shambhoo Nath Misra *See* Shambhoo Nath Misra *v.* State of U. P.
State of U. P. *v.* Shambhu Nath Singh, (2001) 4 SCC 667: 2001 SCC (Cri) 798: AIR 2001 SC 1403: 2001 All LJ 835: 2001 Cri LJ 1740: (2001) 2 KLT 159 ➢**3131**
State of U. P. ; Shamim Ara *See* Shamim Ara *v.* State of U. P.
State of U. P. ; Shamshul Kanwar *See* Shamshul Kanwar *v.* State of U. P.
State of U. P. *v.* Shankar, AIR 1962 SC 1154: 1962 Supp (3) SCR 213: (1962) 2 Cri LJ 261 ➢➢**8963**
State of U. P. ; Shanker *See* Shanker *v.* State of U. P.
State of U. P. *v.* Shanker, 1980 Supp SCC 489: 1981 SCC (Cri) 428: AIR 1981 SC 897: 1981 Cri LJ 23 ➢**1422**
State of U. P. ; Sharvan Kumar *See* Sharvan Kumar *v.* State of U. P.
State of U. P. ; Shaukin Singh *See* Shaukin Singh *v.* State of U. P.
State of U. P. ; Sheela Rani *See* Sheela Rani *v.* State of U. P.
State of U. P. ; Sher Singh *See* Sher Singh *v.* State of U. P.
State of U. P. ; Shiv Nandan Dixit *See* Shiv Nandan Dixit *v.* State of U. P.
State of U. P. ; Shiv Ram *See* Shiv Ram *v.* State of U. P.
State of U. P. *v.* Shobhanath, (2009) 6 SCC 600 ➢**1095, 1493**
State of U. P. *v.* Shri Kishan, (2005) 10 SCC 420: 2005 SCC (Cri) 1568: AIR 2005 SC 1250: 2005 Cri LJ 333 ➢**162, 164**
State of U. P. ; Shri Ram *See* Shri Ram *v.* State of U. P.
State of U. P. ; Shrilekha Vidyarthi (Kumari) *See* Shrilekha Vidyarthi (Kumari) *v.* State of U. P.
State of U. P. ; Shyam Behari *See* Shyam Behari *v.* State of U. P.
State of U. P. ; Shyam Niranjan Dubey *See* Shyam Niranjan Dubey *v.* State of U. P.
State of U. P. *v.* Shyam Sunder, (2000) 10 SCC 49 ➢**1099**
State of U. P. *v.* Sikandar Ali, (1998) 4 SCC 298: 1998 SCC (Cri) 926: AIR 1998 SC 1862: 1998 All LJ 1310 ➢**1680**
State of U. P. *v.* Singhara Singh, AIR 1964 SC 358: (1964) 4 SCR 485: (1964) 1 Cri LJ 263 (2) ➢➢**8044, 9267**
State of U. P. ; Sita Ram *See* Sita Ram *v.* State of U. P.
State of U. P. ; Sone Lal *See* Sone Lal *v.* State of U. P.
State of U. P. ; Subash *See* Subash *v.* State of U. P.
State of U. P. ; Subedar Tewari *See* Subedar Tewari *v.* State of U. P.
State of U. P. ; Subhash *See* Subhash *v.* State of U. P.
State of U. P. ; Subhash Chandra *See* Subhash Chandra *v.* State of U. P.
State of U. P. ; Sudha Verma *See* Sudha Verma *v.* State of U. P.
State of U. P. *v.* Sughar Singh, (1978) 1 SCC 178: 1978 SCC (Cri) 83: AIR 1978 SC 191: 1978 Cri LJ 141: 1978 ALJ 466 ➢**792, 1201**
State of U. P. ; Sukhar *See* Sukhar *v.* State of U. P.
State of U. P. *v.* Sukhbasi, 1985 Supp SCC 79: 1985 SCC (Cri) 387: AIR 1985 SC 1224: 1985 Cri LJ 1479 ➢➢**5426**
State of U. P. *v.* Sukhpal Singh, (2009) 4 SCC 385 ➢**3988**
State of U. P. ; Suman Pandey *See* Suman Pandey *v.* State of U. P.
State of U. P. ; Sunder Singh *See* Sunder Singh *v.* State of U. P.
State of U. P. ; Suraj Pal *See* Suraj Pal *v.* State of U. P.

State of U. P. ; Suraj Singh *See* Suraj Singh *v.* State of U. P.
State of U. P. *v.* Surendra Kumar, (2005) 9 SCC 161 ≻≻**7109, 7660**
State of U. P. ; Surendra Pal *See* Surendra Pal *v.* State of U. P.
State of U. P. ; Surendra Pratap Singh *See* Surendra Pratap Singh *v.* State of U. P.
State of U. P. ; Surendra Singh *See* Surendra Singh *v.* State of U. P.
State of U. P. ; Suresh *See* Suresh *v.* State of U. P.
State of U. P. ; Suresh Chandra *See* Suresh Chandra *v.* State of U. P.
State of U. P. *v.* Suresh Chandra Shrivastava, (1984) 3 SCC 92: 1984 SCC (Cri) 415: AIR 1984 SC 1108: 1984 Cri LJ 926 ≻**2285, 2286**
State of U. P. *v.* Surinder Pal Singh, (1989) 2 SCC 470: (1989) 10 ATC 442: 1989 SCC (Cri) 402: AIR 1989 SC 811: 1989 Cri LJ 998 ≻**180**
State of U. P. ; Surinder Singh *See* Surinder Singh *v.* State of U. P.
State of U. P. ; Sushil *See* Sushil *v.* State of U. P.
State of U. P. ; Tahsildar Singh *See* Tahsildar Singh *v.* State of U. P.
State of U. P. ; Teeka *See* Teeka *v.* State of U. P.
State of U. P. ; Tehzibul Husain *See* Tehzibul Husain *v.* State of U. P.
State of U. P. ; Tej Bahadur Singh *See* Tej Bahadur Singh *v.* State of U. P.
State of U. P. ; Tori Singh *See* Tori Singh *v.* State of U. P.
State of U. P. ; Tulsi Ram *See* Tulsi Ram *v.* State of U. P.
State of U. P. *v.* Udai Narayan, (1999) 8 SCC 741: AIR 1999 SC 3845: (1999) 114 ELT 374 ≻≻**6064**
State of U. P. ; Uma Nath Pandey *See* Uma Nath Pandey *v.* State of U. P.
State of U. P. ; V. D. Chaudhary *See* V. D. Chaudhary *v.* State of U. P.
State of U. P. ; V. D. Jhingan *See* V. D. Jhingan *v.* State of U. P.
State of U. P. ; V. V. S. Rama Sharma *See* V. V. S. Rama Sharma *v.* State of U. P.
State of U. P. *v.* Veer Singh, (2004) 10 SCC 117: 2004 SCC (Cri) 1672: 2004 All LJ 2809: 2004 Cri LJ 3835 ≻**1828** ≻≻**5783**
State of U. P. ; Vijai Singh *See* Vijai Singh *v.* State of U. P.
State of U. P. ; Vijay Bahadur Singh *See* Vijay Bahadur Singh *v.* State of U. P.
State of U. P. ; Vinesh Pundir *See* Vinesh Pundir *v.* State of U. P.
State of U. P. ; Vinod Kumar *See* Vinod Kumar *v.* State of U. P.
State of U. P. *v.* Vinod Kumar, (1992) 2 SCC 536: 1992 SCC (Cri) 505: AIR 1992 SC 1011: 1992 Cri LJ 1115 ≻**4021**
State of U. P. ; Vinod Mohan Avasthi *See* Vinod Mohan Avasthi *v.* State of U. P.
State of U. P. ; Virendra Kumar *See* Virendra Kumar *v.* State of U. P.
State of U. P. ; Vivek Kumar *See* Vivek Kumar *v.* State of U. P.
State of U. P. *v.* Vyas Tewari, 1980 Supp SCC 433: 1981 SCC (Cri) 361: AIR 1981 SC 635: 1981 Cri LJ 38 ≻**1557**
State of U. P. ; Wariyam Singh *See* Wariyam Singh *v.* State of U. P.
State of U. P. ; Wasim Khan *See* Wasim Khan *v.* State of U. P.
State of U. P. ; Wilayat Khan *See* Wilayat Khan *v.* State of U. P.
State of U. P. ; Zahoor *See* Zahoor *v.* State of U. P.
State of U. P. *v.* Zakaullah, (1998) 1 SCC 557: 1998 SCC (Cri) 456: AIR 1998 SC 1474: 1998 All LJ 290: 1998 Cri LJ 863 ≻**287**
State of UT, Chandigarh ; Jai Pal *See* Jai Pal *v.* State of UT, Chandigarh
State of UT, Chandigarh ; Thaman Kumar *See* Thaman Kumar *v.* State of UT, Chandigarh
State of Uttarakhand ; Paramjeet Singh *See* Paramjeet Singh *v.* State of Uttarakhand
State of Uttarakhand ; Subhash Kumar *See* Subhash Kumar *v.* State of Uttarakhand
State of Uttarakhand ; Vikas Kumar Roorkewal *See* Vikas Kumar Roorkewal *v.* State of Uttarakhand
State of Uttaranchal ; Aftab Ahmad Anasari *See* Aftab Ahmad Anasari *v.* State of Uttaranchal
State of Uttaranchal ; Akhtar *See* Akhtar *v.* State of Uttaranchal
State of Uttaranchal ; Amar Nath Shukla *See* Amar Nath Shukla *v.* State of Uttaranchal
State of Uttaranchal ; Chaman *See* Chaman *v.* State of Uttaranchal

State of Uttaranchal ; Fakhruddin Ahmad *See* Fakhruddin Ahmad *v.* State of Uttaranchal

State of Uttaranchal ; Inder Mohan Goswami *See* Inder Mohan Goswami *v.* State of Uttaranchal

State of Uttaranchal ; Nisar Khan *See* Nisar Khan *v.* State of Uttaranchal

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Sultana Khatoon ; Mohd. Naim Siddiqui *See* Mohd. Naim Siddiqui *v.* Sultana Khatoon

Suman *v.* State of Rajasthan, (2010) 1 SCC 250 ➢**3351, 3357, 3358**

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Suna *v.* State of Orissa, (1976) 4 SCC 307: 1976 SCC (Cri) 601 ➢➢**9040**

Sundar ; State of T. N. *See* State of T. N. *v.* Sundar

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Sunder Singh *v.* State of Punjab, AIR 1962 SC 1211: 1962 Supp (2) SCR 654: (1962) 2 Cri LJ 290 ➢➢**8930**

Sunder Singh *v.* State of U. P., AIR 1956 SC 411: 1956 Cri LJ 801 ➢➢**7772, 7774**

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Sunderlal Kanaiyalal Bhatija *v.* State of Maharashtra, (2010) 4 SCC 414 ➢**1575, 1576**

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Sunil ; State (Govt. of NCT of Delhi) *See* State (Govt. of NCT of Delhi) *v.* Sunil

Sunil Batra *v.* Delhi Admn., (1978) 4 SCC 494: 1979 SCC (Cri) 155: AIR 1978 SC 1675: 1978 Cri LJ 1741 ➢**3896**

Sunil Chandra Roy ; Nagindra Bala Mitra *See* Nagindra Bala Mitra *v.* Sunil Chandra Roy

Sunil K. Sinha *v.* State of Bihar, (1998) 5 SCC 607: 1998 SCC (Cri) 1366: AIR 1999 SC 1533 ➢➢**6708**

Sunil Kumar *v.* Escorts Yamaha Motors Ltd., (1999) 8 SCC 468: 1999 SCC (Cri) 1466: AIR 2000 SC 27 ➢➢**7148, 7515**

Sunil Kumar *v.* State (Govt. of NCT of Delhi), (2003) 11 SCC 367 ➢**738**

Sunil Kumar *v.* State of M. P., (1997) 10 SCC 570: 1997 SCC (Cri) 879: AIR 1997 SC 940: 1997 Cri LJ 1183 ➢**641, 1827**

Sunil Kumar *v.* State of Rajasthan, (2005) 9 SCC 283: AIR 2005 SC 1096: 2005 SCC (Cri) 1230: 2005 Cri LJ 1402 ➢**944, 1670**

Sunil Kumar Pal *v.* Phota Sk., (1984) 4 SCC 533: 1985 SCC (Cri) 18: AIR 1984 SC 1591 ➢**128** ➢➢**6084**

Sunil Kumar Paul *v.* State of W. B., AIR 1965 SC 706: (1964) 7 SCR 70: (1965) 1 Cri LJ 630 ➢➢**8396, 9306**

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Supdt. & Remembrancer of Legal Affairs *v.* S. K. Majumdar, 1983 SCC (Cri) 187 ≻≻**5937**

Supdt. & Remembrancer of Legal Affairs *v.* Satyen Bhowmick, (1981) 2 SCC 109: 1981 SCC (Cri) 342: AIR 1981 SC 917: (1981) 2 SCR 661: 1981 Cri LJ 341 ≻**3890** ≻≻**9339**

Supdt. & Remembrancer of Legal Affairs *v.* Usha Ranjan Roy Choudhury, 1986 Supp SCC 190: 1986 SCC (Cri) 311: AIR 1986 SC 1655: 1986 Cri LJ 1248 ≻≻**9347, 9348**

Supdt. and Remembrancer of Legal Affairs *v.* Anil Kumar Bhunja, (1979) 4 SCC 274: 1979 SCC (Cri) 1038: AIR 1980 SC 52: 1979 Cri LJ 1390 ≻**2794, 2808** ≻≻**6945**

Supdt. and Remembrancer of Legal Affairs *v.* Ashutosh Ghosh, (1979) 4 SCC 381: 1979 SCC (Cri) 991: AIR 1979 SC 1195 ≻≻**7098, 7677, 8318, 9366**

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Supdt., Central Jail ; Boucher Pierre Andre *See* Boucher Pierre Andre *v.* Supdt., Central Jail

Supdt., Central Jail ; Raj Narain *See* Raj Narain *v.* Supdt., Central Jail

Supdt., Distt. Jail ; R. K. Garg *See* R. K. Garg *v.* Supdt., Distt. Jail

Supdt., Narcotics Control Bureau, Chennai *v.* R. Paulsamy, (2000) 9 SCC 549: 2001 SCC (Cri) 648: AIR 2000 SC 3661 ≻≻**6858**

Supdt., Nari Niketan, Delhi ; Gian Devi *See* Gian Devi *v.* Supdt., Nari Niketan, Delhi

Supdt. of Central Jail ; G. V. Ramanaiah *See* G. V. Ramanaiah *v.* Supdt. of Central Jail

Supdt. of Customs *v.* Bhanabhai Khalpabhai Patel, 1993 Supp (1) SCC 475: 1993 SCC (Cri) 258: AIR 1992 SC 1583 ≻≻**5486**

Supdt. of Customs ; Ravindran *See* Ravindran *v.* Supdt. of Customs

Supdt. of Police ; K. Anbazhagan *See* K. Anbazhagan *v.* Supdt. of Police

Supdt. of Police, CBI *v.* Tapan Kumar Singh, (2003) 6 SCC 175: 2003 SCC (Cri) 1305: AIR 2003 SC 4140: 2003 Cri LJ 2322 ≻**603, 644, 717, 1351, 1843** ≻≻**6034**

Supdt. of Police, Karnataka Lokayukta *v.* B. Srinivas, (2008) 8 SCC 580: (2008) 3 SCC (Cri) 587: (2008) 69 AIC 49 (SC) ≻**1291** ≻≻**7126, 7330, 7618, 7624**

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Superintendent and Remembrancer of Legal Affairs, Govt. of W. B. ; Dhirendra Kumar *See* Dhirendra Kumar *v.* Superintendent and Remembrancer of Legal Affairs, Govt. of W. B.

Supreme Court Legal Aid Committee *v.* Union of India, (1994) 6 SCC 731: 1995 SCC (Cri) 39 ≻**3132** ≻≻**6549**

Suraj Bhan ; Kewal Krishan *See* Kewal Krishan *v.* Suraj Bhan

Suraj Bhan *v.* Om Prakash, (1976) 1 SCC 886: 1976 SCC (Cri) 208: AIR 1976 SC 648: 1976 Cri LJ 577 ≻**4012**

Suraj Kumar ; Pratibha Rani *See* Pratibha Rani *v.* Suraj Kumar

Suraj Mal Saraf *v.* Collector of Customs, (1987) 2 SCC 283: 1987 SCC (Cri) 348: AIR 1987 SC 1158: 1987 Cri LJ 1057: (1987) 11 ECC 367 ≻≻**5445**

Suraj Pal *v.* State of Haryana, (1995) 2 SCC 64: 1995 SCC (Cri) 313 ≻**827**

Suraj Pal *v.* State of U. P., AIR 1955 SC 419: (1955) 1 SCR 1332: 1955 Cri LJ 1004 ≻≻**8367, 8393, 8655, 8945**

Suraj Pal *v.* State of U. P., 1994 Supp (1) SCC 528: 1994 SCC (Cri) 701: AIR 1994 SC 748: 1994 Cri LJ 928: (1994) 1 Crimes 502 ≻**890**

Suraj Singh *v.* State of U. P., (2008) 16 SCC 686: (2008) 5 All LJ 646: (2009) 75 AIC 227 (SC) ≻≻**5404**

Surat Singh ; Satbir *See* Satbir *v.* Surat Singh

Surat Singh *v.* State of Punjab, (1976) 4 SCC 311: 1976 SCC (Cri) 605: AIR 1977 SC 705: 1977 Cri LJ 347 ≻≻**5197**

Suratlal *v.* State of M. P., (1982) 1 SCC 488: 1982 SCC (Cri) 260: AIR 1982 SC 1224: 1982 Cri LJ 1577 ≻≻**5207**

Surbhan ; State of M. P. *See* State of M. P. *v.* Surbhan

Surender ; State of Haryana *See* State of Haryana *v.* Surender

Surendra Chauhan *v.* State of M. P., (2000) 4 SCC 110: 2000 SCC (Cri) 772: AIR 2000 SC 1436: 2000 Cri LJ 1789 ≻**3223**

Surendra Gupta *v.* Bhagwan Devi, (1994) 4 SCC 657: 1994 SCC (Cri) 1318: AIR 1996 SC 509 ≻**3595**

Surendra Kumar *v.* State of Rajasthan, (1979) 4 SCC 718: 1980 SCC (Cri) 158: AIR 1979 SC 1048: 1979 Cri LJ 907 ≻**3855**

Surendra Kumar ; State of U. P. *See* State of U. P. *v.* Surendra Kumar

Surendra Kumar Bhatia *v.* Kanhaiya Lal, (2009) 12 SCC 184: AIR 2009 SC 1961 ≻≻**7619**

Surendra Nath Mohanty *v.* State of Orissa, (1999) 5 SCC 238: 1999 SCC (Cri) 998: AIR 1999 SC 2181: 1999 Cri LJ 3496 ≻**3498**

Surendra Pal *v.* State of U. P., (2010) 9 SCC 399 ≻**845, 1071, 2085**

Surendra Pal Shivbalakpal *v.* State of Gujarat, (2005) 3 SCC 127: 2005 SCC (Cri) 653: AIR 2004 SC 4862: 2004 Cri LJ 4642 ≻**2890**

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Surendra Singh *v.* State of U. P., AIR 1954 SC 194: 1954 SCR 330: 1954 Cri LJ 475 ≻≻**8707, 9298**

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Suresh Chand Jain *v.* State of M. P., (2001) 2 SCC 628: 2001 SCC (Cri) 377: AIR 2001 SC 571 ≻**1340, 1391**

Suresh Chandra *v.* State of U. P., (2005) 6 SCC 130: 2005 SCC (Cri) 1364: AIR 2005 SC 3120: 2005 Cri LJ 3449 ≻≻**6286, 6303**

Suresh Chandra Bahri *v.* State of Bihar, 1995 Supp (1) SCC 80: 1995 SCC (Cri) 60: AIR 1994 SC 2420: 1994 Cri LJ 3271 ≻**3101, 3118, 3121, 3201, 3726**

Suresh Chandra Shrivastava ; State of U. P. *See* State of U. P. *v.* Suresh Chandra Shrivastava

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Suresh Gupta (Dr.) *v.* Govt. (NCT of Delhi), (2004) 6 SCC 422: 2004 SCC (Cri) 1785: AIR 2004 SC 4091: (2004) 3 KLT 14: (2004) 112 DLT 866 ≻≻**7654**

Suresh Kaushal ; State of M. P. *See* State of M. P. *v.* Suresh Kaushal

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Suresh Kumar *v.* State (NCT of Delhi), (2001) 10 SCC 338 ≻≻**5818**

Suresh Kumar Bhikamchand Jain *v.* Pandey Ajay Bhushan, (1998) 1 SCC 205: 1998 SCC (Cri) 1: AIR 1998 SC 1524: 1998 Cri LJ 1242 ≻**2416**

Suresh Kumar Somabhai Rana *v.* Ashok Kumar Haraklal Mittal, (2009) 14 SCC 292: (2003) 1 Guj LR 686 ≻≻**6473, 6507**

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Suresh Rai *v.* State of Bihar, (2000) 4 SCC 84: 2000 SCC (Cri) 764: AIR 2000 SC 2207: 2000 Cri LJ 3457 ➢**2095**

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Surjit Kaur *v.* D. S. Kapoor, (2001) 9 SCC 468 ➢**2962**

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T. Vengama Naidu *v.* T. Dora Swamy Naidu, (2007) 12 SCC 93: (2008) 2 SCC (Cri) 231: (2007) 52 AIC 65 (SC) ≻≻**7474**

T. Venkatesh Murthy ; State *See* State *v.* T. Venkatesh Murthy

Tahsildar Singh *v.* State of U. P., AIR 1959 SC 1012: 1959 Supp (2) SCR 875: 1959 Cri LJ 1231 ≻≻**7860, 7935, 7942, 7943, 7947, 7971, 7975, 7976, 7977, 7978, 7979, 7988, 7989**

Takht Singh *v.* State of M. P., (2001) 10 SCC 463 ≻≻**6711**

Talab Haji Hussain *v.* Madhukar Purshottam Mondkar, AIR 1958 SC 376: 1958 SCR 1226: 1958 Cri LJ 701 ≻≻**9181, 9182, 9368, 9382**

Tallurri Venkaiah Naidu *v.* Public Prosecutor, High Court of A. P., (1996) 11 SCC 355: 1997 SCC (Cri) 175: AIR 1997 SC 353 ≻≻**5139**

Tama *v.* State of W. B., (2007) 10 SCC 493: (2008) 1 SCC (Cri) 61: 2007 Cri LJ 4724: (2007) 59 AIC 268 (SC) ≻**1133**

Tamil Nadu *See* T. N.

Tamil Nadu Civil Supplies *See* TNCS

Tamil Nadu Wakf Board *v.* Syed Fatima Nachi, (1996) 4 SCC 616: 1996 SCC (Cri) 810: AIR 1996 SC 2423 ≻**415**

Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) *v.* S. C. Sekar, (2009) 2 SCC 784 ≻≻**7112**

Tanveer Aquil *v.* State of M. P., 1990 Supp SCC 63: 1990 SCC (Cri) 618 ≻**3469, 3886**

Tanviben Pankajkumar Divetia *v.* State of Gujarat, (1997) 7 SCC 156: 1997 SCC (Cri) 1004: AIR 1997 SC 2193: 1997 Cri LJ 2535: (1997) 1 Guj LH 851: (1997) 2 Guj LR 1346 ≻**2707, 3236** ≻≻**5882, 8986**

Tapan Kumar Singh ; CBI *See* CBI *v.* Tapan Kumar Singh

Tapan Kumar Singh ; Supdt. of Police, CBI *See* Supdt. of Police, CBI *v.* Tapan Kumar Singh

Tapas D. Neogy ; State of Maharashtra *See* State of Maharashtra *v.* Tapas D. Neogy

Tapinder Singh *v.* State of Punjab, (1970) 2 SCC 113: 1970 SCC (Cri) 328: AIR 1970 SC 1566: 1970 Cri LJ 1415 ≻≻**7862, 7987**

Tara Dutt ; State of H. P. *See* State of H. P. *v.* Tara Dutt

Tara Singh *v.* State, AIR 1951 SC 441: 1951 SCR 729: (1951) 52 Cri LJ 1491 ≻≻**8070, 8079, 8139, 8310, 8480, 8493, 8578, 8579, 8628, 8640**

Tara Singh *v.* State of M. P., 1980 Supp SCC 466: 1981 SCC (Cri) 375: AIR 1981 SC 950: 1981 Cri LJ 483 ≻≻**5208**

Tara Singh *v.* State of Punjab, 1991 Supp (1) SCC 536: 1991 SCC (Cri) 710: AIR 1991 SC 63: (1991) 28 ACC 93 ≻**981, 1033**

Tarachand *v.* State of Haryana, (1971) 2 SCC 579: 1971 SCC (Cri) 593: AIR 1971 SC 1891: 1971 Cri LJ 1411 ≻≻**7868, 8465**

Tarachand Jain ; State of Rajasthan *See* State of Rajasthan *v.* Tarachand Jain

Taraknath Kar *v.* Lipika Kar, (2008) 5 SCC 387: (2008) 2 SCC (Cri) 618: AIR 2008 SC 2310 ≻≻**5930**

Taran Singh ; State of Rajasthan *See* State of Rajasthan *v.* Taran Singh

Tarkeshwar Sahu *v.* State of Bihar (Now Jharkhand), (2006) 8 SCC 560: (2006) 3 SCC (Cri) 556 ≻**2708**

Tarkeshwar Singh ; Shashikant Singh *See* Shashikant Singh *v.* Tarkeshwar Singh

Tarlok Singh *v.* State of Punjab, (1973) 2 SCC 458: 1973 SCC (Cri) 872: AIR 1974 SC 1797: 1974 Cri LJ 1265 ≻≻**7735**

Tarlok Singh *v.* State of Punjab, (1977) 3 SCC 218: 1977 SCC (Cri) 490: AIR 1977 SC 1747: 1977 Cri LJ 1139 ≻**2888, 2891, 2902**

Tarsem Singh *v.* State of Punjab, (2008) 16 SCC 155: AIR 2009 SC 1454: (2009) 73 AIC 50 (SC): (2009) 2 ECrN 520 (SC) ≻≻**5623**

Tarun K. Shah *v.* C. R. Alimchandani, (2001) 9 SCC 728 ≻≻**7436**

Tata Engg. and Locomotive Co. *See* TELCO

Tata Iron and Steel Co. *See* TISCO

Teeka *v.* State of U. P., AIR 1961 SC 803: (1962) 1 SCR 75: (1961) 1 Cri LJ 859: 1961 All Cri R 198: 1961 MPC 441 ≻≻**9280**

Tehzibul Husain *v.* State of U. P., (2000) 3 SCC 688: 2000 SCC (Cri) 739 ≻**3966**

Tej Bahadur Singh *v.* State of U. P., (1970) 3 SCC 779 ≻≻**7767**

Teja Ram ; State of Rajasthan *See* State of Rajasthan *v.* Teja Ram

Teja Singh ; State of Rajasthan *See* State of Rajasthan *v.* Teja Singh

Teja Singh ; Sukhdev Singh *See* Sukhdev Singh *v.* Teja Singh

Tek Chand *v.* Tek Chand, Supdt. of Police, 1986 Supp SCC 533: 1987 SCC (Cri) 163: AIR 1987 SC 349 ≻**3540**

Tek Chand, Supdt. of Police ; Tek Chand *See* Tek Chand *v.* Tek Chand, Supdt. of Police

Tek Narayan Prasad Yadav *v.* State of Bihar, 1999 SCC (Cri) 356 ≻**3393**

Tek Singh ; State of Haryana *See* State of Haryana *v.* Tek Singh

Terumo Penpol Ltd. *v.* NCT of Delhi, (2005) 10 SCC 273: 2005 SCC (Cri) 1513 ≻≻**7276, 7529**

Testa Setalvad *v.* State of Gujarat, (2004) 10 SCC 88: 2004 SCC (Cri) 1675: AIR 2004 SC 1979: 2004 Cri LJ 2022 ≻**3637**

TGN Kumar *v.* State of Kerala, (2011) 2 SCC 772 ≻**2589, 2593, 2594, 3323**

Thadi Narayana ; State of A. P. *See* State of A. P. *v.* Thadi Narayana

Thaivalappil Kunjuvaru Vareed *v.* State of Travancore-Cochin, AIR 1956 SC 142: (1955) 2 SCR 1022: 1956 Cri LJ 315 ≻≻**8763**

Thakara Besra ; State of Orissa *See* State of Orissa *v.* Thakara Besra

Thakarda Lalaji Gamaji *v.* State of Gujarat, (1974) 3 SCC 639: 1974 SCC (Cri) 169: AIR 1974 SC 1351: 1974 Cri LJ 612 ≻**698, 1243**

Thakarde Malaji Ramsangji *v.* State of Gujarat, 1993 SCC (Cri) 1022: AIR 1993 SC 1678: 1993 Cri LJ 1059 ≻≻**5526**

Thakkidiram Reddy ; State of A. P. *See* State of A. P. *v.* Thakkidiram Reddy

Thakore Dolji Vanvirji *v.* State of Gujarat, 1993 Supp (2) SCC 534: 1993 SCC (Cri) 704: AIR 1993 SC 209: (1993) 1 GLH 1040 ≻**1053**

Thakur Das *v.* State of M. P., (1978) 1 SCC 27: 1978 SCC (Cri) 21: AIR 1978 SC 1: 1978 Cri LJ 1: 1978 MLJ (Cri) 255: (1977) 3 ALR 720: (1978) 1 ALT 81 ≻≻**5936, 9017, 9018**

Thakur Muneshwar Nath Singh ; Ram Sharan Yadav *See* Ram Sharan Yadav *v.* Thakur Muneshwar Nath Singh

Thakur Prasad *v.* State of M. P., AIR 1954 SC 30: 1954 Cri LJ 261 ≻≻**8802, 8803**

Thakur Ram *v.* State of Bihar, AIR 1966 SC 911: (1966) 2 SCR 740: 1966 Cri LJ 700 ≻≻**8280, 8285, 8289, 8691, 9024, 9025, 9026**

Thakurdas ; Gomti *See* Gomti *v.* Thakurdas

Thaman Kumar *v.* State of UT, Chandigarh, (2003) 6 SCC 380: 2003 SCC (Cri) 1362: AIR 2003 SC 3975: 2003 Cri LJ 3070 ≻**643** ≻≻**5737**

Thamisharasi ; Union of India *See* Union of India *v.* Thamisharasi

Thanedar Singh *v.* State of M. P., (2002) 1 SCC 487: 2002 SCC (Cri) 153: AIR 2002 SC 175: 2002 Cri LJ 254 ≻**939, 2094** ≻≻**5395**

Thanga Prakash *v.* State of Karnataka, (2008) 14 SCC 698 ≻**3987** ≻≻**5520**

Thangavelu ; Sivasuriyan *See* Sivasuriyan *v.* Thangavelu

Thankachan *v.* State of Kerala, (2008) 17 SCC 760 ≻≻**5354**

Thankappan Nadar *v.* Gopala Krishnan, (2002) 9 SCC 393 ≻≻**5934**

Thippaswamy *v.* State of Karnataka, (1983) 1 SCC 194: 1983 SCC (Cri) 160: AIR 1983 SC 747: 1983 Cri LJ 1271 ≻**2829**

Thiru Sudali *v.* State of T. N., (1999) 9 SCC 88: 1999 SCC (Cri) 370: AIR 1999 SC 1434 ≻≻**5438**

Thirukkural Perumal ; State of T. N. *See* State of T. N. *v.* Thirukkural Perumal

Thokchom Bira Singh ; Manipur Admn. *See* Manipur Admn. *v.* Thokchom Bira Singh

Thomas Manjaly (Dr.) ; Tomy Jacob Kattikkaran *See* Tomy Jacob Kattikkaran *v.* Thomas Manjaly (Dr.)

ThSuzanne Louise Martin *v.* State of Rajasthan, (2009) 4 SCC 376 ≻≻**5835**

Thulia Kali *v.* State of T. N., (1972) 3 SCC 393: 1972 SCC (Cri) 543: AIR 1973 SC 501: (1972) 3 SCR 622: 1972 Cri LJ 1296: (1974) 1 MLJ 32 ≻≻**7853**

Tika Ram *v.* State of M. P., (2007) 15 SCC 760 ≻**753**

Tikaram Agarwala ; Hareram Satpathy *See* Hareram Satpathy *v.* Tikaram Agarwala

Tilkeshwar Singh *v.* State of Bihar, AIR 1956 SC 238: (1955) 2 SCR 1043: 1956 Cri LJ 441 >>**7929, 8661, 8961**

Tomy Jacob Kattikkaran *v.* Thomas Manjaly (Dr.), (1997) 11 SCC 24: 1997 SCC (Cri) 1184: AIR 1998 SC 366 >**2972**

Toran Singh *v.* State of M. P., (2002) 6 SCC 494: 2002 SCC (Cri) 1377: AIR 2002 SC 2807 >**3938**

Tori Singh *v.* State of U. P., AIR 1962 SC 399: (1962) 3 SCR 580: (1962) 1 Cri LJ 469 >>**7963**

Tota Singh *v.* State of Punjab, (1987) 2 SCC 529: 1987 SCC (Cri) 381: AIR 1987 SC 1083: 1987 Cri LJ 974 >>**5220**

Toyo Engg. India Ltd. *v.* Collector of Customs, (2001) 9 SCC 608 >**3616**

Transmission Corpn. of A. P. *v.* Ch. Prabhakar, (2004) 5 SCC 551: 2004 SCC (Cri) 1681 >**4096** >>**6041**

Transport Commr. *v.* S. Sardar Ali, Bus Owner, (1983) 4 SCC 245: 1983 SCC (Cri) 827: AIR 1983 SC 1225: 1983 Cri LJ 1506 >**49, 310**

Tribhuvan Nath ; Delhi Administration *See* Delhi Administration *v.* Tribhuvan Nath

Tribhuvan Nath *v.* State of Maharashtra, (1972) 3 SCC 511: 1972 SCC (Cri) 604: AIR 1973 SC 450: 1972 Cri LJ 1277 >>**8669**

Trilok Chand Jain *v.* State of Delhi, (1975) 4 SCC 761: 1975 SCC (Cri) 725: AIR 1977 SC 666: (1976) 1 SCR 348: 1977 Cri LJ 254 >**3596** >>**8593**

Trimbak *v.* State of M. P., AIR 1954 SC 39: 1954 Cri LJ 335 >>**8859**

Trisuns Chemical Industry *v.* Rajesh Agarwal, (1999) 8 SCC 686: AIR 1999 SC 3499: 1999 Cri LJ 4325 >**2198** >>**7455**

Triveniben *v.* State of Gujarat, (1988) 4 SCC 574: 1989 SCC (Cri) 25: AIR 1989 SC 142 >>**6210**

Triveniben *v.* State of Gujarat, (1989) 1 SCC 678: 1989 SCC (Cri) 248: AIR 1989 SC 1335 >**3652, 3654, 3911** >>**6209**

Tukaram *v.* State of Maharashtra, (1979) 2 SCC 143: 1979 SCC (Cri) 381: AIR 1979 SC 185: 1978 Cri LJ 1864: (1979) 16 ACC 7 >>**5179**

Tukaram Annaba Chavan *v.* Machindra Yeshwant Patil, (2001) 3 SCC 33: 2001 SCC (Cri) 430: AIR 2001 SC 994: 2001 Cri LJ 1164 >**2565**

Tukaram G. Gaokar *v.* R. N. Shukla, AIR 1968 SC 1050: (1968) 3 SCR 422: 1968 Cri LJ 1234 >>**8671**

Tula Ram *v.* Kishore Singh, (1977) 4 SCC 459: 1977 SCC (Cri) 621: AIR 1977 SC 2401: 1978 Cri LJ 8 >**1386, 2179, 2202**

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Tulshiram Bhanudas Kamble ; State of Maharashtra *See* State of Maharashtra *v.* Tulshiram Bhanudas Kamble

Tulsi Ram *v.* State of M. P., 1987 Supp SCC 464: 1988 SCC (Cri) 104 >>**5082**

Tulsi Ram *v.* State of U. P., AIR 1963 SC 666: 1963 Supp (1) SCR 382: (1963) 1 Cri LJ 623: ILR (1963) 1 All 840 >>**8183, 8322**

Tulsi Ram *v.* State of U. P., (1982) 3 SCC 478: 1983 SCC (Cri) 104 >**2921**

Tulsi Singh *v.* State of Punjab, (1996) 6 SCC 63: 1996 SCC (Cri) 1118: AIR 1996 SC 3477 >**1759**

Tulsidas Mundhra ; State of W. B. *See* State of W. B. *v.* Tulsidas Mundhra

Tulsiram Kanu *v.* State, AIR 1954 SC 1: 1954 Cri LJ 225 >>**8861, 9210**

Turabali Gulamhussain Hirani ; State of Gujarat *See* State of Gujarat *v.* Turabali Gulamhussain Hirani

Tutul Kumari Sen *v.* State of Jharkhand, (2009) 13 SCC 495: AIR 2009 SC 2547: (2009) 3 CTC 408 (SC) >>**6054**

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U. Dhar *v.* State of Jharkhand, (2003) 2 SCC 219: 2003 SCC (Cri) 490: AIR 2003 SC 974: 2003 Cri LJ 1224 >**2243**

U. J. S. Chopra *v.* State of Bombay, AIR 1955 SC 633: (1955) 2 SCR 94: 1955 Cri LJ 1410 >>**8725, 8726, 8902, 8921, 8999, 9073, 9076, 9082, 9083, 9084, 9085, 9086**

U. P. Pollution Control Board *v.* Dr. Bhupendra Kumar Modi, (2009) 2 SCC 147 >**2596** >>**7271, 7545**

U. P. Pollution Control Board *v.* Modi Distillery, (1987) 3 SCC 684: 1987 SCC (Cri) 632: AIR 1988 SC 1128 **≻17, 2508**
U. P. Pollution Control Board *v.* Mohan Meakins Ltd., (2000) 3 SCC 745: AIR 2000 SC 1456: 2000 Cri LJ 1799: 2000 All LJ 872 **≻2551, 2578, 2582, 3341**
U. P. Shia Central Board of Wakf *v.* U. P. Sunni Central Board of Wakf, (2001) 5 SCC 162: AIR 2001 SC 2086 **≻574**
U. P. State Electricity Board *See* U. P. SEB
U. P. State Road Transport Corpn. *See* U. P. SRTC
U. P. Sunni Central Board of Wakf ; U. P. Shia Central Board of Wakf *See* U. P. Shia Central Board of Wakf *v.* U. P. Sunni Central Board of Wakf
U. Palaniappan *v.* Sub-Inspector of Police, (2005) 10 SCC 464: 2005 SCC (Cri) 1586 **≻≻6660**
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Udai Singh ; State of M. P. *See* State of M. P. *v.* Udai Singh
Uday Chakraborty *v.* State of W. B., (2010) 7 SCC 518 **≻1660**
Uday Chand *v.* Sk. Mohammad Abdullah, Chief Minister, J&K, (1983) 2 SCC 417: 1983 SCC (Cri) 529 **≻≻6383**
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Uday Madhukar Patil ; Sujata Uday Patil *See* Sujata Uday Patil *v.* Uday Madhukar Patil
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Ujjagar Singh *v.* State of Punjab, (2007) 13 SCC 90: 2008 Cri LJ 808 **≻3284**
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Uma Devi Nambiar *v.* T. C. Sidhan, (2004) 2 SCC 321: AIR 2004 SC 1772: (2004) 2 KLT 75: (2004) 2 CHN 56 **≻542**
Uma Nath Pandey *v.* State of U. P., (2009) 12 SCC 40: AIR 2009 SC 2375: (2009) 77 AIC 132 (SC): (2009) 237 ELT 241: (2009) 4 All LJ 515 **≻≻5919**
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Uma Shankar Singh *v.* State of Bihar, (2010) 9 SCC 479: (2010) 4 UPLJ 39 (SC) **≻2233, 2251**
Uma Shankar Sitani *v.* Commr. of Police, Delhi, (1996) 11 SCC 714 **≻898**
Umapada Kayal *v.* State of W. B., (2010) 1 SCC 161 **≻≻5222**
Umar Abdul Sakoor Sorathia *v.* Narcotic Control Bureau, (2000) 1 SCC 138: 2000 SCC (Cri) 200: AIR 1999 SC 2562: 1999 Cri LJ 3972 **≻1967, 2817, 2822**
Umar Mohammad *v.* State of Rajasthan, (2007) 14 SCC 711: 2008 Cri LJ 816: (2008) 61 AIC 52 (SC) **≻799, 3191**
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Union of India *v.* Atar Singh, (2003) 12 SCC 434 ➢➢**5822**

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Supreme Court on CrPC & Criminal Trial

Volume 2

CRIMINAL PROCEDURE CODE, 1973 *(contd.)*

Section 378 — Appeal against acquittal

— **S. 378** *See also* S. 417, Criminal Procedure Code, 1898, pp. 1190 et seq. in Vol. 2

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— S. 378(1) *See* Ss. 256(1) and 378(1)

(1) Generally

[5001] — S. 378 — Applicability — "Acquittal" — Meaning of — *Held, even when the trial Court does not entirely acquit the accused of the major offence and convicts him of a minor offence, it is still an "acquittal" — CrPC, 1898, S. 417(1)*

Having regard to the language employed in S. 417(1) of the 1898 Code and S. 2*(a)* of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, when an accused is acquitted of a major charge but convicted under a minor charge, it is still an acquittal under the major charge which may be challenged by the State before the High Court in an appeal under S. 417(1) of the 1898 Code. *Kishore Singh* v. *State of M.P.*, (1977) 4 SCC 524: 1977 SCC (Cri) 656: AIR 1977 SC 2267: 1977 Cri LJ 1937.

Bench Strength **2**. Coram: **P.K. Goswami** and *N.L. Untwalia*, JJ. [Date of decision: 10-10-1977]

[5002] — S. 378 — The figure "(5)" in S. 378(1) is inadvertently retained and should read as "(6)"

The reference to sub-section (5) in sub-section (1) is clearly an inadvertent mistake. Sub-section (5) of Section 378 applies only to application for special leave by a complainant. Sub-section (5) of Section 378 has no application to an appeal by the State Government or to an application for leave under sub-section (3). What the legislature clearly intended was to continue to provide that an appeal by the State Government would not be maintainable if special leave to appeal had been refused to a complainant. Thus sub-section (1) of Section 378 was to be subject to provisions of sub-section (6) and not sub-section (5) as inadvertently provided therein. Inadvertently the figure (5) in Section 417(1) was continued, without noticing that now under Section 378 the relevant provision was sub-section (6). The figure (5) in Section 378(1) is inadvertently retained. Thus in Section 378(1) the figure (6) will have to be read in place of the figure (5). *State (Delhi Admn.)* v. *Dharampal*, (2001) 10 SCC 372: AIR 2001 SC 2924.

Bench Strength **2**. Coram: *K.T. Thomas* and **S.N. Variava**, JJ. [Date of decision: 19-10-2001]

Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87, relied on

[5003] — Ss. 378 & 401 and 190 — Appeal against acquittal — Locus standi — *Held, in prosecution based on police report, State has a statutory right to appeal, while the private party does not — Private complainant, in such cases, can only excite general powers of revision by High Court*

The Division Bench in not allowing the condonation of delay has effectively dismissed the appeal in the sense that it has not allowed the State Government to proceed with the appeal for which there was a provision. This was a prosecution not based on a private complaint but on the police report. Therefore, the State Government had a right under Section 378(2) CrPC to file an appeal and very conspicuously the private party did not have that right. The private complainant, therefore, could only excite the general powers of revision by the High Court. (Para 20). *K. Ramachandran* v. *V.N. Rajan*, (2009) 14 SCC 569: (2009) 82 AIC 119 (SC): 2009 Cri LJ 4413.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *R.M. Lodha*, JJ. [Date of decision: 7-7-2009]

Akalu Ahir v. Ramdeo Ram, (1973) 2 SCC 583: 1973 SCC (Cri) 903, considered and relied on

[5004] — S. 378(1) — Mode of construction — Exception clause — *Held, all changes in wording and phrasing are presumed to be deliberate with the purpose to limit, qualify or enlarge the pre-existing law — Any construction that makes the exception (clause) with which the section opens unnecessary and redundant should be avoided*

As noticed above, the words—"save as otherwise provided in sub-section (2)"—were added in the 1973 Code; Section 417 of the 1898 Code did not have these words. It is a familiar rule of construction that all changes in the wording and phrasing may be presumed to have been deliberate and with the purpose to limit, qualify or enlarge the pre-existing law as the changes of the words employ. Any construction that makes the exception (clause) with which the section opens unnecessary and redundant should be avoided. (Para 36)

If the legislature had intended to give the right of appeal under Section 378(1) to the State Government in all cases of acquittal including the classes of cases referred to in sub-section (2), it would not have been necessary to incorporate the exception (clause) in the opening words. This objective could have been achieved without the use of these words as the erstwhile Section 417 of the 1898 Code enabled the State Government to appeal from all cases of acquittal while in the two types of cases mentioned in sub-section (2) thereof, an appeal from the order of acquittal could be filed under the direction of the Central Government as well. (Para 37)

Parliament in the 1973 Code re-enacted the provision for appeal from an order of acquittal with certain modifications. It changed the language by addition of the words—"save as otherwise provided in sub-section (2)". The alteration in language by addition of these words gives rise to an inference that the legislature made conscious changes in Section 378 (the 1973 Code). The addition of words in Section 378(1) by way of exception (clause) cannot be set at naught by giving the same interpretation which has been given to Section 417 (the 1898 Code). The language used in Section 417 (the 1898 Code) and Section 378 (the 1973 Code) is not in pari materia. (Para 41)

One of the rules of construction of statutes is that the language of the statute should be read as it is and any construction that results in rejection of words has to be avoided; the effort should be made to give meaning to each and every word used by the legislature. However, such rule of construction of statutes is not without exceptions. (Para 43). *Lalu Prasad Yadav* v. *State of Bihar*, (2010) 5 SCC 1.

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and **R.M. Lodha** and *Dr. B.S. Chauhan*, **JJ.** [Date of decision: 1-4-2010]

[5005] — S. 378(1) — Phrase "in any case" — Construction of — *Held, means "in all cases", but the opening words in S. 378(1) put fetters on State Government in directing appeal to be filed in the two types of cases mentioned in S. 378(2)*

The main object and legislative intent by the opening words—"save as otherwise provided in sub-section (2)"—in sub-section (1) of Section 378 being clear i.e. to fetter the general power given to the State Government in filing appeal from the order of acquittal in two types of cases stated in sub-section (2), the use of word "also" in sub-section (2) does not make any sense. The word "also" in sub-section (2), if construed in the manner suggested by the State Government, may result in reducing the opening words in sub-section (1) a nullity and will deny these words their full play. Since exception (clause) in the beginning of sub-section (1) has been expressly added in Section 378 and it is not possible to harmonise the word "also" occurring in sub-section (2) with that, it appears that no sensible meaning can be given to the word "also" and the said word has to be treated as immaterial. To declare "also" enacted in sub-section (2) immaterial or insensible is not very satisfactory, but it is much more unsatisfactory to deprive the words—"save as otherwise provided in sub-section (2)"—of their true and plain meaning. In order that the exception (clause) expressly stated in the opening words of sub-section (1) might be preserved, it is necessary that word "also" in sub-section (2) is treated as immaterial and is held accordingly. The phrase "in any case" in sub-section (1) of Section 378, without hesitation, means "in all cases", but the opening words in the said section put fetters on the State Government in directing appeal to be filed in the two types of cases mentioned in sub-section (2). (Para 45). *Lalu Prasad Yadav* v. *State of Bihar*, (2010) 5 SCC 1.

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and **R.M. Lodha** and *Dr. B.S. Chauhan*, **JJ.** [Date of decision: 1-4-2010]

[5006] — S. 378(2) — Word "also" occurring in — Connotation of — *State Government's plea to read "also" as suggesting existence of power of State Government to direct its Public Prosecutor to file appeal from order of acquittal in the two classes of cases covered by S. 378(2) — Held, in order that exception (clause) of S. 378(1) might be preserved, necessary that "also" is treated as immaterial or redundant*

The main object and legislative intent by the opening words—"save as otherwise provided in sub-section (2)"—in sub-section (1) of Section 378 being clear i.e. to fetter the general power given to the State Government in filing appeal from the order of acquittal in two types of cases stated in sub-section (2), the use of word "also" in sub-section (2) does not make any sense. The word "also" in sub-section (2), if construed in the manner suggested by the State Government, may result in reducing the opening words in sub-section (1) a nullity and will deny these words their full play. Since exception (clause) in the beginning of sub-section (1) has been expressly added in Section 378 and it is not possible to harmonise the word "also" occurring in sub-section (2) with that, it appears that no sensible meaning can be given to the word "also" and the said word has to be treated as immaterial. To declare "also" enacted in sub-section (2) immaterial or insensible is not very satisfactory, but it is much more unsatisfactory to deprive the words—"save as otherwise provided in sub-section (2)"—of their true and plain meaning. In order that the exception (clause) expressly stated in the opening words of sub-section (1) might be preserved, it is necessary that word "also" in sub-section (2) is treated as immaterial and is held accordingly. The phrase "in any case" in sub-section (1) of Section 378, without hesitation, means "in all cases", but the opening words in the said section put fetters on the State Government in directing appeal to be filed in the two types of cases mentioned in sub-section (2). (Para 45). *Lalu Prasad Yadav* v. *State of Bihar*, (2010) 5 SCC 1.

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and **R.M. Lodha** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 1-4-2010]

(2) Appeal against acquittal vis-à-vis appeal against conviction

See also under Section 378, '(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted', below

[5007] — Ss. 378 and 386 — Appeal against acquittal — Not distinct in nature from appeal against conviction — *Only there is a presumption of innocence in favour of accused — But if on a reappreciation of evidence acquittal is not found to be based on a reasonable view, appellate court will interfere with the order of acquittal — Constitution of India — Art.136*

There is no difference between an appeal against conviction and an appeal against acquittal except that when dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set on the materials on record, the acquittal may not be interfered with. Upon reading the record and after hearing the counsel it is clear that the High Court's judgment of acquittal in the instant case was not based on a reasonable view. Once evidence has been read and this Court has proceeded to review the entire material, there is indeed no limitation in law in the exercise of the jurisdiction under Art. 136 of the Constitution for the matter of making a just decision. Therefore, interference with the acquittal is called for in this case.

Supreme Court indicated as to how courts should find out the truth from evidence and decide in a detached mind, dissociated from "the heat generated outside the courtroom either through the news media or through flutter in the public mind".

The Court also expressed opinion on the cause of bride killing as also the place that should be given to women in our society. *State (Delhi Admn.)* v. *Laxman Kumar*, (1985) 4 SCC 476: 1986 SCC (Cri) 2: AIR 1986 SC 250.

Bench Strength **2**. Coram: *A.N. Sen* and **Ranganath Misra**, JJ. [Date of decision: 23-9-1985]

[5008] — Ss. 378 and 386 — Appeal against acquittal — Power of High Court in such appeal, held, is the same as in appeal against conviction, albeit in case of reversal of acquittal, High Court must give reasons for not accepting the reasons recorded by the Sessions Judge for acquittal — *Where the Sessions Judge erroneously excluded the dying declarations which had been found to be truthful and voluntarily made, and in absence of any other evidence acquitted the accused persons of charge under Ss. 302/34 IPC, held, High Court was justified in setting aside the order of acquittal — Penal Code, 1860, Ss. 302/34* (Para 9). *Koli Chunilal Savji* v. *State of Gujarat*, (1999) 9 SCC 562: 2000 SCC (Cri) 432: AIR 1999 SC 3695.

Bench Strength **3**. Coram: **G.B. Pattanaik**, *M. Srinivasan* and *N. Santosh Hegde*, JJ. [Date of decision: 29-9-1999]

[5009] — Ss. 378 and 374 — Appeal before Supreme Court against acquittal — Scope of interference — Comparison with scope of appeal against conviction

While deciding an appeal against acquittal, the power of the appellate court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further, if it decides to interfere, it should assign reasons for differing with the decision of the trial court. (Para 11)

It is pointed out that the witnesses on hearing about the dacoity had rushed to the police station and had no occasion to know the names of the accused persons. The parameters for dealing with an appeal against the judgment of acquittal have been laid down by the Supreme Court in several cases. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence for the purpose of ascertaining as to whether any of the accused committed any offence or not. (Paras 10 and 11). *State of U.P.* v. *Awdhesh*, (2008) 16 SCC 238.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 9-9-2008]

Krishnan v. State, (2003) 7 SCC 56: 2003 SCC (Cri) 1577, relied on

Glanville Williams: 'The Mathematics of Proof II'; Sweet and Maxwell: Criminal Law Review, 1979, p. 340 (342), cited

[5010] — Ss. 378 and 386 — Appeal against acquittal — Generally — Distinguished for appeal against conviction (concurrently recorded by courts below) — *Held, considerations which weigh with Supreme Court in deciding a State's appeal against an order of acquittal by High Court are totally different from a case where there are concurrent findings both by trial court and High Court about the guilt of the appellant — In appeal against acquittal Court has to consider whether the view taken by High Court is a possible view — In instant case there are concurrent findings of guilt against the appellant — Hence,* Rajendra Singh case, *(2009) 11 SCC 106 inapplicable* (Paras 35 and 36)

Facts :

Long standing enmity pursuant to land dispute between parties who were related. On the day of occurrence, during morning hours, when PW 1, his brother PW 2, and their father (deceased) were sitting in front of their house, appellant (A-1) alleged to have stabbed the deceased with knife, while A-2 assaulted PW 2 with knife. When victims tried to run away from the place, other accused alleged to have pelted stones at them. Deceased died on the spot, while PW 2, who was grievously injured was taken to a hospital. PW 5 who conducted post-mortem opined that the death was due to cardio respiratory arrest brought about by haemorrhagic shock as a result of stab injury to the left ventricle of the heart. It was clear therefore, that the injuries which were inflicted on the deceased were on vital parts, namely, on the scalp and on the chest which pierced the left ventricle of the heart. PWs 1, 2 and 8 (wife of PW 1) were stated to be eyewitnesses.

Trial court convicted appellant under S. 302 and sentenced him to rigorous LI and fine of Rs 100 with default stipulation, while A-2 was convicted under S. 324 and sentenced to 3 years' RI and fine of Rs 500 with default stipulation. Rest of the accused, however, were acquitted of all charges framed against them. The High Court, by impugned judgment upheld judgment of trial court. Hence, present appeal.

Submissions by appellant that: (*i*) eyewitnesses should not be believed as they were closely related to deceased, and there was admitted enmity between parties; (*ii*) there was delay in lodging FIR; and (*iii*) injuries on accused were not explained which leads to inference that genesis of occurrence had been suppressed.

Dismissing appeal, the Supreme Court held as above. *Hari* v. *State of Maharashtra*, (2009) 11 SCC 96: (2009) 3 SCC (Cri) 1254.

Bench Strength **2**. Coram: *S.B. Sinha* and **A.K. Ganguly**, JJ. [Date of decision: 23-3-2009]

State of Rajasthan v. Rajendra Singh, (2009) 11 SCC 106: 1998 SCC (Cri) 1605, distinguished on facts

[5011] — Ss. 378 and 386 — Appeal against acquittal — Powers of appellate court — Nature and scope — *Held, power of High Court in an appeal from acquittal is no different from its power in an appeal from conviction when it can review and consider the entire evidence and come to its own conclusions by either accepting the evidence rejected by the trial court or rejecting the evidence accepted by the trial court* (Paras 13 to 15). *Sannaia Subba Rao* v. *State of A.P.*, (2008) 17 SCC 225.

Bench Strength **2**. Coram: *R.V. Raveendran* and **Dr. M.K. Sharma**, JJ. [Date of decision: 24-7-2008]

Hari Ram v. State of Rajasthan, (2000) 9 SCC 136: 2000 SCC (Cri) 1178; Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, considered and relied on

(2) Appeal against acquittal vis-à-vis appeal against conviction *(contd.)*

[5012] — Ss. 378 and 386 — Appeal against acquittal — Powers of court — Compared with appeal against conviction — *Held, though High Court would be slow in interfering with the order of acquittal but it has got same powers to review and reappreciate the entire evidence as in an appeal against conviction and if reasons recorded by the trial court for acquittal are unjustified and untenable, High Court can certainly interfere — On facts held, High Court rightly reversed the order of acquittal — Penal Code, 1860, Ss. 375 and 376. Ayub Hussain Mandal* v. *State of Assam*, (2007) 15 SCC 549.

Bench Strength **2**. Coram: *Shivaraj V. Patil* and *Arun Kumar*, JJ. [Date of decision: 8-10-2002]

[5013] — Ss. 378, 374 and 386 — Appeal against acquittal — Not distinct in nature from appeal against conviction — *High Court has full power to reappreciate evidence and arrive at a different conclusion — But interference with order of acquittal not justified merely because another view was possible — High Court's approach while reversing an order of acquittal indicated — On facts, High Court justified in reversing order of acquittal passed by the trial court*

Under the Criminal Procedure Code there is no difference so far as the power of the appellate court is concerned to deal with an appeal from a conviction and that from an appeal against an order of acquittal excepting that an appeal against a conviction is as of right and lies to courts of different jurisdictions depending on the nature of sentence and kind of trial and the court in which the trial was held, whereas an appeal against an order of acquittal can be made only to the High Court with the leave of the court. The procedure for dealing with two kinds of appeals is identical and the powers of the appellate court in disposing of the appeals are in essence the same. The High Court, therefore, has full powers while hearing an appeal against an order of acquittal, to reappreciate the evidence and to come to a conclusion whether the order of acquittal passed by the Sessions Judge was per se bad or not. If, however, on the evidence two views are reasonably possible, one supporting acquittal and the other indicating conviction then the High Court would not be justified in interfering with an order of acquittal merely because it takes the view that it would have taken the other view sitting as a trial court. It would, therefore, be correct to state that the High Court while reversing an order of acquittal must apply its mind to the reasons given by the trial court and find out whether such reasons are at all sustainable or not. But on examining the reasons advanced by the trial court as well as on reappreciating the evidence on record if the High Court is satisfied that the reasons given by the trial court for acquittal are totally unsustainable and the appreciation of evidence made by the trial court is per se bad then there would be no limitation on the power of the High Court to set aside an order of acquittal. *Banwari Ram* v. *State of U.P.*, (1998) 9 SCC 3: 1998 SCC (Cri) 835: AIR 1998 SC 674: 1998 Cri LJ 869.

Bench Strength **2**. Coram: *G.T. Nanavati* and **G.B. Pattanaik**, JJ. [Date of decision: 10-12-1997]

[5014] — Ss. 378 and 386 — Appeal against acquittal — High Court's power in disposing of appeals from conviction or acquittal are essentially the same — *Appellate court is free to come to its own conclusions as to the credibility of the evidence except when it depends upon the demeanour of the witness — Reversal of acquittal not justified if the view taken by the trial court is not palpably wrong — High Court must take into consideration the reasons advanced by the trial court before reversing the order of acquittal. Betal Singh* v. *State of M.P.*, (1996) 8 SCC 205: 1996 SCC (Cri) 571: AIR 1996 SC 2770.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **G.B. Pattanaik**, JJ. [Date of decision: 19-3-1996]

[5015] — Ss. 378 and 386 — Appeal before High Court against acquittal — High Court's power to reassess the evidence and reach its own conclusion as extensive as in any appeal against conviction — *High Court however must give proper weight and consideration to the view of the trial court — If the view taken by the trial court is reasonable and plausible, order of acquittal should not be disturbed — On facts, view taken by the High Court was the only possible view and the High Court was justified in reversing order of acquittal passed by the trial court*

The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 386 CrPC are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the trial court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of accused to the benefit of any doubt and the slowness of appellate court in justifying a finding of fact arrived at by a judge who had the advantage of seeing the witness. No doubt it is settled law that if the main grounds on which the court below has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal. (Para 15). *Ram Kumar* v. *State of Haryana*, 1995 Supp (1) SCC 248: 1995 SCC (Cri) 355: AIR 1995 SC 280: (1995) 32 ACC 47.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 7-10-1994]

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted

See also Section 378, '(5) Approach of appellate court in disposal of appeal against acquittal: considerations involved',

'(11) Acquittal justified', and

'(12) Reversal of acquittal justified/ Acquittal not justified', below

[5016] — S. 378 — Right of first appeal — Held, is based on notion that human beings are fallible and so are Judges — *CPC, 1908, S. 96*

The principle of right to first appeal lies in the doctrine of human fallibility that "Men are fallible" and "Judges are also men". It is keeping in view the said object that the principles has to be understood and applied. (Para 22). *State of Maharashtra* v. *Sujay Mangesh Poyarekar,* (2008) 9 SCC 475: (2008) 3 SCC (Cri) 793: (2008) 70 AIC 15 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 19-9-2008]

[5017] — Ss. 378 and 386 — Scope of interference — Criminal matters — Appeal against acquittal — Interference in case of — Principles reiterated — *Stressed, however, that a miscarriage of justice which may arise from acquittal of the guilty is no less than from conviction of an innocent — Constitution of India — Art. 136*

There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. (Para 24). *State of U.P.* v. *Satish*, (2005) 3 SCC 114: 2005 SCC (Cri) 642: AIR 2005 SC 1000: 2005 Cri LJ 1428.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 8-2-2005]

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of Punjab v. Phola Singh, (2003) 11 SCC 58: 2004 SCC (Cri) 276, relied on

[5018] — S. 378 — Appeal against acquittal — Power of appellate court to interfere — *Where two views possible, held, appellate court should not interfere with finding of acquittal recorded by court below* (Para 54). *M.S. Narayana Menon* v. *State of Kerala*, (2006) 6 SCC 39: (2006) 3 SCC (Cri) 30: (2006) 3 KLT 404: (2006) 5 Mah LJ 676: (2006) 4 MPLJ 97.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

[5019] — S. 378 — Appeal against acquittal — Interference when called for — Review of evidence by appellate court — *Held, generally order of acquittal strengthens presumption of innocence of accused and therefore not to be interfered with — Where two views possible on evidence adduced, one as to guilt and the other as to innocence, that view which is favourable to accused is to be adopted — However, there is no embargo on appellate court reviewing evidence upon which order of acquittal is based — Interference is justified when there are compelling and substantial reasons for doing so in order to prevent miscarriage of justice — If impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it would be a compelling reason for interference — Constitution of India — Art. 136*

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. However, there is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. (Para 19)

The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. No doubt a miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. Therefore the principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so in order to prevent miscarriage of justice resulting therefrom. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it would be a compelling reason for interference. (Para 19)

No error can be said to have been committed by the High Court, nor any other infirmity to undermine the legality and propriety of the findings of the High Court, warranting the interference of the Supreme Court has been substantiated, in this case. (Para 19). *State of M.P.* v. *Sanjay Rai*, (2004) 10 SCC 570: 2004 SCC (Cri) 1913: AIR 2004 SC 2174: 2004 Cri LJ 2006.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 25-3-2004]

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of Punjab v. Phola Singh, (2003) 11 SCC 58: 2004 SCC (Cri) 276; Suchand Pal v. Phani Pal, (2003) 11 SCC 527: 2004 SCC (Cri) 220, relied on

[5020] — Ss. 378 and 386 — Appeal against acquittal — Powers of appellate court — Scope — Restated — *On facts held, High Court was justified in interfering with order of acquittal by giving cogent and adequate reasons therefor*

The following principles have to be kept in mind by the appellate court while dealing with appeals, particularly, against an order of acquittal:

(*i*) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded and to come to its own conclusion.

(*ii*) The appellate court can also review the trial court's conclusion with respect to both facts and law.

(*iii*) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons set aside the judgment of acquittal.

(*iv*) An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.

(*v*) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed. [Paras 27 and 303(1)]. *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength **2**. Coram: **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision: 19-4-2010]

Madan Lal v. State of J&K, (1997) 7 SCC 677: 1997 SCC (Cri) 1151; Ghurey Lal v. State of U.P., (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60; Chandra Mohan Tiwari v. State of M.P., (1992) 2 SCC 105: 1992 SCC (Cri) 252; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991, relied on

[5021] — Ss. 378 and 386 — Appeal against acquittal — Powers of appellate court — Scope — *Held, presumption of innocence is strengthened if an accused is acquitted by the trial court — If two views were possible, the one taken by the trial court in favour of the accused should be retained — However, trial court's judgment can be reversed where the view taken was not possible on the evidence or perverse — In the instant case High Court was not justified in interfering with judgment of acquittal by trial court — Entire prosecution version hinged on evidence of PWs 30 & 33, who were chance witnesses and whose evidence was found unreliable — PWs, deceased and the accused belonged to the same village — Yet, PW 30 never reported the incident to other co-villagers for 5/6 days — PW 33,* *though was first cousin of deceased, and resided only 150 ft away from his house, went to meet his sister residing in another village, after witnessing the murder, and not reporting the incident to anybody, though returning to his village a day later — His silence for six days after murder bespeaks of absolutely unnatural conduct — Reason given therefor that he was frightened on account of the warring political groups in village, unacceptable — Hence, accused entitled to acquittal* (Paras 6, 5, 4 and 1). *Jaisingh* v. *State of Karnataka*, (2007) 10 SCC 788: (2007) 3 SCC (Cri) 692: 2007 Cri LJ 2434: (2007) 55 AIC 107 (SC).

Bench Strength **2**. Coram: *B.P. Singh* and **Harjit Singh Bedi**, JJ. [Date of decision: 12-4-2007]

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, relied on

[5022] — Ss. 378 and 386 — Appeal against acquittal — Powers of appellate court — Scope *— Held, though it is open to High Court to reappreciate the materials brought on record by the parties, but where two views are possible, the High Court should not ordinarily interfere with the judgment of acquittal — High Court may interfere provided the materials on record lead to only one conclusion that the appellants are guilty — In the instant case, High Court failed to analyse the evidence independently, to meet the reasoning of trial court, and also to spell out why a different view was being taken — Hence, impugned judgment liable to be set aside* (Paras 12 and 13). *Jagdish* v. *State of M.P.*, (2007) 13 SCC 12: 2008 Cri LJ 350: (2007) 59 AIC 155 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 18-9-2007]

Rattanlal v. State of J&K, (2007) 13 SCC 18; State of Rajasthan v. Bhanwar Singh, (2004) 13 SCC 147: 2005 SCC (Cri) 73; Kallu v. State of M.P., (2006) 10 SCC 313: (2006) 3 SCC (Cri) 546; Ramappa Halappa Pujar v. State of Karnataka, (2007) 13 SCC 31, relied on

[5023] — Ss. 378 and 386 — Appeal against acquittal — Powers of appellate court — Nature and scope — Reiterated — Interference, when and extent to which permissible — Discussed — "Perverse findings" — Meaning *— Not only against weight of evidence but altogether against evidence — In instant case, benefit was given to accused by Sessions Judge primarily on surmises and conjectures, and doubting presence of witnesses, particularly PW 4, whose presence was admitted by accused himself — Hence, impugned judgment setting aside order of acquittal calls for no interference* (Paras 15 to 22 and 27). *Satyavir Singh* v. *State of U.P.*, (2010) 3 SCC 174.

Bench Strength **2**. Coram: *Altamas Kabir* and **Swatanter Kumar**, JJ. [Date of decision: 11-2-2010]

Ganesh Bhavan Patel v. State of Maharashtra, (1978) 4 SCC 371: 1979 SCC (Cri) 1; Sheo Swarup v. King Emperor, (1933-34) 61 IA 398: AIR 1934 PC 227 (2); Mathai Methews v. State of Maharashtra, (1970) 3 SCC 772; Khedu Mohton v. State of Bihar, (1970) 2 SCC 450: 1970 SCC (Cri) 479; Kunwar Bahadur Singh v. Shiv Baran Singh, (2001) 9 SCC 149: 2002 SCC (Cri) 428; Arulvelu v. State, (2009) 10 SCC 206: (2010) 1 SCC (Cri) 288; Ghurey Lal v. State of U.P., (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60, followed

[5024] — Ss. 378 and 386 — Appeal against acquittal — Maintenance of standards of judging of appellate courts by giving proper weight to assessment of the credibility of witnesses by trial court *— Held, appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so — Instances of, stated by way of illustration*

The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "*very substantial and compelling reasons*" for doing so. This is a murder case in which the trial court acquitted the accused. The High Court reversed the trial court's decision, finding the accused guilty. In doing so, the appellate court failed to give proper weight to the views of the trial court as to credibility of witnesses, thereby ignoring the standards by which the appellate courts consider appeals against acquittals. (Paras 70 and 2)

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when: (*i*) the trial court's conclusion with regard to the facts is palpably wrong; (*ii*) the trial court's decision was based on an erroneous view of law; (*iii*) the trial court's judgment is likely to result in "grave miscarriage of justice"; (*iv*) the entire approach of the trial court in dealing with the evidence was patently illegal; (*v*) the trial court's judgment was manifestly unjust and unreasonable; (*vi*) the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc. (*vii*) this list is intended to be illustrative, not exhaustive. (Para 70). *Ghurey Lal* v. *State of U.P.*, (2008) 10 SCC 450.

Bench Strength **2**. Coram: *R.V. Raveendran* and **Dalveer Bhandari**, JJ. [Date of decision: 30-7-2008]

Tulsiram Kanu v. State, AIR 1954 SC 1; Balbir Singh v. State of Punjab, AIR 1957 SC 216; M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200; Lekha Yadav v. State of Bihar, (1973) 2 SCC 424: 1973 SCC (Cri) 820; Khem Karan v. State of U.P., (1974) 4 SCC 603: 1974 SCC (Cri) 639; Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228: 1978 SCC (Cri) 108; K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355: 1979 SCC (Cri) 305; R. v. Fantle, 1959 Cri L Review 584;

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

Madan Lal v. State of J&K, (1997) 7 SCC 677: 1997 SCC (Cri) 1151; State of Karnataka v. K. Gopalakrishna, (2005) 9 SCC 291: 2005 SCC (Cri) 1237; State of Goa v. Sanjay Thakran, (2007) 3 SCC 755: (2007) 2 SCC (Cri) 162; State of Rajasthan v. Raja Ram, (2003) 8 SCC 180: 2003 SCC (Cri) 1965; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, relied on

[5025] — Ss. 378 and 386 — Appeal against acquittal — Murder case — Scope of interference by High Court — Restated — *Not necessary for High Court to advert to all the reasons for acquittal given by the trial court if reversal of acquittal otherwise called for — Where the consistent statements of the three eyewitnesses that the accused gave a stabbing blow on vital part of the deceased with a knife while he came out of his house, were fully corroborated by medical evidence, and, without any sound reasons the trial court discarded the same and acquitted the accused, held, High Court was fully entitled to reappreciate the said evidence and to record its own conclusion as to whether a conviction was sustainable — Penal Code, 1860 — Ss. 300 and 302*

The plenitude of power available to the court hearing an appeal against acquittal is the same as that available to a court hearing an appeal against conviction. However the court will not interfere solely because a different plausible view may arise on the evidence. In a case of murder, if the reasons given by the trial court for discarding the testimony of the eyewitnesses are not sound, then there should be no hesitation on the part of the High Court in interfering with an order of acquittal. If the judgment of the trial Judge was absolutely perverse, legally erroneous and based on wrong testimony, it would be proper for the High Court to interfere and reverse the order of acquittal. In the instant case although the High Court has not adverted to all the reasons given by the trial Judge for recording an order of acquittal, it is not possible to hold that the High Court exceeded its jurisdiction and the parameters fixed for interference with an order of acquittal. In order to bring home the charge of murder against the appellant the ground that he gave a stabbing blow on the deceased on a vital part by means of a knife while he came out of his house has been consistently narrated by the three eyewitnesses. There has been no embellishment or exaggeration by these eyewitnesses so far as the role ascribed to the appellant from their previous version to the police is concerned. The testimony of the three witnesses is fully corroborated by the medical evidence of the two doctors and, therefore, the trial court was not justified in discarding this part of the prosecution case and in acquitting the appellant and the High Court, therefore, was fully entitled to reappreciate the evidence of these witnesses and record its own conclusion on the question whether the same can sustain conviction or not. *K. Ramakrishnan Unnithan* v. *State of Kerala*, (1999) 3 SCC 309: 1999 SCC (Cri) 410: AIR 1999 SC 1428: 1999 Cri LJ 2101.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision: 18-3-1999]

[5026] — Ss. 378 and 386 — Appeal against acquittal — High Court has full powers to review the evidence on record and arrive at independent conclusion — *However, the High Court must keep in mind the reasons given by the trial court. A.P. Raju* v. *State of Orissa*, 1995 Supp (2) SCC 385: 1995 SCC (Cri) 675.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision: 16-2-1994]

[5027] — Ss. 378 and 386 — Appeal against acquittal — High Court not justified in reversing an order of acquittal without giving a finding that the appreciation of evidence by the trial court was perverse or not fair — *High Court cannot interfere with an order of acquittal merely because a different view is possible. Bala Bhagwan Raut* v. *State of Maharashtra*, 1995 Cri LJ 2631.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *M.K. Mukherjee*, JJ. [Date of decision: 8-12-1994]

[5028] — Ss. 378 and 386 — Review of evidence by appellate court — When proper — *Held, there is no quarrel with the proposition that an order of acquittal should not ordinarily be interfered with as presumption of innocence of accused gets further strengthened by acquittal — But the same by itself would not mean that appellate court cannot review the evidence on record and interfere with findings of trial court despite existence of compelling reasons* (Para 34). *Shivappa* v. *State of Karnataka*, (2008) 11 SCC 337: AIR 2008 SC 1860: 2008 Cri LJ 2992.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 31-3-2008]

Main Pal v. State of Haryana, (2004) 10 SCC 692: 2004 SCC (Cri) 1882; Mahadeo Laxman Sarane v. State of Maharashtra, (2007) 12 SCC 705: (2008) 2 SCC (Cri) 791; Swami Prasad v. State of M.P., (2007) 13 SCC 25; S. Sudershan Reddy v. State of A.P., (2006) 10 SCC 163: (2006) 3 SCC (Cri) 503; Sucha Singh v. State of Punjab, (2003) 7 SCC 643: 2003 SCC (Cri) 1697, relied on

Ram Swaroop v. State of Rajasthan, (2004) 13 SCC 134: 2005 SCC (Cri) 61; Budh Singh v. State of U.P., (2006) 9 SCC 731: (2006) 3 SCC (Cri) 377, distinguished

[5029] — Ss. 378 and 386 — Appellate court can reappreciate the evidence and take a different view — *If two views are reasonably possible, appellate court would not normally interfere with order of acquittal* (Para 12). *State of U.P.* v. *Punni*, (2008) 11 SCC 153: AIR 2008 SC 932: (2008) 62 AIC 122 (SC): 2008 Cri LJ 1028: (2008) 105 Cut LT 361.

Bench Strength **2**. Coram: *C.K. Thakker* and **Tarun Chatterjee**, JJ. [Date of decision: 4-1-2008]

State of U.P. v. Harihar Bux Singh, (1975) 3 SCC 167: 1974 SCC (Cri) 799; State of Punjab v. Ajaib Singh, (1995) 2 SCC 486: 1995 SCC (Cri) 418; State of U.P. v. Babul Nath, (1994) 6 SCC 29: 1994 SCC (Cri) 1585, relied on

[5030] — S. 378 — Appeal against acquittal — Interference when imperative — Communal riots — "Best Bakery Case" — Macabre killings arising out of communal frenzy — *Failure of State machinery to protect citizens' life, liberties and property, and investigation conducted in a manner helpful to accused persons — Duty of courts arising therefrom to maintain confidence of the public in the judicial system — Courts to ensure that accused persons are punished and the might and authority of the State are not used to shield itself or its men — Deficiencies in investigation or prosecution to be dealt with an iron hand, appropriately within framework of law — Judicial criminal administration to be kept clean and beyond the reach of whimsical political wills or agendas and properly insulated from discriminatory standards of the type prohibited by the Constitution — Role of State Government in not getting the offenders to book deprecated in the strongest terms — Described as "modern-day 'Neros'" who looked elsewhere whilst innocent children and helpless women were burning — As "wanton boys" who's "flies" law and justice had become, which they killed for their sport — And as "fences that swallowed their crops" — Constitution of India — Arts. 25, 21 and 19*

Facts

The case commonly came to be known as the "Best Bakery Case". Between 8.30 p.m. of 1-3-2002 and 11.00 a.m. of 2-3-2002, a business concern known as "Best Bakery" at Vadodara was burnt down by an unruly mob of a large number of people. In the ghastly incident 14 persons died. The attacks were stated to be a part of retaliatory action to avenge the killing of 56 persons burnt to death in the *Sabarmati Express* near Godhra in Gujarat. *Z*, the appellant, was the main eyewitness who lost her family members, including helpless women and innocent children in the gruesome incident. Many persons other than *Z* were also eyewitnesses. The accused persons were the alleged perpetrators of the crime. After investigation a charge-sheet was filed in June 2002. During trial the purported eyewitnesses resiled from the statements made during investigation. Faulty and biased investigation as well as perfunctory trial were said to have marred the sanctity of the entire exercise undertaken to bring the culprits to book. By judgment dated 27-6-2003, the trial court directed acquittal of the accused persons. *Z* appeared before the National Human Rights Commission stating that she was threatened by powerful politicians not to depose against the accused persons.

On 7-8-2003 an appeal was filed by the State against the judgment of acquittal before the Gujarat High Court. The Gujarat High Court upheld the acquittal of the respondents-accused. Along with the said appeal, two other petitions were disposed of. The prayers made by the State in those petitions for adducing additional evidence under Section 391 CrPC and/or for directing retrial were rejected. Consequentially, prayer for examination of witnesses under Section 311 CrPC was also rejected. Thereafter, NHRC moved the Supreme Court and its special leave petition was treated as a petition under Article 32 of the Constitution. *Z* and another organisation, Citizens for Justice and Peace, filed an SLP challenging the judgment of acquittal affirmed by the High Court.

These appeals raised important issues regarding witness protection, the quality and credibility of the evidence before court, the improper conduct of trial by the Public Prosecutor and the role of the investigating agency itself, which was alleged to be perfunctory and not impartial.

Allowing the appeals to the extent and in the terms below,

Held :

If the State's machinery fails to protect citizen's life, liberties and property and the investigation is conducted in a manner to help the accused persons, it is but appropriate that the Supreme Court should step in to prevent undue miscarriage of justice that is perpetrated upon the victims and their family members. (Para 22)

Though justice is depicted to be blindfolded, as popularly said, it is only a veil not to see who the party before it is while pronouncing judgment on the cause brought before it by enforcing law and administering justice, and not to ignore or turn the mind/attention of the court away from the truth of the cause or lis before it, in disregard of its duty to prevent miscarriage of justice. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

justice — often referred to as the duty to vindicate and uphold the "majesty of the law". Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. When an ordinary citizen makes a grievance against the mighty administration, any indifference, inaction or lethargy shown in protecting his right guaranteed in law will tend to paralyse by such inaction or lethargic action of courts, and erode in stages the faith inbuilt in the judicial system, ultimately destroying the very justice-delivery system of the country itself. Doing justice is the paramount consideration and that duty cannot be abdicated or diluted and diverted by manipulative red herrings. (Paras 54 and 35)

Courts have to ensure that accused persons are punished and that the might or authority of the State are not used to shield itself or its men. It should be ensured that they do not wield such powers, which under the Constitution have to be held only in trust for the public and society at large. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand, appropriately within the framework of law. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. (Para 56)

If one even cursorily glances through the records of the present case, one gets a feeling that the justice-delivery system was being taken for a ride and literally allowed to be abused, misused and mutilated by subterfuge. The investigation appears to be perfunctory and anything but impartial without any definite object of finding out the truth and bringing to book those who were responsible for the crime. The Public Prosecutor appears to have acted more as a defence counsel than one whose duty was to present the truth before the Court. The Court in turn appeared to be a silent spectator, mute to the manipulations and preferred to be indifferent to sacrilege being committed to justice. (Para 68)

The role of the State Government also leaves much to be desired. One gets a feeling that there was really no seriousness in the State's approach in assailing the trial court's judgment. This is clearly indicated by the fact that the first memorandum of appeal filed was an apology for the grounds. A second amendment was done, that too after the Supreme Court had expressed its unhappiness over the perfunctory manner in which the appeal was presented and the challenge made. That also was not the end of the matter. There was a subsequent petition for amendment. All this sadly reflects on the quality of determination exhibited by the State and the nature of seriousness shown to pursue the appeal. Those who are responsible for protecting life and property and ensuring that investigation is fair and proper seem to have shown no real anxiety. Large number of people had lost their lives. Whether the accused persons were really assailants or not could have been established by a fair and impartial investigation. In a country like ours with heterogeneous religions and multiracial and multilingual society which necessitates protection against discrimination on the ground of caste or religion taking lives of persons belonging to one or the other religion is bound to have dangerous repercussions and reactive effect on the society at large and may tend to encourage fissiparous elements to undermine the unity and security of the nation on account of internal disturbances. It strikes at the very root of an orderly society, which the founding fathers of our Constitution dreamt of. When the ghastly killings take place in the land of Mahatma Gandhi, it raises a very pertinent question as to whether some people have become so bankrupt in their ideology that they have deviated from everything which was so dear to him. When a large number of people including innocent and helpless children and women are killed in a diabolic manner it brings disgrace to the entire society. Criminals have no religion. No religion teaches violence and cruelty-based religion is no religion at all, but a mere cloak to usurp power by fanning ill feeling and playing on feelings aroused thereby. The golden thread passing through every religion is love and compassion. The fanatics who spread violence in the name of religion are worse than terrorists and more dangerous than an alien enemy. The little drops of humanness which jointly make humanity a cherished desire of mankind had seemingly dried up when the perpetrators of the crime had burnt alive helpless women and innocent children. Was it their fault that they were born in the houses of persons belonging to a particular community? The still, stard music of humanity had become silent when it was forsaken by those who were responsible for the killings.The modern-day "Neros" were looking elsewhere when Best Bakery and innocent children and helpless women were burning, and were probably deliberating how the perpetrators of the crime could be saved or protected. Law and justice had become flies in the hands of these "wanton boys". When fences start to swallow the crops, no scope will be left for survival of law and order or truth and justice. Public order as well as public interest become martyrs and monuments. (Paras 68 and 69)

Criminal trials should not be reduced to be mock trials or shadow-boxing or fixed trials. Judicial criminal administration system must be kept clean and beyond the reach of whimsical political wills or agendas and properly insulated from discriminatory standards or yardsticks of the type prohibited by the mandate of the Constitution. (Para 68)

It is no doubt true that the accused persons have been acquitted by the trial court and the acquittal has been upheld, but if the acquittal is unmerited and based on tainted evidence, tailored investigation, unprincipled prosecution and perfunctory trial and evidence of threatened/terrorised witnesses, it is no acquittal in the eye of the law and no sanctity or credibility can be attached and given to the so-called findings. It seems to be nothing but a travesty of truth, fraud on the legal process and the resultant decisions of courts — coram non judis and non est. There is, therefore, every justification to call for interference in these appeals. (Para 64). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble, (2003) 7 SCC 749: 2003 SCC (Cri) 1918; Gurcharan Das Chadha v. State of Rajasthan, AIR 1966 SC 1418: (1966) 2 SCR 678: 1966 Cri LJ 1071; K. Anbazhagan v. Supdt. of Police, (2004) 3 SCC 767, relied on

Clarified in Satyajit Banerjee v. State of W.B., (2005) 1 SCC 115

[5031] — Ss. 378 and 386 — Ambit and scope of High Court's powers in appeal against acquittal under — *Principles restated — CrPC, 1898, Ss. 417 and 423*

The High Court in an appeal against an order of acquittal has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that, upon the evidence, the order of acquittal should be reversed.

The different phraseology used in the judgment of the Supreme Court such as 'substantial and compelling reasons', 'good and sufficiently cogent reasons', 'strong reasons', are not intended to curtail or place any limitation on the undoubted power of an appellate Court in an appeal against acquittal to review the entire evidence and to come to its own conclusion as stated above but in doing so it should give proper consideration to such matters as (*i*) the views of the trial Judge as to the credibility of the witnesses; (*ii*) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (*iii*) the right of the accused to the benefit of any real and reasonable doubt; and (*iv*) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.

In the present case, the High Court had not lost sight of the above principles in reversing the order of acquittal made by the trial Court. The appellant's version that the injuries observed on his person by the doctor were the result of shots fired by the deceased from revolver not having been established and the appellant having admitted that he fired two or three shots at the deceased, the High Court was fully justified in reversing the trial Court's order of acquittal of the appellant which was erroneously made by the Sessions Judge on the basis of surmises and conjectures and convicting him specially when the prosecution story that the appellant fired at the deceased without any justifiable provocation was established to the hilt by the evidence of a number of prosecution witnesses who, even according to the Sessions Judge, gave a true account of the occurrence. *Salim Zia* v. *State of U.P.*, (1979) 2 SCC 648: 1979 SCC (Cri) 568: AIR 1979 SC 391: 1979 Cri LJ 323.

Bench Strength **2**. Coram: **Jaswant Singh** and *O. Chinnappa Reddy*, JJ. [Date of decision: 24-11-1978]

[5032] — Ss. 378 and 386 — Appeal against acquittal — If trial court's order of acquittal is based on plausible reasons, High Court not justified in reversing it merely because another view is possible

If the finding reached by the trial court cannot be said to be unreasonable, the appellate court should be slow in disturbing the finding of fact of the trial court even if it was possible to reach a different conclusion on the basis of the material on the record because the Trial Judge has the advantage of seeing and hearing the witnesses and the initial presumption of innocence in favour of the accused is not weakened by his acquittal. If two views are reasonably possible of the evidence on the record, Supreme Court is not expected to interfere simply because it feels that it would have taken a different view if the case had been tried by it. *Babu* v. *State of U.P.*, (1983) 2 SCC 21: 1983 SCC (Cri) 332: AIR 1983 SC 308: 1983 Cri LJ 334: 1983 ALJ 826: 1983 MLJ (Cri) 478.

Bench Strength **2**. Coram: *E.S. Venkataramiah* and **R.B. Misra**, JJ. [Date of decision: 1-2-1983]

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

[5033] — Ss. 378 and 386 — Appeal against acquittal — If trial Court's view is reasonably possible, High Court not to reverse the order of acquittal of the trial Court merely on the ground that a different view on evidence was possible — *Hence reversal of acquittal not justified where, is not shown that the view taken by the trial Court was not reasonably possible. Dinanath Singh* v. *State of Bihar,* (1980) 1 SCC 674: 1980 SCC (Cri) 320: AIR 1980 SC 1199: 1980 Cri LJ 921: 1980 MLJ (Cri) 719.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 18-1-1980]

Dhan Kumar v. Municipal Corpn., (1980) 1 SCC 605: 1980 SCC (Cri) 304

Mukhtiar Kaur v. State of Punjab, (1980) 2 SCC 369: 1980 SCC (Cri) 456

Marudanal Augusti v. State of Kerala, (1980) 4 SCC 425: 1980 SCC (Cri) 985: AIR 1980 SC 638: 1980 Cri LJ 446

Shivji v. State of M.P., (1980) 1 SCC 203: 1980 SCC (Cri) 189: AIR 1980 SC 552: 1980 Cri LJ 407

Chowdikodhu Asuralli Dyarappa v. State of Mysore, (1980) 1 SCC 468: 1980 SCC (Cri) 251

Kanbi Purshottam Ladha v. State of Gujarat, (1980) 1 SCC 578: 1980 SCC (Cri) 135

[5034] — Ss. 378 and 386 — Appeal against acquittal — Interference — Grounds for — *Held, acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable*

An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable. The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. The appellate court undoubtedly has wide powers of reappreciating and re-evaluating the entire evidence but it would be justified in interfering with the judgment of acquittal only when the judgment of the trial court is palpably wrong, totally ill-founded or wholly misconceived, based on erroneous analysis of evidence and non-existent material, demonstrably unsustainable or perverse. (Paras 75 and 43). *Ghurey Lal* v. *State of U.P.*, (2008) 10 SCC 450.

Bench Strength **2**. Coram: *R.V. Raveendran* and **Dalveer Bhandari**, JJ. [Date of decision: 30-7-2008]

Sheo Swarup v. King Emperor, (1933-34) 61 IA 398: AIR 1934 PC 227 (2); Surajpal Singh v. State, AIR 1952 SC 52; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Bishan Singh v. State of Punjab, (1974) 3 SCC 288: 1973 SCC (Cri) 914, relied on

[5035] — Ss. 378 and 386 — Appeal against acquittal — Interference by appellate court — Scope — *If two views are reasonably possible, and the view favouring the accused is accepted by the court below, that is sufficient for upholding the order of acquittal — But where the findings of the court below are wholly unreasonable or perverse and not based on the evidence on record, or suffer from serious illegality including ignorance or misreading of evidence on record, the appellate court will be justified in setting aside such an order of acquittal — Present case fell under the latter category — Hence order of acquittal passed by High Court, set aside by Supreme Court* (Para 17). *State of Karnataka* v. *K. Gopalakrishna*, (2005) 9 SCC 291: 2005 SCC (Cri) 1237: AIR 2005 SC 1014: 2005 Cri LJ 1436.

Bench Strength **2**. Coram: **B.P. Singh** and *Arun Kumar*, JJ. [Date of decision: 18-1-2005]

[5036] — Ss. 378 and 386 — Appeal against acquittal — Interference by appellate court — When called for — *Principles restated — On facts, High Court was justified in reversing the acquittal — Penal Code, 1860 — S. 302*

The principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial court may be reiterated as under:

(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against an order of conviction.

(2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.

(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view

which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness-box.

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused. *Ajit Savant Majagvai* v. *State of Karnataka*, (1997) 7 SCC 110: 1997 SCC (Cri) 992: AIR 1997 SC 3255: 1997 Cri LJ 3964.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S. Saghir Ahmad**, JJ. [Date of decision: 14-8-1997]

Sheo Swarup v. King Emperor, (1934) 61 IA 398: AIR 1934 PC 227 (2), approved

[5037] — S. 378 — Appeal against acquittal — Parameters for dealing with an appeal against judgment of acquittal, restated (Paras 10 and 11). *Nepal Singh* v. *State of Haryana*, (2009) 12 SCC 351.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 24-4-2009]

[5038] — Ss. 378 and 384 — Appeal against acquittal — Inference as to innocence of accused — Approach of appellate court — *Held, accused is presumed to be innocent until proven guilty — Accused has the benefit of this presumption when he is before trial court — Trial court's acquittal bolsters the presumption that he is innocent — While dealing with judgments of acquittal, held, appellate court must keep in view this fundamental principle* (Para 40). *Arulvelu* v. *State*, (2009) 10 SCC 206: (2009) 83 AIC 253 (SC).

Bench Strength **2**. Coram: **Dalveer Bhandari** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 7-10-2009]

Sheo Swarup v. King Emperor, (1933-34) 61 IA 398: AIR 1934 PC 227 (2), followed

Shailendra Pratap v. State of U.P., (2003) 1 SCC 761: 2003 SCC (Cri) 432; Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10: 1999 SCC (L&S) 429; Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312, relied on

[5039] — Ss. 378 and 386 — Powers of appellate court while dealing with appeal against acquittal — Principles restated — *Case related to murder and causing of grievous injuries — In the facts and circumstances, considering the reasonings recorded by courts below, held, there is no scope for interference with the order of acquittal passed by trial court and affirmed by High Court — Penal Code, 1860 — Ss. 302, 307, 326, 325, 323, 148 and 149* (Paras 1, 6 and 10 to 13). *State of Punjab* v. *Sukhchain Singh*, (2008) 16 SCC 629: AIR 2009 SC 1542: (2009) 2 ECrN 51 (SC).

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 7-11-2008]

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; State of U.P. v. Krishna Gopal, (1988) 4 SCC 302: 1988 SCC (Cri) 928; State of U.P. v. Awdhesh, (2008) 16 SCC 238, relied on

Glanville Williams: Proof of Guilt; The Mathematics of Proof II, Sweet and Maxwell: Criminal Law Review, 1979, p. 340 (342), cited

[5040] — Ss. 378 and 386 — Appeal against acquittal — Two views — Appellate court's approach — *Held, appellate court should be very slow in setting aside a judgment of acquittal where two views are possible — Trial court judgment can not be set aside because appellate court's view is more probable — Appellate court would not be justified in setting aside trial court judgment unless it is either perverse or wholly unsustainable in law* (Paras 23, 31 to 36 and 40). *Arulvelu* v. *State*, (2009) 10 SCC 206: (2009) 83 AIC 253 (SC).

Bench Strength **2**. Coram: **Dalveer Bhandari** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 7-10-2009]

Sheo Swarup v. King Emperor, (1933-34) 61 IA 398: AIR 1934 PC 227 (2), followed

Shailendra Pratap v. State of U.P., (2003) 1 SCC 761: 2003 SCC (Cri) 432; Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10: 1999 SCC (L&S) 429; Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312, relied on

[5041] — Ss. 378 and 386 — Appeal against acquittal — Appellate court's powers — Scope of appellate court's power to reappreciate, review and reconsider the evidence — *Duty, power and jurisdiction of High Court in appeals against acquittal, examined and clarified — Case law discussed*

It was contended by the appellants that an appeal against the acquittal cannot be interfered with by the appellate court except for the compelling reasons. The appellants questioned the correctness of the High Court's judgment. According to them, the High Court had not kept in view the parameters of appeal against acquittal. It was submitted that even if two views are possible, the view supporting the accused had to be accepted and since the trial court had precisely done that there was no reason to interfere with the judgment of the trial court. Herein, when the factual position is analysed in the background of the conclusions arrived at by the High Court, the inevitable conclusion is that the High Court's judgment is correct. (Paras 17, 18 and 22). *Murugan* v. *State*, (2008) 16 SCC 40: AIR 2009 SC 72: (2008) 71 AIC 201 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 30-9-2008]

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

[5042] — Ss. 378 and 386 — Appeal against acquittal — Interference with, when not called for

When it was difficult to hold that the view taken by the High Court was either unjustified or untenable so also it could not be said that the reasons given by the High Court to record an acquittal were either perverse or not based on the evidence, merely because the High Court in one of the paragraphs stated that the prosecution case was though established by evidence, but in the absence of motive the respondent could not be acquitted and when the judgment of the High Court by reading in its entirety, it appears that the High Court kept in view all the aspects of the case, interference of the Supreme Court is not called for. (Para 9). *State of U.P.* v. *Rajvir*, (2007) 15 SCC 545.

Bench Strength **2**. Coram: *Shivaraj V. Patil* and *Arun Kumar*, JJ. [Date of decision: 10-10-2002]

[5043] — Ss. 378 and 386 — Appeal against acquittal — Jurisdiction of appellate court — Scope — Discussed through case law (Paras 16 to 19). *Narayanamurthy* v. *State of Karnataka*, (2008) 16 SCC 512: AIR 2008 SC 2377.

Bench Strength **2**. Coram: *S.B. Sinha* and **L.S. Panta**, JJ. [Date of decision: 13-5-2008]

Tota Singh v. State of Punjab, (1987) 2 SCC 529: 1987 SCC (Cri) 381; State of Rajasthan v. Raja Ram, (2003) 8 SCC 180: 2003 SCC (Cri) 1965; Surajpal Singh v. State, AIR 1952 SC 52; Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217, considered and relied on

Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; State of Goa v. Sanjay Thakran, (2007) 3 SCC 755: (2007) 2 SCC (Cri) 162, relied on

[5044] — Ss. 378 and 386 — Appeal against acquittal — Parameters for (Paras 10 to 12). *Bhaskar Ramappa Madar* v. *State of Karnataka*, (2009) 11 SCC 690: 2009 Cri LJ 2422.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 31-3-2009]

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, applied

Krishnan v. State, (2003) 7 SCC 56: 2003 SCC (Cri) 1577; Valson v. State of Kerala, (2008) 12 SCC 241: (2009) 2 SCC (Cri) 208, relied on

[5045] — Ss. 378 and 386 — Appeal against acquittal — Powers of appellate court — Nature and scope — *Held, it is undisputed that if two views are possible, appellate court should not interfere with judgment of acquittal — But, it has many exceptions — On facts held, instant case was not a case where two views were possible — Interference with judgment of acquittal by High Court was justified*

The appellant-accused purchased an undivided share in the property concerned vide sale deeds dated 7-5-1993 and 24-5-1993, and allegedly sowed some bajra crop therein claiming possession. Prosecution alleging that deceased was the co-owner and was in possession of said land for a long time. On the day of occurrence when PW 8 was ploughing the agricultural land, and his father (deceased) was also standing there, accused armed with lathis and jaellies came there. They grievously assaulted the deceased and also caused injuries to PW 12 *L*, *D* and *M* (uncle, aunt and sister of PW 8 respectively). The entire incident lasted for about 2/2 ½ minutes. After admitting the injured at Primary Health Centre, PW 8 proceeded to the police station where his statement was recorded at 1.50 p.m.

Two of the accused had also sustained injuries which were found simple in nature. Deceased died on the same day.

Trial court acquitted accused on following grounds: (*i*) since the accused were in possession of land since 16 days prior to occurrence having purchased the same, the complainant party had no right to destroy the bajra crop sown by them; and when complainants inflicted injuries on them, they rightfully exercised their right of private defence of person and property; (*ii*) presence of PW 8 at place of occurrence was doubtful; (*iii*) injuries sustained by accused were not explained by prosecution; and (*iv*) FIR was antedated and ante-timed.

The High Court by impugned judgment reversed the said judgment. Initially eight persons were arrayed as accused. The High Court did not grant special leave to appeal in respect of Accused 6 to 8. Accused 1 dying during pendency of appeal. Hence, Accused 2 to 5 had preferred the instant appeal.

It was submitted by the appellants that: (*i*) view taken by trial court being a plausible one, High Court should not have interfered therewith; (*ii*) "settled possession" on part of accused having been established by trial court inter alia on basis of admission made by PW 8 vide Exts. DN and DQ, High Court erred in interfering therewith; (*iii*) exercise of right of private defence on part of injured accused *S* and *R* having been accepted and the High Court not granting special leave to appeal so far as they were concerned, same benefit ought to have been extended to appellants too; and (*iv*) injuries sustained by accused not being explained, and FIR having been ante-dated and ante-timed, no interference with judgment of trial court acquitting accused was warranted.

Dismissing the appeal,

Held:

It is true that right of private defence need not be specifically raised. The right of private defence can be exercised provided any occasion arises therefor. Appellants were not in settled possession of the property. If they were not, they had no right of private defence to defend the possession of the property. Furthermore, they came wholly armed, whereas except *L* who was having a small twig (kamari), the deceased party were not armed with any weapon. The kamari was not a dangerous weapon. No grievous injuries could have been caused by use thereof and in fact no grievous injuries have been suffered by the accused. (Paras 46 to 51)

Presence of PW 12 at place of occurrence was admitted. Presence of PW 8 was doubted by trial court only on the ground that he got his father admitted at 2.30 p.m. His presence could not have been doubted on such slender evidence. He was driving the tractor. The entire occurrence lasted for only 2/2 ½ minutes. No suggestion was given by the defence that no tractor was found at the place, or it was deceased himself who was driving the tractor. Evidence of PW 8 was found trustworthy and he was cross-examined on all material points. The reason why he suffered no injury was also satisfactorily explained by stating that by the time he reached there all accused had fled away. (Paras 54 and 55)

There cannot be any doubt or dispute that when two views are possible, appellate court should not interfere with judgment of acquittal. But this has many exceptions. The instant case is a case where no two views are possible. Trial court erred in acquitting accused. Judgment of the High Court convicting appellants calls for no interference. (Paras 56 to 59). *Ram Pat* v. *State of Haryana*, (2009) 7 SCC 614: (2009) 3 SCC (Cri) 488: (2009) 79 AIC 98 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, **JJ**. [Date of decision: 12-5-2009]

Surendra v. State of Maharashtra, (2006) 11 SCC 434: (2007) 1 SCC (Cri) 490; Satya Narain Yadav v. Gajanand, (2008) 16 SCC 609; Bhanwar Singh v. State of M.P., (2008) 16 SCC 657; State of Punjab v. Gurnam Kaur, (2009) 11 SCC 225; Union of India v. Bal Mukund, (2009) 12 SCC 161, considered and relied on

Bishna v. State of W.B., (2005) 12 SCC 657: (2006) 1 SCC (Cri) 696; Ravishwar Manjhi v. State of Jharkhand, (2008) 16 SCC 561, relied on

[5046] — Ss. 378 and 386 — Appeal against acquittal — Powers of appellate court — Nature and scope — *Held, when view taken by trial court is a possible view, then acquittal cannot be set aside by merely substituting its reasons by High Court — In the instant case, view taken by trial court acquitting accused was a possible view, hence, High Court not justified in substituting its own possible view and interfering with well-reasoned judgment of trial court — Moreover, trial court's acquittal had bolstered the presumption that accused was innocent* (Paras 21, 40 and 41). *Dhanapal* v. *State*, (2009) 10 SCC 401: (2009) 82 AIC 160 (SC).

Bench Strength **2**. Coram: **Dalveer Bhandari** and *H.S. Bedi*, JJ. [Date of decision: 1-9-2009]

Sheo Swarup v. King Emperor, (1933-34) 61 IA 398: AIR 1934 PC 227(2); Surajpal Singh v. State, AIR 1952 SC 52; Tulsiram Kanu v. State, AIR 1954 SC 1; Atley v. State of U.P., AIR 1955 SC 807; Balbir Singh v. State of Punjab, AIR 1957 SC 216; M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200; Khedu Mohton v. State of Bihar, (1970) 2 SCC 450: 1970 SCC (Cri) 479; Bishan Singh v. State of Punjab, (1974) 3 SCC 288: 1973 SCC (Cri) 914; K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355: 1979 SCC (Cri) 305; Tota Singh v. State of Punjab, (1987) 2 SCC 529: 1987 SCC (Cri) 381; Sambasivan v. State of Kerala, (1998) 5 SCC 412: 1998 SCC (Cri) 1320; Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Harijana Thirupala v. Public Prosecutor, (2002) 6 SCC 470: 2002 SCC (Cri) 1370; State of Rajasthan v. Raja Ram, (2003) 8 SCC 180: 2003 SCC (Cri) 1965; State of Goa v. Sanjay Thakran, (2007) 3 SCC 755: (2007) 2 SCC (Cri) 162; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; Ghurey Lal v. State of U.P., (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60, followed and considered

[5047] — Ss. 378 and 386 — Appeal against acquittal — Powers of appellate court — Nature and scope — Reiterated (Paras 14 and 15). *Krishna Ram* v. *State of Rajasthan*, (2009) 11 SCC 708: AIR 2009 SC 2112: 2009 Cri LJ 2436: (2009) 76 AIC 45 (SC).

Bench Strength **2**. Coram: **L.S. Panta** and *B. Sudershan Reddy*, JJ. [Date of decision: 17-3-2009]

[5048] — Ss. 378 and 386 — Appeal against acquittal — Powers of appellate court — Nature and scope — Reiterated — *Where it is possible to have two views, one in favour of the prosecution and the other in favour of accused, held, latter would prevail* (Paras 22 and 15). *State of Maharashtra* v. *Dnyaneshwar Laxman Rao Wankhede*, (2009) 15 SCC 200.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 29-7-2009]

Shivappa v. State of Karnataka, (2008) 11 SCC 337: (2009) 1 SCC (Cri) 143; State of Maharashtra v. Rashid B. Mulani, (2006) 1 SCC 407: (2006) 1 SCC (Cri) 408; State v. K. Narasimhachary, (2005) 8 SCC 364: (2006) 1 SCC (Cri) 41; Dilip v. State of M.P., (2007) 1 SCC 450: (2007) 1 SCC (Cri) 377; Gagan Kanojia v. State of Punjab, (2006) 13 SCC 516: (2008) 1 SCC (Cri) 109, relied on

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

[5049] — Ss. 378 and 386 — Appeal against acquittal — Powers of appellate court — Nature and scope — Restated (Paras 11 and 12). *State of U.P.* v. *Dinesh*, (2009) 11 SCC 566: (2009) 3 SCC (Cri) 1484: (2009) 76 AIC 260 (SC): (2009) 3 All LJ 725.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 25-2-2009]

[5050] — Ss. 378 and 386 — Appeal against acquittal — Powers of appellate court — Scope

The following principles emerge from the case law:

1. The accused is presumed to be innocent until proven guilty. In the instant case, the accused possessed this presumption when he was before the trial court. The trial court's acquittal further bolstered the presumption that he was innocent.

2. The power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the appellate court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached — one that leads to acquittal, the other to conviction — the High Courts/appellate courts must rule in favour of the accused. (Para 39). *Dhanapal* v. *State*, (2009) 10 SCC 401: (2009) 82 AIC 160 (SC).

Bench Strength 2. Coram: **Dalveer Bhandari** and *H.S. Bedi*, JJ. [Date of decision: 1-9-2009]

Sheo Swarup v. King Emperor, (1933-34) 61 IA 398: AIR 1934 PC 227(2); Surajpal Singh v. State, AIR 1952 SC 52; Tulsiram Kanu v. State, AIR 1954 SC 1; Atley v. State of U.P., AIR 1955 SC 807; Balbir Singh v. State of Punjab, AIR 1957 SC 216; M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200; Khedu Mohton v. State of Bihar, (1970) 2 SCC 450: 1970 SCC (Cri) 479; Bishan Singh v. State of Punjab, (1974) 3 SCC 288: 1973 SCC (Cri) 914; K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355: 1979 SCC (Cri) 305; Tota Singh v. State of Punjab, (1987) 2 SCC 529: 1987 SCC (Cri) 381; Sambasivan v. State of Kerala, (1998) 5 SCC 412: 1998 SCC (Cri) 1320; Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Harijana Thirupala v. Public Prosecutor, (2002) 6 SCC 470: 2002 SCC (Cri) 1370; State of Rajasthan v. Raja Ram, (2003) 8 SCC 180: 2003 SCC (Cri) 1965; State of Goa v. Sanjay Thakran, (2007) 3 SCC 755: (2007) 2 SCC (Cri) 162; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; Ghurey Lal v. State of U.P., (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60, followed

[5051] — Ss. 378 and 386 — Appeal against acquittal — Powers of appellate court — Scope — Reappreciation of evidence when permissible — *Held, it is not and can never be that the High Court is bound by the finding of the Sessions Judge and cannot reappreciate the evidence — Only requirement of law is that the High Court should be sufficiently mindful of the presumption of innocence of the accused which presumption is reiterated by the finding of acquittal recorded by the trial court — High Court must come to the conclusion that the finding of acquittal by the trial court is totally unsustainable and further that the appreciation of the evidence of the trial court is perverse and as such cannot be supported — If High Court comes to these conclusions, then the whole appeal is open to the High Court and the High Court is justified in reappreciating the evidence and also to come to a different finding — In the instant case, High Court had relied upon* Allarakha case, *(2002) 3 SCC 57 wherein the Supreme Court had reiterated the duty to avoid miscarriage of justice arising from acquittal of the guilty — Hence, it cannot be said that the High Court was not alive to the fact that it was dealing with the judgment of acquittal and had correctly proceeded to consider the evidence — Besides, it had not rejected the findings by the Sessions Court, merely because it could come to the other findings but had given adequate reasons in coming to the findings that it did — Hence, High Court acted correctly in setting aside the judgment of the trial court* (Paras 15, 37 and 38). *Mallappa Siddappa Alakanur* v. *State of Karnataka*, (2009) 14 SCC 748: AIR 2009 SC 2959: (2009) 80 AIC 233 (SC).

Bench Strength 2. Coram: **V.S. Sirpurkar** and *R.M. Lodha*, JJ. [Date of decision: 7-7-2009]

Allarakha K. Mansuri v. State of Gujarat, (2002) 3 SCC 57: 2002 SCC (Cri) 519; Dila v. State of U.P., (2002) 7 SCC 450: 2002 SCC (Cri) 1782; Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736, followed

[5052] — Ss. 378 and 386 — Powers of appellate court under — Scope of — *Reiterated, High Court has full power to reappreciate and reassess the entire evidence upon which the order of acquittal was founded and then to come to its own conclusion*

In an appeal from acquittal under Sections 378 CrPC, the High Court has full power to reappreciate and reassess the entire evidence upon which the order of acquittal was founded and then to come to its own conclusion. There is no limitation placed on that power of the High Court. CrPC makes no difference in the power of the appellate court, between the appeal filed by the State or by other person but the appellate court would not be justified merely because it feels that a different view should be taken for reasons which are not so strong. (Para 10). *Sangappa* v. *State of Karnataka*, (2010) 3 SCC 686.

Bench Strength 2. Coram: **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision: 9-3-2010]

[5053] — Ss. 378 and 386 — Appeal against acquittal — Powers of appellate court — Scope — Reiterated — Case law extensively discussed (Paras 10 to 12). *Satya Narain Yadav* v. *Gajanand*, (2008) 16 SCC 609: AIR 2008 SC 3284: (2008) 69 AIC 213 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 1-8-2008]

Krishnan v. State, (2003) 7 SCC 56: 2003 SCC (Cri) 1577, relied on

Glanville Williams: The Mathematics of Proof II, Criminal Law Review, 1979, by Sweet and Maxwell, p. 340, cited

[5054] — Ss. 378 and 386 — Appeal against acquittal — Powers of appellate court — To desist from fact-finding exercise — *In the instant case evidence against respondent-accused was not clinching enough and hence High Court granted them benefit of doubt, which finding could not be said to be perverse or such as could not be reached after reasonable and careful survey of evidence — A suspicion by itself cannot take place of the proof much less in an appeal against acquittal — Law requires hard facts duly proved by admissible and truthful evidence — Hence, interference therewith unwarranted* (Paras 23 and 24). *State of U.P.* v. *Sahrunnisa*, (2009) 15 SCC 452: 2009 Cri LJ 4151: (2009) 80 AIC 147 (SC).

Bench Strength 2. Coram: **V.S. Sirpurkar** and *R.M. Lodha*, JJ. [Date of decision: 7-7-2009]

[5055] — Ss. 378 and 386 — Appeal against acquittal — Principles reiterated — *No infirmity discernible either in the judgment of acquittal rendered by trial court or the same confirmed by High Court — View taken by trial court and upheld by High Court was a reasonable one and the same cannot be said to be perverse in any manner, warranting interference* (Para 18). *State of A.P.* v. *Rayaneedi Sitharamaiah*, (2008) 16 SCC 179.

Bench Strength 2. Coram: **B.N. Agrawal** and *G.S. Singhvi*, JJ. [Date of decision: 19-12-2008]

[5056] — Ss. 378 and 386 — Appeal against acquittal — Reappreciation of evidence by appellate court — Failure thereof, on the part of appellate court — Sustainability of appellate court's order — *In the present case, High Court while confirming acquittal recorded by trial court not considering other factors considered by trial court — Hence, matter remitted to High Court to consider it afresh — Penal Code, 1860 — S. 302*

The other factors which were considered by the trial court were not considered by the High Court as it primarily concurred with the view of the trial court rendered with reference to the judgment of the Supreme Court in *Paparambaka Rosamma case*, (1999) 7 SCC 695. It would therefore be appropriate to set aside the impugned judgment and remit the matter to the High Court to consider the matter afresh. Needless to say that the High Court shall consider the evidence on record and the applicable legal principle while deciding the matter afresh. (Paras 7 and 8). *State of Maharashtra* v. *Guntabai*, (2009) 14 SCC 363.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 21-4-2009]

[5057] — Ss. 378 and 386 — Appeal against acquittal — Scope — Reiterated — *In the instant case, held, view taken by trial court acquitting accused was a possible view, and could not be said to be palpably wrong on facts or based on erroneous view of law — Hence, High Court not justified in interfering with judgment of acquittal* (Paras 15 and 37). *Mohd. Ankoos* v. *High Court of A.P.*, (2010) 1 SCC 94.

Bench Strength 2. Coram: *D.K. Jain* and **R.M. Lodha**, JJ. [Date of decision: 6-11-2009]

Ghurey Lal v. State of U.P., (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60, relied on

[5058] — Ss. 378 and 386 — Appeal against acquittal — Scope of interference — *Held, order of acquittal should not be lightly interfered with even if the Court believes that there is some evidence pointing finger towards the accused — Case law pertinent to, discussed* (Paras 20 to 24). *State of Rajasthan* v. *Naresh*, (2009) 9 SCC 368: (2009) 3 SCC (Cri) 1069.

Bench Strength 2. Coram: *Dalveer Bhandari* and **Dr. M.K. Sharma**, JJ. [Date of decision: 26-8-2009]

Ramanand Yadav v. Prabhu Nath Jha, (2003) 12 SCC 606: 2004 SCC (Cri) Supp 526, followed

Anil Kumar v. State of U.P., (2004) 13 SCC 257: 2005 SCC (Cri) 178; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; State of U.P. v. Gambhir Singh, (2005) 11 SCC 271: (2006) 1 SCC (Cri) 125, considered and relied on

[5059] — Ss. 378 and 386 — Appeal against acquittal — Scope of interference — Permissible limits — *Held on facts, where whole approach of trial court in appreciating evidence of eyewitnesses was faulty and flawed, and judgment acquitting accused suffered from factual and legal errors, High Court was justified in interfering therewith*

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

within permissible limits — View taken by trial court was neither possible nor plausible (Paras 78 to 80). *Pandurang Chandrakant Mhatre* v. *State of Maharashtra*, (2009) 10 SCC 773: (2009) 83 AIC 38 (SC).

Bench Strength **2**. Coram: *D.K. Jain* and **R.M. Lodha**, JJ. [Date of decision: 8-10-2009]

[5060] — Ss. 378 and 386 — Appeal against acquittal — Two views — *Where two views are possible, reiterated, appellate court shall not interfere — Appellate court would not interfere with a judgment of acquittal only because another view is possible*

The High Court, for good and sufficient reasons, had arrived at findings of fact both with regard to voluntariness of the purported confessions made by the respondents as also compliance with the mandatory statutory provisions vis-à-vis directions issued by the Central Government in making search, seizure as also taking of samples for the purpose of chemical examination having been doubted, there is no reason why a contrary view is to be taken, as it is well known that the appellate court would not interfere with a judgment of acquittal only because another view is possible. On the other hand, if two views are possible, it is trite, the appellate court shall not interfere. (Para 38). *Union of India* v. *Bal Mukund*, (2009) 12 SCC 161: 2009 Cri LJ 2407.

Bench Strength **3**. Coram: **S.B. Sinha**, *Dr. M.K. Sharma* and *H.L. Dattu*, JJ. [Date of decision: 31-3-2009]

Animireddy Venkata Ramana v. Public Prosecutor, (2008) 5 SCC 368: (2008) 2 SCC (Cri) 600, followed

Bal Mukund v. State, 2005 Cri LJ (NOC) 208 (MP), affirmed

[5061] — Ss. 378 and 386 — Appeal against acquittal — Two views possible — Interference not justified (Para 17). *State of Punjab* v. *Gurnam Kaur*, (2009) 11 SCC 225: (2009) 3 SCC (Cri) 1311: (2009) 1 APLJ 197 (SC).

Bench Strength **3**. Coram: **S.B. Sinha**, *Dr. M.K. Sharma* and *H.L. Dattu*, JJ. [Date of decision: 6-3-2009]

Rangaiah v. State of Karnataka, (2008) 16 SCC 737, relied on

[5062] — Ss. 378 and 386 — Appeal against acquittal — When High Court should not disturb trial court's order of acquittal — Rule of prudence — *Reiterated, if on appraisal of evidence and on considering relevant attending circumstances, it is found that two views are possible, one for acquitting accused and other for convicting accused, in such a situation rule of prudence should guide High Court not to disturb order of acquittal made by trial court — Unless conclusions of trial court drawn on evidence on record are found to be unreasonable and perverse or unsustainable, High Court should not interfere with the order of acquittal*

Having regard to the entire evidence and considering the judgments of the courts below, it appears that the view taken by the trial court was reasonable and plausible. It is well settled that, if on appraisal of the evidence and on considering the relevant attending circumstances it is found that two views are possible, one, as held by the trial court, for acquitting the accused and the other for convicting the accused, in such a situation the rule of prudence should guide the High Court not to disturb the order of acquittal made by the trial court. Unless the conclusions of the trial court drawn on the evidence on record are found to be unreasonable and perverse or unsustainable, the High Court should not interfere with the order of acquittal. (Para 61)

The evidence of the eyewitnesses including injured witnesses does not at all inspire confidence and their evidence is in conflict and contradiction with the medical evidence and ballistic expert's report in regard to the weapon of offence, which was different from the one sealed in the police station. The High Court disregarded the rule of judicial prudence in converting the order of acquittal to conviction. (Para 62)

In view of the facts and circumstances, the prosecution failed to prove its case beyond all reasonable doubt and the High Court committed an error in interfering with the trial court's order of acquittal. Accordingly, the order of the High Court and the appellant's conviction set aside and the order of the trial court restored, acquitting the appellant. (Para 65). *Mahendra Pratap Singh* v. *State of U.P.*, (2009) 11 SCC 334: (2009) 3 SCC (Cri) 1352: (2009) 2 ECrN 772 (SC): (2009) 3 All LJ 794.

Bench Strength **2**. Coram: **L.S. Panta** and *B. Sudershan Reddy*, JJ. [Date of decision: 24-2-2009]

[5063] — Ss. 378 and 386 — Appeal against acquittal — When two views are possible, held, judgment of acquittal should not be interfered with

The High Court, did not apply the right test for reversing a judgment of acquittal. The findings of the Sessions Judge were probable. Such a view was possible. By no standard, the views of the Sessions Judge can be said to be wholly unacceptable. The parameters laid down by the Supreme Court in regard to a judgment of acquittal are well known. A judgment of acquittal passed should not be interfered with when two possible views are possible. (Paras 28 to 31 and 21). *Rangaiah* v. *State of Karnataka*, (2008) 16 SCC 737: AIR 2009 SC 1411: (2009) 74 AIC 129 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 12-12-2008]

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; Gowrishankara Swamigalu v. State of Karnataka, (2008) 14 SCC 411: (2009) 2 SCC (Cri) 813; Ghurey Lal v. State of U.P., (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60, relied on

[5064] — Ss. 378 and 386(a) — Appeal against acquittal — Interference when not warranted — *Reiterated, if two reasonable conclusions are possible on basis of evidence on record, appellate court should not disturb findings of acquittal — Acquittal reinforces and reaffirms presumption of innocence of accused* (Para 57). *M.C. Ali* v. *State of Kerala*, (2010) 4 SCC 573.

Bench Strength 2. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 13-4-2010]

Antar Singh v. State of M.P., (1979) 1 SCC 79: 1979 SCC (Cri) 147; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, relied on

[5065] — Ss. 378 and 386 — Appeal against acquittal — Interference by appellate court — When called for — *When reasonings given by trial court contrary to weight of evidence, appellate court justified in discarding the same. Goverdhan Raoji Ghyare* v. *State of Maharashtra*, 1993 Supp (4) SCC 316: 1994 SCC (Cri) 15.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 19-8-1993]

[5066] — Ss. 378 and 386(a) — Ambit and scope of power of appellate court in appeal against acquittal — Principles restated (Paras 12 and 13). *Perla Somasekhara Reddy* v. *State of A.P.*, (2009) 16 SCC 98.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 6-5-2009]

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, followed

[5067] — Ss. 378 and 386(a) — Appeal against acquittal — Interference with acquittal — When proper — *Reiterated, in case of acquittal, if trial court's view is a possible or plausible view, then appellate court or High Court would not be justified in interfering with it — Furthermore, it is a settled legal position that there is presumption of innocence and that presumption is further fortified with acquittal of accused by trial court — Appellate court or High Court would not be justified in reversing judgment of acquittal unless it comes to a clear conclusion that judgment of trial court is utterly perverse and, on basis of evidence on record, no other view is plausible or possible than one taken by appellate court or High Court* (Para 61). *Darshan Singh* v. *State of Punjab*, (2010) 2 SCC 333.

Bench Strength 2. Coram: **Dalveer Bhandari** and *A.K. Ganguly*, JJ. [Date of decision: 15-1-2010]

[5068] — Ss. 378 and 386(a) — Appeal against acquittal — Powers of appellate court — Principles reiterated (Para 14)

Interference in an appeal against an acquittal recorded by the trial court should be rare and in exceptional circumstances. It is, however, well settled by now that it is open to the High Court to reappraise the evidence and conclusions drawn by the trial court but only in a case when the judgment of the trial court is stated to be perverse. The word "perverse" in terms as understood in law has been defined to mean "against the weight of evidence". (Para 14). *Gamini Bala Koteswara Rao* v. *State of A.P.*, (2009) 10 SCC 636: (2009) 83 AIC 166 (SC).

Bench Strength 2. Coram: *H.S. Bedi* and *Dr. B.S. Chauhan*, JJ. [Date of decision: 19-8-2009]

[5069] — Ss. 378 and 386(a) — Appeal against acquittal — Powers of appellate court — Principles restated (Paras 18 and 19). *Raj Narain Singh* v. *State of U.P.*, (2009) 10 SCC 362: (2009) 82 AIC 261 (SC).

Bench Strength 2. Coram: *Dalveer Bhandari* and **Dr. M.K. Sharma**, JJ. [Date of decision: 18-9-2009]

Ghurey Lal v. State of U.P., (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, relied on

[5070] — Ss. 378 and 386(a) — Appeal against acquittal — Powers of High Court under — Principles regarding, restated (Paras 46 to 59). *State of U.P.* v. *Ram Sajivan*, (2010) 1 SCC 529.

Bench Strength 2. Coram: **Dalveer Bhandari** and *A.K. Patnaik*, JJ. [Date of decision: 4-12-2009]

Tulsiram Kanu v. State, AIR 1954 SC 1; Lekha Yadav v. State of Bihar, (1973) 2 SCC 424: 1973 SCC (Cri) 820; Sheo Swarup v. King Emperor, (1933-34) 61 IA 398; Sanwat Singh v. State of Rajasthan, AIR 1961 SC 715; Bishan Singh v. State of Punjab, (1974) 3 SCC 288: 1973 SCC (Cri) 914; Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228: 1978 SCC (Cri) 108; B.N. Mutto v. Dr. T.K. Nandi, (1979) 1 SCC 361; K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355; Tota Singh v. State of Punjab, (1987) 2 SCC 529: 1987 SCC (Cri) 381; Harijana Thirupala v. Public Prosecutor, (2002) 6 SCC 470: 2002 SCC (Cri) 1370; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; Sambasivan v. State of Kerala, (1998) 5 SCC 412: 1998 SCC (Cri) 1320; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Ghurey Lal v. State of U.P., (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60, relied on

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

[5071] — Ss. 378 and 386 — Appeal against acquittal — Benefit of doubt — *Held, when on the basis of the evidence on record two views could be taken, one in favour of the accused and the other against the accused, the one favouring the accused should be accepted* (Para 23). *State of U.P.* v. *Nandu Vishwakarma*, (2009) 14 SCC 501: 2009 Cri LJ 4157: (2009) 80 AIC 215 (SC).

Bench Strength 2. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 6-7-2009]

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, followed

[5072] — Ss. 378 and 386(a) — Powers of appellate court while deciding appeal against acquittal, stated — Caution to be exercised by it during, reiterated

Appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded and its power to review and reappreciate the evidence and come to its own conclusion is not controlled by any provisions of CrPC. The Supreme Court in more than one case cautioned that an appellate court, however, must always bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. If two reasonable views are possible on the basis of the evidence on record and one favourable to the accused has been taken by the trial court, it ought not to be disturbed by the appellate court. (Para 21). *Arun* v. *State*, (2008) 15 SCC 501: (2009) 3 SCC (Cri) 1097: AIR 2009 SC 1256: (2009) 73 AIC 116 (SC).

Bench Strength 2. Coram: *L.S. Panta* and **B. Sudershan Reddy**, JJ. [Date of decision: 11-12-2008]

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, relied on

[5073] — Ss. 378 and 386 — Appeal against acquittal — Interference by appellate court — When called for — Principles restated

Though the Code does not make any distinction between an appeal from acquittal and an appeal from conviction so far as powers of the appellate court are concerned, certain unwritten rules of adjudication have consistently been followed by Judges while dealing with appeals against acquittal. No doubt, the High Court has full power to review the evidence and to arrive at its own independent conclusion whether the appeal is against conviction or acquittal. But while dealing with an appeal against acquittal the appellate court has to bear in mind: first, that there is a general presumption in favour of the innocence of the person accused in criminal cases and that presumption is only strengthened by the acquittal. The second is, every accused is entitled to the benefit of reasonable doubt regarding his guilt and when the trial court acquitted him, he would retain that benefit in the appellate court also. Thus, the appellate court in appeals against acquittals has to proceed more cautiously and only if there is absolute assurance of the guilt of the accused, upon the evidence on record, that the order of acquittal is liable to be interfered with or disturbed. *Dhanna* v. *State of M.P.*, (1996) 10 SCC 79: 1996 SCC (Cri) 1192: AIR 1996 SC 2478.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **K.T. Thomas**, JJ. [Date of decision: 25-7-1996]

[5074] — Ss. 378 and 386 — Appeal against acquittal — Interference by appellate court not justified unless view taken by the trial court is wholly unreasonable and erroneous. *Latel* v. *State of M.P.*, AIR 1994 SC 763: 1994 Cri LJ 1122.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 18-8-1992]

[5075] — Ss. 378 and 386 — Appeal against acquittal — Interference by High Court when justified — *On facts, High Court justified in reserving order of acquittal passed by the trial court*

It is well settled that in appeal against acquittal the High Court is entitled to reappreciate the evidence if it is found that the view taken by the acquitting court was not a possible view or that it was a perverse or infirm or palpably erroneous view.

In the present case the defence failed to establish the theory of alibi still the trial court accepted the theory of alibi as put forward by the defence and extended benefit of doubt to the appellants. The said reasoning of the trial court was clearly perverse, unreasonable and against the weight of evidence. Under these circumstances the High Court was perfectly justified in interfering in appeal against acquittal and in coming to its own conclusion by appreciating the evidence led by the prosecution. *Hari Chand* v. *State of Delhi*, (1996) 9 SCC 112: 1996 SCC (Cri) 950: AIR 1996 SC 1477.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **S.B. Majmudar**, JJ. [Date of decision: 12-2-1996]

Uppari Venkataswamy v. Public Prosecutor, High Court of A.P., (1996) 7 SCC 232: 1996 SCC (Cri) 284, followed

[5076] — Ss. 378 and 386 — Appeal against acquittal — Principles for interference reiterated — Acquittal correctly reversed by High Court — Reversal of acquittal, confirmed — *Held, trial court completely misread implication of evidence given by the five witnesses, three of whom were virtually eyewitnesses and two of them being totally independent — Prosecution evidence further corroborated by doctor's evidence that neck had been almost severed from body by a cutting weapon such as a khukri — Penal Code, 1860 — S. 302* (Paras 8 to 12). *Jayanta Sil* v. *State of Assam*, (2010) 11 SCC 739: AIR 2010 SC 3389.

Bench Strength **2**. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 4-8-2010]

Mahendra Pratap Singh v. State of U.P., (2009) 11 SCC 334: (2009) 3 SCC (Cri) 1352, cited

[5077] — Ss. 378 and 386 — Appeal against acquittal — Interference by High Court without compelling reasons, held, improper. *Vasudeo Kulkarni* v. *Surya Kant Bhatt*, (1977) 2 SCC 304: 1977 SCC (Cri) 349: AIR 1977 SC 1331: 1977 Cri LJ 1000: (1977) 3 SCR 109.

Bench Strength **2**. Coram: **P.K. Goswami** and *P.N. Shinghal*, JJ. [Date of decision: 2-3-1977]

[5078] — Ss. 378 and 386 — Appeal against acquittal — Interference by the High Court when justified — *Findings of trial court based on presumptions, surmises and conjectures — Reliance upon minor and immaterial contradictions and discrepancies — Trial court instead of finding out which of the contending versions was correct giving out a version of its own — Held, in the circumstances of the case, High Court justified in reversing order of acquittal passed by the trial court* (Paras 12, 18, 21 and 24). *Chand Khan* v. *State of U.P.*, (1995) 5 SCC 448: 1995 SCC (Cri) 915: AIR 1995 SC 2140: 1995 Cri LJ 3675.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 11-7-1995]

[5079] — Ss. 378 and 386 — Appeal against acquittal — Interference of High Court in appeal, when called for — Principles restated

The principles relating to interference by the High Court in appeals against acquittal are well settled. While the High Court can review the entire evidence and reach its own conclusions, it will not interfere with the acquittal by the trial court unless there are strong reasons based on evidence which can dislodge the findings arrived at by the trial court, which were the basis for the acquittal. The High Court has to give due importance to the conclusions of the trial court, if they had been arrived at after proper appreciation of the evidence. The High Court will interfere in appeals against acquittals, only where the trial court makes wrong assumptions of material facts or fails to appreciate the evidence properly. If two views are reasonably possible from the evidence on record, one favouring the accused and one against the accused, the High Court is not expected to reverse the acquittal merely because it would have taken the view against the accused had it tried the case. The very fact that two views are possible makes it clear that the prosecution has not proved the guilt of the accused beyond reasonable doubt and consequently the accused is entitled to benefit of doubt. (Para 13). *Sambhaji Hindurao Deshmukh* v. *State of Maharashtra*, (2008) 11 SCC 186.

Bench Strength **2**. Coram: *G.P. Mathur* and **R.V. Raveendran**, JJ. [Date of decision: 17-1-2008]

Ganesh Bhavan Patel v. State of Maharashtra, (1978) 4 SCC 371: 1979 SCC (Cri) 1; Babu v. State of U.P., (1983) 2 SCC 21: 1983 SCC (Cri) 332; Awadhesh v. State of M.P., (1988) 2 SCC 557: 1988 SCC (Cri) 361; Thanedar Singh v. State of M.P., (2002) 1 SCC 487: 2002 SCC (Cri) 153; State of Rajasthan v. Raja Ram, (2003) 8 SCC 180: 2003 SCC (Cri) 1965, relied on

[5080] — Ss. 378 and 386 — Appeal against acquittal — Interference — Powers of appellate court — Scope — *Reiterated — Interference only when there are substantial and compelling reasons for doing so* (Para 9). *State of M.P.* v. *Bacchudas*, (2007) 9 SCC 135: (2007) 3 SCC (Cri) 87: AIR 2007 SC 1236: (2007) 50 AIC 126 (SC): 2007 Cri LJ 1661.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-1-2007]

Bhagwan Singh v. State of M.P., (2003) 3 SCC 21: 2003 SCC (Cri) 712; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of Punjab v. Phola Singh, (2003) 11 SCC 58: 2004 SCC (Cri) 276; Suchand Pal v. Phani Pal, (2003) 11 SCC 527: 2004 SCC (Cri) 220; Sachchey Lal Tiwari v. State of U.P., (2004) 11 SCC 410: 2004 SCC (Cri) Supp 105, relied on

[5081] — Ss. 378 and 386 — Appeal against acquittal — Interference with finding of fact recorded by the trial court by reappreciating the evidence — When justified — *Evidence of injured witnesses found consistent — Medical evidence establishing that the witnesses had suffered number of injuries from bomb blast in the same incident — Trial Court not justified in contradicting the injured eyewitness with statement in the FIR given by the deceased complainant who could not be examined during the trial — Trial Court disbelieving the*

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

eyewitness account of injured witnesses in a most perfunctory and callous manner — On the facts of the case High Court was justified in appeal against acquittal in reappreciating the evidence on record. Uppari Venkataswamy v. *Public Prosecutor, High Court of A.P.*, (1996) 7 SCC 232: 1996 SCC (Cri) 284.

Bench Strength 2. Coram: *M.K. Mukherjee* and **S.B. Majmudar**, JJ. [Date of decision: 8-12-1995]

State of Punjab v. Ajaib Singh, (1995) 2 SCC 486: 1995 SCC (Cri) 418, relied on

[5082] — Ss. 378 and 386 — Appeal against acquittal — Interference with order of acquittal not justified merely because another view was possible — *Conviction under S. 395, Indian Penal Code set aside. Tulsi Ram* v. *State of M.P.*, 1987 Supp SCC 464: 1988 SCC (Cri) 104.

Bench Strength 2. Coram: *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 24-2-1987]

Antar Singh v. State of M.P., (1979) 1 SCC 79: 1979 SCC (Cri) 147, followed

[5083] — Ss. 378 and 386 — Appeal against acquittal — Interference with when not called for — *When view taken by High Court found to be a possible reasonable view based on appreciation of evidence on record, held, no interference therewith called for by Supreme Court in appeal — Penal Code, 1860 — S. 302 — Arms Act, 1959, S. 27*

If on the same evidence two views are reasonably possible, where the court below takes a view in favour of the accused, the appellate court will not set aside the order of acquittal unless it finds the findings to be perverse, highly unreasonable, based on no evidence on record or made in ignorance of relevant evidence on record or for other such reasons. In the instant case, the High Court appreciated the evidence on record and recorded its findings which appear to be reasonable and based on evidence on record. Therefore, there is no reason to interfere with the judgment of the High Court. (Paras 3 and 4). *Ayodhya Singh* v. *State of Bihar*, (2005) 9 SCC 584: 2005 SCC (Cri) 1252: AIR 2005 SC 1022: 2005 Cri LJ 1450.

Bench Strength 2. Coram: **B.P. Singh** and *B.N. Srikrishna*, JJ. [Date of decision: 3-2-2005]

[5084] — Ss. 378 and 386(a) — Appeal against acquittal — Interference by High Court — When not warranted — *Held, High Court's power while converting an acquittal into a conviction is no longer a matter of speculation and debate — However, it is now well settled that if trial court's judgment is well founded on evidence and conclusion drawn in favour of accused is possible thereon, High Court would not be justified in interfering on the premise that a different view could also be taken — Though High Court is entitled to reappraise evidence, there should be substantial and compelling reasons for setting aside an acquittal order and making it one of conviction* (Para 21). *Gopal Singh* v. *State of M.P.*, (2010) 6 SCC 407.

Bench Strength 2. Coram: **H.S. Bedi** and *A.K. Patnaik*, JJ. [Date of decision: 12-5-2010]

[5085] — S. 378 — Appeal against acquittal — Power of appellate court to reappreciate, review or reconsider evidence and interfere with acquittal — Scope — Principles restated — *Where two views are possible on evidence on record, one taken by trial court in favour of accused should not be disturbed by appellate court — Trial court gave benefit of doubt to accused finding that prosecution had not examined material witnesses, testimony of the witnesses was unreliable and inconsistent, prosecution story was unnatural, knife produced before court as mudammal article was not the same which was used by accused in inflicting injuries — Fact that PWs tried to suppress the fact that Accused 1 also sustained injuries during the course of the same incident also creates doubt about the prosecution case — In the circumstances held, High Court erred in interfering with the possible view taken by trial court on evidence and reversing the order of acquittal — Penal Code, 1860 — Ss. 302, 324, 143, 147 and 148*

The accused persons were running a chit transaction in which successful members were given articles like vessels, watches, sarees, etc. On the day of occurrence, one such transaction was held at about 5.30 p.m. in which one *N*, the successful bidder was given a copper vessel (*kolaga*). *N* returned the vessel as it was old and demanded a new one which was refused. At about 9.30 p.m. on the same day when PWs 1 to 4 were near a bypass, Accused 1 to 8 who were armed with weapons like knife, rippers, stones, formed themselves into an unlawful assembly and attacked PWs 2 to 4 causing injuries. At that time *A*, the deceased intervened to stop the quarrel. Accused 8 then took out a button knife from the pocket and stabbed *A* on the left side of his chest, due to which *A* fell down. The complainant *V* along with one *K* took *A* to hospital but on the way he died. The accused persons after committing the assault, threw the clubs and rippers on the spot and ran away. The trial court found that the prosecution had failed to examine certain persons who could have unfolded the genesis of the prosecution case.

The trial court indicated that the root cause of the quarrel was refusal to exchange copper vessel (*kolaga*) to *N*, winner of the draw, but he was not examined. Likewise, *K*, who accompanied the deceased to the hospital, was not brought before the court. Though it was in evidence that Accused 1 was injured and was also taken to the hospital along with the deceased, some witnesses had denied the fact as to injuries sustained by the accused. The trial court had also stated that it was unnatural that the prosecution witnesses and the deceased could have gone to the bypass at about 9.30 p.m. when a shorter route was available for going to their destination. The trial court observed that there was inconsistency in prosecution evidence as to availability of electric light at the time of incident. The court also noted that the knife produced before the court as mudammal article was not the same which was used by Accused 8 for inflicting injury on the deceased. There was also no consistency in evidence as to injuries sustained by prosecution witnesses. On the basis of these findings, the trial court extended benefit of doubt to the accused-appellants and acquitted them of offences punishable under Sections 143, 147, 148, 302 and 324 IPC.

In an appeal against an order of acquittal by the State, the High Court reversed the order of the trial court. It observed that on careful examination of evidence of PWs 1 to 4, it was clearly established that deceased was done to death by Accused 8 and PWs 2 to 4 sustained injuries in the course of incident. However, the High Court did not give much weight to the fact regarding injuries sustained by Accused 1 observing that Accused 1 was neither examined by a doctor nor was a cross-complaint filed by him against the prosecuting party. It was held by the High Court that contradictions and variations were of minor nature which did not affect substratum of the prosecution case and evidence of PWs 1 to 4 had remained totally unshaken and there was a ring of truth running through their testimony which inspired confidence notwithstanding trivial omissions and discrepancies, which did not go to the root of the matter. The High Court, accordingly, set aside acquittal recorded by the trial court and convicted the appellants.

Allowing the appeal,

Held :

The following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(*1*) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(*3*) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(*4*) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. (Para 42)

(*5*) If two reasonable views are possible on the basis of evidence on record and one favourable to the accused has been taken by the trial court, it ought not to be disturbed by the appellate court. (Para 44)

In the present case, the High Court ought not to have disturbed the order of acquittal recorded by the trial court. It is not material whether Accused 1 had or had not filed a complaint or he was or was not examined by a doctor, but the fact that even though it was the case of prosecution that Accused 1 was injured during the course of incident, prosecution witnesses tried to suppress that fact which would throw doubt as to the correctness of the case or the manner in which the incident had happened. (Para 43)

If in the light of the circumstances of the case, the trial court felt that the accused could get benefit of doubt, the said view cannot be held to be illegal, improper or contrary to law. Hence, even though in an appeal against acquittal, powers of the appellate court are as wide as that of the trial court and it can review, reappreciate and reconsider the entire evidence

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brought on record by the parties and can come to its own conclusion on fact as well as on law, in the present case, the view taken by the trial court for acquitting the accused was possible and plausible. On the basis of evidence, therefore, at the most, it can be said that the other view was equally possible. A possible view on the evidence of prosecution had been taken by the trial court which ought not to have been disturbed by the appellate court. The decision of the appellate court (the High Court), therefore, is liable to be set aside. (Para 44). *Chandrappa* v. *State of Karnataka*, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325: (2007) 54 AIC 172 (SC): 2007 Cri LJ 2136.

Bench Strength 2. Coram: **C.K. Thakker** and *L.S. Panta*, JJ. [Date of decision: 15-2-2007]

Sheo Swarup v. R. Emperor, (1933-34) 61 IA 398: AIR 1934 PC 227 (2); Nur Mohd. v. Emperor, AIR 1945 PC 151: 47 Cri LJ 1; Prandas v. State, AIR 1954 SC 36: 1954 Cri LJ 331; Surajpal Singh v. State, AIR 1952 SC 52: (1952) 3 SCR 193: 1952 Cri LJ 331; Ajmer Singh v. State of Punjab, AIR 1953 SC 76: (1953) 4 SCR 418: 1953 Cri LJ 521; Atley v.State of U.P., AIR 1955 SC 807: 1955 Cri LJ 1653; Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217: (1955) 2 SCR 1285; Sanwat Singh v. State of Rajasthan, AIR 1961 SC 715: (1961) 3 SCR 120: (1961) 1 Cri LJ 766; M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200: (1963) 2 SCR 405; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355: 1979 SCC (Cri) 305; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Allarakha K. Mansuri v. State of Gujarat, (2002) 3 SCC 57: 2002 SCC (Cri) 519; Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Harijana Thirupala v. Public Prosecutor, High Court of A.P., (2002) 6 SCC 470: 2002 SCC (Cri) 1370; Ramanand Yadav v. Prabhu Nath Jha, (2003) 12 SCC 606: 2004 SCC (Cri) Supp 526; Kallu v. State of M.P., (2006) 10 SCC 313: (2006) 3 SCC (Cri) 546, relied on

***Followed** in State of Maharashtra v. Sujay Mangesh Poyarekar, (2008) 9 SCC 475*

[5086] — S. 378 — Reversal of acquittal by High Court — Principles to be followed restated — Reversal of acquittal upheld

The High Court in an appeal under S. 417 of the Code of Criminal Procedure has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it be found expressly stated in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any real and reasonable doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witness. *Barati* v. *State of U.P.*, (1974) 4 SCC 258: 1974 SCC (Cri) 420: AIR 1974 SC 839: (1974) 3 SCR 570: 1974 Cri LJ 709.

Bench Strength 2. Coram: **H.R. Khanna** and *V.R. Krishna Iyer*, JJ. [Date of decision: 12-3-1974]

[5087] — S. 378 — Reversal of acquittal — Principles to be followed — *Labour dispute turning hostile leading to death of two women and injury to several others — Out of 49 accused seven convicted by trial court — High Court in cryptic manner reversing acquittal of four accused and confirming conviction of the seven accused found guilty by trial court — Sustainability — Manner of disposal deprecated — High Court without properly discussing legal and factual aspects held four accused guilty — Held, there was no occasion to have passed order of conviction without removing doubts with regard to correctness, legality and propriety of the two dying declarations — Four accused convicted by High Court, acquitted — Out of remaining seven accused appellants, conviction and sentence awarded by trial court and confirmed by High Court for A-1, A-2, A-15, A-32, A-33, confirmed — A-25 and A-46 acquitted — Penal Code, 1860 — Ss. 302, 307, 435, 427, 143 and 148 r/w S. 149 IPC* (Paras 35 to 37, 51 and 52). *C. Magesh* v. *State of Karnataka*, (2010) 5 SCC 645.

Bench Strength 2. Coram: *V.S. Sirpurkar* and **Deepak Verma**, JJ. [Date of decision: 30-4-2010]

Baldev Singh v. State of Punjab, (1990) 4 SCC 692: 1991 SCC (Cri) 61, relied on

[5088] — Ss. 378 and 386 — Appeal against acquittal — When interference of appellate court with acquittal called for

There cannot be any dispute in regard to the legal proposition that an appellate court while entertaining an appeal from a judgment of acquittal would not ordinarily interfere therewith, if two views are possible. But when there were very serious infirmities in the judgment of the trial court both in regard to the legal propositions as also appreciation of evidence and there were non-consideration of material facts and consideration of irrelevant facts, the appellate court's interference with the judgment of acquittal would be warranted.

Which matter deserves interference at the hands of the appellate court would depend upon the fact situation of each case. Legal proposition must be applied having regard to the fact of each case. (Paras 43 and 44). *Animireddy Venkata Ramana* v. *Public Prosecutor, High Court of A.P.*, (2008) 5 SCC 368: (2008) 2 SCC (Cri) 600: AIR 2008 SC 1603: (2008) 65 AIC 136 (SC): 2008 Cri LJ 2038.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 5-3-2008]

Mahadeo Laxman Sarane v. State of Maharashtra, (2007) 12 SCC 705; Swami Prasad v. State of M.P., (2007) 13 SCC 25, relied on

[5089] — Ss. 378 and 386 — Appeal against acquittal — When interference with acquittal called for — Two views — *Appellate court ordinarily would not interfere with the finding of acquittal if two views are possible — But appellate court is also entitled to consider the evidence brought on record by both prosecution and defence and if on appraisal thereof only one view is possible, appellate court would not hesitate to interfere with the judgment of acquittal* (Paras 39 and 40). *State* v. *M. Krishna Mohan*, (2007) 14 SCC 667: AIR 2008 SC 368: (2008) 61 AIC 180 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

State of Haryana v. Sher Singh, (2002) 9 SCC 356: 2003 SCC (Cri) 1188; Narendra Singh v. State of M.P., (2004) 10 SCC 699: 2004 SCC (Cri) 1893; Budh Singh v. State of U.P., (2006) 9 SCC 731: (2006) 3 SCC (Cri) 377, relied on

[5090] — Ss. 378 and 386 — Appeal against acquittal — When two views are possible, appellate court should not reverse the judgment of acquittal merely because the other view was possible — *When judgment of trial court was neither perverse, nor suffered from any legal infirmity or non-consideration/ misappreciation of evidence on record, reversal thereof by High Court was not justified* (Para 19). *K. Prakashan* v. *P.K. Surenderan*, (2008) 1 SCC 258: (2008) 1 SCC (Cri) 200: (2007) 140 Comp Cas 372: (2008) 2 Mah LJ 771.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 10-10-2007]

M.S. Narayana Menon v. State of Kerala, (2006) 6 SCC 39: (2006) 3 SCC (Cri) 30; Mahadeo Laxman Sarane v. State of Maharashtra, (2007) 12 SCC 705, relied on

[5091] — Ss. 378 and 386 — Appeal against acquittal — Where two views of evidence reasonably possible interference with order of acquittal not justified — But where conclusions drawn by the trial court are wholly unreasonable and perverse the appellate court can reverse the acquittal — *Successive assault on three victims forming part of the same transaction and outcome of one and the same common object — Trial court appraising the evidence treating the three incidents of assault as distinct and unconnected with each other — Held, High Court justified in observing that the basic approach of the trial court in appreciating the evidence was absolutely erroneous* (Paras 9 and 10). *Bharwad Jakshibhai Nagjibhai* v. *State of Gujarat*, (1995) 5 SCC 602: 1995 SCC (Cri) 993: AIR 1995 SC 2505.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *G.T. Nanavati*, JJ. [Date of decision: 24-8-1995]

[5092] — Ss. 378 and 386 — Appeal against acquittal — Where two views reasonably possible from the very same evidence, prosecution cannot be said to have proved its case beyond reasonable doubt — *Trial court, finding that the accused succeeded in proving his case by preponderance of probabilities, acquitting the accused — High Court without holding that the view taken by trial court was perverse or erroneous, erred in reappreciating the very same evidence and coming to a contrary conclusion* (Para 17). *T. Subramanian* v. *State of T.N.*, (2006) 1 SCC 401: (2006) 1 SCC (Cri) 401: AIR 2006 SC 836: 2006 Cri LJ 804: (2006) 38 AIC 114 (SC): (2006) 101 Cut LT 516.

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

State v. K. Narasimhachary, (2005) 8 SCC 364: (2006) 1 SCC (Cri) 41, relied on

[5093] — Ss. 378 and 386 — Appeal against acquittal — Where view taken by trial Court is reasonably possible, High Court not justified in reversing the order of acquittal even if it does not agree with the trial Court's view — *On facts, conviction and sentence under S. 307, Penal Code, 1860, passed by High Court set aside — Penal Code, 1860, S. 307. Dharam Pal* v. *State of U.P.*, 1981 Supp SCC 20: 1981 SCC (Cri) 640.

Bench Strength **3**. Coram: *S. Murtaza Fazal Ali, Baharul Islam* and *A. Varadarajan*, JJ. [Date of decision: 25-3-1981]

[5094] — Ss. 378 and 386 — Appeal against acquittal — Reappreciation of evidence and interference with the findings of acquittal — When called for

An appellate court entertaining an appeal from the judgment of acquittal by the trial court though entitled to reappreciate the evidence and come to an independent conclusion, it should not do so as a matter of routine. In other words, if from the same set of evidence two views are possible and if the trial court has taken one view on the said evidence, unless the appellate court comes to the conclusion that the view taken by the trial court is either perverse or such that no reasonable person could come

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

to that conclusion or that such a finding of the trial court is not based on any material on record, it should not merely because another conclusion is possible reverse the finding of the trial court. In the instant case the trial court had taken a view which the High Court has not held to be either perverse, unreasonable or a finding which is not based on evidence, still on reappreciation of the evidence, the High Court came to a different conclusion which on facts of this case and on the basis of the ratio of the law laid down by this Court in the above cited cases cannot be sustained. (Para 9). *Bhim Singh* v. *State of Haryana*, (2002) 10 SCC 461: 2003 SCC (Cri) 1469: AIR 2003 SC 693: 2003 Cri LJ 857.

Bench Strength **3**. Coram: **N. Santosh Hegde**, *Shivaraj V. Patil* and *B.P. Singh*, JJ. [Date of decision: 11-12-2002]

Mohanlal Hargovind Dass v. Ram Narain, (1979) 3 SCC 279: 1979 SCC (Cri) 649; State of Punjab v. Balraj Singh, (1978) 3 SCC 129: 1978 SCC (Cri) 359; State of Maharashtra v. Wasudeo Ramchandra Kaidalwar, (1981) 3 SCC 199: 1981 SCC (Cri) 690; Ram Kumar Pandey v. State of M.P., (1975) 3 SCC 815: 1975 SCC (Cri) 225, relied on

[5095] — Ss. 378 and 386 — Appeal against acquittal — Reappreciation of evidence by High Court — *Factors to be considered — On facts, order of High Court setting aside acquittal of the appellants perfectly justified*

The jurisdiction and obligation of the High Court to reappreciate the evidence is identical in case involving acquittal and conviction and all that is required of the High Court while dealing with an appeal against acquittal is that it shall take into consideration and be alive of the factors which influenced the trial court to record an order of acquittal. In the present case the High Court had dealt with the case keeping in view the above settled principles and had analysed and reappreciated the entire evidence with great care and caution. The High Court while upholding the acquittal of the four co-accused found sufficient, reliable and clinching evidence to convict the appellants. The High Court was perfectly justified in setting aside the acquittal of the appellants. *Amrik Singh* v. *State of Rajasthan*, (1994) 1 SCC 563: 1994 SCC (Cri) 447.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *N.P. Singh*, JJ. [Date of decision: 17-12-1993]

[5096] — Ss. 378 and 386 — Appeal against acquittal — Reappreciation of evidence by the High Court — *Where the trial court disbelieved the evidence of eyewitnesses on improper and insufficient grounds resulting in failure of justice, High Court was justified in reappreciating the evidence and coming to its own conclusions* (Para 4). *Gajanan Amrut Gaykwad* v. *State of Maharashtra*, 1995 Supp (3) SCC 607: 1995 SCC (Cri) 1081: AIR 1996 SC 3332.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **G.T. Nanavati**, JJ. [Date of decision: 1-9-1995]

[5097] — Ss. 378 and 386 — Appeal against acquittal — Reasons for acquittal given by the trial court not perverse — *Each of reasons substantiated and based on proper appreciation of evidence — Held, in the circumstances, the High Court not justified in setting aside the acquittal merely because a different view of evidence can be taken — Conviction set aside — Benefit of the order extended also to non-appealing accused. Jai Pal* v. *State of UT Chandigarh*, (1999) 1 SCC 218: 1998 SCC (Cri) 1593: AIR 1998 SC 2787.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *D.P. Wadhwa*, JJ. [Date of decision: 29-7-1998]

[5098] — Ss. 378 and 386 — Appeal against acquittal — Reasons given by the trial court for acquittal must be kept in mind — *If two views possible and the one in favour of acquittal is taken by the trial court, the High Court will not interfere with order of acquittal — On facts, reasons given by the High Court for reversing the order of acquittal held, sustainable. Shankar Lal* v. *State of M.P.*, 1996 SCC (Cri) 740.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 26-4-1996]

[5099] — Ss. 378 and 386 — Appeal against acquittal — Reversal of acquittal — When permissible — *Conviction by appellate court by substituting plausible possibilities/theories of trial court when witness' credibility and prosecution story doubted, held, is not permissible*

If the trial court's view is possible and plausible, the High Court should not substitute the same by its own possible views. Due or proper weight and consideration must be given to the trial court's decision and findings. This is especially true when a witness' credibility is at issue. The difference in treatment of the case by two courts below is particularly noticeable in the manner in which they have dealt with the prosecution evidence. While the trial court took great pain in discussing all important material aspects and to record its opinion on every material and relevant point, the Judges of the High Court have reversed the judgment of the trial court without placing the very substantial reasons given by it in support of its conclusion. The trial court after marshalling the evidence on record came to the conclusion that there were serious infirmities in the prosecution's story. The reasoning given by the High Court for overturning the judgment of the trial court is wholly unsustainable and contrary to the settled principles of law crystallised by a series of judgment. (Paras 69 to 73). *Ghurey Lal* v. *State of U.P.*, (2008) 10 SCC 450.

Bench Strength **2**. Coram: *R.V. Raveendran* and **Dalveer Bhandari**, JJ. [Date of decision: 30-7-2008]

Tota Singh v. State of Punjab, (1987) 2 SCC 529: 1987 SCC (Cri) 381, applied

Madan Mohan Singh v. State of U.P., AIR 1954 SC 637; Atley v. State of U.P., AIR 1955 SC 807; Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217; Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248: 1995 SCC (Cri) 355; Sambasivan v. State of Kerala, (1998) 5 SCC 412: 1998 SCC (Cri) 1320; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Harijana Thirupala v. Public Prosecutor, High Court of A.P., (2002) 6 SCC 470: 2002 SCC (Cri) 1370; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, relied on

[5100] — Ss. 378 and 386 — Appeal against acquittal — Reversal of acquittal when not justified — *Interference with trial court's appreciation of evidence by appellate authority when called for*

While the jurisdiction of an appellate court is co-extensive with that of the trial court, in the case of an appeal against a judgment of acquittal it cannot totally brush aside the appreciation of the evidence by the trial court. The reasons for reversing a judgment of acquittal should be cogent and if two views are reasonably possible, the appellate court should be slow in interfering with the judgment of the trial court, even if it is possible for it to take a different view after a process of laborious reasoning.

In the present case, in view of inordinate delay in filing FIR, prosecution's failure to show sufficient motive of the accused to commit the crime and unreliability of the uncorroborated testimony of the sole and closely related eyewitness, High Court was not justified in reversing the acquittal, and convicting the first accused (appellant 1) under Ss. 302/34, IPC. *Ramji Surjya Padvi* v. *State of Maharashtra*, (1983) 3 SCC 629: 1983 SCC (Cri) 748: AIR 1983 SC 810: 1983 Cri LJ 1105: 1983 MLJ (Cri) 520.

Bench Strength **2**. Coram: **E.S. Venkataramiah** and *V. Balakrishna Eradi*, JJ. [Date of decision: 13-5-1983]

[5101] — Ss. 378 and 386 — Appeal against acquittal — Review of evidence and interference with acquittal — *General principles regarding restated — On facts held, High Court erred in upsetting the well-reasoned judgment and order of acquittal without dislodging the reasons given by trial court — Penal Code, 1860 — S. 302*

In this case the High Court proceeded on the ground that evidence of PWs 1 and 2 clearly established the case and as such the motive aspect had no bearing on the case. The High Court recorded its finding on the aspect of motive without dispelling valid reasons given by the trial court. It held that the evidence of PWs 1 and 2 was trustworthy as nothing had been elicited in their cross-examination to discredit their testimony. Here again, it was not shown as to how the reasons recorded by the trial court on appreciation of the entire evidence were perverse or untenable in not relying on the evidence of PWs 1 and 2. As to the non-conducting of identification parade and its impact on the prosecution case, the High Court disagreed with the view taken by the trial court observing that the appellants and PWs 1 and 2 were from the same locality and as such not holding test identification parade was of no consequence. As to the non-examination of independent witnesses, though several independent persons had witnessed the incident, the High Court accepted the feeble explanation given by the investigating officer, that none of them came forward to give evidence because of fear of the accused. Nothing had come in evidence that the appellants were notorious criminals or they were a terror in the village. The trial court took the view that non-examination of independent witnesses seriously impaired the credibility of the prosecution case. The High Court erroneously accepted the explanation of the investigating officer. In relation to the overt acts of Appellants 1 and 2, the High Court was again not correct in ignoring the discrepancy which the trial court pointed out on the basis of conflicting evidence of PWs 1 and 2 on the one hand and that of the doctor on the other. (Para 15)

Thus the High Court committed a serious error in disturbing the order of acquittal recorded by the trial court that too without dislodging the reasons given by the trial court. Assuming one other view was possible, that itself was no ground to interfere with the order of acquittal unless it was shown that the appreciation of evidence by the trial court was either perverse or untenable and that in ordering acquittal, the trial court either ignored material evidence or that the view taken by it was patently untenable. (Para 16)

Doubtless the High Court in appeal either against an order of acquittal or conviction as a court of first appeal has full power to review the evidence to reach its own independent conclusion. However, it will not interfere with an order of acquittal lightly or merely because one other view is possible, because with the passing of an order of acquittal

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presumption of innocence in favour of the accused gets reinforced and strengthened. The High Court would not be justified to interfere with the order of acquittal merely because it feels that sitting as a trial court it would have proceeded to record a conviction; a duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity. (Para 12)

In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which he is charged. Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be added that ultimately and finally the decision in every case depends upon the facts of each case. (Para 11). *Harijana Thirupala* v. *Public Prosecutor, High Court of A.P.*, (2002) 6 SCC 470: 2002 SCC (Cri) 1370: AIR 2002 SC 2821.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Shivaraj V. Patil**, JJ. [Date of decision: 1-8-2002]

[5102] — Ss. 378 and 386 — Appeal against acquittal — Review of evidence and interference with order of acquittal by appellate court — When called for — *Paramount consideration is prevention of miscarriage of justice — There must be compelling and substantial reasons for interference — Such reasons exist where judgment of acquittal is unreasonable and eliminates relevant and convincing materials — Where two views are possible, one favourable to accused should be preferred — Prosecution case that the accused had exhorted the co-accused, who was having a pistol, to kill the deceased — High Court finding that prosecution failed to establish the factum of exhortation, acquitting the accused — Held on facts, High Court's view being a possible view, no interference called for* (Paras 10 and 11)

There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. (Para 10)

The High Court analysed the evidence of PWs 1 and 2 to conclude that it would not have been possible for PW 2 to hear the exhortation as he was at a distance. It is not the evidence that the exhortation was in a loud voice. Evidence of PW 1 was vague about the exhortation. The view taken by the High Court is a possible view. (Para 11). *Sachchey Lal Tiwari* v. *State of U.P.*, (2004) 11 SCC 410: AIR 2004 SC 5039.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 6-10-2004]

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2004 SCC (Cri) 736; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of Punjab v. Phola Singh, (2003) 11 SCC 58: 2004 SCC (Cri) 276; Suchand Pal v. Phani Pal, (2003) 11 SCC 527: 2004 SCC (Cri) 220, relied on

[5103] — Ss. 378 and 386 — Appeal against acquittal — Scope — *Held, generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by the acquittal — If two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted — Paramount consideration of the court is to ensure that miscarriage of justice is prevented which may arise not only from acquittal of guilty but also conviction of innocent — Appellate court while dealing with appeal against acquittal should interfere only when there are compelling and substantial reasons for doing so — Where impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference — In the instant case, prosecution for proving motive alleging that accused was harassing PW 8 and was rebuked therefor — It was also alleged that accused on several occasion wanted to sexually assault PW 8 and to ensure that she is not left alone, the deceased was asked to accompany her — Deceased last seen by PW 3, PW 4 & PW 8 talking to accused in front of his house and thereafter accompanying him — His dead body recovered from well in the night — Held, in such circumstances it is improbable and unnatural as rightly held by the High Court that PW 3 (mother of the deceased) would permit the deceased to go with the accused and would not take any precaution when she claimed to have seen the deceased in the company of the accused — Evidence of PW 4 not found reliable — Accused rightly acquitted by High Court* (Paras 9, 10 and 2). *State of U.P.* v. *Jai Prakash*, (2007) 10 SCC 164: (2007) 3 SCC (Cri) 450: AIR 2007 SC 2497: (2007) 56 AIC 92 (SC): (2007) 5 All LJ 149.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 20-6-2007]

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of Punjab v. Phola Singh, (2003) 11 SCC 58: 2004 SCC (Cri) 276, relied on

[5104] — Ss. 378 and 386 — Appeal against acquittal — Scope and ambit of appellate court's powers restated — *Judgment of trial court neither manifestly perverse nor wholly unreasonable — Moreover, victims not implicating appellants in perpetration of crime — They even did not know or remember as to who assaulted them — Testimony of other witnesses also not reliable — On facts and in circumstances of case reversal of acquittal by High Court not justified — Constitution of India — Art.136. Lalit Kumar Sharma* v. *Govt. of W.B.*, 1989 Supp (2) SCC 140: AIR 1989 SC 2134: 1989 Cri LJ 2297.

Bench Strength 2. Coram: *G.L. Oza* and **S. Ratnavel Pandian**, JJ. [Date of decision: 31-8-1989]

Mathai Methews v. State of Maharashtra, (1970) 3 SCC 772, relied on

[5105] — Ss. 378 and 386 — Appeal against acquittal — Scope of appellate Court's jurisdiction explained and law laid down in *Sanwant Singh case* reiterated — *That if two reasonable views of the evidence are possible the appellate Court should not interfere, held, is but the old rule of giving accused the benefit of reasonable doubt — What is "reasonable doubt" further explained — CrPC, 1898, Ss. 417 and 423*

The right of the appellate Court to review the entire evidence and come to its own conclusion bearing in mind the consideration mentioned by the Privy Council in *Sheo Swarup case*, AIR 1934 PC 227 and affirmed by the Supreme Court in *Sanwant Singh case*, AIR 1961 SC 715 is beyond dispute. In some later decisions of the Supreme Court it has been said that to the principles laid down in *Sanwat Singh case* may be added the further principle that "if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate Court should not disturb the finding of the trial Court". This, of course, is not a new principle. It stems out of the fundamental principle of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable.

"A reasonable doubt does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other; it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reasons."

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So where the trial Court allows itself to be best with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule. *K. Gopal Reddy* v. *State of A.P.*, (1979) 1 SCC 355: 1979 SCC (Cri) 305: AIR 1979 SC 387: 1979 MLJ (Cri) 259: 1979 ALJ 137: 1980 Cri LJ 812.

Bench Strength **2**. Coram: *Jaswant Singh* and **O. Chinnappa Reddy**, JJ. [Date of decision: 22-11-1978]

[5106] — Ss. 378 and 386 — Appeal against acquittal — Scope of appellate court's power — Reiterated. *State of Haryana* v. *Surender*, (2007) 11 SCC 281: (2008) 1 SCC (Cri) 137: AIR 2007 SC 2312: (2007) 55 AIC 12 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 1-6-2007]

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of Punjab v. Phola Singh, (2003) 11 SCC 58: 2004 SCC (Cri) 276; V.N. Ratheesh v. State of Kerala, (2006) 10 SCC 617: (2007) 1 SCC (Cri) 50, relied on

[5107] — Ss. 378 and 386 — Appeal against acquittal — Scope of appellate court's power to review the evidence and interfere with the order of acquittal, restated — *If two views are possible, one favourable to the innocence of accused should be adopted — Interference is called for only for compelling and substantial reasons such as where the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated — On facts, held, High Court was justified in interfering with acquittal recorded by trial court — Penal Code, 1860 — Ss. 302 & 34*

There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. (Para 9)

In this case the trial court's conclusions were patently based on surmises and conjectures and were contrary to the evidence. Therefore, the High Court was justified in interfering with the acquittal recorded by the trial court. (Paras 9, 12 and 13). *Anil Kumar* v. *State of U.P.*, 2005 SCC (Cri) 178: 2004 All LJ 3779.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 16-9-2004]

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of Punjab v. Phola Singh, (2003) 11 SCC 58: 2004 SCC (Cri) 276; Suchand Pal v. Phani Pal, (2003) 11 SCC 527: 2004 SCC (Cri) 220, relied on

State of U.P. v. Akshey Kumar, 1999 Cri LJ 2987 (All), affirmed

[5108] — Ss. 378 and 386 — Appeal against acquittal — Scope of appellate court's power to review the evidence and interfere with the order of acquittal, restated — *If two views are possible, one favourable to the innocence of accused should be adopted — Interference is called for only for compelling and substantial reasons such as where the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated — On facts, held, High Court was justified in interfering with acquittal recorded by trial court — Penal Code, 1860 — Ss. 302 & 34*

There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. (Para 9)

In this case the trial court's conclusions were patently based on surmises and conjectures and were contrary to the evidence. Therefore, the High Court was justified in interfering with the acquittal recorded by the trial court. (Paras 9, 12 and 13). *Anil Kumar* v. *State of U.P.*, (2004) 13 SCC 257: 2005 SCC (Cri) 178: AIR 2004 SC 4662: 2004 Cri LJ 4881.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 16-9-2004]

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of Punjab v. Phola Singh, (2003) 11 SCC 58: 2004 SCC (Cri) 276; Suchand Pal v. Phani Pal, (2003) 11 SCC 527: 2004 SCC (Cri) 220, relied on

State of U.P. v. Akshey Kumar, 1999 Cri LJ 2987 (All), affirmed

[5109] — Ss. 378 and 386 — Appeal against acquittal — Scope of appellate court's power to reappreciate the evidence and interfere with the acquittal, restated — *Intrinsic and probative value of the evidence having been overlooked by trial court, held on facts, High Court was justified in interfering with trial court's judgment of acquittal* (Paras 10 and 14). *Shashidhar Purandhar Hegde* v. *State of Karnataka*, (2004) 12 SCC 492: AIR 2004 SC 5075.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 15-10-2004]

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of Punjab v. Phola Singh, (2003) 11 SCC 58: 2004 SCC (Cri) 276

[5110] — Ss. 378 and 386 — Appeal against acquittal — Scope of appellate power — Factors to be taken into account

The appellate court while dealing with an appeal against the order of acquittal has full power to review at large the evidence on which the order of acquittal is founded and to reach to a conclusion that upon such evidence the order of acquittal should be reversed. However, in exercising that power the appellate court should give proper weight and consideration to the following matters: (1) the views of the Trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of the appellate court in disturbing a finding of fact arrived at by a Judge, who had the advantage of seeing the witnesses, which finding would not certainly be disturbed if two reasonable conclusions can be reached on the basis of the evidence on record.

In the present case the High Court was fully alive to the legal position about the power of the appellate court and the order of reversal passed by the High Court is fully warranted and justified by the evidence on record. *Solanki Chimanbhai Ukabhai* v. *State of Gujarat*, (1983) 2 SCC 174: 1983 SCC (Cri) 379: AIR 1983 SC 484: 1983 Cri LJ 822: (1983) 2 GLR 870.

Bench Strength **2**. Coram: *D.A. Desai* and **R.B. Misra**, JJ. [Date of decision: 22-2-1983]

[5111] — Ss. 378 and 386 — Appeal against acquittal — Scope of exercise of power under — Power of reviewing evidence and conclusions of trial court, held, are very wide but must be exercised with great care and caution

The appellate court is given wide powers to review the evidence to come to its own conclusions. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 CrPC. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law. But this power must be exercised with great care and

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

caution. In order to ensure that the innocents are not punished, the appellate court should attach due weight to the lower court's acquittal because the presumption of innocence is further strengthened by the acquittal. The appellate court should, therefore, reverse an acquittal only when it has "*very substantial and compelling reasons*". (Paras 3 and 69). *Ghurey Lal* v. *State of U.P.*, (2008) 10 SCC 450. Bench Strength **2**. Coram: *R.V. Raveendran* and **Dalveer Bhandari**, JJ. [Date of decision: 30-7-2008]

Noor Khan v. State of Rajasthan, AIR 1964 SC 286; Khedu Mohton v. State of Bihar, (1970) 2 SCC 450: 1970 SCC (Cri) 479; C. Antony v. K.G. Raghavan Nair, (2003) 1 SCC 1: 2003 SCC (Cri) 161, relied on

[5112] — Ss. 378 and 386 — Appeal against acquittal — Scope of High Court's jurisdiction — *Held, where two views are possible, High Court should not interfere only because it feels that sitting as a Sessions Court it would have preferred a contrary view — It should consider every reason given by the Sessions Court and then dislodge them — Further held, but appellate court is not precluded from reappraising the evidence in cases where it feels that Sessions Court had erred in its approach or appreciation of law and evidence, or when the court has missed or not read the evidence placed before it — High Court can reverse the order of Sessions Court when it feels and finds that there is direct evidence on record to prove to the contrary, otherwise the whole purpose of providing appeal against the judgment of the Sessions Court would be defeated — On facts, High Court rightly reversed order of acquittal*

One *R* (PW 15), father of the complainant *S* (PW 1), was shot at while reading a telegram, at the main door of his residence. *S* was standing behind him at that time. Brother of the complainant, PW 2, ran after the four miscreants. *R* (deceased) also ran after the miscreants and was able to catch hold of one of them. The miscreant in his attempt to flee, fired at *R* which hit *R* in the abdomen. The miscreant was thereafter overpowered by the complainant and others while other miscreants escaped from the spot, but various witnesses managed to see their faces in the streetlight. A country-made pistol was recovered from the apprehended miscreant. *R* succumbed to his injuries. The accused-appellant was charged under Sections 302, 307/34 IPC and Section 27 of the Arms Act. The Sessions Judge acquitted the appellant as it found statements of PW 1, PW 2 and other eyewitnesses unreliable, inter alia, on following grounds: (*1*) It is unnatural that PW 1 would scribe the FIR in his own hand inside his house when his injured father was lying at the door during that period; (*2*) When 32-40 persons had assembled at the house of PW 1, he could not name even 2-4 persons; (*3*) Only one out of the four miscreants was apprehended but none tried to go after the remaining miscreants; (*4*) PW 1's clothes were not found smeared with blood although his father PW 15 had bleeding injuries; (*5*) PW 2 was disbelieved because he was unable to see the person who handed over the telegram to his father but was able to see the miscreants who were about 15 paces away and who were facing north-west, whereas PW 2 was coming from west and facing east; (*6*) PW 3 was disbelieved because he could not give the direction of the shop at which he was standing during occurrence; (*7*) Despite the fact that other miscreants were armed, no attempt was made by them to free the captured miscreants even though he was the brother of the two miscreants; (*8*) Persons responsible for hatching the conspiracy were not proceeded against though evidence was collected against them; (*9*) PW 1 and his family members were not strangers to the crime; (*10*) PW 3 was a chance witness and was closely associated with PW 1; and (*11*) Prosecution had not examined independent witnesses even when their presence was admitted.

The High Court in appeal against acquittal, on reappreciation of evidence convicted the appellant under Section 302 and Sections 307/34 IPC and Section 27 of the Arms Act and sentenced him to life imprisonment, five years RI and one year RI respectively. Hence the present appeal by the accused-appellant.

Dismissing the appeals,

Held :

The High Court had reached a conclusion contrary to that of the Sessions Court on reappreciation of evidence. It had appreciated the statement of the victim, PW 15 which the Sessions Court failed to do. The High Court had placed reliance on the fact of immediate lodging of FIR and the confirmation of the story narrated therein by ocular statement of the witnesses examined by the prosecution. The High Court had rightly taken a different view on the statement of PW 1 which has been ignored by the trial court on the basis of the insignificant aspects. Testimony of PW 15 cannot be discarded as he is the victim and the fact that he was shot at cannot be denied. A person who is shot at from a near distance would be in a position to look at the face of the assailants in the availability of sufficient light. There does not appear to be any motive or reason for PW 15 to falsely implicate the appellant in such a serious crime. The statement of PW 1 could not have been discarded whose presence in the whole of the incident was natural as the incident commenced at his house and culminated in a nearby place when he along with other persons including the deceased *R*, chased the miscreants and apprehended the accused-appellant with a gun in his hand. There was sufficient time and opportunity for him to see that the appellant who was involved in commission of the crime. Further, fact that PW 1 could not remember the faces of persons among the people who had gathered outside his house at the time of the incident, would not make his testimony unreliable. One has to look at the situation in which crime was committed and also the mental condition of the witness who is the son of the injured person who had witnessed the heinous crime. In the heat of the moment it is quite natural that his attention would be more towards the assailants and his injured father and also to catch hold of the assailants who were running away from the spot rather than to find out who were the persons present at the spot and in that course if he could not remember the faces of the persons present, it cannot be a ground for discarding his statement whose presence at the spot was most natural. Sessions court had discarded his statement on the ground that his clothes were not found smeared with bloodstains. The evidence on record shows that he had simply helped his father after he received the injuries and thereafter he immediately left the spot and particularly so, when there is nothing on record to disbelieve the statement of his father *R* (PW 15). There is no reason to disbelieve the version of PW 2 whose presence at the spot cannot be denied. His testimony does not suffer from any material incongruity or falsehood. Though PW 3 was found not to be a wholly truthful witness but so far as his statement of identifying the assailant is concerned, it does inspire confidence. The High Court's acceptance of part of the evidence and discarding the unreliable part is in accordance with law and is in tune with the established practice followed by the courts while appreciating the evidence of the witnesses. The Sessions Court committed an error in discarding his evidence wholly. The statement of PW 3 is a corroborative piece of evidence corroborating the statement of witnesses PW 1 and PW 2. The High Court has rightly found that the testimony of the doctor who first examined the deceased, is reliable regarding the nature of injuries and supported by the statement of ballistics expert (PW 21) that a gun was used in the incident. Moreover, FIR was promptly lodged and story narrated therein was confirmed by the PWs. There is no merit in the argument that appellant had been falsely implicated as he was caught near the place of incident with the country-made pistol. Deposition of DW 5 that accused-appellant had gone there only for the purpose of purchasing buffalo not inspiring confidence as only Rs 120.13 was recovered from him and any person intending to purchase buffalo would not come with such a meagre amount. Besides such defence was put forth not at the outset when he was examined for the first time under Section 313 CrPC. The stand was only taken when he was examined for the second time after examination of the court witnesses. (Paras 8 and 10)

On an overall consideration and on appreciation of the evidence on record placed by the prosecution, the conclusion is that the High Court has not committed any error or illegality in reversing the order of acquittal passed by the Sessions Court. (Para 11). *Haji Khan* v. *State of U.P.*, (2005) 13 SCC 353: (2006) 2 SCC (Cri) 336.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 23-11-2005]

[5113] — Ss. 378 and 386 — Appeal against acquittal — Scope of High Court's jurisdiction — When can High Court interfere with trial court's order of acquittal — *Murder of a Granthi of a Gurudwara — Evidence on record cogent and clearly pointing to commission murder by accused-appellants with common intention — Trial court acquitting the appellants relying upon inconsequential circumstances — Held on facts, High Court on fresh appreciation of the entire evidence was justified in reversing the order of acquittal — Penal Code, 1860 — Ss. 302/34*

A Granthi of a Gurudwara was murdered. According to prosecution, few days prior to the day of occurrence, the two appellants had asked the deceased to vacate the office of Granthi as the first appellant was desirous of becoming Granthi and had threatened him that in case of not doing so he would be done to death. On the day of occurrence, when the deceased was going to a bank with his son on a cycle pedalled by his son for withdrawing money from his account, he was intercepted by the appellant on the road and while the first appellant grabbed him, the second appellant stabbed him with gatra kirpan on the left side of his neck resulting in his death. The deceased's son had to run away when appellants tried to attack him also. The kirpan was later recovered pursuant to the disclosure statement made by the second appellant. However, neither the cycle nor the passbook of the bank had been taken into custody by police. The doctor, who

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

conducted post-mortem examination, initially opined that the injury in question could not be possible by a mini-kirpan which the appellant, being an Amritdhari Sikh, was keeping but on the adjourned day, he stated that after seeing the kirpan he was of the opinion that possibility of the injury being caused by that weapon could not be ruled out. Prosecution case was mainly based on testimony of deceased's son as the sole eyewitness, which was corroborated by the testimony of other witnesses and medical evidence. The trial court acquitted the appellants holding:

(*i*) The prosecution failed to establish motive. It failed to show any relation between the second appellant and the first appellant. The motive if any of the first appellant i.e. his aspiration to become Granthi could not be attributed to the second appellant who had allegedly caused the injury.

(*ii*) The deceased's son was a got-up witness. Neither the cycle nor the passbook of the bank were taken into custody by police. There was no reason for the deceased's son to accompany the deceased.

(*iii*) Recovery of the weapon from the second appellant was not a sufficient circumstances.

(*iv*) The medical evidence contradicted the ocular evidence. The doctor only later tried to improve upon his evidence in a manner favourable to the prosecution.

(*v*) The prosecution case with regard to the role attributed to the second appellant, if accepted to be correct, the first appellant would not be made responsible for the injury allegedly inflicted by the second appellant on the deceased.

However, the High Court, on appeal against the acquitted considered the whole matter afresh and finding the evidence led by the prosecution trustworthy, it convicted the second appellant under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay fine of Rs 5000 and in default of payment of fine to undergo further rigorous imprisonment for six months. The first appellant was convicted under Sections 302/34 IPC and similarly sentenced. Dismissing the appeal of the accused persons,

Held :

The High Court while considering the appeal against acquittal is not exercising any extraordinary jurisdiction. Its power to consider and decide the appeal against the judgment of acquittal is same as against the judgment of conviction. However, there are certain guidelines. One is that if there are two views on evidence which are reasonably possible one supporting acquittal and the other indicating conviction, the High Court in an appeal against judgment of acquittal should not interfere merely because it feels that it would as a trial court have taken a different view. The High Court will certainly interfere if it finds that the judgment of acquittal is manifestly erroneous and that the trial court has acted with material irregularity or its appreciation of evidence lacks coherence or it has made assumptions which are unwarranted or its evaluation of evidence is such as to shock the sense of justice and which has led to a miscarriage of justice or its reasoning is unintelligible or defies logic or its conclusions are against the weight of the evidence. (Para 12)

The High Court was right in overturning the judgment of acquittal of the Court of Session. Perversity is writ large on the face of the judgment of the trial court. Its appreciation of evidence is wholly inappropriate and it has acted with material irregularity. It has taken into consideration inconsequential circumstances to record acquittal of the appellants. (Para 13)

Both the appellants were acting in concert. Their intention to do away with the deceased was manifest when a couple of days before the occurrence they openly threatened him to kill him in case he did not give up the post of Granthi of the Gurudwara. The testimony of the deceased's son was cogent and reliable, and was corroborated by evidence of other witnesses. The evidence on record clearly points to murder of the deceased by the appellants with the common intention. It is not disputed that Amritdhari Sikhs always carry kirpans on their bodies and in that view of the matter it is not necessary for the appellants to carry any other arm or weapon. The kirpan (Exh. P-1) was used to commit the murder. The trial court totally went wrong when it said that the recovery of the kirpan from the second appellant was of no consequence and was not sufficient to connect the appellants with the crime. (Para 16). *Narinder Singh* v. *State of Punjab*, (2000) 4 SCC 603: 2000 SCC (Cri) 855: AIR 2000 SC 2212: 2000 Cri LJ 3462.

Bench Strength **2**. Coram: **D.P. Wadhwa** and *Ruma Pal*, JJ. [Date of decision: 6-4-2000]

[5114] — Ss. 378 and 386 — Appeal against acquittal — Scope of High Court's power of interference — High Court has power to reappreciate the entire evidence — But while doing so it cannot interfere with the acquittal merely because it prefers another possible view — High Court should give proper weight to the

views of the trial court — *But where the judgment of the trial court is perverse, and its appreciation of evidence is based on surmises and conjectures, High Court would reverse the judgment of the trial court, otherwise it would result in miscarriage of justice — On facts held, trial court erred in disbelieving the trustworthy evidence of the eyewitnesses and acquitting the accused-appellants of charge under Ss. 302/34 IPC and High Court was justified in reversing trial court's judgment and convicting the accused under Ss. 302/34 — Penal Code, 1860 — Ss. 302/34*

The power of the High Court, while hearing an appeal against an acquittal, is as wide and comprehensive as in an appeal against a conviction and it has full power to reappreciate the entire evidence, but if two views on the evidence are reasonably possible, one supporting the acquittal and the other indicating conviction, then the High Court would not be justified in interfering with the acquittal, merely because it feels that it would, sitting as a trial court, have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice. (Para 4)

Bearing in mind the aforesaid parameters and having scrutinised the evidence of the two eyewitnesses PWs 6 and 7 as well as the reasoning advanced by the Sessions Judge in discarding their testimony, it must be held that the Sessions Judge, instead of appreciating the evidence as a court of law, entered into an arena of conjecture and recorded the conclusion, which cannot be held to be a conclusion on the basis of the evidence on record. Instead of analysing the evidence of the two eyewitnesses and trying to find out the intrinsic worth of their testimony, the Sessions Judge, on wrong assumptions and by mere conjecture, was of the opinion that the two eyewitnesses PWs 6 and 7 could not have seen the occurrence at all. The High Court, therefore, while sitting in appeal, was fully justified in examining those reasons of the Sessions Judge and in coming to the conclusion that the reasons on the face of it are unsustainable in law and there is no justification to discard the testimony of the two eyewitnesses PWs 6 and 7. Having scrutinised the evidence of the two eyewitnesses, it is clear that the High Court was justified in making appreciation of evidence and coming to the conclusion that the two eyewitnesses must be held to be trustworthy and full reliance can be placed on their testimony. These two witnesses have not only seen the occurrence but they have also seen the accused persons with their respective weapons in their hands mercilessly assaulting the deceased, which was fully corroborated by the medical evidence and presence of a large number of injuries on the dead body of the deceased on different parts. In this view of the matter, there is no infirmity with the conclusions arrived at by the High Court in the impugned judgment and in relying upon the testimony of the two trustworthy witnesses PWs 6 and 7, one of whom happens to be the wife of the deceased and as such, is the most natural witness to be present and have witnessed the occurrence. (Para 4). *Hari Ram* v. *State of Rajasthan*, (2000) 9 SCC 136: 2000 SCC (Cri) 1178: AIR 2000 SC 1647: 2000 Cri LJ 2312.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *S.N. Variava*, **JJ**. [Date of decision: 9-5-2000]

[5115] — Ss. 378 and 386 — Appeal against acquittal — Scope of High Court's power to reappraise the evidence and interfere with the order of acquittal — *Where two views are possible High Court should not interfere only because it feels that sitting as a trial court it would have preferred conviction — High Court should consider every reason given by trial court in favour of acquittal and then dislodge them*

Though the High Court while hearing an appeal against an acquittal has powers as wide and comprehensive as in an appeal against a conviction and while exercising its appellate jurisdiction the High Court can reappraise the evidence, arrive at findings at variance with those recorded by the trial court in its order of acquittal and arrive at its own findings, yet, the salutary principle which would guide the High Court is — if two views are reasonably possible, one supporting the acquittal and the other recording a conviction, the High Court would not interfere merely because it feels that sitting as a trial court its view would have been one of recording a conviction. It follows as a necessary corollary that it is obligatory on the High Court while reversing an order of acquittal to consider and discuss each of the reasons given by the trial court to acquit the accused and then to dislodge those reasons. Failure to discharge this obligation constitutes a serious infirmity in the judgment of the High Court. (Para 21). *Kashiram* v. *State of M.P.*, (2002) 1 SCC 71: 2002 SCC (Cri) 68: AIR 2001 SC 2902.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti**, *Ashok Bhan*, **JJ**. [Date of decision: 17-10-2001]

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

[5116] — Ss. 378 and 386 — Appeal against acquittal — Scope of interference by appellate court — Legal position restated — *On facts, trial court acquitting all accused persons facing trial under Ss. 302/34 IPC — High Court allowing appeal by State only against appellant, thereby convicting him, while dismissing the appeal against other accused persons upholding their acquittal — Sustainability — Held, appeal was disposed of by High Court in perfunctory manner — High Court did not apply its mind to the various aspects and the position in law relating to the scope for interference in appeal against an order of acquittal — In the circumstances, impugned order set aside and matter remitted to High Court for consideration afresh in accordance with law only in respect of the appellant as State had not questioned the High Court's order upholding acquittal of other accused persons — Penal Code, 1860 — Ss. 302/34* (Paras 6, 1, 2 and 8). *Syed Peda Aowlia* v. *Public Prosecutor*, (2008) 11 SCC 394: AIR 2008 SC 2573: (2008) 67 AIC 102 (SC): 2008 Cri LJ 3488.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 13-6-2008]

Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of Punjab v. Phola Singh, (2003) 11 SCC 58: 2004 SCC (Cri) 276; V.N. Ratheesh v. State of Kerala, (2006) 10 SCC 617: (2007) 1 SCC (Cri) 50, relied on

[5117] — Ss. 378 and 386 — Appeal against acquittal — Scope of interference by High Court and limitations thereof, restated — *Where the lower appellate court by a reasoned order acquitted the accused of the charges under Ss. 276-C and 277, IT Act for filing incorrect income tax return for AY 1980-81, withholding books of accounts seized during search under S. 132 and making a wrong verification on the said return, held, High Court erred in interfering with the order of acquittal merely on the basis of the presumption under S. 132(4-A) without adverting to the reasons and grounds contained in the impugned order and without finding any proof of mens rea — Income Tax Act, 1961, Ss. 276-C, 277, 132(4-A) and 271(1-C)*

The appellant was convicted under Sections 276-C and 277 of the IT Act for filing an incorrect return of income tax for AY 1980-81, making an incorrect verification thereon and deliberately withholding books of account later seized during search under Section 132. The first appellate court found the charge to be vague, and the evidence insufficient to infer criminal intent on the part of the appellant. That there was nothing on record to pinpoint the identity, veracity or falsity of entries in the books of account on which the entire prosecution case was founded. The first appellate court also took into account the fact that CIT (Appeals) had partly allowed the appellant's appeal and had recorded that the income estimated by the ITO was not based on reasonable data and therefore, directed the ITO to work out the commission @ 8% instead of 10%. It further noted that that direction had resulted in substantial reduction of the appellant's liability. Therefore the first appellate court gave benefit of doubt to the appellant. The High Court reappraised the evidence and, in view of the presumption under Section 132(4-A) of the IT Act, reversed the order of the first appellate court and affirmed the decision of the trial court. The instant appeal was opposed by the Revenue on the grounds: (*i*) that a conviction in a criminal proceedings could not be interfered with on the basis of the findings of the appellate authority or the Tribunal in a penalty proceedings, and (*ii*) that Section 279(1-A) had no application as the penalty had been reduced neither by the Commissioner nor the Chief Commissioner. Allowing the appeal,

Held :

The plenitude of power available to the court hearing an appeal against acquittal although is the same as that available to a court hearing an appeal against an order of conviction, the court will not interfere with an order of acquittal solely because a different plausible view may arise on the evidence and the court thinks that the view taken by the trial court of the evidence is not correct. In other words, the court must come to the conclusion that the view taken by the trial Judge while acquitting cannot be the view of a reasonable man on the materials on record. Moreover, the court of appeal must examine the reasons on which an order of acquittal is based and must reach the conclusion that the view taken by the acquitting Judge was clearly unreasonable. If the evaluation of the evidence made by the courts below while recording an order of acquittal does not suffer from any illegality or manifest error and the grounds on which the said order of acquittal is based are not unreasonable, then the High Court should not disturb the said order of acquittal. In the instant case, the High Court has not considered the reasons and grounds advanced by the Sessions Judge while recording an order of acquittal and by merely relying upon the presumption arising out of Section 132(4-A) of the Income Tax Act, reversed the order of acquittal without reversing the findings arrived at by the Sessions Judge on the evidence on record. The conclusion of the Sessions Judge after appreciating the evidence led by the prosecution and after perusing the appellate order of CIT (Appeals) has not been given due consideration by the High Court. (Para 4)

To attract the provisions of Section 276-C of the IT Act the prosecution has to establish that the accused wilfully attempted in any manner to evade any tax, penalty or interest chargeable or imposable under the Act. Similarly a statement made by a person in any verification under the Act can be an offence under Section 277 if he either knew or believed the same to be false or did not believe to be true. Necessary mens rea, therefore, is required to be established by the prosecution to attract the provisions of Section 277. There is nothing in Section 132(4-A) which would establish the ingredients of the offences under Sections 276-C and 277. More so, when in the instant case, the ITAT while interfering with the penalty imposed under Section 271(1-C) of the Act came to a positive finding that there was no act of concealment on the part of the assessee and he had returned the income on estimate basis. The ITAT further found that it was a case purely on difference of opinion as to the estimates and not a case of concealment of income or even furnishing of inaccurate particulars of income. (Paras 4 and 8)

Therefore, the High Court was totally in error in interfering with the order of acquittal passed by the Sessions Judge by an elaborate and well-reasoned judgment. (Para 9)

The literal interpretation sought to applied to Section 279(1-A) of the IT Act in the second contention of the Revenue cannot be accepted when it is found that CIT (Appeals) has reduced the penalty. Further that the Tribunal has totally set aside the order imposing penalty could not have been lost sight of by the High Court while considering the question whether the order of acquittal passed by the Sessions Judge had to be interfered with or not, particularly, when the gravamen of indictment related to filing of incorrect return and making wrong verification of the statements filed in support of the return, resulting in initiation of penalty proceedings. Therefore, the High Court was not justified in interfering with the order of acquittal. (Para 11). *Prem Dass* v. *ITO*, (1999) 5 SCC 241: 1999 SCC (Cri) 1004: AIR 1999 SC 1079: (1999) 236 ITR 683.

Bench Strength 2. Coram: **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision: 9-2-1999]

ITO v. Prem Dass, (1992) 198 ITR 93 (P&H), reversed

[5118] — Ss. 378 and 386 — Appeal against acquittal — Strong and convincing reasons must exist for interference by appellate court — *In a group clash, members of both the groups sustaining injuries and one belonging to the prosecution party succumbing to his injuries — Serious injuries suffered by members of the accused party not explained by prosecution — Accused claiming to have acted in self-defence — Prosecution version not containing the whole truth and therefore trial court giving benefit of doubt to accused — High Court proceeding on the footing that presence of injuries on the accused persons established their participation in the occurrence by forming unlawful assembly — Held, whole truth not revealed by the prosecution and the real question as to who were the aggressors could not be conclusively ascertained — High Court therefore, erred in reversing the acquittal recorded by trial court without giving cogent and convincing reasons for its interference — Hence conviction and sentence awarded by High Court set aside — Penal Code, 1860, Ss. 147, 148, 323 & 324, 326 r/w 149 and 34*

The Appellate Court while reversing the order of acquittal has to consider the entire evidence in detail. It should be slow in reversing the order of acquittal and unless there are good and strong grounds the acquittal should not be interfered with.

In this case the High Court mainly seems to have proceeded on the footing that the presence of injuries on some of the accused by virtue of the fact that the injuries were found on them establishes them as members of an unlawful assembly. It may be treated that the presence can be accepted but the important question is as to how they are culpable particularly when they come forward with a plausible explanation by giving a report about the occurrence at the earliest moment. The prosecution has not come forward with the whole truth. The prosecution at the most has established that an occurrence has taken place in which some persons on either side received injuries. No explanation was given as to how four accused happened to receive injuries. In such a situation the version given by the defence cannot be rejected. Consequently a grave doubt arises about the credibility and truthfulness of the version put forward by the prosecution. Consequently the convictions and sentences awarded against the appellants are set aside. *Ram Milan* v. *State of U.P.*, 1993 Supp (1) SCC 561: 1993 SCC (Cri) 348: AIR 1992 SC 1577.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *R.C. Patnaik*, JJ. [Date of decision: 7-4-1992]

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

[5119] — Ss. 378 and 386 — Appeal against acquittal — Powers of appellate court — Scope — Reiterated — *On facts held, High Court erred in setting aside the order of acquittal by making observations in abstract and general manner without even discussing the factors which weighed with the trial court in recording acquittal*

There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. However, judgment of acquittal can be interfered with only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. (Para 5)

If two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (Para 5)

On facts held, the High Court's judgment is clearly indefensible. By making observations in an abstract and general manner it concluded that the discrepancies were immaterial, without even discussing the factors which weighed with the trial court to hold that the prosecution evidence was not cogent and credible. Therefore, the order of acquittal should not have been set aside in the manner as done. (Para 6). *V.N. Ratheesh* v. *State of Kerala*, (2006) 10 SCC 617: (2007) 1 SCC (Cri) 50: AIR 2006 SC 2667: (2006) 3 KLT 383: 2006 Cri LJ 3634.

Bench Strength **2**. Coram: **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 6-7-2006]

Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2003 SCC (Cri) 212; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of Punjab v. Phola Singh, (2003) 11 SCC 58: 2004 SCC (Cri) 276; Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736, relied on

[5120] — Ss. 378 and 386 — Appeal against acquittal — Powers of appellate court to reappreciate, review or reconsider evidence and interfere with acquittal — Scope of — Principles restated — Case law discussed — *Thirteen persons faced murder trial — All of them were found to be not guilty of the charges and were acquitted — In an appeal against acquittal, High Court found that accused-Appellants 1 and 2 were guilty and directed their conviction for offences punishable under S. 302 and S. 324 r/w S. 34 IPC — According to the appellants, High Court had not kept in view the parameters of appeal against acquittal — The contention of the appellants was that even if two views are possible, the view supporting the accused had to be accepted and since the trial court had precisely done it, there was no reason to interfere with the judgment of the trial court — Held, trial court attached undue importance to the portion in the injury certificate which states that injury was caused by unknown persons — Trial court went into a dream world of imaginations and imagined certain irrelevant aspects to discard the otherwise cogent and credible evidence of eyewitnesses — One of the most untenable conclusions recorded by the trial court was as to why only witnesses from a particular locality were chosen, as in a procession "there must have been persons other than the inhabitants of Gandhigram" — Held, the same cannot certainly be a ground to discard the otherwise cogent and credible evidence — The reasons indicated by the trial court to direct acquittal have been rightly found to be vulnerable by the High Court — Appeal dismissed — Penal Code, 1860, Ss. 143, 147, 148, 341, 323, 324 and 302 r/w S. 149* (Para 12). *Valson* v. *State of Kerala*, (2008) 12 SCC 241: (2008) 69 AIC 82 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 1-8-2008]

Ajmer Singh v. State of Punjab, AIR 1953 SC 76: 1953 SCR 418; Kallu v. State of M.P., (2006) 10 SCC 313: (2006) 3 SCC (Cri) 546; Krishnan v. State, (2003) 7 SCC 56: 2003 SCC (Cri) 1577; P. Babu v. State of A.P., (1994) 1 SCC 388: 1994 SCC (Cri) 424, relied on

[5121] — Ss. 378 and 386 — Appeal against acquittal — Powers of High Court — Scope — Reiterated — *On facts held, view of the trial court having regard to the facts and circumstances of the case was a possible view, which should not have been interfered with by the High Court*

The High Court does not ordinarily set aside a judgment of acquittal in a case where two views are possible, although, the view of the appellate court is a more probable one. However, while dealing with a judgment of acquittal, it is free to consider the entire evidence on record so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. It is also entitled to consider as to whether in arriving at a finding of fact, the trial Judge has failed to take into consideration admissible evidence and has taken into consideration evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of the scrutiny by the appellate court. (Paras 9 to 13)

On 12-4-1992, at about 9 p.m., while the deceased *R* and his wife *C* were irrigating their sugarcane field in the moonlit night and a lantern was hanging nearby, the appellants armed variously are alleged to have entered their field. They stopped running of motor resulting in exchange of abuses. Hearing the noise *CR* (PW 2), *S* (PW 3), *V* and *SW* arrived at the place of occurrence with torches. *B* allegedly fired from his gun at *R*, whereas A-5 fired at his wife. A-6 was said to have fired at their son *RV* (PW 1). Other accused were also alleged to have fired from their respective weapons. On receiving injuries *R* and *C* ran a few paces but fell down dead at some distance. PW 1 thereafter went to a police station which was 28 km away from the place of occurrence in a tractor, along with PW 2 and *V* and lodged FIR at about 0025 hours on 13-4-1992, which was dispatched to the court at about 6.25 a.m. on the same day, but which reached the court only on 18-4-1992. PW 7, SI of the police station, reached the place of occurrence and found the dead bodies lying in the field. He made an attempt to arrest the accused at night.

In the meantime, PW 1 who had received a gun shot injury was examined by the doctor (PW 4) at about 4 a.m. on 13-4-1992, and was advised to take an x-ray of the injured part. However, x-ray was taken only on 18-4-1992 by PW 6, Senior Radiologist, who found an opaque substance, which according to him was a metallic pellet in the upper part of his right arm.

PW 1 allegedly came back to the village at 6 a.m. Inquest of the dead bodies started at 8 a.m. and concluded at 9.30 a.m. whereafter dead bodies were taken for autopsy at about 12/12.30 p.m. The post-mortem was done only on 14-4-1992 by PW 9 because no autopsy surgeon was available on previous day.

The trial court acquitted the appellants, inter alia, holding that: (*i*) FIR was ante-timed and antedated; (*ii*) exact time of occurrence was not proved; (*iii*) injuries on the person of PW 1 were doubtful; (*iv*) evidence of PW 2 and PW 3, who were chance witnesses was unreliable; and (*v*) medical evidence did not support the prosecution case.

On an appeal preferred thereagainst by the State, a Division Bench of the High Court reversed the same. Hence the present appeal by the accused-appellants. *Budh Singh* v. *State of U.P.*, (2006) 9 SCC 731: (2006) 3 SCC (Cri) 377: AIR 2006 SC 2500: 2006 Cri LJ 2886: (2006) 4 All LJ 284.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

Balak Ram v. State of U.P., (1975) 3 SCC 219: 1974 SCC (Cri) 837; Shambhoo Missir v. State of Bihar, (1990) 4 SCC 17: 1990 SCC (Cri) 518; Shailendra Pratap v. State of U.P., (2003) 1 SCC 761: 2003 SCC (Cri) 432; Narendra Singh v. State of M.P., (2004) 10 SCC 699: 2004 SCC (Cri) 1893, considered and relied on

Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294: 2005 SCC (Cri) 1057, considered

Distinguished in Shivappa v. State of Karnataka, (2008) 11 SCC 337

[5122] — Ss. 378 and 386 — Appeal against acquittal — Principle to be followed by appellate court — An order which is "clearly unreasonable" would justify interference

The principle to be followed by appellate courts considering an appeal against an order of acquittal is to interfere only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable" it is a compelling reason for interference. (Para 21). *Jaswant Singh* v. *State of Haryana*, (2000) 4 SCC 484: 2000 SCC (Cri) 991: AIR 2000 SC 1833: 2000 Cri LJ 2212.

Bench Strength **2**. Coram: *D.P. Wadhwa* and **Ruma Pal**, JJ. [Date of decision: 4-4-2000]

Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; George v. State of Kerala, (1998) 4 SCC 605: 1998 SCC (Cri) 1232, relied on

[5123] — Ss. 378 and 386 — Appeal against acquittal — Principles to be followed by the High Court

The principles governing appeals against acquittal are thus firmly established and the issue cannot now be reopened. The Code of Criminal Procedure, 1898 by S. 423, has accorded parity to appeals against conviction and appeals against acquittal; the Code makes no distinction between the powers of the appellate Court in regard to the two categories of appeals and therefore the High Court has powers as full and wide in appeals against acquittal as in appeals against conviction. Whether the High Court is dealing with one class of appeals or the other, it must equally have regard to the fundamental principles of Criminal Jurisprudence that unless the statute provides to the contrary, there is a presumption of innocence in favour of the accused and secondly that the accused is entitled to the benefit of reasonable doubt. Due regard to the views of the trial Court as to the credibility of witnesses in matters resting on pure appreciation of evidence and the studied slowness of the appellate Court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing and hearing the witnesses, where such seeing and hearing can be useful aids to the assessment of evidences, are well-known principles which generally inform the administration of justice and govern the exercise of all appellate jurisdiction. They are self-imposed limitations on a power otherwise plenary and like all voluntary restraints, they constitute valuable guidelines. Such regard and slowness must find their reflection in the appellate judgment, which can only be if the appellate Court deals with the principal reasons that influenced the order of acquittal and after examining the evidence with care gives its own reasons justifying a contrary view of the evidence. It is implicit in this judicial process that if two views of the evidence are reasonably possible, the finding of acquittal ought not to be disturbed. *Ram Jag* v. *State of U.P.*, (1974) 4 SCC 201: AIR 1974 SC 606.

Bench Strength 2. Coram: *M.H. Beg* and **Y.V. Chandrachud**, JJ. [Date of decision: 21-12-1973]

[5124] — Ss. 378 and 386 — Appeal before the High Court against acquittal — Interference with trial court's decision when not justified — *Prosecution case resting on evidence of family members and neighbours of the deceased — Witnesses inimical to the accused and highly interested — Name of some of the witnesses not given in the FIR and they were examined at a belated stage — Their evidence found to be full of inconsistencies and material discrepancies — Statement of Junior Engineer who visited the scene of occurrence and prepared sketch making it highly doubtful whether the witnesses could have witnessed the part played by each of the accused — Held, the reasons given by the trial court for rejecting the evidence of the witnesses are correct and sound and interference in an appeal against acquittal by the High Court, in the circumstances, was uncalled for — Conviction set aside. Krishna Reddy* v. *State of Karnataka*, 1994 Supp (3) SCC 137: 1994 SCC (Cri) 1667.

Bench Strength 2. Coram: *M.M. Punchhi* and **K. Jayachandra Reddy**, JJ. [Date of decision: 3-8-1994]

[5125] — Ss. 378 and 386 — Appeal to High Court against acquittal — Power of High Court to interfere — *Learned Sessions Judge failing to consider the evidence adduced against the accused and failing to discuss his case — Order of acquittal not passed on consideration of all materials placed on record — High Court giving cogent reasons as to why order of acquittal was not justified and interference with such an order was warranted — Held, there was no reason for Supreme Court to interfere with the conviction and sentence passed by High Court — Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, S. 2(a). Ranjit Singh* v. *State of Maharashtra*, 1993 Supp (2) SCC 544: 1993 SCC (Cri) 712: AIR 1993 SC 1375: 1993 Cri LJ 1804.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 15-10-1992]

[5126] — Ss. 378 and 386 — Appeal to High Court against acquittal by trial Court — *Evidence of eye-witnesses discrepant — Benefit of doubt given by trial Court — Held, on facts, assessment of evidence and conclusions of the trial Court not so unreasonable as to warrant interference by High Court. Hasan Ahmad Mai Isha* v. *State of Gujarat*, 1980 Supp SCC 180: 1980 SCC (Cri) 898: AIR 1980 SC 437: 1980 Cri LJ 386.

Bench Strength 2. Coram: *R.S. Sarkaria* and **O. Chinnappa Reddy**, JJ. [Date of decision: 15-11-1979]

[5127] — Ss. 378 and 386 — Appellate court's interference with trial court's order of acquittal — When called for

Where the view taken by the trial court in acquitting the accused is extremely perverse and is not reasonably sustainable on the evidence on record, then the appellate court can interfere with such an order of acquittal and set at naught the injustice done to the parties. When facts of the present case are examined in the light of this well-settled principle regarding the scope and power of the High Court in interfering with an order of acquittal, the High Court in the present case cannot be said to have committed any illegality but on the other hand it has arrived at a proper and just conclusion. Therefore, Supreme Court's interference is not warranted. *Sham Kant* v. *State of Maharashtra*, 1992 Supp (2) SCC 521: 1992 SCC (Cri) 765: AIR 1992 SC 1879: 1992 Cri LJ 3243.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 15-5-1992]

[5128] — Ss. 378 and 386 — Appellate power of High Court — Scope — When can High Court interfere with the findings of trial court — *When two views are reasonably possible, one supporting acquittal while the other indicating conviction of the accused, High Court would not be justified in reversing the order of acquittal*

While there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice. (Para 2). *Dwarka Dass* v. *State of Haryana*, (2003) 1 SCC 204: 2003 SCC (Cri) 264: AIR 2003 SC 185.

Bench Strength **2**. Coram: **U.C. Banerjee** and *Y.K. Sabharwal*, JJ. [Date of decision: 13-11-2002]

Hari Ram v. State of Rajasthan, (2000) 9 SCC 136: 2000 SCC (Cri) 1178; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Tota Singh v. State of Punjab, (1987) 2 SCC 529: 1987 SCC (Cri) 381, relied on

[5129] — Ss. 378 and 386 — Appeal against acquittal — Principles reiterated

The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Para 12)

In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. (Para 19)

The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Para 20). *Babu* v. *State of Kerala*, (2010) 9 SCC 189: (2010) 3 SCC (Cri) 1179.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 11-8-2010]

Balak Ram v. State of U.P., (1975) 3 SCC 219: 1974 SCC (Cri) 837; Shambhoo Missir v. State of Bihar, (1990) 4 SCC 17: 1990 SCC (Cri) 518; Shailendra Pratap v. State of U.P., (2003) 1 SCC 761: 2003 SCC (Cri) 432; Narendra Singh v. State of M.P., (2004) 10 SCC 699: 2004 SCC (Cri) 1893; Budh Singh v. State of U.P., (2006) 9 SCC 731: (2006) 3 SCC (Cri) 377; State of U.P. v. Ram Veer Singh, (2007) 13 SCC 102: (2009) 2 SCC (Cri) 363; S. Rama Krishna v. S. Rami Reddy, (2008) 5 SCC 535: (2008) 2 SCC (Cri) 645; Arulvelu v. State, (2009) 10 SCC 206: (2010) 1 SCC (Cri) 288; Perla Somasekhara Reddy v. State of A.P., (2009) 16 SCC 98: (2010) 2 SCC (Cri) 176; Ram Singh v. State of H.P., (2010) 2 SCC 445: (2010) 1 SCC (Cri) 1496; Sheo Swarup v. King Emperor, (1933-34) 61 IA 398: AIR 1934 PC 227 (2); Tulsiram Kanu v. State, AIR 1954 SC 1: 1954 Cri LJ 225; Balbir Singh v. State of Punjab, AIR 1957 SC 216: 1957 Cri LJ 481; M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200: (1963) 1 Cri LJ 235; Khedu Mohton v. State of Bihar, (1970) 2 SCC 450: 1970 SCC (Cri) 479; Sambasivan v. State of Kerala, (1998) 5 SCC 412: 1998 SCC (Cri) 1320; Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; State of Goa v. Sanjay Thakran, (2007) 3 SCC 755: (2007) 2 SCC (Cri) 162; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; Ghurey Lal v. State of U.P., (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60; State of Rajasthan v. Naresh, (2009) 9 SCC 368: (2009) 3 SCC (Cri) 1069; State of U.P. v. Banne, (2009) 4 SCC 271: (2009) 2 SCC (Cri) 260; Dhanapal v. State, (2009) 10 SCC 401: (2010) 1 SCC (Cri) 336; Rajinder Kumar Kindra v. Delhi Admn., (1984) 4 SCC 635: 1985 SCC (L&S) 131; Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312; Triveni Rubber & Plastics v. CCE, 1994 Supp (3) SCC 665; Gaya Din v. Hanuman Prasad, (2001) 1 SCC 501; Gamini Bala Koteswara Rao v. State of A.P., (2009) 10 SCC 636: (2010) 1 SCC (Cri) 372; Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10: 1999 SCC (L&S) 429, relied on

[5130] — Ss. 378 and 386 — Appeal against acquittal — Power of appellate court to interfere with findings of trial court — Principles restated — *Appellate court not precluded from assessing the evidence in an appeal arising from an acquittal — High court analysing evidence in detail and giving cogent reasons for not accepting finding of trial court — Prosecution case proved by a number of eyewitnesses and there being no justification for giving benefit of doubt to the accused persons reversal of acquittal by High Court, on facts, justified*

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

It is not the correct position in law that the appellate court is precluded from assessing the evidences in an appeal arising out of the judgment of acquittal. If the finding made by the trial court is against the weight of the evidence and the view taken by the trial court is unreasonable, the appellate court will be justified in rejecting such unreasonable finding made by the trial court which is against the weight of the evidence adduced in the case and the court of appeal will be quite competent to set aside the order of acquittal and convict the accused.

In this case the High Court has taken pains in analysing the evidences in detail, by adverting to each and every finding made by the trial court and has given cogent reasons for not accepting the finding made by the Sessions Judge in holding that the prosecution case was not proved beyond doubt. The prosecution case was proved by a number of eyewitnesses and there was no justification to hold that the accused persons were entitled to the benefit of doubt. There is, therefore, no reason to interfere with the judgment impugned in these appeals and the appeals are therefore, dismissed. *Kathavan Servai* v. *State of T.N.*, 1994 SCC (Cri) 69.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 15-4-1993]

Ganesh Bhavan Patel v. State of Maharashtra, (1978) 4 SCC 371: 1979 SCC (Cri) 1, followed

[5131] — Ss. 378 and 386 — Appeal against acquittal — Power of appellate court to reappreciate evidence

The Supreme Court is not precluded or the court hearing the appeal against acquittal is not prevented from examining and reappreciating the evidence on record. But the duty of a court hearing the appeal against acquittal in the first instance is to satisfy itself if the view taken by the acquitting court exercising appellate jurisdiction was possible view or not. And if the court comes to conclusion that it was not, it can on reappreciation of evidence reverse the order. (Para 7). *State of Punjab* v. *Ajaib Singh*, (1995) 2 SCC 486: 1995 SCC (Cri) 418: AIR 1995 SC 975.

Bench Strength **2**. Coram: *P.B. Sawant* and **R.M. Sahai**, JJ. [Date of decision: 20-1-1995]

[5132] — Ss. 378 and 386 — Appeal against acquittal — Power of High Court to reverse acquittal — Practice and considerations restated — *On facts the overall view of the evidence by the trial Court was reasonable and should not have been disturbed*

Although in an appeal from an order of acquittal the powers of the High Court to reassess the evidence and reach its own conclusions are as extensive as in an appeal against an order of conviction, yet, as a rule of prudence, it should always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. Where two reasonable conclusions can be drawn on the evidence on record, the High Court should, as a matter of judicial caution, refrain from interfering with the order of acquittal recorded by the Court below. In other words, if the main grounds on which the Court below has based its order acquitting the accused, are reasonable and plausible, and cannot be entirely and effectively dislodged, or demolished, the High Court should not disturb the acquittal.

On facts, the overall view of the evidence taken by the trial Court was reasonable. While it is true that some of the reasons given by the trial Court, if taken individually, do not appear to be substantial or impeccable, but taken in their totality, they certainly render the evidence of the material prosecution witnesses unsafe to be acted upon. The vitiating circumstance of delay in lodging the FIR and further delay in recording statements of eyewitnesses has not been effectively dispelled by the High Court, except by acceptance of the ipse dixit of the sub-inspector. The reversal of acquittal by the trial Court was unjustified in the circumstances. *Ganesh Bhavan Patel* v. *State of Maharashtra*, (1978) 4 SCC 371: 1979 SCC (Cri) 1: AIR 1979 SC 135: 1979 Cri LJ 51.

Bench Strength **3**. Coram: *Y.V. Chandrachud, C.J.* and **R.S. Sarkaria** and *O. Chinnappa Reddy*, JJ. [Date of decision: 18-10-1978]

[5133] — Ss. 378 and 386 — Appeal against acquittal — Power of High Court to review evidence — Scope — *Held, High Court can review the evidence and come to its own conclusion — However, it should also examine the reasons for acquittal and should interfere only if the view of the trial court, which recorded the order of acquittal, was unreasonable — No interference if two views possible — Reasons should be given for reversing the order of acquittal — In the instant case, in view of the reasons given by the High Court, held, the*

High Court did not exceed its powers in interfering with the order of acquittal passed under Ss. 376 and 511, IPC, by the trial court — Penal Code, 1860, Ss. 375, 376 and 511

There is no limitation on the part of the appellate court to review the evidence upon which an order of acquittal is founded. The different expressions used in different judgments of the Supreme Court to the effect that there must be "sufficient and compelling reasons" or "good and sufficiently cogent reasons" for the appellate court to alter an order of acquittal to one of conviction, by no manner curtail the power of an appellate court in an appeal against acquittal to review the entire evidence and come to its conclusion. But in doing so the appellate court should consider every matter on record and the reasons given by the trial court in support of the order of acquittal; and should interfere on being satisfied that the view taken by the acquitting Judge is unreasonable. If two views are possible on a set of evidence then the appellate court need not substitute its own view in preference to the view of the trial court which has recorded an order of acquittal. If the Sessions Judge acquits an accused by giving undue importance to minor discrepancies and taking a suspicious view of the evidence based on conjectures then the High Court will be fully justified in interfering with the order of acquittal. But all the same while reversing an order of acquittal the High Court must give sufficient grounds for holding that the appreciation of evidence by the trial court is unsupportable.

In the instant case, the High Court on reading the evidence of the prosecutrix has come to the finding that the prosecutrix's evidence was cogent and clear to the effect that there was no penetration of the organ of the accused into the vagina of the prosecutrix and on the other hand the accused merely rubbed his genital organ as a result of which there was discharge of hot white liquid substance which fell on the thighs of the prosecutrix. On going through the reasoning advanced by the High Court for interfering with an order of acquittal passed by the trial court, it has to be held that the High Court has not exceeded the parameters indicated in the judgments of the Supreme Court for interference with an order of acquittal.

In assessing the testimonial potency of the victim's version, human psychology and behavioural probability must be looked into. The inherent bashfulness and the feminine tendency to conceal the outrage of masculine sexual aggression are factors which are relevant to improbabilise the hypothesis of false implication. The High Court review of the evidence on record and on examining the reasons given by the learned Sessions Judge for according an order of acquittal was fully justified in interfering with the said order of acquittal. *Madan Lal* v. *State of J&K*, (1997) 7 SCC 677: 1997 SCC (Cri) 1151: AIR 1998 SC 386.

Bench Strength **2**. Coram: *G.N. Ray* and **G.B. Pattanaik**, JJ. [Date of decision: 6-8-1997]

[5134] — Ss. 378 and 386 — Power of appellate court to reappreciate and reweigh the evidence and set aside acquittal by trial court — *Held, if two views are possible and trial court has recorded acquittal, interference by High Court should be restricted — However, in case High Court finds that view taken by trial court was not based on the evidence, it would defeat ends of justice if order is not set aside — Present case falls under category where High Court fully justified in reversing acquittal* (Para 10). *Beere Gowda* v. *State of Karnataka*, (2010) 11 SCC 771.

Bench Strength **2**. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 28-7-2010]

[5135] — Ss. 378 and 386 — Appeal against acquittal — Power of High Court while dealing with — Scope — *Factors to be borne in mind — Held, High Court can review and consider entire evidence and come to its own conclusions by either accepting the evidence rejected by the trial court or rejecting the evidence accepted by the trial court — But if it departs from conclusions reached by trial court, it should state reasons for not accepting the same — While dealing with appeal against acquittal, High Court should bear in mind (i) that the presumption of innocence in favour of accused is fortified by findings of trial court, (ii) that the accused is entitled to benefit of any doubt, and (iii) that the trial court had advantage of examining the demeanour of witnesses*

The power of the High Court in an appeal from acquittal is no different from its power in an appeal from conviction. It can review and consider the entire evidence and come to its own conclusions by either accepting the evidence rejected by the trial court or rejecting the evidence accepted by the trial court. However, if the High Court decided to depart from the conclusions reached by the trial court, it should pay due attention to the grounds on which acquittal was based and state the reasons as to why it finds the conclusions leading to the acquittal, unacceptable. It should also bear in mind that (*i*) the presumption of innocence in favour of the accused is fortified by the findings of the trial court; (*ii*) the accused is entitled to benefit of any doubt; and (*iii*) the trial court had the advantage of examining

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

the demeanour of the witnesses. The crux of the matter, however, is whether the High Court is able to give clear reasons to dispel the doubt raised, and reject the reasons given by the trial court. (Para 15). *Pulicherla Nagaraju* v. *State of A.P.*, (2006) 11 SCC 444: AIR 2006 SC 3010: 2006 Cri LJ 3899.

Bench Strength **2**. Coram: *G.P. Mathur* and **R.V. Raveendran**, JJ. [Date of decision: 18-8-2006]

Sher Singh v. State of U.P., (1967) 2 SCR 727: AIR 1967 SC 1412: 1967 Cri LJ 1213; Dargahi v. State of U.P., (1974) 3 SCC 302: 1973 SCC (Cri) 928; Ravinder Singh v. State of Haryana, (1975) 3 SCC 742: 1975 SCC (Cri) 202; Labh Singh v. State of Punjab, (1976) 1 SCC 181: 1975 SCC (Cri) 812, relied on

[5136] — S. 378 — Appeal against acquittal — Power of High Court to reappreciate evidence — *Where the High Court found the reasons given by the trial court for disbelieving the eyewitness to be improper, held, it could reappreciate the evidence and come to its own conclusion. Ramkishore Patel* v. *State of M.P.*, (1996) 11 SCC 217: 1997 SCC (Cri) 72.

Bench Strength **2**. Coram: *G.N. Ray* and **G.T. Nanavati**, JJ. [Date of decision: 3-10-1996]

[5137] — S. 378 — Appeal against acquittal — Scope of High Court's power of interference with the order of acquittal — *Where two views are possible, the one favouring the accused's innocence should be adopted — But paramount consideration should be to avoid miscarriage of justice — On facts held, trial court's conclusion was based on conjectures, imagination and hypothesis and therefore, High Court was justified in re-examining the evidence and reversing the order of acquittal recorded by trial court — Penal Code, 1860 — S. 302*

According to the prosecution, the appellant along with another person, went to the teastall of the deceased on 27-3-1989 at about 7.30 p.m. armed with a dharia and inflicted four blows to the deceased with that dharia, as a result of which the deceased sustained serious injuries on head and other parts of his body. He was shifted to the hospital where he succumbed to the injuries. At about 7.45 p.m. a message was received at the police station from the hospital about the serious injuries sustained by the deceased. The intimation was recorded as crime entry in the police station. Thereafter, statement of PW 4 was recorded at the police station and FIR (Ext. 30) was registered. On completion of investigation, charge-sheet was filed against the accused persons. The trial court discarded the testimony of the eyewitnesses (PW 4, PW 5, PW 6 and PW 9) cited by the prosecution and acquitted the accused by relying mainly upon the following aspects: (*i*) the crime entry in the police station diary was the first information report under Section 154 CrPC and not the complaint lodged by PW 4 (Ext. 30); (*ii*) the time of death of the deceased was not established, hence the prosecution story was doubtful; (*iii*) identity of the muddamal articles was doubtful as the witnesses had not been shown such items and had not identified; (*iv*) identity of PW 9 was also doubtful and in his place somebody was placed; (*v*) the investigation carried by the IO was not truthful but was shaky, which created doubt; (*vi*) statements of some of the witnesses by police under Section 162 CrPC were recorded late and therefore, there was chance for manipulation; (*vii*) non-cognizable complaint lodged by A-1 was not admissible in evidence as it was given to the IO during course of investigation; and (*viii*) the contradictions in the evidence of witnesses were also creating doubt on the veracity of the prosecution case. In appeal the High Court relied upon the testimony of the eyewitnesses and convicted the appellant under Section 302 IPC. It found that the appellant was the prime accused who had given four successive dharia-blows on the vital organs of the deceased which resulted in his death. The weapon of offence recovered from the appellant was stained with blood Group 'B' which was the blood group of the deceased. The statements of three eyewitnesses viz. PW 4, PW 6 and PW 9 proved the version of the prosecution leading to the unerring conclusion that it was the appellant alone who had committed the murder of the deceased by inflicting four successive blows with the weapon of offence. The evidence of the eyewitnesses stood corroborated by the medical evidence of the doctors.

Dismissing the appeal,

Held :

None of the aforesaid circumstances or aspects relied upon by the trial court can be held to be based upon legal evidence. Whether the crime entry was the first information report would not change the nature of the allegation made against the accused as no discrepancy is pointed out in the aforesaid entries. The said entry was recorded on the basis of report received from the hospital and the entry was on the basis of the statement of the complainant. In the absence of any discrepancy in the aforesaid two documents, the accused-appellant could not be acquitted. The two entries did not make the so-called two versions possible. The only inference of the two entries is that occurrence had taken place in which the deceased had died and the appellant had inflicted injuries. Similarly the time of death in no way proves the appellant to be innocent. In the presence of the ocular testimony of eyewitnesses that occurrence had taken place on 27-3-1989 at about 7.30 p.m. in which the injuries found on the person of the deceased were caused by the appellant, the time of death of the deceased ascertained on the basis of opinion of the doctor was in no way helpful to the appellant. The trial court had no reason to hold that the identity of the weapon of offence was doubtful or PW 9 was not the prosecution witness whose statement had been recorded under Section 161 CrPC. The defects in the investigation holding it to be shaky and creating doubts also appears to be the result of the imaginative thought of the trial court. Otherwise also, defective investigation by itself cannot be made a ground for acquitting the accused. The trial court was also not justified in holding that the statements of the witnesses under Section 161 CrPC were recorded late by the police and that there was any chance of manipulation. The FIR is proved to have been recorded within 15 minutes of the occurrence and its copy furnished to the Magistrate within 24 hours, which rules out the possibility of manipulation. The contradictions in the evidence of the witnesses, referred to in the judgment of the trial court, are of very minor nature which instead of discarding their testimony strengthens the case of the prosecution of the witnesses being truthful as they were not shown to have made parrot-like statements. A critical examination of the judgment of the trial court shows that the view taken by it was uncalled for, not based upon the facts of the case or the legal evidence tendered in the case and was the result of conjectures, imagination and hypothesis. The High Court rightly held that the conclusions arrived at by the trial court were factually and legally incorrect. The High Court was, therefore, justified in re-examining the whole evidence produced in the case and holding that the accused-appellant was proved to have committed the offence of murder beyond all reasonable doubt. He has rightly been convicted and sentenced for the commission of the offence under Section 302 IPC. There is no illegality or error of jurisdiction in the judgment of the High Court requiring the Supreme Court's interference. (Para 8)

Though the High Court has full powers to review the evidence upon which an order of acquittal is based, it will not interfere with an order of acquittal because with the passing of an order of acquittal the presumption of innocence in favour of the accused is reinforced. The High Court should be slow in disturbing the finding of the fact arrived at by the trial court. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court should be to avoid miscarriage of justice. A miscarriage of justice which may arise from the acquittal of guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view based upon conjectures and hypothesis and not on the legal evidence, a duty is cast upon the High Court to reappreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether the accused has committed any offence or not. Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence. Only because the accused has been acquitted by the trial court, cannot be made a basis to urge that the High Court under all circumstances should not disturb such a finding. (Paras 6 and 7). *Allarakha K. Mansuri* v. *State of Gujarat*, (2002) 3 SCC 57: 2002 SCC (Cri) 519: AIR 2002 SC 1051: 2002 Cri LJ 1489.

Bench Strength **2**. Coram: **R.P. Sethi** and *K.G. Balakrishnan*, JJ. [Date of decision: 14-2-2002]

Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033: AIR 1973 SC 2622, relied on

[5138] — Ss. 378 and 386 — Appeal against acquittal — Appellate court's interference with acquittal, when called for — Principles restated — *Reasons recorded by trial court for acquittal found to be unreasonable and perverse — On the basis of evidence it was not possible to take a view in favour of the accused — Held, High Court justified in reversing trial court's judgment and order of acquittal*

The reasons recorded by the trial court while recording an order of acquittal are unreasonable and perverse. On the basis of the evidence on record it was not possible to take a view in favour of the accused. The High Court was therefore, justified in setting aside the order of acquittal. (Para 28)

It is true, the settled legal position is that in an appeal against acquittal the High Court ought not to interfere with the order of acquittal if on the basis of the same evidence two views are reasonably possible — one in favour of the accused and the other against him. In such a case if the trial court takes a view in favour of the accused, the High Court ought not to interfere with the order of acquittal. However, if the judgment of acquittal is perverse or highly

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unreasonable or the trial court records a finding of acquittal on the basis of irrelevant or inadmissible evidence, the High Court, if it reaches a conclusion that on the evidence on record it is not reasonably possible to take another view, it may be justified in setting aside the order of acquittal. In this case the High Court was justified in setting aside the order of acquittal. (Para 20). *Mahadeo Laxman Sarane* v. *State of Maharashtra*, (2007) 12 SCC 705: (2008) 2 SCC (Cri) 791: 2007 Cri LJ 3209: (2007) 56 AIC 140 (SC).

Bench Strength **2**. Coram: *B.P. Singh* and *H.S. Bedi*, JJ. [Date of decision: 3-5-2007]

[5139] — S. 378 — Appeal against acquittal — Scope of interference with acquittal, by High Court — *Where the reasoning of the trial court for rejecting the evidence of the PWs and for acquitting the accused was highly discrepant, patently erroneous and totally unacceptable, reversal of the trial court's order by the High Court after giving cogent and plausible reasons, upheld — Penal Code, 1860, Ss. 148, 302 and 149 — Explosive Substances Act, 1908, S. 3*

A-1, A-5 and A-6 were convicted by the trial court under Sections 120 and 302 of the Penal Code. A-5 was convicted also under Sections 302 and 109 of the Penal Code as well as under Section 3 of the Explosive Substances Act. The trial court acquitted A-2, A-3 and A-4 of all the offences they were charged with.

The High Court found A-1 guilty of the offences under Section 147 IPC and after setting aside acquittal of A-2 and A-3 found them guilty under Section 148 IPC. The High Court also held A-2 guilty for the offence under Section 302 IPC and A-1 and A-3 guilty under Sections 302/149 IPC. A-2 and A-3 were further held guilty under Section 3 of the Explosive Substances Act, 1908 and were convicted accordingly and all the three were sentenced to undergo life imprisonment. The conviction of A-1 and A-3 under Section 3 of the Explosive Substances Act was also maintained but no separate sentence was awarded on that count. The appeal filed by A-1 abated due to his death during the pendency of the appeal before the Supreme Court. Dismissing the appeal of A-2 and A-3 and rejecting their contention that the High Court should not have interfered with the well-reasoned judgment of the trial court and should not have reversed the findings recorded by the trial court

Held :

It is well-settled law that the appellate court should be slow in reversing the order of acquittal unless there are good and strong grounds for interference. But, in the instant case, the reasoning of the trial court in rejecting the evidence of PWs 4 and 6 is highly discrepant and patently erroneous which could not be accepted at all. The evidence of PW 4 when no infirmity was found therein, ought not to have been rejected merely on the ground that he was an uncle of the deceased. The evidence of PW 6 and other eyewitnesses has been rejected by the trial court on the ground that after the bomb had exploded PWs 4, 6 and other witnesses would not have been able to see the miscreants who had hurled the bomb due to smoke after explosion. But, on facts, this reasoning is not only faulty but perverse and could not be accepted. The High Court has given cogent and plausible reasons for rejecting the finding of the trial court and accepting the evidence of the said eyewitnesses. The High Court was right in taking that view. *Tallurri Venkaiah Naidu* v. *Public Prosecutor, High Court of A.P.*, (1996) 11 SCC 355: 1997 SCC (Cri) 175: AIR 1997 SC 353.

Bench Strength **2**. Coram: *Faizan Uddin* and *K. Venkataswami*, JJ. [Date of decision: 21-8-1996]

[5140] — S. 378 — Appeal against order of acquittal — Power of High Court to interfere on reappreciation of evidence in appeal — Scope — *Unless the findings of trial court are perverse or contrary to the material on record, held, High Court cannot, in appeal, substitute its finding merely because another contrary opinion was possible on the basis of the material on record — Further held, High Court must express its reasons in the judgment for holding the acquittal to be not justified — Hence, where the trial court passed the acquittal order under S. 138 of Negotiable Instruments Act on the basis of its findings on a number of points, held, the High Court erred in not applying its mind to the said points and reversing the acquittal order on totally different grounds — Negotiable Instruments Act, 1881, S. 138*

The respondent filed a complaint under Section 138, Negotiable Instruments Act, against the appellant alleging that the respondent had advanced to the appellant a certain sum in cash in repayment whereof the appellant issued a cheque to the respondent. That cheque was dishonoured by the bank. The appellant denied the said allegations and stated that the cheque in question was a blank one and was issued five years ago not to the respondent but to one *C* as security for future instalments in a chit transaction. The appellant added that *C* did not return the cheque even after the chit transaction was over and the said cheque was misused by the respondent in collusion with *C*. The trial court noticed that: (*i*) although the respondent complainant admitted that he did not know the appellant personally and had advanced the money at the instance of *V*, the respondent did not examine *V* to prove that fact, (*ii*) the respondent did not examine *C* despite the presence of *C* in the court hall, (*iii*) there was difference in the ink used in writing of the name and amount in the cheque and the ink used in the signature portion thereof. Therefore the trial court held that the prosecution case was not proved and dismissed the complaint. In appeal, the High Court noticed that: (*i*) the appellant had failed to produce the counterfoils of his cheque-book to prove the year of issuance of the cheque, and (*ii*) had failed to examine himself. On those bases, the High Court held the appellant to be guilty and convicted him. Thereupon the appellant filed the instant appeal by special leave.

Allowing the appeal,

Held :

Sitting as an appellate court against a judgment of acquittal passed by the trial court, there was an obligation on the part of the High Court to come to a definite conclusion that the findings of the trial court were either perverse or contrary to the material on record because the High Court could not have substituted its finding merely because another contrary opinion was possible based on the material on record. (Para 5)

Moreover, while hearing an appeal against an order of acquittal, the High Court must express its reasons in the judgment for holding the acquittal to be not justified. If two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court. (Para 6)

Therefore, it is held, that the trial court was justified in coming to the said conclusion because of the said three deficiencies pointed out by the trial court, and that the respondent's complaint ought to fail. The High Court fell in error in reappreciating the case of the respondent on a totally different perspective without coming to the conclusion that the findings given by the trial court on the said three points were either irrelevant or contrary to the material on record. The High Court was in error in reversing the finding of acquittal recorded by the trial court. (Para 8). *C. Antony* v. *K.G. Raghavan Nair*, (2003) 1 SCC 1: AIR 2003 SC 182.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 1-11-2002]

Bhim Singh Rup Singh v. State of Maharashtra, (1974) 3 SCC 762: 1974 SCC (Cri) 238; Dharamdeo Singh v. State of Bihar, (1976) 1 SCC 610: 1976 SCC (Cri) 108, relied on and also followed

[5141] — S. 378 — Appeal before High Court against acquittal — High Court when justified in reversing the acquittal order — *Penal Code, 1860, S. 304 Part II*

In the present case the High Court has carefully analysed the entire evidence and has demonstrated how the trial court has gone wrong and the conclusions drawn by the trial court are not sustainable on the evidence. It is not a case where the High Court has failed to observe the caution or misdirected itself in drawing the conclusions. The trial court had on conjecture and strained reasoning arrived at the conclusion that the prosecution case is not true. The evidence placed on record as found by the High Court is truthful and proved the fact beyond the shadow of doubt and the involvement of the appellant in the crime is clearly established. Therefore, there is no reason to interfere with the judgment of the High Court. *Pradumansinh Kalubha* v. *State of Gujarat*, 1992 Supp (2) SCC 62: 1992 SCC (Cri) 530: AIR 1992 SC 881: 1992 Cri LJ 1111.

Bench Strength **2**. Coram: **M. Fathima Beevi** and *Yogeshwar Dayal*, JJ. [Date of decision: 21-1-1992]

[5142] — S. 378 — Appeal before High Court against acquittal — Scope of High Court's power of judicial review — *High Court can review the entire case both on facts and on law and take its own decision — When Supreme Court would interfere with the conclusion of the High Court*

Section 378 of the new Code (corresponding to S. 417 of the old Code) gives the High Court full power to review at large the evidence upon which the order of acquittal was founded. The whole case is at large for review by the High Court both as to the facts and the law. The High Court is clothed with the plenary powers to go through the entire evidence and to come to its own conclusions as warranted by the facts of the case concerned but, of course, subject to certain guidelines laid down by the judicial pronouncements. But however circumspect and cautious approach of the High Court may be in dealing with those appeals by exercising its plenary and unlimited statutory powers, the Court is to reach its own proper conclusions of guilt or otherwise of the indicted persons as the established facts warrant and to award appropriate sentence which will be commensurate with the gravity of the offence in case of conviction. But if on a scrutiny of

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

the evidence the conclusion of the High Court is found to be erroneous and not reasonable and justifiable, then the Supreme Court will interfere to correct the error. *Madan Gopal Kakkad* v. *Naval Dubey*, (1992) 3 SCC 204: 1992 SCC (Cri) 598.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *M. Fathima Beevi*, JJ. [Date of decision: 29-4-1992]

[5143] — S. 378 — High Court will be justified in entertaining the appeal against acquittal only under special circumstances which must therefore exist in the case appealed against. *Umedbhai Jadavbhai* v. *State of Gujarat*, (1978) 1 SCC 228: 1978 SCC (Cri) 108: AIR 1978 SC 424: 1978 Cri LJ 489: (1978) 19 GLR 268: (1978) 2 SCR 471.

Bench Strength **2**. Coram: **P.K. Goswami** and *V.D. Tulzapurkar*, JJ. [Date of decision: 16-12-1977]

[5144] — S. 378 — Reversal of acquittal by High Court — *Where trial Court's order of acquittal is based on a reasonably possible view, held, High Court should not, as a rule of prudence, disturb the acquittal. Sirajuddin* v. *State of Karnataka*, (1980) 4 SCC 375: 1980 SCC (Cri) 964: AIR 1981 SC 113: 1980 Cri LJ 1498.

Bench Strength **3**. Coram: **R.S. Sarkaria**, *A.C. Gupta* and *E.S. Venkataramiah*, JJ. [Date of decision: 3-9-1980]

[5145] — Ss. 378 and 384 — Reversal of acquittal justified where the trial Court rejected the testimony of the eyewitnesses without at all considering the evidence on its intrinsic merit but on the basis of sweeping observations and inherent improbabilities — *Judgment of trial court was based on pure speculation, surmises and conjectures, the inferences purely imaginary and illusory — Held, rightly set aside by the High Court — CrPC, 1898, Ss. 417 and 421. Soma Bhai* v. *State of Gujarat*, (1975) 4 SCC 257: 1975 SCC (Cri) 515: AIR 1975 SC 1453: 1975 Cri LJ 1201.

Bench Strength **2**. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 30-4-1975]

[5146] — Ss. 378 and 386 — Appeal against acquittal by High Court — High Court interfering with detailed and exhaustive analysis of evidence made by trial court by laying great importance on small or insignificant facts or discrepancies and being mainly influenced by the mere fact that the prosecution witnesses were interested — *Held, on facts, High Court's approach absolutely wrong and perverse and its conclusion unreasonable — Acquittal order of High Court set aside, conviction under S. 302/149, IPC recorded by trial court maintained, and accused sentenced to life imprisonment — Constitution of India — Art. 136. State of U.P.* v. *Ballabh Das*, (1985) 3 SCC 703: 1985 SCC (Cri) 452: AIR 1985 SC 1384.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision: 2-8-1985]

[5147] — S. 378 — Murder trial — Appreciation of evidence — Benefit of doubt — Entitlement to — Acquittal restored — *Alleged grudge due to dispute over fishery rights — Leaving person with whom there was alleged grudge unscathed but killing his relatives with whom there was no enmity — Plausibility — Appellant-accused, along with others, allegedly killed father and nephew of PW 1 (alleged eyewitness) — High Court, mainly relying upon evidence of PW 1, reversed acquittal of accused — Sustainability — Held, whole prosecution case was that on account of dispute over fishery rights, accused bore a grudge against PW 1 and even threatened him with dire consequences — Whether there was any dispute over fishery rights, itself is highly doubtful — There was no enmity whatsoever between deceased and accused — When suggested enmity, if at all, was between accused and PW 1, there was no reason for accused to attack deceased and leave PW 1 unscathed — There was not even an attempt by accused to attack PW 1 — PW 1 made omnibus allegation of all accused attacking deceased indiscriminately with weapons in their hands — However, if PW 1 and PWs 2 and 3 (alleged eyewitnesses, neighbours of PW 1, who had allegedly come on hearing cries) were present at the scene of offence, as stated by PW 1, there is no explanation forthcoming as to why three of them put together, could not resist accused in attacking deceased — In such circumstances, it is doubtful to believe PWs 2 and 3, to have actually witnessed the incident and recognised the accused with the help of torchlights — It is highly doubtful as to whether PWs 1, 2 and 3 had actually torchlights in their hands, as stated by them, in absence of their recovery details in seizure memo and their non-production before court — Moreover, PW 1's evidence does not inspire any confidence — All these factors give rise to doubt and trial court rightly entertained the doubt and accordingly gave benefit of doubt to accused — High Court ought not to have interfered with judgment of trial court merely because there was possibility of taking different view other than that taken by trial court — Hence, appellant is entitled to* *benefit of doubt and is, thus, acquitted — Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, S. 2(a) — Penal Code, 1860, Ss. 302/149, 147 and 148* (Paras 17 to 27). *Durbal* v. *State of U.P.*, (2011) 2 SCC 676.

Bench Strength 2. Coram: **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision: 25-1-2011]

[5148] — Ss. 378 and 386 — Appeal against acquittal — Power of court — *Appellate court can review the evidence and interfere for compelling reasons such as where admissible evidence has been unreasonably and unjustifiably ignored — Primary concern of the court is to prevent miscarriage of justice — If two views are possible, the one favourable to the accused, held, should be adopted — Constitution of India — Art.136*

There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. (Para 8)

In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (Para 8)

The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. (Para 8). *Bihari Nath Goswami* v. *Shiv Kumar Singh*, (2004) 9 SCC 186: 2004 SCC (Cri) 1435.

Bench Strength 2. Coram: *P. Venkatarama Reddi* and **Arijit Pasayat**, JJ. [Date of decision: 24-2-2004]

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of Punjab v. Phola Singh, (2003) 11 SCC 58: 2004 SCC (Cri) 276; Suchand Pal v. Phani Pal, (2003) 11 SCC 527: 2004 SCC (Cri) 220, relied on

[5149] — S. 378 — Appeal against acquittal — Scope of consideration by appellate court — Possibility of two views, one taken by trial court and the other which is considered more probable by appellate court — Held, view of trial court should not normally be overturned because trial court which had the benefit of watching demeanour of witnesses is best judge to assess credibility of evidence (Paras 38 and 40)

While dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. Even though the appellate court is entitled to consider, whether in arriving at a finding of fact, the trial court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. The trial court which has the benefit of watching the demeanour of the witnesses is the best judge of the credibility of the witnesses. (Para 38)

In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. A finding may also be said to be perverse if it is against the weight of evidence, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Para 40)

The High Court did not dislodge the reasons given by the trial court for acquittal and dealt with the case very casually, adopting a very superficial approach to the whole matter. The High Court did not make any attempt to appreciate the evidence with accuracy and erroneously reversed the findings of the trial court which were based on the evidence on record and for which detailed reasons had been assigned. (Para 59). *Sunil Kumar Sambhudayal Gupta (Dr.)* v. *State of Maharashtra*, (2010) 13 SCC 657.

Bench Strength 2. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 11-11-2010]

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

Balak Ram v. State of U.P., (1975) 3 SCC 219: 1974 SCC (Cri) 837; Shailendra Pratap v. State of U.P., (2003) 1 SCC 761: 2003 SCC (Cri) 432; Budh Singh v. State of U.P., (2006) 9 SCC 731: (2006) 3 SCC (Cri) 377; S. Rama Krishna v. S. Rami Reddy, (2008) 5 SCC 535: (2008) 2 SCC (Cri) 645; Arulvelu v. State, (2009) 10 SCC 206: (2010) 1 SCC (Cri) 288; Ram Singh v. State of H.P., (2010) 2 SCC 445: (2010) 1 SCC (Cri) 1496; Babu v. State of Kerala, (2010) 9 SCC 189: (2010) 3 SCC (Cri) 1179, relied on

[5150] — Ss. 378 and 386 — Interference by High Court in such appeal cannot be made if the reasons of the trial court are good and sturdy (Para 21). *Rang Bahadur Singh* v. *State of U.P.*, (2000) 3 SCC 454: 2000 SCC (Cri) 703: AIR 2000 SC 1209: 2000 Cri LJ 1718: 2000 All LJ 860.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.C. Lahoti*, JJ. [Date of decision: 7-3-2000]

[5151] — Ss. 378 and 386 — Appeal against acquittal — *Approach of the trial court in appreciating evidence of single eyewitness found to be wholly erroneous and unrealistic — High Court fully justified in reversing the findings of the trial court. Marwadi Kishor Parmanand* v. *State of Gujarat*, (1994) 4 SCC 549: 1994 SCC (Cri) 1294.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 15-3-1994]

[5152] — Ss. 378 and 386 — Appeal before High Court against acquittal — When can High Court interfere with the findings of trial court — *High Court on reappreciation of evidence giving cogent reasons for non-acceptance of findings of trial court — Held on facts, reversal of acquittal by High Court justified*

In an appeal arising from an order of acquittal, the appellate court is not precluded from appreciating the evidence on its own if the reasons given by the trial Judge in passing the order of acquittal do not stand scrutiny and are against the weight of the evidence adduced in the trial. The appellate court will be quite justified in setting aside the order of acquittal if it appears to the court of appeal that improper consideration of the material and evidence on record was made and the reasonings of the trial Judge are wholly unjustified. It is only necessary that the court of appeal should weigh the reasonings of the trial Judge with care and caution in the light of the evidence adduced in the case by giving cogent reasons as to why such findings are unreasonable and against the evidence. In the instant case, the High Court has taken care in analysing each and every finding of the Sessions Judge in the light of the evidence adduced in the case and has given cogent reasons as to why such findings were unreasonable and not acceptable. The findings of the Sessions Judge were not accepted by the High Court by indicating that such findings were against the weight of the evidences and the same were wholly unreasonable. In the circumstances of the case there is no reason to take a contrary view in this appeal and set aside the order of conviction made by the High Court. *Mohd. Aslam* v. *State of U.P.*, (1993) 3 SCC 10: 1993 SCC (Cri) 577.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 18-3-1993]

[5153] — Ss. 378 and 386 — Appeal before High Court against acquittal recorded by trial court — High Court can re-appreciate the evidence to find out misappreciation of evidence by trial court, if any — *Where there was proper appreciation of evidence by trial court, reappreciation of evidence by High Court was not warranted — Penal Code, 1860, Ss. 302/34, 396, 460 and 404 — M.P. (Dacoity Vihavaran Kshetra) Adhiniyam, 1981, Ss. 11/13*

Accused *B* and his father and the deceased *M* all lived in the neighbourhood of each other in a village. There was a civil dispute regarding opening of a door for access to the *chabutra* between the houses of the parties and the deceased *M* filed a civil suit and obtained an injunction against the accused *B* restraining the latter from opening any door or window towards the *chabutra* of the plaintiff. The case of the prosecution was that the accused *B*, therefore, hatched a plan to kill *M* with the help of the other co-accused. To accomplish their plan, they entered the house of *M* at midnight and throttling him by neck, killed him and hanged him with the hook of the door in the house. They also killed his daughter who was found dead inside the house with burns. The main evidence led by the prosecution against the accused was the solitary testimony of the alleged child eyewitness aged about 6 years at the time of the incident. According to the prosecution, he along with his two younger brothers were sleeping with his deceased mother in the house of deceased *M*. The investigating officer claimed to have recorded the statement of the child witness under Section 161 CrPC on the next day of the incident. In his deposition the child claimed to have seen the accused *B* catching hold of his mother by face and the co-accused *L* and *S* assaulting her. He also stated that there were two other persons present with the accused. After witnessing the incident, he got terrified and went back to sleep. When he woke up in the morning, he found his grandfather dead and hanging on the door of the house and mother lying burnt and dead. On seeing this ghastly scene, he again fell asleep inside the house. In the morning, his maternal uncle *A* came and took him and his younger brothers to the village where his father lived. *A* was, however, not produced by the prosecution as a witness. Further, father of the child witness in his statement did not state that after the incident his son had disclosed to him the names of the assailants. Although the child had named three appellant-accused in his statement under Section 161 CrPC on 1-3-1984, the named accused were not arrested immediately thereafter. They were arrested on 12-3-1984. The child witness was examined in the court. His statement was recorded on 14-2-1985. The accused are said to have been produced in the court with their faces covered. They were then on the directions of the court asked to uncover their faces. The child is said to have identified them in the court when they were in the dock. The trial Judge recorded the demeanour of the child witness that he was pausing and sometimes faltering while deposing and did not seem to understand a few questions put to him. The trial Judge, therefore, held that it would be hazardous to rely on such shaky testimony of a child witness who could have been tutored in the period intervening the date of incident and the date of his deposition. The oral evidence led by the prosecution against the accused of hatching a plan and talking about it before and after its accomplishment, which was allegedly overheard by the witnesses had not been believed both by the trial court as also the High Court. The trial court also totally rejected the evidence of the alleged recovery of articles on the alleged information of the accused but the High Court made a mention of recovery of a few domestic articles as a corroborative evidence against the accused. The High Court relied on the sole testimony of the above eyewitness and brushed aside such serious omissions including not holding of test identification parade after the child witness had named the three assailants before the police. The High Court relied on dock identification stating that the child witness used to regularly visit his deceased grandfather with his mother and was knowing since before the incident the accused *B* living in the neighbourhood and other accused *S* and *L* who were also of the same village. The High Court relied on the judicial confession made by the co-accused *P* against the present appellant-accused as a corroborative evidence to the eyewitness account of the child. The High Court reversed the verdict of the trial court and convicted the three accused-appellants for offences for which they were charged i.e. under Sections 302/34, 396, 460, 404 IPC and Sections 11/13 of the M.P. (Dacoity Vihavaran Kshetra) Adhiniyam, 1981. They were sentenced to life imprisonment and fine of Rs 1000 each with directions that they shall suffer RI for one year in default of payment of fine. The fourth accused *P* was acquitted by both the courts below.

Allowing the appeal filed by the three accused, *Held* :

The High Court was not at all justified in reversing the verdict of acquittal passed by the trial Judge. In appeal against acquittal, the High Court is competent to reappreciate the evidence to find out whether the trial Judge has misappreciated any part of the evidence or not. Here the appreciation of the evidence made by the trial Judge is proper and the conclusions drawn are reasonable. The High Court, therefore, erred in reappreciating the evidence to substitute its own view for that of the trial Judge. (Para 35)

It is not denied that the village where the incident took place comes under dacoity-affected area to which provisions of the M.P. (Dacoity Vihavaran Kshetra) Adhiniyam, 1981 are applicable. In such circumstances, possibility of commission of the alleged crime by unknown criminals is not wholly ruled out. (Para 33). *Bhagwan Singh* v. *State of M.P.*, (2003) 3 SCC 21: 2003 SCC (Cri) 712: AIR 2003 SC 1088: 2003 Cri LJ 1262: (2003) 3 MPLJ 297.

Bench Strength **3**. Coram: *S. Rajendra Babu*, **D.M. Dharmadhikari** and *G.P. Mathur*, JJ. [Date of decision: 23-1-2003]

State of M.P. v. Bhagwan Singh, 2002 Cri LJ 3169 (MP), reversed

[5154] — Ss. 378 and 386 — Appeal before High Court against acquittal recorded by trial court — High Court should not ordinarily reverse the judgment of acquittal when two views are possible — *When trial court's judgment cannot be said to be perverse or not possible to be taken, held on facts, High Court erred in reversing trial court's judgment and convicting the accused* (Para 17). *Samghaji Hariba Patil* v. *State of Karnataka*, (2006) 10 SCC 494: (2007) 1 SCC (Cri) 113.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 19-10-2006]

[5155] — **Ss. 378 & 386 — Appeal against acquittal — If view taken by trial court is found to be a possible reasonable view, appellate court should not interfere with it**. *Pramod Mandal* v. *State of Bihar*, (2004) 13 SCC 150: 2005 SCC (Cri) 75.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and **B.P. Singh**, JJ. [Date of decision: 17-9-2004]

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

[5156] — Ss. 378 & 386 — Appeal before High Court against acquittal — *Reappreciation of evidence and interference with the findings of trial court — When called for*

The High Court, as an appellate court, can reappreciate the evidence and interfere with the findings, if they are perverse or the reasons given by the trial Judge are palpably untenable. In this case the view taken by the trial court cannot be considered to be a reasonably possible view precluding interference against the verdict of acquittal. The High Court has rightly taken the view that the evidence of the eyewitness has been discarded on feeble and untenable grounds and unnecessary doubts were entertained by the trial court despite the clear and cogent evidence linking the appellant to the crime. Therefore, there is no merit in this appeal. (Para 9). *Ram Sewak* v. *State of U.P.*, (2005) 12 SCC 143.

Bench Strength 2. Coram: *P. Venkatarama Reddi* and *P.P. Naolekar*, JJ. [Date of decision: 29-3-2005]

[5157] — Ss. 378 and 386 — Appeal before High Court against acquittal — *Scope of High Court's power of interference with the order of acquittal, restated — Interference held justified on facts*

Though the High Court has full powers to review the evidence upon which an order of acquittal is based, it will not interfere with an order of acquittal because with the passing of an order of acquittal the presumption of innocence in favour of the accused is reinforced. The paramount consideration of the court should be to avoid miscarriage of justice. A miscarriage of justice which may arise from the acquittal of guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view based upon conjectures and hypothesis and not on the legal evidence, a duty is cast upon the High Court to reappreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether the accused has committed any offence or not. Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence. Only because the accused has been acquitted by the trial court, cannot be made a basis to urge that the High Court under all circumstances should not disturb such a finding. (Para 11). *Harisingh M. Vasava* v. *State of Gujarat*, (2002) 3 SCC 475: 2002 SCC (Cri) 654: AIR 2002 SC 1212: 2002 Cri LJ 1771.

Bench Strength 2. Coram: **R.P. Sethi** and *K.G. Balakrishnan*, JJ. [Date of decision: 27-2-2002]

[5158] — Ss. 378 and 386 — Appeal against acquittal — Power of appellate court to reverse orders of acquittal on a matter of fact — Principles restated — *When two views possible appellate court should take the view which supports the acquittal — On facts, however, the acquittal of A-2 and A-6 need to be reversed*

If on reassessment of the evidence, the appellate court comes to the conclusion that the guilt of the accused is established, the fact that the appeal is against the acquittal will be immaterial. However, if two views are possible, the court, having regard to the basic principle that presumption of innocence of the accused gets strengthened by the fact of his acquittal by court, should take the view that supports the acquittal of the accused.

On facts, the view of the evidence taken by the High Court is erroneous and that it misled itself in coming to the conclusion that the guilt of A-2 and A-6 was not established; we are of the view that prosecution has proved the guilt of the accused beyond any reasonable doubt. The trial court was, therefore, right in convicting them and that the High Court was not justified in interfering with their conviction and sentence. *State of U.P.* v. *Nahar Singh*, (1998) 3 SCC 561: 1998 SCC (Cri) 850: AIR 1998 SC 1328.

Bench Strength 2. Coram: *G.T. Nanavati* and **S.S.M. Quadri**, JJ. [Date of decision: 18-2-1998]

Sheo Swarup v. King Emperor, AIR 1934 PC 227 (II): 1934 All LJ 905, approved

Prandas v. State, AIR 1954 SC 36: 1954 Cri LJ 331; Sanwat Singh v. State of Rajasthan, AIR 1961 SC 715: (1961) 3 SCR 120; State of U.P. v. Krishna Gopal, (1988) 4 SCC 302: 1988 SCC (Cri) 928; Ajit Savant Majagvai v. State of Karnataka, (1997) 7 SCC 110: 1997 SCC (Cri) 992, relied on

[5159] — S. 378 — Appeal against acquittal — Interference by the appellate court — If called for — *It was found that evidence suggested that judgment of trial court was unjustified in the face of extremely credible evidence and based on complete misconception as to evidence on record — Held, interference on a reappreciation of evidence by High Court called for* (Paras 15 to 17). *Himmat Sukhadeo Wahurwagh* v. *State of Maharashtra*, (2009) 6 SCC 712.

Bench Strength 3. Coram: *S.B. Sinha*, **H.S. Bedi** and *Aftab Alam*, JJ. [Date of decision: 1-5-2009]

[5160] — Ss. 378 and 386 — Appeal against acquittal — Reappreciation of evidence — Interference with findings of acquittal — When not called for — *Trial court had accorded a judgment of acquittal upon assigning sufficient and cogent reasons — On facts, held, it is one of the rarest of rare cases where the necessary deeper scrutiny was not done by High Court*

On 18-7-1986 at about 8.30 a.m., the appellant Swamiji in a position of authority in the Mutt school allegedly through PW 2, *P* and *G* called the complainant, PW 1 a student of the IXth standard to his office. The office had been partitioned and one part of it had been converted into a bedroom. PW 1 alleged that he was then subjected to unnatural offence by the appellant. His clothes, anus and panche (lungi) got soiled. He allegedly came back to his house with his brother on 28-7-1986. He gave the dirty clothes for washing to his mother. His mother, PW 4 found sticky substances in the lungi. When accosted, he allegedly told her about the indecent behaviour of the appellant. PW 8, *B*, the maternal uncle of Respondent 2 at that time was also present. The victim was allegedly persuaded to go back to the school. He came back to the school on 3-8-1986. PW 9, *S* and *N* were said to have been asked by the appellant to bring him again to the appellant's office. He declined to come. He allegedly made a complaint to the senior Swamiji as regards the incident who assured him of looking thereinto and asked him not to make any complaint, the prestige of the Mutt being involved. However, no action was allegedly taken. PW 1 thereafter lodged a first information report on 29-8-1986 at about 6.30 p.m. The appeal against acquittal and the criminal revision application were taken up together for hearing by the High Court. The High Court by the impugned order convicted the appellant-accused.

Allowing the appeal,

Held:

The High Court completely lost sight of the parameters of its jurisdiction to reverse a judgment of acquittal. The High Court could have made an endeavour to arrive at its independent findings. But the mind of the Judges of the High Court stood influenced. If the High Court was clear in its mind that it was dealing with a criminal case and that too with the offence under Section 377 IPC, which is a serious one, there was no reason why it had made endeavours to mediate in the internal disputes of the Mutt and for that purpose held sittings in chamber. There was also no reason why the presence of the appellant on each day of hearing was insisted upon and his absence had been adversely commented upon. A large number of irrelevant factors including the rate of conviction, legalisation of sodomy in other countries had been taken into consideration by the High Court. The appellant for no reason was condemned in the clearest possible terms. He was accused of coming to the High Court in an air-conditioned car and holding press conferences which was denied and disputed by the Public Prosecutor. He was also branded as a habitual offender. Again, although the allegation against the appellant was commission of a heinous offence, an attempt was made by the Court to get certain civil disputes between the appellant and the senior Swamiji of the Mutt settled. (Paras 38, 32 and 12)

It is one of the rarest of rare cases where a deeper scrutiny was necessary particularly when the trial court had recorded a judgment of acquittal upon assigning sufficient and cogent reasons. While deciding an appeal against acquittal, the power of the appellate court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further, if the appellate court decides to interfere, it should assign reasons for differing with the decision of the trial court. (Paras 36 and 40). *Gowrishankara Swamigalu* v. *State of Karnataka*, (2008) 14 SCC 411.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 5-3-2008]

Jagdish v. State of M.P., (2007) 13 SCC 12; Rattanlal v. State of J&K, (2007) 13 SCC 18; Kallu v. State of M.P., (2006) 10 SCC 313: (2006) 3 SCC (Cri) 546; Ramappa Halappa Pujar v. State of Karnataka, (2007) 13 SCC 31; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; Haji Khan v. State of U.P., (2005) 13 SCC 353: (2006) 2 SCC (Cri) 336; Abdul Gafur v. State of Assam, (2007) 12 SCC 627: (2008) 3 SCC (Cri) 316, relied on

[5161] — Ss. 378 and 386 — Appeal against acquittal — *Principle that order of acquittal not to be reversed where two views of evidence possible not applicable where the court had acquitted the accused for reasons which are patently wrong and error leading to an element of perversity pervading the judgment — Compulsive and telling evidence ignored — Constitution of India — Art. 136. Brij Lal* v. *Prem Chand*, 1989 Supp (2) SCC 680: AIR 1989 SC 1661.

Bench Strength **2**. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 20-4-1989]

[5162] — Ss. 378 and 386 — Appeal against acquittal — *Reappreciation of evidence and interference with the findings of acquittal — When called for — Penal Code, 1860, Ss. 326, 323 & 324 r/w S. 149*

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

While deciding an appeal against acquittal, the power of the appellate court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further, if it decides to interfere, it should assign reasons for differing with the decision of the trial court. (Para 8)

In the instant case the High Court had not interfered in the matter in a routine manner merely because a different view was possible. The High Court had interfered rightly, because the trial court unreasonably disbelieved the evidence of six eyewitnesses on insufficient grounds, and had also assigned reasons for interfering with acquittal. Hence, judgment of the High Court was well justified. (Para 16). *Kallu* v. *State of M.P.*, (2006) 10 SCC 313: (2006) 3 SCC (Cri) 546: AIR 2006 SC 831: 2006 Cri LJ 799.

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

Bhim Singh v. State of Haryana, (2002) 10 SCC 461: 2003 SCC (Cri) 1469, relied on

[5163] — Ss. 378 & 386 — Appeal against acquittal — *Reappreciation of evidence on record by appellate court permissible but unless acquittal found to be unreasonable or perverse, no interference therewith called for*

In an appeal against acquittal, the appellate court is entitled to reappreciate the evidence on record, but having done so it will not interfere with the order of acquittal unless it finds the view of the court acquitting the accused to be unreasonable or perverse. If the view recorded by the court acquitting the accused is a possible, reasonable view of the evidence on record, the order of acquittal ought not to be reversed. (Para 10). *State of Punjab* v. *Ajaib Singh*, (2005) 9 SCC 94: 2005 SCC (Cri) 43: AIR 2004 SC 2466: 2004 Cri LJ 2547.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 13-4-2004]

[5164] — Ss. 378 and 386 — Scope — Interference by High Court should be minimal, only where trial court judgment is perverse or does not flow from the evidence — *Two dying declarations in favour of appellant — FIR delayed by 10 days without any explanation — Circumstances showing accidental death — Held, complainant lodged FIR to seek compensation from Government on death of his wife as she belonged to Scheduled Caste — Judgment of trial court based on correct appreciation of evidence, was completely in accordance with law — Interference by High Court not warranted* (Paras 24 and 28). *Mukeshbhai Gopalbhai Barot* v. *State of Gujarat*, (2010) 12 SCC 224: AIR 2010 SC 3692.

Bench Strength **2**. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 4-8-2010]

[5165] — Ss. 378 and 386 — Appeal before High Court against acquittal — High Court's interference with the acquittal, not called for unless findings of trial court are perverse — *Where view taken by trial court was a possible view, held, the High Court erred in taking another view by explaining the infirmities in the prosecution case — Penal Code, 1860 — Ss. 302 and 34*

The deceased sustained gunshot injuries as a result of which he died near an octroi toll barrier. The appellants were charged with the offence of committing the murder of the deceased. The trial court held that the cumulative effect of the following circumstances made the prosecution case doubtful: (*i*) the FIR was not recorded or lodged at the time it is purported to have been lodged, (*ii*) two of the three eyewitnesses did not give the names of assailants to the third eyewitness who had come to the scene after the firing incident, (*iii*) recovery of cartridges one day after the occurrence, (*iv*) nature and position of injuries on the body of the deceased were not consistent with the testimony of the eyewitness having regard to the local site, (*v*) the empty cartridges alleged to have been fired by the accused-appellants causing injuries to the deceased were not sent to the ballistic expert for his opinion, nor was he examined to support the prosecution case, (*vi*) unnatural and inconsistent testimony of the eyewitnesses, and (*vii*) though a large number of persons were available at the scene of occurrence, but no independent witness, either employee of the toll barrier or of Home Guard, having office adjacent to the octroi toll barrier, or any other person was examined to support the prosecution. Accordingly, the trial court acquitted the accused persons. On appeal against the acquittal the High Court took the view that sometimes the memory of the eyewitnesses fail and held that a broad view of the evidence given by the eyewitnesses clearly indicated that the prosecution had proved its case.

Allowing the present appeal,

Held:

Having regard to the entire evidence and having carefully and closely considered the judgments of the trial court and the High Court, it appears that the view taken by the trial court was reasonable and plausible, that the prosecution failed to prove its case beyond all reasonable doubt, and that the High Court committed error in interfering with the trial court's order of acquittal. The High Court disregarded the rule of judicial prudence in converting the order of acquittal to conviction. If on appraisal of the evidence and on considering relevant attending circumstances it is found that two views are possible, one as held by the trial court for acquitting the accused and the other for convicting the accused, in such a situation the rule of prudence should guide the High Court not to disturb the order of acquittal made by the trial court. Unless the conclusions of the trial court drawn on the evidence on record are found to be unreasonable, perverse or unsustainable, the High Court should not interfere with the order of acquittal. *Awadesh* v. *State of M.P.*, (1988) 2 SCC 557: 1988 SCC (Cri) 361: AIR 1988 SC 1158.

Bench Strength 2. Coram: **K.N. Singh** and *M.H. Kania*, JJ. [Date of decision: 12-4-1988]

[5166] — S. 378 — Reappreciation of evidence by appellate court — When justified — Perverse findings of trial court — *Findings recorded by trial court acquitting appellant found perverse — Held, reversal of acquittal by High Court by reappreciating evidence, justified*

A judgment of acquittal rendered by a trial court must be given the greatest consideration and the appellate court would be slow in setting aside that judgment, and where two views are possible, the one taken by the trial court would not be disturbed. On the contrary, if the trial court's judgment was perverse, meaning thereby that it was not only against the weight of evidence but was all together against the evidence, interference was called for. The High Court in the present case was alive to its limitation in such a matter and while dealing with this argument first expressed its shock and observed that though virtually all the findings were in favour of the prosecution, yet curiously, the decision had been rendered in favour of the accused. The judgment of the trial court was accordingly held to be perverse and against the evidence. The High Court's observations were justified on the facts. Even assuming that the matter in the present case was to be treated as a first appeal, the Supreme Court too would have interfered in the matter and set aside the judgment of the trial court, as it was against the evidence and to desist from doing so would cause great injustice not only to the prosecution but even to the deceased victim and her family. (Paras 84 and 86). *Santosh Kumar Singh* v. *State*, (2010) 9 SCC 747.

Bench Strength 2. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 6-10-2010]

Arulvelu v. State, (2009) 10 SCC 206: (2010) 1 SCC (L&S) 288, relied on

[5167] — Ss. 378 and 386 — Appeal against acquittal — Trial court acquitting accused — High Court's power to review evidence and to set aside acquittal in appeal — *Appellate court should be slow to interfere unless compelling reasons exist — If two views are possible appellate court cannot re-evaluate evidence and take a different view — Allowing the appeal, held, High Court erred in setting aside order of acquittal. Garasia Ratubha Hanubha* v. *State of Gujarat*, 1997 SCC (Cri) 195: 1995 Cri LJ 3607.

Bench Strength 2. Coram: *G.N. Ray* and *Faizan Uddin*, JJ. [Date of decision: 7-2-1995]

[5168] — Ss. 378 and 386 — Appeal against acquittal — *Where view taken by the trial court not unreasonable High Court should not reverse the order of acquittal merely because a different view is possible. Gurmej Kaur* v. *State of Haryana*, 1995 SCC (Cri) 167.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 19-8-1992]

[5169] — Ss. 378 and 386 — Appeal against acquittal — Appellate court can review the evidence and interfere for compelling and substantial reasons — *Where admissible evidence has been ignored unreasonably and unjustifiably, held, it is a compelling reason for interference — Primary concern of the court is to prevent miscarriage of justice — If two views are possible, the one favourable to the accused, held, should be adopted — Constitution of India — Art. 136*

There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. (Para 21). *Ramanand Yadav* v. *Prabhu Nath Jha*, (2003) 12 SCC 606: AIR 2004 SC 1053: 2004 Cri LJ 640.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 31-10-2003]

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972: (1996) 4 Supreme 167; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of Punjab v. Phola Singh, (2003) 11 SCC 58: 2004 SCC (Cri) 276, relied on

[5170] — Ss. 378 and 386 — Appeal against acquittal — Due importance to the opinion of the Sessions Judge to be given only if arrived at after proper appreciation of evidence

In an appeal against acquittal the High Court would not ordinarily interfere with the trial Court's conclusion unless there are compelling reasons to do so, inter alia, on account of manifest errors of law or of fact resulting in miscarriage of justice. In the present case, the High Court was justified in intervening in the matter. Once it is found that the High Court was justified in entertaining the appeal against the order of acquittal, the High Court is entitled to reappreciate the entire evidence independently and can come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if it was arrived at after proper appreciation of the evidence. This would, however, not be applicable in the present case where the Sessions Judge had made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case. *Umedbhai Jadavbhai* v. *State of Gujarat*, (1978) 1 SCC 228: 1978 SCC (Cri) 108: AIR 1978 SC 424: 1978 Cri LJ 489: (1978) 19 GLR 268: (1978) 2 SCR 471.

Bench Strength 2. Coram: **P.K. Goswami** and *V.D. Tulzapurkar*, JJ. [Date of decision: 16-12-1977]

[5171] — Ss. 378 & 386 — Appeal against acquittal — Error of law — *Held on facts, trial Court committed an error of law in treating the statement recorded in proceedings under S. 107, CrPC of a court witness not present on the scene at the time of occurrence as substantive evidence while rejecting the substantive and reliable testimony of the eyewitnesses — Trials court's view in acquitting the accused not being reasonably possible, held, High Court justified in reversing the order of acquittal and convicting the accused and as such Supreme Court's interference is not called for — Penal Code, 1860, Ss. 304/149, 148 and 147.* *Naunidh* v. *State of U.P.*, 1981 Supp SCC 62: 1982 SCC (Cri) 138: AIR 1982 SC 1299.

Bench Strength 3. Coram: *S. Murtaza Fazal Ali*, *Baharul Islam* and *A. Varadarajan*, JJ. [Date of decision: 24-3-1981]

[5172] — Ss. 378 & 386 — Appeal against acquittal — Ground which weighed with High Court in acquitting the accused not perverse — *Unless the judgment of acquittal is found to be perverse, appellate court would not interfere with the same* (Para 4). *Vijai Singh* v. *State of U.P.*, (2005) 12 SCC 506.

Bench Strength 2. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 26-7-2005]

[5173] — Ss. 378 and 386 — Held, it is well settled that if two views are possible, the appellate court should not interfere with the judgment of acquittal passed by the court below (Para 26). *Umrao* v. *State of Haryana*, (2006) 10 SCC 136: (2006) 3 SCC (Cri) 482: AIR 2006 SC 2152: 2006 Cri LJ 2798.

Bench Strength 2. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 12-5-2006]

[5174] — Ss. 378 and 386 — Interference with acquittal by High Court — Scope — *Where the reasons given by the trial court were not unsound and its view was quite reasonable, held, the High Court ought not to have interfered in an appeal against acquittal.* *Dharam Singh* v. *State of Punjab*, 1993 Supp (3) SCC 532: 1993 SCC (Cri) 1059: AIR 1993 SC 319: 1993 Cri LJ 150.

Bench Strength 2. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 22-10-1992]

[5175] — Ss. 378 & 386 — Jurisdiction of High Court under — Appeal against acquittal — *Husband charged for abetment of suicide by wife — Doubtful testimony of prosecution witnesses — Material omissions in statement made under S. 161 CrPC — Unreasoned non-examination of an important witness — High Court, reversing the order of acquittal by Sessions Judge, convicting accused under S. 306 IPC — High Court, held, acted beyond its jurisdiction by not adverting to the grounds and reasons given for discarding the testimony of witnesses by Sessions Judge — Prosecution having failed to establish their case beyond reasonable doubt, impugned order of High Court set aside — Penal Code, 1860, S. 306. Anil Kumar* v. *State of Punjab*, (2000) 9 SCC 455: 2001 SCC (Cri) 469.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *Shivaraj V. Patil*, JJ. [Date of decision: 28-3-2000]

[5176] — Ss. 378 and 386 — Powers of High Court in an appeal against the order of acquittal — *Held, the High Court possesses full powers to review the evidence, but generally it would not interfere with the order of acquittal — If two views are possible on the evidence adduced, the view which is favourable to the accused should be adopted — Paramount consideration of the court is to ensure that miscarriage of justice is avoided — Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence — Where the trial court completely ignored the basic principles of criminal law in giving the benefit of right of self-defence to the accused persons and discarded the testimony of three eyewitnesses taking into account extraneous considerations, held, the High Court was justified in reversing the acquittal order passed by the trial court — Penal Code, 1860, Ss. 302/149 and 148*

The settled position of law regarding the powers of the High Court in an appeal against an order of acquittal is that the court has full powers to review the evidence upon which an order of acquittal is based and generally it will not interfere with the order of acquittal because by passing an order of acquittal the presumption of innocence in favour of the accused is reinforced. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, the view which is favourable to the accused should be adopted. Such is not a jurisdiction limitation on the appellate court but Judge-made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided. A miscarriage of justice which may arise from the acquittal of the guilty is no less than from the conviction of an innocent. (Para 7)

In a case where the trial court has taken a view ignoring the admissible evidence, a duty is cast upon the High Court to reappreciate the evidence in acquittal appeal. Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence. In the instant case the trial court acquitted the accused persons by not relying upon the testimony of the three eyewitnesses on considerations which apparently appeared to be extraneous. The High Court has ascribed valid reasons for believing the statements of those witnesses by pointing out the illegalities committed by the trial court in discarding their testimonies. The High Court has also rightly held that the trial court completely ignored the basic principles of law in criminal jurisprudence which entitles the accused to claim the benefit of right of self-defence. In view of the above facts, the High Court was justified in setting aside the order of acquittal passed by the trial court. (Para 7). *Bhagwan Singh* v. *State of M.P.*, (2002) 4 SCC 85: 2002 SCC (Cri) 736: AIR 2002 SC 1621.

Bench Strength **2**. Coram: **R.P. Sethi** and *K.G. Balakrishnan*, JJ. [Date of decision: 22-3-2002]

[5177] — Ss. 378 and 386 — Reversal of acquittal — Held, justified where the trial Court's verdict was both factually and legally erroneous. *Baljit Singh* v. *State of U.P.*, (1976) 4 SCC 590: 1977 SCC (Cri) 15: AIR 1976 SC 2273: 1976 Cri LJ 1745: 1976 CLR 396 (SC).

Bench Strength **2**. Coram: *P.N. Bhagwati* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 6-9-1976]

[5178] — Ss. 378 and 386 — Reversal of acquittal — High Court can award death sentence if facts so warrant irrespective of the fact that it was an appeal from acquittal. *Karuppanna Thevar* v. *State of T.N.*, (1976) 1 SCC 31: 1975 SCC (Cri) 753: AIR 1976 SC 980: 1976 Cri LJ 708.

Bench Strength **3**. Coram: **Y.V. Chandrachud**, *P.N. Bhagwati* and *R.S. Sarkaria*, JJ. [Date of decision: 19-8-1975]

[5179] — Ss. 378 & 386 — Reversal of acquittal — Not justified if view taken by trial Court was reasonably possible even though High Court was inclined to take a different view of the facts. *Tukaram* v. *State of Maharashtra*, (1979) 2 SCC 143: 1979 SCC (Cri) 381: AIR 1979 SC 185: 1978 Cri LJ 1864: (1979) 16 ACC 7.

Bench Strength **3**. Coram: *Jaswant Singh*, *P.S. Kailasam* and **A.D. Koshal**, JJ. [Date of decision: 15-9-1978]

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

[5180] — Ss. 378 and 386 — Reversal of acquittal by High Court — *Held, justified where the view of the trial court was palpably wrong and the High Court considered and dispelled all the reasons for acquittal given by the trial court — Penal Code, 1860 — S. 302. Shyam Behari* v. *State of U.P.*, (1976) 2 SCC 206: 1976 SCC (Cri) 261: AIR 1976 SC 400: 1976 Cri LJ 342.

Bench Strength **2**. Coram: *P.N. Bhagwati* and **R.S. Sarkaria**, JJ. [Date of decision: 9-9-1975]

[5181] — Ss. 378 & 386 — Reversal of acquittal by High Court — Held on facts, was justified where the reasons given by the trial court were totally unsustainable in law — *Trial court based itself on surmises and conjectures — Its view was not a probable one — Further, the case being one of circumstantial evidence, the prosecution had successfully and conclusively proved all the circumstances which completed the chain. Uday Kumar* v. *State of Karnataka*, (1998) 7 SCC 478: 1998 SCC (Cri) 1686: AIR 1998 SC 3317.

Bench Strength **2**. Coram: *G.T. Nanavati* and **S.P. Kurdukar**, JJ. [Date of decision: 21-9-1998]

[5182] — Ss. 378 and 386 — Reversal of acquittal by High Court — *Held, on reappreciation of evidence to be not justified since the High Court did not consider all the reasons and inconsistencies on which the trial court based the acquittal and also because the view of the trial court was a possible view — Principles laid down by the Supreme Court in this regard not followed by the High Court. Ediga Sanjanna* v. *State of A.P.*, (1976) 2 SCC 210: 1976 SCC (Cri) 265: AIR 1977 SC 785: 1977 Cri LJ 585.

Bench Strength **2**. Coram: *R.S. Sarkaria* and **A.C. Gupta**, JJ. [Date of decision: 10-10-1975]

[5183] — Ss. 378 and 386 — Appeal against acquittal — Acquittal reversed — Findings recorded by High Court based on surmises and conjectures, and thus perverse — *Hence held, sufficient and cogent reasons to disturb acquittal* (Para 22). *State of Punjab* v. *Lakhwinder Singh*, (2010) 4 SCC 402.

Bench Strength **2**. Coram: **Dr. M.K. Sharma** and *A.K. Patnaik*, JJ. [Date of decision: 5-4-2010]

[5184] — Ss. 378 and 386 — Reversal of acquittal by High Court — *Held, the findings recorded by the trial court in favour of the appellants were patently wrong and perverse and the High Court was fully justified in reversing the same and convicting both the appellants under Ss. 302/34 IPC — The trial court erred in discarding the evidence of eyewitnesses — Hostile witness did not stand wholly discredited — The trial court was not also justified in disbelieving the evidence of other independent witnesses when nothing was brought out in the cross-examination to indicate that they were interested in the prosecution case or that they were inimically disposed towards the appellants — The improvements and contradictions referred to by the trial court in their evidence were too insignificant to be taken notice of — The trial court was also wrong in making much of the discrepancy in their evidence as to the actual time of the occurrence and non-explanation by the prosecution of the minor injuries found on the accused — Penal Code, 1860 — Ss. 302/34. Pandappa Hanumappa Hanamar* v. *State of Karnataka*, (1997) 10 SCC 197: 1997 SCC (Cri) 811: AIR 1997 SC 3663: 1997 Cri LJ 2493.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.P. Kurdukar*, JJ. [Date of decision: 28-2-1997]

[5185] — Ss. 378 and 386 — Reversal of acquittal by High Court — Held, was justified when the trial court's judgment was based upon surmises, conjectures and assumed contradictions — *On facts, High Court rightly found that there was no contradiction in the depositions of the eyewitnesses and the omissions or improvements noticed by the trial court did not amount to contradictions for the purpose of discarding the testimony of otherwise trustworthy natural witnesses*

A usual brawl between the appellant and the deceased *K*, who was living with the appellant as his mistress, resulted in the death of the deceased. The appellant was acquitted by the trial court on the ground of various omissions, improvements and contradictions found in the testimony of the eyewitness. The High Court reversed the said acquittal by holding that there was no contradiction in the evidence of the eyewitnesses. The appellant challenged the judgment of the High Court on the grounds of (*i*) contradictions, improvements and omissions in the testimony of the eyewitnesses, (*ii*) non-examination of the fingerprint expert, (*iii*) non-availability of the serologist report, and (*iv*) difference between the statement of the eyewitnesses and the post-mortem report regarding the position of the injury inflicted on the person of the deceased. Allowing the appeal partly,

Held :

The High Court was justified in setting aside the judgment of the trial court because the judgment of acquittal is based upon surmises, conjectures and assumed contradictions. The High Court rightly found that in fact there was no contradiction in the depositions of the eyewitnesses and omissions or improvements noticed by the trial court did not amount to contradictions for the purposes of discarding the testimony of otherwise trustworthy natural witnesses. The trial court totally ignored the testimony of the eyewitnesses while holding that they had not seen the injury because, according to the FIR, the injury allegedly had been inflicted on the nose of the deceased. All the witnesses had deposed in the court that the injury was caused on the body of the deceased from behind near the right shoulder and the force with which it was caused resulted in the cutting of the vital inner parts of her body. (Para 4)

Non-examination of the fingerprint expert has not, in any way, affected the case of the prosecution because it has come on record that before the seizure of the weapon of offence many persons had handled it. Though the report of the serologist is not available on the record, yet the report of the Chemical Analyser clearly and unequivocally shows that the clothes of the appellant and the weapon of offence were stained with human blood. Non-ascertainability of the blood group cannot be made a basis to discard the evidence of the witnesses who otherwise inspire the confidence of the court and are believed by it. Hence, no fault can be found with the judgment of the High Court by which the acquittal was reversed. (Para 4). *Keshavlal* v. *State of M.P.*, (2002) 3 SCC 254: 2002 SCC (Cri) 641: AIR 2002 SC 1221: 2002 Cri LJ 1776.

Bench Strength 2. Coram: **R.P. Sethi** and *K.G. Balakrishnan*, JJ. [Date of decision: 4-3-2002]

[5186] — Ss. 378 & 386 — Reversal of acquittal by High Court — Held, not justified merely because another view was possible and where no serious infirmity in trial court's appreciation of the evidence was found. *A.R. Singh* v. *Govt. of Manipur*, (1976) 3 SCC 465: 1976 SCC (Cri) 423: AIR 1976 SC 2191: 1976 Cri LJ 1712.

Bench Strength 2. Coram: *R.S. Sarkaria* and **P.N. Shinghal**, JJ. [Date of decision: 7-4-1976]

Same view taken in Dharamdeo Singh v. State of Bihar, (1976) 1 SCC 610, 613: 1976 SCC (Cri) 108; Phino v. State of Punjab, (1975) 4 SCC 119, 121, 122: 1975 SCC (Cri) 376; Muluwa v. State of M.P., (1976) 1 SCC 37, 42: 1975 SCC (Cri) 759: 1976 Cri LJ 717; Ram Das v. State of Maharashtra, (1977) 2 SCC 124, 129: AIR 1977 SC 1164: 1977 SCC (Cri) 254; Hukam Singh v. State of Rajasthan, (1977) 2 SCC 99, 102: 1977 SCC (Cri) 250.

[5187] — Ss. 378 and 386 — Reversal of acquittal by High Court — Principles restated

The power of an appellate court to review evidence in appeals against acquittals is as extensive as its power in appeals against convictions, and before an appellate court can set aside an order of acquittal it must carefully consider the reasons given by the trial court in support of its decision and give its own reasons for rejecting them. Thus if the finding reached by the trial Judge cannot be said to be unreasonable, the appellate court should not disturb it even if it were possible to reach a different conclusion on the basis of the material on the record. This has been held to be so because the trial Judge has the advantage of seeing and hearing the witnesses and the initial presumption of innocence in favour of the accused is not weakened by his acquittal. The appellate court therefore should be slow in disturbing the finding of fact of the trial court, and if two views are reasonably possible of the evidence on the record, it is not expected to interfere simply because it feels that it would have taken a different view if the case had been tried by it. *Vasudeo Kulkarni* v. *Surya Kant Bhatt*, (1977) 2 SCC 304: 1977 SCC (Cri) 349: AIR 1977 SC 1331: 1977 Cri LJ 1000: (1977) 3 SCR 109.

Bench Strength 2. Coram: **P.K. Goswami** and *P.N. Shinghal*, JJ. [Date of decision: 2-3-1977]

See also Bhagwati v. State of U.P., (1976) 3 SCC 235, 238: 1976 SCC (Cri) 388; V. Thomas v. State of Kerala, (1976) 4 SCC 348, 349: 1976 SCC (Cri) 643

[5188] — Ss. 378 and 386 — Reversal of acquittal by High Court, held, not justified because another view of the evidence was possible — *Unreasonableness of the view taken by the trial court not shown — Reversal of acquittal unjustified — CrPC, 1898, Ss. 417 and 423. Dharamdeo Singh* v. *State of Bihar*, (1976) 1 SCC 610: 1976 SCC (Cri) 108: AIR 1976 SC 832: 1976 Cri LJ 638.

Bench Strength 3. Coram: *Y.V. Chandrachud, V.R. Krishna Iyer* and **A.C. Gupta**, JJ. [Date of decision: 18-12-1975]

[5189] — Ss. 378 & 386 — Reversal of acquittal by High Court improper where judgment of the trial Court was well considered and at the most two views were possible — *Held, on reappreciation of evidence that the balance of probabilities was slightly in favour of the appellant — Conviction by High Court set aside. Anne Nageswara Rao* v. *Public Prosecutor*, (1975) 4 SCC 106: 1975 SCC (Cri) 357: AIR 1975 SC 1387: 1975 Cri LJ 1119.

Bench Strength 2. Coram: **A. Alagiriswami** and *N.L. Untwalia*, JJ. [Date of decision: 14-3-1975]

[5190] — Ss. 378 & 386 — Reversal of acquittal by High Court justified in case of patent infirmities in the trial court's approach of the case and its appreciation of evidence

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

The rule that in an appeal against acquittal the High Court will be slow in interfering with the findings of the trial court which has the opportunity to watch the witnesses while giving evidence before it may be largely true where the trial court records remarks about the demeanour of the witnesses. But where the prima facie appreciation of the recorded evidence is opposed to even a reasonable appraisement of the same bearing in mind the relevant point or points sought to be established by the evidence, there will be no option to the High Court in the interest of justice but to step in to do justice in the case. *Ravinder Singh* v. *State of Haryana*, (1975) 3 SCC 742: 1975 SCC (Cri) 202: AIR 1975 SC 856: (1975) 3 SCR 453: 1975 Cri LJ 765.

Bench Strength **3**. Coram: *V.R. Krishna Iyer*, **P.K. Goswami** and *R.S. Sarkaria*, JJ. [Date of decision: 7-2-1975]

[5191] — Ss. 378 and 386 — Reversal of acquittal by High Court justified where reasoning of Sessions Judge perverse and there was no scope for taking two views of the prosecution evidence. *Babu Lodhi* v. *State of U.P.*, (1987) 2 SCC 352: 1987 SCC (Cri) 371: AIR 1987 SC 1268: 1987 Cri LJ 1119.

Bench Strength **2**. Coram: *M.M. Dutt* and **S. Natarajan**, JJ. [Date of decision: 1-4-1987]

[5192] — Ss. 378 and 386 — Reversal of acquittal by High Court justified where the trial Court had simulated 'mere frivolities' as 'reasons' for rejecting the prosecution case

The approach of the trial Judge could not be said to be a judicial approach. Prepossessed by suspicion, he smelled something sinister in the evidence of each and every witness examined by the prosecution. Instead of logical ratiocination, he depended for his conclusions on speculation and conjectures. This is apparent from his repeated observations that he was not impressed by the demeanour of the witnesses, although he did not make any note whatever of such demeanour. Even in his judgment he did not reveal with particularity, the nature of the "demeanour" that led him to doubt the veracity of the witnesses. (Paras 13 to 19).

The view of the evidence taken by the trial Judge was not reasonably possible, and the High Court was fully justified in reversing the acquittal of the appellants. *Abdul Majid Abdul Rahman* v. *State of Gujarat*, (1976) 4 SCC 351: 1976 SCC (Cri) 625: AIR 1976 SC 1782: 1976 Cri LJ 1382.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *P.N. Shinghal*, JJ. [Date of decision: 3-5-1976]

[5193] — Ss. 378 & 386 — Reversal of acquittal by High Court not justified merely because another view of the evidence was possible. *K. Lakshmana Rao* v. *Public Prosecutor, State of A.P.*, (1979) 4 SCC 638: 1980 SCC (Cri) 147: AIR 1979 SC 1324: 1979 Cri LJ 1067.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 30-1-1979]

[5194] — Ss. 378 and 386 — Reversal of acquittal by High Court, on facts, held justified where the judgment of the trial Court was absolutely perverse ignoring important evidence and based on wrong conclusions. *Nawratan Mahton* v. *State of Bihar*, (1979) 3 SCC 488: 1979 SCC (Cri) 665: 1979 Cri LJ 1295.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *A.D. Koshal*, JJ. [Date of decision: 7-3-1979]

[5195] — Ss. 378 & 386 — Reversal of acquittal by High Court, on facts, held not justified where the view taken by the trial Court was not perverse and was reasonably possible. *Harijan Magha Jesha* v. *State of Gujarat*, (1979) 3 SCC 474: 1979 SCC (Cri) 652: AIR 1979 SC 1566: 1979 Cri LJ 1137.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *A.D. Koshal*, JJ. [Date of decision: 7-3-1979]

[5196] — Ss. 378 and 386 — Reversal of acquittal by High Court upheld — *On reappreciation of evidence, held, no two views of the evidence were possible — Trial Court's view erroneous. Shamu Balu Chaugule* v. *State of Maharashtra*, (1976) 1 SCC 438: 1976 SCC (Cri) 56: AIR 1976 SC 557: 1976 Cri LJ 492.

Bench Strength **2**. Coram: **M.H. Beg** and *P.K. Goswami*, JJ. [Date of decision: 13-11-1975]

[5197] — Ss. 378 and 386 — Reversal of acquittal by High Court upheld where the trial Court had rejected the evidence on flimsy grounds and on ground of trifling contradictions. *Surat Singh* v. *State of Punjab*, (1976) 4 SCC 311: 1976 SCC (Cri) 605: AIR 1977 SC 705: 1977 Cri LJ 347.

Bench Strength **3**. Coram: *P.N. Bhagwati*, **N.L. Untwalia** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 13-8-1976]

[5198] — Ss. 378 and 386 — Reversal of acquittal by High Court when justified — *Where the view of the evidence taken by the trial Court was manifestly erroneous and reasons utterly unsustainable reversal justified. Maharaj Singh* v. *State of Rajasthan*, (1981) 2 SCC 18: 1981 SCC (Cri) 306: AIR 1981 SC 936: 1981 Cri LJ 477.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *O. Chinnappa Reddy*, JJ. [Date of decision: 16-12-1980]

[5199] — Ss. 378 and 386 — Reversal of acquittal by the High Court justified where the trial Court after reaching a clear finding on the reliability of the prosecution witnesses disbelieved them on the basis of surmises and conjectures and for reasons wholly untenable in law. *Ananta Mohanta* v. *State of Orissa*, (1979) 3 SCC 423: 1979 SCC (Cri) 523: AIR 1979 SC 1433: 1979 Cri LJ 1091: (1979) 48 Cut LT 515.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 22-3-1979]

[5200] — Ss. 378 & 386 — Reversal of acquittal by the High Court not justified where the view taken by the trial Court was reasonable and probable. *Hukam Singh* v. *State of Rajasthan*, (1977) 2 SCC 99: 1977 SCC (Cri) 250: AIR 1977 SC 1063: 1977 Cri LJ 639.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 7-2-1977]

[5201] — Ss. 378 and 386 — Reversal of acquittal by the High Court when justified — *Evidence of eyewitnesses found to be consistent and free from omissions and contradictions against the appellants — Held, on facts, finding of guilt recorded by the High Court is based on correct appreciation of evidence and there is no infirmity in such findings. Sukhdeo* v. *State of Maharashtra*, (1997) 10 SCC 102: 1997 SCC (Cri) 790: AIR 1997 SC 1849: 1997 Cri LJ 1916.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 11-3-1997]

[5202] — Ss. 378 and 386 — Reversal of acquittal justified when based on perverse findings

The law only requires that the appellate Court, in reversing the order of acquittal, should be slow and circumspect to disturb a finding of fact but if it is of the opinion that the finding of fact is wrong and not borne out by the evidence there is no limitation on its power to interfere with the order of acquittal. *Sarwan Singh* v. *State of Punjab*, (1976) 4 SCC 369: 1976 SCC (Cri) 646: AIR 1976 SC 2304: 1976 Cri LJ 1787.

Bench Strength **3**. Coram: *P.N. Bhagwati, A.C. Gupta* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 11-8-1976]

[5203] — Ss. 378 & 386 — Reversal of acquittal not justified where the view of the trial Court was reasonably possible. *Ram Das* v. *State of Maharashtra*, (1977) 2 SCC 124: 1977 SCC (Cri) 254: AIR 1977 SC 1164: 1977 Cri LJ 955.

Bench Strength **2**. Coram: *P.N. Bhagwati* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 14-2-1977]

[5204] — S. 378 & 386 — Reversal of acquittal on facts, held not justified — View of the trial Court was a highly possible view. *Caetano Piedade Fernandes* v. *UT, Goa, Daman and Diu*, (1977) 1 SCC 707: 1977 SCC (Cri) 154: AIR 1977 SC 135: 1977 Cri LJ 167.

Bench Strength **3**. Coram: **P.N. Bhagwati**, *N.L. Untwalia* and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 1-9-1976]

[5205] — Ss. 378 & 386 — View taken by trial Court, held on facts was reasonable and probable — *Reversal of acquittal by High Court therefore not justified. Padman Meher* v. *State of Orissa*, 1980 Supp SCC 434: 1981 SCC (Cri) 362: AIR 1981 SC 457: 1980 Cri LJ 1507.

Bench Strength **2**. Coram: *R.S. Sarkaria* and **O. Chinnappa Reddy**, JJ. [Date of decision: 21-10-1980]

[5206] — S. 378 — Appeal against acquittal — High Court's interference with acquittal, when not called for, reiterated — *If two views are possible judgment of acquittal should be ordinarily preferred*

The appeal preferred by the respondents was against a judgment of acquittal. The High Court should have, therefore, exercised its jurisdiction keeping in view the limited role it had to play in the matter. (Para 14)

The High Court itself had come to the finding that the respondents were not interested in getting the matter prosecuted. Despite the same, it allowed their appeal, opining that any lis between the parties should be decided on merits rather than on technicalities. On what basis such a statement of law was made is not known. No precedent was cited; no reason has been assigned. The High Court failed to take into consideration the fact that it was dealing with an order of acquittal and, thus, the principle of law which was required to be applied was that, if two views are possible, a judgment of acquittal should not ordinarily be interfered with. (Para 15)

The High Court therefore, misdirected itself in passing the impugned judgment. It cannot therefore be sustained. (Para 17). *S. Rama Krishna* v. *S. Rami Reddy*, (2008) 5 SCC 535: (2008) 2 SCC (Cri) 645: AIR 2008 SC 2066: 2008 Cri LJ 2625.

Bench Strength **2**. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 29-4-2008]

[5207] — Ss. 378 and 386 — When two views of the evidence, one indicating conviction and the other acquittal are equally possible, High Court should not disturb trial court's order of acquittal. *Suratlal* v. *State of M.P.*, (1982) 1 SCC 488: 1982 SCC (Cri) 260: AIR 1982 SC 1224: 1982 Cri LJ 1577.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *R.S. Pathak*, JJ. [Date of decision: 14-3-1980]

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

[5208] — Ss. 378 & 386 — Where two views of the evidence are reasonably possible, held, High Court not justified in reversing the acquittal — *On facts, High Court had ignored evidence of defence witness which had substantiated accused's plea of private defence — Order of acquittal restored. Tara Singh* v. *State of M.P.*, 1980 Supp SCC 466: 1981 SCC (Cri) 375: AIR 1981 SC 950: 1981 Cri LJ 483.

Bench Strength **2**. Coram: *R.S. Sarkaria* and *O. Chinnappa Reddy*, JJ. [Date of decision: 17-9-1980]

[5209] — Ss. 378 and 386 — Whether in an appeal against acquittal, High Court can arrive at a different conclusion even in a case where two opinions are possible — *Not considered. Narendra Singh* v. *State of U.P.*, (1987) 2 SCC 236: 1987 SCC (Cri) 350: AIR 1987 SC 1337: 1987 Cri LJ 1070.

Bench Strength **2**. Coram: *V. Khalid* and **G.L. Oza**, JJ. [Date of decision: 10-3-1987]

[5210] — Ss. 378 & 386 and 154 — Appeal against acquittal — Appellate court's interference when called for — *Testimony of PWs natural, truthful and trustworthy and also corroborated by other established facts — No material showing false implication of accused by PWs — FIR lodged promptly — Cooking up a false story not possible within the short period — View taken by trial court in recording acquittal based on conjectures, surmises and improper inferences — Held, High Court's interference with the trial court's judgment of acquittal justified — No interference by SC called for — Penal Code, 1860, S. 302/34*

In an appeal from the order of acquittal, the court of appeal should be careful enough in weighing the reasonings of the Sessions Judge and it need not reappreciate the evidences to substitute its own finding when the other finding is also a possible one and not contrary to the evidences. But if it transpires that the finding made by the Sessions Judge is contrary to the weight of the evidence adduced and facts established in the trial and such finding is inherently based on surmise and conjecture and improper and irrational inferences have been drawn from the facts established, it will not only be just and proper to discard the judgment of acquittal but it will be the duty of the appeal court in exercise of its appellate power to consider the evidences and materials on record to come to its own finding.

In the present case the evidences adduced by the eyewitnesses do not suffer from any material discrepancy, inconsistency or improbability for which there was any occasion to hold that the case sought to be made out by the prosecution was doubtful or the veracity of the eyewitnesses was to be doubted. There is no material warranting a finding that the eyewitnesses had any motive to falsely implicate the accused persons on a charge of murder. The FIR had been lodged within a short period after the murder because the FIR had been lodged within less than three hours, although the informant got the information from an eye witness at his own village which was three kilometers away from the place of occurrence and thereafter he came to the place of occurrence on foot and then went to the police station at some distance. The injury on another eye witness conforms to the case of the prosecution that she also sustained injury while she had been trying to prevent the murderous assault. Any case of cooking up a story by introducing alleged eyewitnesses does not stand scrutiny. The murder had taken place near the bus stop of a populous village in the morning at about 7.15 a.m. It was quite likely that such incident might have been noticed by some other villagers. In such circumstances, it will be a wild imagination to suggest that in order to cook up a story by lodging a FIR within three hours, fabrication was meticulously made by introducing two ladies and another person from a different village as eyewitnesses even at the risk of exposing unusual behaviour of a widow in leaving her residence on the fateful day. The evidences of the eyewitnesses appear to be quite natural straightforward and trustworthy. Moreover, the evidences of the eyewitnesses got ample corroboration from other facts established in the trial by the prosecution. The view taken by the Sessions Judge does not appear to be acceptance of one of the probable views. Sessions Judge proceeded on surmise and conjectures and had drawn adverse inference against the prosecution case by analysing the evidences from an erroneous point of view. The reasonings given by the High Court in accepting the evidences are sound. In these circumstances, there is no reason to interfere with the decision passed by the High Court in convicting and sentencing the accused persons. *Aher Maya Visa* v. *State of Gujarat*, 1993 Supp (1) SCC 348: 1993 SCC (Cri) 214: AIR 1992 SC 2155.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **G.N. Ray**, JJ. [Date of decision: 15-9-1992]

[5211] — Ss. 378 and 386(1)(a) — Appeal against acquittal — Though court should exercise restraint but in case of perversity and misreading court's interference is imperative — *Where trial court's order of acquittal is based on conjectures and surmises, High Court's interference is justified. Ashok Kumar* v. *State of Rajasthan*, (1991) 1 SCC 166: 1991 SCC (Cri) 126: AIR 1990 SC 2134: 1990 Cri LJ 2276.

Bench Strength **2**. Coram: *M.M. Punchhi* and **R.M. Sahai**, JJ. [Date of decision: 11-9-1990]

[5212] — Ss. 378 and 386(a) — Appeal against acquittal — Interference of High Court with trial court's decision called for in case of perversity or misreading of evidence

While caution is the watchword, in appeal against acquittal as the trial Judge has occasion to watch demeanour of witnesses interference should not be made merely because a different conclusion could have been arrived at. Prudence demands restraint on mere probability or possibility but in perversity or misreading interference is imperative otherwise existence of power shall be rendered meaningless. In the present case the order of the trial court is vitiated as apart from deciding the case on irrelevant consideration the most serious error of which he was guilty and which rendered the order infirm which could be set aside by the High Court was that he misread the evidence and indulged in conjectural inferences and surmises. (Paras 2 and 8). *Ashok Kumar* v. *State of Rajasthan*, (1991) 1 SCC 166: 1991 SCC (Cri) 126: AIR 1990 SC 2134: 1990 Cri LJ 2276.

Bench Strength **2**. Coram: *M.M. Punchhi* and **R.M. Sahai**, JJ. [Date of decision: 11-9-1990]

[5213] — Ss. 378 and 386(a) — Appeal Against Acquittal — Scope — *Reiterated, unless there are substantial and compelling circumstances, order of acquittal is not required to be reversed in appeal — High Court had perversely set aside conviction altogether* (Para 18). *S. Ganesan* v. *Rama Raghuraman*, (2011) 2 SCC 83.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 3-1-2011]

Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra, (2010) 13 SCC 657; Balak Ram v. State of U.P., (1975) 3 SCC 219: 1974 SCC (Cri) 837; Budh Singh v. State of U.P., (2006) 9 SCC 731: (2006) 3 SCC (Cri) 377; S. Rama Krishna v. S. Rami Reddy, (2008) 5 SCC 535: (2008) 2 SCC (Cri) 645; Arulvelu v. State, (2009) 10 SCC 206: (2010) 1 SCC (Cri) 288; Babu v. State of Kerala, (2010) 9 SCC 189: (2010) 3 SCC (Cri) 1179, relied on

[5214] — Ss. 378 and 386 — Reversal of acquittal by High Court, held, not justified when it could not offset all the reasons given by the trial court for recording a verdict of acquittal — *High Court's reasoning based on conjectures and conclusion based on the testimony of interested witnesses ignoring that of government officials on duty who were disinterested and independent witnesses — That another reasonable view of the evidence was possible cannot justify the reversal of acquittal — Position in law on this aspect restated — Penal Code, 1860 — S. 302 — CrPC, 1898, Ss. 417 and 423*

Although the powers of the High Court in an appeal against acquittal are as extensive as in an appeal against conviction, it should, before reversing an acquittal pay due regard to the reasons given by the trial court in support of the order of acquittal and try to dispel the same in a general or specific way. It should also bear in mind that the initial presumption of innocence in favour of an accused person is in no way weakened, if not reinforced by his acquittal at the trial. Due weight must also be given to the opinion of the trial court as to the value of the oral evidence rendered by the oral witnesses because the trial court had the advantage of observing the demeanour of the witnesses appearing before it. If two conclusions can be reasonably reached on the same evidence, one of which supports the acquittal then the High Court should stay its hands from interfering with the order of the trial court. The present case is of this category. (Para 27). *Bhagirath Singh* v. *State of Bihar*, (1976) 1 SCC 614: 1976 SCC (Cri) 112: AIR 1976 SC 924: 1976 Cri LJ 685.

Bench Strength **2**. Coram: *P.N. Bhagwati* and **R.S. Sarkaria**, JJ. [Date of decision: 31-10-1975]

[5215] — Ss. 378 and 386 — High Court justified in reversing the acquittal where the reasons given by the trial Court for acquitting the accused are totally unsustainable. *Jetha Ram* v. *State of Rajasthan*, (1978) 4 SCC 425: 1978 SCC (Cri) 561: AIR 1979 SC 22: 1979 Cri LJ 26.

Bench Strength **2**. Coram: *R.S. Sarkaria* and **P.S. Kailasam**, JJ. [Date of decision: 21-7-1978]

[5216] — Ss. 378 & 386 — High Court, on facts, held, not justified in interfering with the acquittal by the trial Court which was based on a view reasonably possible and not legally erroneous. *Joshu Khan* v. *State of Assam*, 1980 Supp SCC 719: AIR 1979 SC 1549: 1979 Cri LJ 1216.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 7-5-1979]

[5217] — Ss. 378 & 386 — High Court, on facts, justified in reversing acquittal based on unreasonable view of the evidence and rejection of dying declaration on unsubstantial reasons. *Habib Usman* v. *State of Gujarat*, (1979) 3 SCC 358: 1979 SCC (Cri) 671: AIR 1979 SC 1181: 1979 Cri LJ 708.

Bench Strength **2**. Coram: *V.D. Tulzapurkar* and **O. Chinnappa Reddy**, JJ. [Date of decision: 29-9-1978]

[5218] — Ss. 378 & 386 — High Court, on facts, justified in reversing acquittal where the judgment of the trial Court was manifestly wrong and perverse and based on unconvincing and unsound reasons. *Matadin* v. *State of U.P.*, 1980 Supp SCC 157: 1979 SCC (Cri) 627: AIR 1979 SC 1234: 1979 Cri LJ 1027: 1980 MLJ (Cri) 60.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 6-3-1979]

(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted *(contd.)*

[5219] — Ss. 378 and 386 — High Court while interfering with acquittal recorded by trial court must consider the reasons which weighed with trial court — *In absence of examination of the reasons, held, reversal of acquittal by High Court not maintainable — Conviction and sentence under S. 395, Penal Code set aside. Chandra Kanta Debnath* v. *State of Tripura*, (1986) 1 SCC 549: 1986 SCC (Cri) 85: AIR 1986 SC 606: 1986 Cri LJ 809.

Bench Strength **2**. Coram: *D.P. Madon* and **G.L. Oza**, JJ. [Date of decision: 8-1-1986]

[5220] — Ss. 378 and 386 — High Court's interference with order of acquittal not open merely because on a reappraisal of evidence High Court preferred an alternative conclusion

The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on is consideration of the evidence is erroneous.

In the present case in absence of any independent corroboration of the testimony given by the alleged eyewitnesses the Sessions Judge who had seen them giving evidence in the box was not impressed by their evidence specially having regard to the fact that they had been appearing as prosecution witnesses in a large number of police cases. The testimony of the eyewitnesses having been found to be unworthy of belief, the Sessions Judge acquitted the accused-appellants. The High Court has not found in its judgment that the reasons given by the Sessions Judge for discarding the testimony of the eyewitnesses were either unreasonable or perverse. It made an independent reappraisal of the evidence on its own and set aside the acquittal merely on the ground that it was inclined to reach a conclusion different from the one recorded by the Sessions Judge. This approach of the High Court was vitiated by manifest illegality. Its interference with the order of acquittal was wholly unwarranted. *Tota Singh* v. *State of Punjab*, (1987) 2 SCC 529: 1987 SCC (Cri) 381: AIR 1987 SC 1083: 1987 Cri LJ 974.

Bench Strength **2**. Coram: *A.P. Sen* and **V. Balakrishna Eradi**, JJ. [Date of decision: 1-4-1987]

Applied in Ghurey Lal v. State of U.P., (2008) 10 SCC 450

[5221] — Ss. 378(1) and (3) — Appeal against acquittal — Ambit and scope of power of appellate court in appeal against acquittal, restated (Paras 6 and 7). *State of Rajasthan* v. *Mohan Lal*, (2009) 12 SCC 515: AIR 2009 SC 1872: (2009) 237 ELT 435.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 16-4-2009]

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; Krishnan v. State, (2003) 7 SCC 56: 2003 SCC (Cri) 1577, followed

Glanville Williams: Proof of Guilt; The Mathematics of Proof II, Criminal Law Review, 1979, Sweet and Maxwell, p. 340 (342), cited

[5222] — Ss. 378(1)(b) and 386(a) — Appeal against acquittal — Reappreciation of evidence — Permissibility — *High Court reversing acquittal and convicting A-1 under S. 304 Pt. II IPC by reappreciating the entire evidence, held, was permissible* (Para 7). *Umapada Kayal* v. *State of W.B.*, (2010) 1 SCC 161.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 6-10-2009]

(4) Comparison with S. 417 CrPC, 1898

[5223] — S. 378 — Appeal against acquittal — Scope and applicability — Scope of S. 378, 1973 Code and S. 417, 1898 Code, examined — Distinction between — *S. 417 (1898 Code) and S. 378 (1973 Code), held, are not in pari materia*

As noticed above, the words—"save as otherwise provided in sub-section (2)"—were added in the 1973 Code; Section 417 of the 1898 Code did not have these words. It is a familiar rule of construction that all changes in the wording and phrasing may be presumed to have been deliberate and with the purpose to limit, qualify or enlarge the pre-existing law as the changes of the words employ. Any construction that makes the exception (clause) with which the section opens unnecessary and redundant should be avoided. (Para 36)

If the legislature had intended to give the right of appeal under Section 378(1) to the State Government in all cases of acquittal including the classes of cases referred to in sub-section (2), it would not have been necessary to incorporate the exception (clause) in the opening words. This objective could have been achieved without the use of these words as the erstwhile Section 417 of the 1898 Code enabled the State Government to appeal from all cases of acquittal while in the two types of cases mentioned in sub-section (2) thereof, an appeal from the order of acquittal could be filed under the direction of the Central Government as well. (Para 37)

Parliament in the 1973 Code re-enacted the provision for appeal from an order of acquittal with certain modifications. It changed the language by addition of the words—"save as otherwise provided in sub-section (2)". The alteration in language by addition of these words gives rise to an inference that the legislature made conscious changes in Section 378 (the 1973 Code). The addition of words in Section 378(1) by way of exception (clause) cannot be set at naught by giving the same interpretation which has been given to Section 417 (the 1898 Code). The language used in Section 417 (the 1898 Code) and Section 378 (the 1973 Code) is not in pari materia. (Para 41)

One of the rules of construction of statutes is that the language of the statute should be read as it is and any construction that results in rejection of words has to be avoided; the effort should be made to give meaning to each and every word used by the legislature. However, such rule of construction of statutes is not without exceptions. (Para 43). *Lalu Prasad Yadav* v. *State of Bihar*, (2010) 5 SCC 1.

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and **R.M. Lodha** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 1-4-2010]

[5224] — S. 378 — Compared with S. 417 CrPC, 1898 — In S. 378(1) sub-section (6) should be read in place of sub-section (5) — It is an inadvertent mistake — *CrPC, 1898, S. 417*

Under Section 417 of the Criminal Procedure Code, 1898 no application for special leave to appeal had to be made by the State Government or the Central Government, if they filed an appeal against acquittal. The period of 60 days provided in Section 417(4) did not apply to an appeal by the State Government or the Central Government. The period of limitation for the State Government or the Central Government was only under Article 114(*a*) of the Limitation Act. The right of the State Government to file an appeal under Section 417(1) was subject to sub-section (5) which provided that if special leave to appeal had been refused to a complainant then the State Government could not maintain an appeal. A comparison of Section 378 with the old Section 417 shows that whilst under the old section no application for leave to appeal had to be made by the State Government or the Central Government, now by virtue of Section 378(3) the State Government or the Central Government have to obtain leave of the High Court before their appeal could be entertained. Sub-section (4) of Section 378 is identical to sub-section (3) of Section 417. Thus a complainant desirous of filing an appeal against acquittal must still obtain special leave. Section 378 makes a distinction between an appeal filed by the State Government or the Central Government, who only need to obtain "leave", and an appeal by a complainant who needs to obtain "special leave". The limitation provided in sub-section (5) is only in respect of applications under sub-section (4) i.e. application for special leave to appeal by a complainant. A complainant may be either a public servant or a private party. If the complainant is a public servant then the period of limitation for an application for special leave is 6 months. If the complainant is a private party then the period of limitation for an application for special leave is 60 days. The periods of 6 months and/or 60 days do not apply to appeals by the State Government [under sub-section (1)] or the Central Government [under sub-section (2)]. Appeals by the State Government or the Central Government continue to be governed by Article 114(*a*) of the Limitation Act. (Paras 22, 23 and 25)

However the reference to sub-section (5) in sub-section (1) of Section 378 is clearly an inadvertent mistake. Sub-section (5) applies only to application for special leave by a complainant. It has no application to an appeal by the State Government or to an application for leave under sub-section (3). What the legislature clearly intended was to continue to provide that an appeal by the State Government would not be maintainable if special leave to appeal had been refused to a complainant. Thus sub-section (1) of Section 378 was to be subject to provisions of sub-section (6) and not sub-section (5) as inadvertently provided therein. Inadvertently the figure (5) in Section 417(1) was continued, without noticing that now under Section 378 the relevant provision was sub-section (6). The figure (5) in Section 378(1) is inadvertently retained. Thus in Section 378(1) the figure (6) will have to be read in place of the figure (5). (Para 26). *State (Delhi Admn.)* v. *Dharampal*, (2001) 10 SCC 372: AIR 2001 SC 2924.

Bench Strength **2**. Coram: *K.T. Thomas* and **S.N. Varlava**, JJ. [Date of decision: 19-10-2001]

Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87, relied on

(5) Approach of appellate court in disposal of appeal against acquittal: considerations involved

See also Section 378, '(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted', above

[5225] — Ss. 378 and 386 — Appeal against acquittal — Proper mode of disposal — Effect of the acquittal — *Presumption of innocence, held, is reinforced by the acquittal by trial court*

The accused is presumed innocent until proven guilty. The trial court's acquittal bolsters the presumption that he is innocent. On proper analysis of the ratio and findings of this case, it is revealed that the findings of the trial court are based on the fundamental principles of the criminal jurisprudence. Presumption of innocence in favour of the accused further gets reinforced and strengthened by the acquittal of the trial court. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. (Paras 43 and 69). *Ghurey Lal* v. *State of U.P.*, (2008) 10 SCC 450.

Bench Strength 2. Coram: *R.V. Raveendran* and **Dalveer Bhandari**, JJ. [Date of decision: 30-7-2008]

[5226] — S. 378 — Appeal against acquittal — Necessity, duty and obligation of High Court — Principles regarding, restated — *Penal Code, 1860, Ss. 394, 307 and 411* (Para 8). *State of U.P.* v. *Ajai Kumar*, (2008) 3 SCC 351: (2008) 2 SCC (Cri) 369: AIR 2008 SC 1269: (2008) 64 AIC 224 (SC): 2008 Cri LJ 1937: (2008) 3 All LJ 512.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 7-2-2008]

State of Rajasthan v. Sohan Lal, (2004) 5 SCC 573, relied on

[5227] — S. 378 — Appeal against acquittal — Proper mode of disposal — *Held, High Court erred in allowing appeal on the ground that any lis between the parties should be decided on merits rather than on technicalities*

The appeal preferred by the respondents was against a judgment of acquittal. The High Court should have, therefore, exercised its jurisdiction keeping in view the limited role it had to play in the matter. (Para 14)

The High Court itself had come to the finding that the respondents were not interested in getting the matter prosecuted. Despite the same, it allowed their appeal, opining that any lis between the parties should be decided on merits rather than on technicalities. On what basis such a statement of law was made is not known. No precedent was cited; no reason has been assigned. The High Court failed to take into consideration the fact that it was dealing with an order of acquittal and, thus, the principle of law which was required to be applied was that, if two views are possible, a judgment of acquittal should not ordinarily be interfered with. (Para 15)

The High Court therefore, misdirected itself in passing the impugned judgment. It cannot therefore be sustained. (Para 17). *S. Rama Krishna* v. *S. Rami Reddy*, (2008) 5 SCC 535: (2008) 2 SCC (Cri) 645: AIR 2008 SC 2066: 2008 Cri LJ 2625.

Bench Strength 2. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 29-4-2008]

[5228] — Ss. 378 and 386 — Appeal against acquittal — Proper mode of disposal — Questions of law and facts — Need for consideration of — *Trial court acquitted all appellants — High Court convicted appellants under Ss. 324 & 427 IPC without considering questions of law and facts — Matter remitted to High Court for decision afresh. Syed Akbar Irfan* v. *State of Karnataka*, (2010) 12 SCC 734: 2010 Cri LJ 3826.

Bench Strength 2. Coram: *Dalveer Bhandari* and *A.K. Patnaik*, JJ. [Date of decision: 8-1-2010]

[5229] — S. 378 — High Court's power of review in appeal against acquittal — Principles to be followed

In an appeal under S. 417 of the Code of Criminal Procedure against acquittal, the High Court has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it be found expressly stated in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matter as, (1) the view of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any real and reasonable doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. The High Court should also take into account the reasons given by the Court below in support of its order of acquittal and must express its reasons in the judgment which lead it to hold that the acquittal is not justified. Further, if two conclusions can be based upon the evidence on record, the High Court should not disturb the finding of acquittal recorded by the trial court. *Labh Singh* v. *State of*

Punjab, (1976) 1 SCC 181, 185, 186: 1975 SCC (Cri) 812: AIR 1976 SC 83; *Barati* v. *State of U.P.*, (1974) 4 SCC 258: (1974) 4 SCR 570: 1974 SCC (Cri) 420; *Sethu Madhavan Nair* v. *State of Kerala*, (1975) 3 SCC 150, 155, 156: (1975) 1 SCR 673: 1974 SCC (Cri) 774: (1975) MLJ (Cri) 239. *Rajendra Rai* v. *State of Bihar*, (1975) 3 SCC 193: 1974 SCC (Cri) 811: AIR 1974 SC 2145: 1974 Cri LJ 1471.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *A.C. Gupta*, JJ. [Date of decision: 10-10-1975]

See also Rajendra Rai v. State of Bihar, (1975) 3 SCC 193, 197-98: 1974 SCC (Cri) 811; Barati v. State of U.P., (1974) 4 SCC 258: (1974) 4 SCC 570: 1974 SCC (Cri) 420; Sethu Madhavan Nair v. State of Kerala, (1975) 3 SCC 150, 155, 156: (1975) 1 SCR 673: 1974 SCC (Cri) 774: (1975) MLJ (Cri) 239

[5230] — Ss. 378 and 386 — Reversal of acquittal by High Court — Held, mere enumeration of the correct principles laid down by the Supreme Court not enough — *The High Court must not only know the fundamental principles of law but apply them correctly — On facts, held, the High Court did not apply the law correctly — Penal Code, 1860 — Ss. 302 and 34. Karuppanna Thevar* v. *State of T.N.*, (1976) 1 SCC 31: 1975 SCC (Cri) 753: AIR 1976 SC 980: 1976 Cri LJ 708.

Bench Strength **3**. Coram: **Y.V. Chandrachud**, *P.N. Bhagwati* and *R.S. Sarkaria*, JJ. [Date of decision: 19-8-1975]

[5231] — Ss. 378 and 386 — High Court as a court of first appeal — Disposal of appeal against acquittal by High Court in a very casual and cavalier manner — Held, not proper — High Court failed to discharge its duty by doing so — *Trial court acquitting all the accused persons charged under Ss. 148 and 302 r/w S. 149 IPC — Held, the High Court being the court of first appeal, was required to consider and reappreciate the evidence on record — High Court erred in disposing of the appeal on the basis of some general observations without making any effort to go into the evidence on record — Growing tendency with the High Courts in disposing of criminal appeals involving vexed questions of law and fact in cursory manner, noticed — Further held, huge pendency of cases may be the reason for such approach, but such a summary disposal is no solution to the problem of arrears of cases in courts — Disposal of appeals by the High Court as a court of first appeal in such a cavalier manner, held, results in denial of right to appeal to the parties* (Paras 7 to 9). *Narendra Nath Khaware* v. *Parasnath Khaware*, (2003) 5 SCC 488: 2003 SCC (Cri) 1144: AIR 2003 SC 2325: 2003 Cri LJ 2340.

Bench Strength **2**. Coram: *M.B. Shah* and **Arun Kumar**, JJ. [Date of decision: 17-4-2003]

[5232] — Ss. 378 and 386 — Criminal appeal — Reappreciation of evidence — Principles reiterated (Paras 14 and 15). *State of Haryana* v. *Ganpat*, (2010) 12 SCC 59.

Bench Strength **2**. Coram: **P. Sathasivam** and *R.M. Lodha*, JJ. [Date of decision: 27-9-2010]

Madan Lal v. State of J&K, (1997) 7 SCC 677: 1997 SCC (Cri) 1151; Ghurey Lal v. State of U.P., (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60; Chandra Mohan Tiwari v. State of M.P., (1992) 2 SCC 105: 1992 SCC (Cri) 252; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991, relied on

[5233] — S. 378 — Reappreciation of evidence — Duty of court under — *Held, while dealing with an appeal against acquittal High Court entitled and obliged to scan through, and if need be, reappreciate the entire evidence* (Para 3). *State of Rajasthan* v. *Sohan Lal*, (2004) 5 SCC 573.

Bench Strength **2**. Coram: *Doraiswamy Raju* and *Arijit Pasayat*, JJ. [Date of decision: 20-4-2004]

[5234] — S. 378 — Reversal of acquittal, upheld — Conviction confirmed — Trajectory of bullet fired from country-made weapon by itself, held, is not a safe basis for assessing entire evidence — Prompt FIR — Previous enmity — Appreciation of evidence — Trial court acquitted all accused under S. 302 r/w S. 34 as medical evidence did not correspond to ocular version — High Court reappraised evidence and set aside order of acquittal — High Court observed that eyewitnesses, particularly injured ones, could not be disbelieved — PW 2 was gravely injured in the incident — A perusal of FIR, revealed that he was indeed an eyewitness — His presence, therefore, cannot be doubted — IO prepared site plan on his instructions and also carried out preliminary investigations at site — PW 3 was a totally independent eyewitness — PW 3 also figured in site plan as having seen murder from a very short distance — Accused persons fired from roof of house — Merely because entry and exit wounds were either parallel to each other or, exit wound slightly higher than entry wound, would not detract from other evidence — Performance of country-made weapons unpredictable and uncertain — Projectiles could have been deflected from their true path by the bones or tissues that came along the way — Held, trajectory of bullet alone would not be a safe basis for assessing entire evidence — Finding of trial court, that prosecution had changed location of two accused, to bring them on the roof, was speculative — Reasons given by trial court were not well considered and High Court rightly reversed acquittal — *Penal Code, 1860, Ss. 302 and 307* (Paras 17, 19 and 23 to 27)

(5) Approach of appellate court in disposal of appeal against acquittal: considerations involved *(contd.)*

Country-made weapons had been used and the performance of these weapons being unpredictable and uncertain, the trajectory of the bullet alone would not be a safe basis for assessing the entire evidence, more particularly as the projectiles could have been deflected from their true path by the bones or tissues that came along the way. The question regarding the direction of fire, whether from right to left or from front to back is of medico-legal importance. To ascertain this, it is necessary to know the position of the victim at the time of the discharge of the bullet, when a straight line drawn between the entrance and exit wounds and prolonged in front generally indicates the line of direction. In some cases, it is difficult to determine the direction as the bullet is so often deflected by the tissues that its course is very irregular, also when the bullet wobbles. (Paras 23 to 27)

Modi's Medical Jurisprudence and Toxicology, 23rd Edn., pp. 724-25, referred to. *Mohd. Mian* v. *State of U.P.*, (2011) 2 SCC 721.

Bench Strength 2. Coram: **H.S. Bedi** and *C.K. Prasad*, JJ. [Date of decision: 16-12-2010]

[5235] — Ss. 378 and 386 — Appeal against acquittal — High Court as a court of first appeal disposing of appeal against acquittal in a very casual and cavalier manner — *High Court not referring to the evidence of complainant PW 1 (eye-witness) — Trial court had also not given due attention to the evidence of PW 1 — None of the three grounds mentioned by the High Court in its impugned judgment were really determinative of the fate of the appeal — Held, it was a fit case for remand — High Court directed to hear the appeal on merits and decide the same in accordance with law* (Para 8). *Narendra Nath Khaware* v. *Parasnath Khaware*, (2003) 5 SCC 488: 2003 SCC (Cri) 1144: AIR 2003 SC 2325: 2003 Cri LJ 2340.

Bench Strength 2. Coram: *M.B. Shah* and **Arun Kumar**, JJ. [Date of decision: 17-4-2003]

[5236] — Ss. 378 and 386 — In appreciating the evidence the background of the story and the complainant must be considered — *Manner in which trap conducted and recovery made also crucial — Failure to examine independent witnesses naturally present on the occasion significant — Conviction on facts, based solely on testimony of panch witness not proper — Reversal by High Court of the acquittal was therefore not justified — Prevention of Corruption Act, 1947, S. 5(1)(d) r/w S. 5(2) and S. 161, Penal Code, 1860. Gulam Mahmood A. Malek* v. *State of Gujarat*, 1980 Supp SCC 684: 1981 SCC (Cri) 586: AIR 1980 SC 1558: 1980 Cri LJ 1096: (1980) 21 GLR 965.

Bench Strength 2. Coram: *R.S. Sarkaria* and **P.S. Kailasam**, JJ. [Date of decision: 10-6-1980]

[5237] — Ss. 378 and 386 — Acquittal order reserved — High Court effectively dispelling all the reasons given by the trial court for order of acquittal — Reversal of acquittal justified — *No interference called for. Jhabla* v. *State of M.P.*, (1982) 2 SCC 145: 1982 SCC (Cri) 371.

Bench Strength 2. Coram: **R.S. Sarkaria** and *A.C. Gupta*, JJ. [Date of decision: 5-8-1980]

[5238] — Ss. 378 and 386 — Appeal against acquittal — High Court swayed by emotions, allowing presumption and conjectures to take the place of proof to set aside the order of acquittal — *Held, approach of the High Court not proper. Sriniwas* v. *Duni Chand*, (1997) 7 SCC 522: 1997 SCC (Cri) 1110.

Bench Strength 2. Coram: *Dr. A.S. Anand* and *K.T. Thomas*, JJ. [Date of decision: 11-7-1997]

[5239] — Ss. 378 & 386 — Appeal against acquittal — Appellate court's approach while reversing order of acquittal — *Held, High Court adopted a wrong approach in reversing the acquittal recorded by trial court — Penal Code, 1860 — Ss. 302 and 323/34*

The appellate court (High Court) should deal with each one of the reasons which prompted the trial court to record the acquittal and should point out how, if at all, those reasons were wrong or incorrect. Without undertaking such exercise the High Court cannot reverse the acquittal.

In the present case the prosecution version was that the accused police officials had brought the deceased from his house in a tempo to the police station where they battered the deceased to death. On a cautious analysis of the entire material on record the trial court came to the conclusion that the prosecution story was highly improbable and that the evidence of the prosecution witnesses was unreliable. But the High Court reversed the acquittal without dealing with or discussing any of the reasons given by trial court for acquitting the accused appellants. The High Court was principally influenced by the nature of injuries that were noticed by the doctor on the dead body at the time of autopsy and in its view some of the injuries which were on the soles and buttocks of the deceased convinced it that the deceased was given a sound beating while he was in police custody. The High Court found that its conclusion was further strengthened by the fact that when the accused prepared the inquest report he made a deliberate effort to minimise the number of injuries sustained by the deceased.

Held :

This was an erroneous approach. Hence conviction recorded by the High Court cannot be sustained. *Ram Chander* v. *State of Haryana*, (1983) 3 SCC 335: 1983 SCC (Cri) 628: AIR 1983 SC 817: 1983 Cri LJ 1072.

Bench Strength **2**. Coram: **V.D. Tulzapurkar** and *V. Balakrishna Eradi*, JJ. [Date of decision: 12-5-1983]

[5240] — Ss. 378, 386 and 313 — Appeal against acquittal — Approach — Trap proceedings — *New plea as to receipt of money taken during recording of S. 313 CrPC — Serious consideration of — Plea that the respondent-accused received a sum of Rs 2000 from the complainant for payment of certain outstanding dues taken for the first time during recording of S. 313 CrPC statements, held, should be taken serious note of by High Court while allowing/dismissing an appeal against acquittal — Prevention of Corruption Act, 1988, Ss. 7, 13(1)(d) and (2)*

The High Court ought to have granted leave, and thereafter, as a first court of appeal, reappreciated the entire evidence on the record independently and objectively as regards the guilt of the accused. The trial court on the facts of this case did not perform its duties, as was enjoined on it by law. The trial court was required to carefully appraise the entire evidence and then come to a conclusion. The questions involved were not trivial. The effect of the admission of the accused in the background of testimony of official witnesses and the documents exhibited needed adjudication in appeal. The High Court appears to have lost sight of the fact that in the statement recorded under Section 313 CrPC, the respondent specifically accepted that he has received a sum of Rs 2000 from the complainant for payment of certain outstanding dues, but such a plea was not taken in the course of the trap proceedings. If the trial court was at lapse in this regard, the High Court was obliged to undertake such an exercise by entertaining the appeal. The impugned order of the High Court is not sustainable, and is, therefore, remitted back to be disposed of in accordance with law. (Paras 8, 9, 4 and 12). *State of Rajasthan* v. *Rajendra Prasad Jain*, (2008) 15 SCC 711: (2009) 3 SCC (Cri) 1163: AIR 2008 SC 1589: 2008 Cri LJ 1935.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 22-2-2008]

[5241] — Ss. 378 and 386 — Appeal against acquittal — Appellate court's approach while reversing order of acquittal — Non-compliance with rule laid down in *Doshi case*, (1996) 9 SCC 225 in this respect — Effect — *Doshi case laying down that appellate court hearing appeal against acquittal must first record its conclusion on the question whether the findings of the trial court were palpably wrong, manifestly erroneous or demonstrably unsustainable, and then reappraise the evidence to arrive at its own conclusion — But not proceeding in this manner, held, would not necessarily entail setting aside of the appellate decision which considered all the contentions raised before it — In such a case the superior court hearing the appeal against judgment of the appellate court must satisfy itself that the approach of the trial court was patently illegal and its conclusions demonstrably unsustainable and that the decision of the appellate court is fee from such infirmities — In case judgment of trial court is found not to suffer from any such infirmity, interference by the appellate court has to be set aside in view of the rule that where two reasonable views are possible the one in favour of acquittal would stand — On facts, since the approach of the trial court was patently erroneous and the conclusions arrived at by it wholly untenable, reversal of acquittal by the High Court was justified — Penal Code, 1860, Ss. 302 and 307/34 — Explosive Substances Act, 1908, S. 3*

In the instant case the High Court has not strictly proceeded in the manner laid down by the Supreme Court in *Doshi case* viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But this non-compliance will not per se justify setting aside the judgment under appeal. In such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot

(5) Approach of appellate court in disposal of appeal against acquittal: considerations involved *(contd.)*

but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand.

Where on the basis of evidence on record two views are reasonably possible the appellate court cannot substitute its view in the place of that of the trial court. It is only when the approach of the trial court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate court can interfere with the order of acquittal.

In the present case the approach of the trial court was patently erroneous and the conclusions arrived at by it were wholly untenable. It is thus not the case where two reasonable views on examination of the evidence on record are possible and so the one which supports the accused, should be adopted. The view taken by the trial court can hardly be said to be a view on proper consideration of evidence much less a reasonable view. Therefore, interference by the High Court in the appeal against acquittal of the appellant and recording the finding of their conviction for offences under Sections 302, 307 read with Section 34 IPC and Section 3 of the Explosive Substances Act, 1908, on consideration of the evidence is justified. The judgment under appeal does not warrant any interference. *Sambasivan* v. *State of Kerala*, (1998) 5 SCC 412: 1998 SCC (Cri) 1320: AIR 1998 SC 2107: 1998 Cri LJ 2924.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.S.M. Quadri**, JJ. [Date of decision: 8-5-1998]

Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972, explained and limited

[5242] — Ss. 378 and 386 — Appeal against acquittal — High Court discussing in detail the evidence of every witness and appreciating the same in the proper perspective — *Held, on facts, High Court justified in reversing the conclusion of the trial court and setting aside the order of acquittal. Rajendra Mahton* v. *State of Bihar*, (1998) 9 SCC 315: 1998 SCC (Cri) 1013: AIR 1998 SC 1546: 1998 Cri LJ 1254.

Bench Strength **2**. Coram: *M.M. Punchhi* and **M. Srinivasan**, JJ. [Date of decision: 9-12-1997]

[5243] — Ss. 378 & 386 — Appeal against acquittal — High Court has a duty to satisfy itself that reasons given by trial Court are palpably wrong before setting aside acquittal. *Vasudeo Kulkarni* v. *Surya Kant Bhatt*, (1977) 2 SCC 298: 1977 SCC (Cri) 343: AIR 1977 SC 1760: 1977 Cri LJ 1152: (1977) 3 SCR 102.

Bench Strength **2**. Coram: **P.K. Goswami** and *P.N. Shinghal*, JJ. [Date of decision: 2-3-1977]

[5244] — Ss. 378 and 386 — Appeal against acquittal — High Court's approach while reversing an order of acquittal — *On facts, the High Court adopted a wrong approach in reversing the acquittal recorded by the trial court*

In the present case the High Court did not dispel the reasons given by the trial court while upsetting the order of acquittal. Though, no distinction is made regarding powers of the High Court in dealing with appeals against acquittal as well as against conviction and it has full power to review all the evidence and arrive at independent findings, nonetheless the High Court should be rather slow to interfere with the findings of the trial court, unless the same are perverse or otherwise unreasonable. Judicial approach in dealing with a case of appeal against acquittal has to be cautious, circumspect and careful. *Gajanan* v. *State of Maharashtra*, (1997) 9 SCC 94: 1997 SCC (Cri) 605.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *K.T. Thomas*, JJ. [Date of decision: 20-11-1996]

[5245] — Ss. 378 and 386 — Appeal before High Court against acquittal — Cogent reasons given by trial court for acquittal — *High Court failed to deal effectively with very important aspects of evidence which impelled the trial court to disbelieve the prosecution case and interfered with the acquittal order not only for no substantial reasons but also by ignoring material infirmities in the prosecution case — In the circumstances held, High Court's order of conviction and sentence liable to be set aside — Penal Code, 1860, S. 302/34, 304 II/34 and 326. Shambhoo Missir* v. *State of Bihar*, (1990) 4 SCC 17: 1990 SCC (Cri) 518: AIR 1991 SC 315.

Bench Strength **3**. Coram: *Kuldip Singh*, **P.B. Sawant** and *M. Fathima Beevi*, JJ. [Date of decision: 24-7-1990]

[5246] — Ss. 378 and 386 — Appeal before High Court against acquittal — High Court elaborately examining reasons of trial court for discarding reliable testimony of injured witnesses and rejecting them as utterly untenable, contrary to the weight of evidence and based on impermissible inferences — *High Court's reasons being convincing, unambiguous and its conclusion* *regarding guilt of the accused being the only reasonable view that can be taken on the evidence, must be accepted — Hence reversal of acquittal by High Court justified. Mer Dhana Sida* v. *State of Gujarat*, (1985) 1 SCC 200: 1985 SCC (Cri) 54: AIR 1985 SC 386: 1985 Cri LJ 660.

Bench Strength 2. Coram: **D.A. Desai** and *Ranganath Misra*, JJ. [Date of decision: 29-11-1984]

[5247] — Ss. 378 and 386 — Appeal against acquittal — Approach — *Court should sift the evidence to ascertain which part of the evidence correctly establishes the incident — Where trial court acquitted one out of several accused persons, but High Court on appreciation of evidence found no justifiable reason for such acquittal, held on facts, High Court justified in reversing the order of acquittal — Penal Code, 1860, Ss. 147, 148, 302, 307 and 452 r/w S. 149*

In order to appreciate the evidence, the court is required to bear in mind the set-up and the environment in which the crime is committed, the level of understanding of the witnesses, the overzealous- ness of some of the near relations to ensure that everyone even remotely connected with the crime be also convicted, and everyone's different way of narration of the same facts. These are only illustrative instances. Bearing in mind these broad principles, the evidence is required to be appreciated to find out what part out of the evidence represents the true and correct state of affairs. It is for the courts to separate the grain from the chaff. (Para 14)

The mere fact that a view other than the one taken by the trial court can be legitimately arrived at by the appellate court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless the appellate court comes to the conclusion that the entire approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. In the present case the High Court while reversing the order of acquittal kept in view these principles. (Para 13)

In the present case the murder of three persons (father and his two sons) had taken place in broad daylight at 7 o'clock in the morning in front of many members of the family of the deceased, some of whom also received various injuries. The presence of the acquitted accused there was deposed to by all material witnesses. The High Court was faced with the question that when his presence as a member of the unlawful assembly as also the fact that he with others shared the common object of doing away with the deceased and injuring others, had been established can he be acquitted as a result of some variations in the manner of his doing positive act to achieve the said object? The High Court rightly answered the question in the negative and convicted the acquitted accused. The fact that there were slight variations in the role attributed to him was held by the High Court to be of no consequence in the facts and circumstances of the case. In fact, he was the main person who had instigated the mob. What had weighed with the High Court in reversing the order of acquittal of that accused was that on the basis of the same evidence, other accused had been convicted and there was no justifiable reason for convicting other 11 accused and confirming their conviction while at the same time upholding the order of acquittal in the case of the said accused. The High Court, on due scrutiny and analysis of the evidence, came to the conclusion that the case of the acquitted accused cannot be meted out a different treatment than others who had been convicted. Under the circumstances, it cannot be said that the High Court in reversing the order of acquittal did not bear in mind the principles required to be kept in view while deciding an appeal against an order of acquittal. (Paras 16, 15, 14 and 19). *Ganesh K. Gulve* v. *State of Maharashtra*, (2002) 7 SCC 71: 2002 SCC (Cri) 1589: AIR 2002 SC 3068.

Bench Strength 2. Coram: **Y.K. Sabharwal** and *H.K. Sema*, JJ. [Date of decision: 21-8-2002]

Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Awadhesh v. State of M.P., (1988) 2 SCC 557: 1988 SCC (Cri) 361, relied on

[5248] — Ss. 378 & 386 — Appeal against acquittal — High Court's interference with order of acquittal — High Court must consider and discuss each of the reasons given by trial court to acquit the accused and then dislodge those reasons — *That obligation not discharged by High Court in the instant case as all the reasons given by trial court while appreciating the evidence had not been dealt with — Hence High Court erred in reversing the order of acquittal* (Para 13). *Peerappa* v. *State of Karnataka*, (2005) 12 SCC 461.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *D.M. Dharmadhikari*, JJ. [Date of decision: 9-8-2005]

Kashiram v. State of M.P., (2002) 1 SCC 71: 2002 SCC (Cri) 68, relied on

[5249] — Ss. 378 and 386 — Appeal against acquittal — High Court's approach while reversing order of acquittal — Principles restated — *High Court must examine the reasons given by the trial court for recording order of acquittal — On facts held, reasons given by the trial court for recording the order of acquittal were cogent and convincing and the High Court was not justified in disturbing the same by reappraising the evidence — Penal Code, 1860, Ss. 201 and 302*

(5) Approach of appellate court in disposal of appeal against acquittal: considerations involved *(contd.)*

In the instant case the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the conclusions. The mere fact that a view other than the one taken by the trial court can be legitimately arrived at by the appellate court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then — and then only — reappraise the evidence to arrive at its own conclusions. *Ramesh Babulal Doshi* v. *State of Gujarat*, (1996) 9 SCC 225: 1996 SCC (Cri) 972: AIR 1996 SC 2035.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.P. Kurdukar*, JJ. [Date of decision: 2-5-1996]

[5250] — Ss. 378 and 386 — Interference in acquittal by High Court — Approach — *Reappraising the evidence — Interest of accused as well as interest of State and prosecution must be balanced in such matters* (Para 11). *Jayanta Sil* v. *State of Assam*, (2010) 11 SCC 739: AIR 2010 SC 3389.

Bench Strength **2**. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 4-8-2010]

[5251] — Ss. 378 & 386 — No interference called for with the conviction recorded by High Court as it took into consideration all the circumstances and evidence and on the basis of cogent and convincing reasons accepted the prosecution case and rejected the reasons given by trial court in acquitting the appellant as being highly unsound. *Ajit Kumar Vasantlal Zaveri* v. *State of Gujarat*, 1993 Supp (1) SCC 482: 1993 SCC (Cri) 226: AIR 1992 SC 2064.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 4-9-1992]

[5252] — S. 378 — Improper reversal of acquittal — *Trial court acquitted appellant accused — High Court reversed order and convicted appellants under Ss. 324 and 326 — Injured victim directed to be paid compensation — High Court being appellate court, has not properly appreciated facts and questions of law — Appeal remitted to High Court for deciding afresh — Penal Code, 1860, Ss. 147, 148, 341, 504, 506, 324, 326 r/w S. 149. Maruthi* v. *State of Karnataka*, (2010) 12 SCC 48.

Bench Strength **2**. Coram: *Dalveer Bhandari* and *A.K. Patnaik*, JJ. [Date of decision: 8-1-2010]

[5253] — S. 378 — Appeal against acquittal — High Court disposing of appeal in a cryptic manner — *Held, not permissible — Matter remitted for passing a reasoned order* (Para 3). *State of U.P.* v. *Manoj Kumar Pandey*, (2009) 1 SCC 72.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *D.K. Jain*, JJ. [Date of decision: 7-11-2008]

[5254] — Ss. 378 and 386 — Appeal against acquittal — Reappraisal of evidence — Duty of the court — *While dealing with an appeal against acquittal the appellate court, held, ought to have dealt with the grounds on which the acquittal was based and dispelled those grounds before reversing the order of acquittal — If the appreciation of evidence did not suffer from any flaw, the appellate court ought not to have set aside the order of acquittal even if a view other than that taken by the trial court was possible — Prevention of Corruption Act, 1947, S. 5(1)(d), (e) & (2) — Prevention of Corruption Act, 1988, S. 13(1)(e)*

The High Court was dealing with an appeal against acquittal. It was required to deal with various grounds on which acquittal had been based and to dispel those grounds. It has not done so. If the appreciation of evidence by the trial court did not suffer from any flaw, as indeed none has been pointed out in the impugned judgment, the order of acquittal could not have been set aside. The view taken by the learned trial court was a reasonable view and even if by any stretch of imagination, it could be said that another view was possible, that was not a ground sound enough to set aside an order of acquittal. (Para 9). *Jagan M. Seshadri* v. *State of T.N.*, (2002) 9 SCC 639: AIR 2002 SC 2399: 2002 Cri LJ 2982.

Bench Strength **3**. Coram: *Dr. A.S. Anand*, C.J. and *R.C. Lahoti* and *Ashok Bhan*, JJ. [Date of decision: 25-9-2001]

[5255] — Ss. 378 and 386(a) — Appeal against acquittal — Duty of appellate court — Principles, reiterated — Murder trial — Appreciation of evidence — Appellate court's approach — *Because of a quarrel, deceased given several blows* *all over his body with gupti, pipe and dhoka (weapons of offence) by all three respondent-accused, resulting in his death — Acquittal of all accused by trial court upheld by High Court — Sustainability — Considering facts and circumstances of instant case, held, High Court acted in a very casual manner and reached certain findings which were perverse — It did not exercise its jurisdiction properly under S. 378 in appreciating material on record while affirming order of acquittal of trial court — Therefore, High Court's judgment of acquittal, held, unsustainable — High Court directed to hear State's appeal afresh properly — Penal Code, 1860 — Ss. 302, 324, 114 and 34*

The High Court in this case acted in a very casual manner and reached certain findings which were perverse. (Para 19)

The doctor clearly opined that the cause of death was shock and haemorrhage due to stab injury on the chest. By characterising these injuries as not sufficient in the ordinary course to cause death, the High Court fell into a grave error and its appreciation of evidence borders on perversity. This was a glaring infirmity in the judgment of the High Court. (Para 22)

The other reason given by the High Court in affirming the order of acquittal was that only interested persons were the witnesses and no independent witness was examined. It has been repeatedly pointed out by the Supreme Court that just as the witnesses are related to the deceased, that is no ground to discard their evidence. In the instant case, there were three eyewitnesses and one of them was an injured witness. Their evidence cannot be discarded just on the ground that they were related to the deceased. It is settled law that if the evidence of the witnesses, who are related, is credible and cogent, the fact that they are related is not a ground for discarding such evidence. Related witnesses do not normally spare the guilty and implicate innocent persons. (Paras 23 and 25)

Another reason given by the High Court to support the judgment of acquittal of the trial court was that much time had elapsed between the occurrence and filing of complaint. About the delay in lodging the FIR, the Supreme Court finds that immediately after the occurrence, the deceased was taken to the hospital by the complainant and other relations where the deceased was declared dead. One GD was entered by 11.05 p.m. on the same night which was just after a gap of about two hours. Therefore, considering normal human conduct, this delay of about two hours between the occurrence and lodging of the complaint, was not a factor for discrediting the prosecution case. A finding of acquittal on the ground of this delay was not a reasonable exercise of jurisdiction by an appellate court. (Paras 23 and 26)

The High Court also came to the finding that the bloodstained clothes and weapons were not examined and this created a doubt about the veracity of the prosecution case. It appears from the record that the weapons of offence were examined to find out that they had stains of human blood, in Group B. (Paras 24 and 27)

Therefore, considering all these facts and circumstances of this case, the High Court did not exercise its jurisdiction properly, under Section 378 CrPC, in appreciating the material on record, while approving the order of acquittal of the trial court. Therefore, the High Court's judgment of acquittal cannot be sustained and is set aside. It will hear the State's appeal afresh and is at liberty to apply its mind to the evidence and materials available on record and come to its independent finding. (Paras 28 and 29). *Champaben Govindbhai* v. *Popatbhai Manilal*, (2009) 13 SCC 662: (2009) 82 AIC 48 (SC).

Bench Strength **2**. Coram: *D.K. Jain* and **A.K. Ganguly**, JJ. [Date of decision: 31-7-2009]

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033, relied on

[5256] — Ss. 378 and 386 — Appeal against acquittal — Approach — *When trial court has failed to appreciate evidence properly, High Court, held, should reappreciate all evidence independently and objectively as regards the guilt of the accused*

The High Court ought to have granted leave, and thereafter, as a first court of appeal, reappreciated the entire evidence on the record independently and objectively as regards the guilt of the accused. The trial court on the facts of this case did not perform its duties, as was enjoined on it by law. The trial court was required to carefully appraise the entire evidence and then come to a conclusion. The questions involved were not trivial. The effect of the admission of the accused in the background of testimony of official witnesses and the documents exhibited needed adjudication in appeal. The High Court appears to have lost sight of the fact that in the statement recorded under Section 313 CrPC, the respondent specifically accepted that he has received a sum of Rs 2000 from the complainant for payment of certain outstanding dues, but such a plea was not taken in the course of the trap proceedings. If the trial court was at lapse in this regard, the High Court was obliged to undertake such an

(5) Approach of appellate court in disposal of appeal against acquittal: considerations involved *(contd.)*

exercise by entertaining the appeal. The impugned order of the High Court is not sustainable, and is, therefore, remitted back to be disposed of in accordance with law. (Paras 8, 9, 4 and 12). *State of Rajasthan* v. *Rajendra Prasad Jain*, (2008) 15 SCC 711: (2009) 3 SCC (Cri) 1163: AIR 2008 SC 1589: 2008 Cri LJ 1935.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 22-2-2008]

[5257] — Ss. 378, 379 and 386(a) — Appellate court's approach — On facts, impropriety of — *Trial court, upon appreciation of evidence, found A-4 guilty under S. 302 IPC, which was confirmed by High Court with no further appeal — So far as appellant was concerned, trial court found him guilty under Ss. 398 and 457(1) IPC but acquitted him of charges under Ss. 120-B, 449 & 302/34 IPC and Ss. 3/25(1-B)(a), Arms Act, 1959 — Rest of the accused were acquitted by trial court — High Court reversed the judgment of acquittal against appellant, convicting him under Ss. 302/34 IPC with sentence of life imprisonment — However, conviction under S. 457(1) of appellant was affirmed by High Court while acquitting him of conviction under other charge — Sustainability — On facts, held, High Court should not have disturbed order of acquittal of appellant under Ss. 302/34 as no evidence was available of appellant entering house of deceased, armed — Moreover evidence of PW 2 of appellant being armed is doubtful — Penal Code, 1860 — Ss. 302/34, 457(1), 398, 120-B and 449 — Arms Act, 1959, Ss. 3/25(1-B)(a) — Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, S. 2* (Paras 22, 15 and 40). *Arun* v. *State*, (2008) 15 SCC 501: (2009) 3 SCC (Cri) 1097: AIR 2009 SC 1256: (2009) 73 AIC 116 (SC).

Bench Strength 2. Coram: *L.S. Panta* and **B. Sudershan Reddy**, JJ. [Date of decision: 11-12-2008]

[5258] — S. 378 — Appeal against acquittal — Scope of consideration by appellate court — Perversity in findings of trial court — Held, entire evidence has to be considered to determine whether findings of trial court are perverse or otherwise unsustainable because burden of proof has incorrectly been placed on a party, or trial court has omitted to take into consideration relevant evidence, or trial court has taken into consideration evidence which has been brought on record contrary to law — High Court had adopted a completely erroneous approach herein while reversing acquittal — Hence acquittal restored (Paras 38, 40 and 59)

While dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. Even though the appellate court is entitled to consider, whether in arriving at a finding of fact, the trial court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. The trial court which has the benefit of watching the demeanour of the witnesses is the best judge of the credibility of the witnesses. (Para 38)

In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. A finding may also be said to be perverse if it is against the weight of evidence, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Para 40)

The High Court did not dislodge the reasons given by the trial court for acquittal and dealt with the case very casually, adopting a very superficial approach to the whole matter. The High Court did not make any attempt to appreciate the evidence with accuracy and erroneously reversed the findings of the trial court which were based on the evidence on record and for which detailed reasons had been assigned. (Para 59). *Sunil Kumar Sambhudayal Gupta (Dr.)* v. *State of Maharashtra*, (2010) 13 SCC 657.

Bench Strength 2. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 11-11-2010]

Balak Ram v. State of U.P., (1975) 3 SCC 219: 1974 SCC (Cri) 837; Shailendra Pratap v. State of U.P., (2003) 1 SCC 761: 2003 SCC (Cri) 432; Budh Singh v. State of U.P., (2006) 9 SCC 731: (2006) 3 SCC (Cri) 377; S. Rama Krishna v. S. Rami Reddy, (2008) 5 SCC 535: (2008) 2 SCC (Cri) 645; Arulvelu v. State, (2009) 10 SCC 206: (2010) 1 SCC (Cri) 288; Ram Singh v. State of H.P., (2010) 2 SCC 445: (2010) 1 SCC (Cri) 1496; Babu v. State of Kerala, (2010) 9 SCC 189: (2010) 3 SCC (Cri) 1179, relied on

[5259] — Ss. 378 and 386 — Appreciation of evidence — *Appeal before High Court against acquittal — High Court should attach greater weight to appreciation of evidence by trial court* *who had the occasion to watch the demeanour of witnesses — Held on facts, High Court not justified in reversing order of acquittal — Penal Code, 1860, S. 302. Anokh Singh* v. *State of Punjab*, 1992 Supp (1) SCC 426: 1992 SCC (Cri) 294: AIR 1992 SC 598: 1992 Cri LJ 525.

Bench Strength **2**. Coram: *Kuldip Singh* and **R.M. Sahai**, JJ. [Date of decision: 29-11-1991]

[5260] — Ss. 378 & 386 — High Court in appeal against acquittal, held, cannot ignore the trial Court's reasons for recording acquittal and merely give its own reasons for conviction — *Finding of the trial Court must first be set aside. Satbir Singh* v. *State of Punjab*, (1977) 2 SCC 263: 1977 SCC (Cri) 333: AIR 1977 SC 1294: 1977 Cri LJ 985: (1977) 3 SCR 195.

Bench Strength **3**. Coram: *Y.V. Chandrachud*, **P.K. Goswami** and *P.N. Shinghal*, JJ. [Date of decision: 14-3-1977]

[5261] — S. 378 — Dismissal — Non-indication of the basis for upholding trial court's decision — Impermissibility — *In the instant case, respondent-accused of snatching money forcibly — High Court dismissing appeal by appellant State based on a telegram sent by relative of deceased accused which purportedly showed that date of arrest reported by police was post-dated — Various other factors throwing light on the controversy not considered in proper perspective — Effect of evidence of the two victims and recovery of part of forcibly snatched amount from accused, completely lost sight of — Contrary to what trial court and High Court noted, seized recovery notes clearly showed stamp of the bank from where money was withdrawn — Relevance of this factor not considered — Hence, impugned order of High Court set aside and matter remitted to it for consideration in accordance with law — Penal Code, 1860, Ss. 394, 307 and 411* (Paras 2, 3 and 9 to 12). *State of U.P.* v. *Ajai Kumar*, (2008) 3 SCC 351: (2008) 2 SCC (Cri) 369: AIR 2008 SC 1269: (2008) 64 AIC 224 (SC): 2008 Cri LJ 1937: (2008) 3 All LJ 512.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 7-2-2008]

State of Rajasthan v. Sohan Lal, (2004) 5 SCC 573, relied on

[5262] — Ss. 378 and 386 — Reversal of acquittal by High Court — Statement of reasons for so doing necessary — *On facts, principles followed and hence conviction unassailable*

The appellate court has full power to review an order of acquittal and to come to its own conclusion in appeal against the acquittal. The only requirement which the appellate Court must observe is that while dealing with an order of acquittal, the appellate Court should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the trial Court in support of its order of acquittal, but it should also express its reasons in its judgment which led it to hold that the order of acquittal is not justified. (Para 3).

The appellate court is also required to bear in mind that the trial court has had the opportunity of witnessing the demeanour of witnesses while in the witness-box and moreover the presumption of innocence is in any event not weakened by the order of acquittal and therefore if two reasonable conclusions can be reached on the basis of evidence on record, the appellate Court should not disturb the finding of the trial Court. *Verghese Thomas* v. *State of Kerala*, (1976) 4 SCC 348: 1976 SCC (Cri) 643: AIR 1977 SC 701: 1977 Cri LJ 343: 1976 Cri LJ 643.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *R.S. Sarkaria*, JJ. [Date of decision: 26-9-1975]

[5263] — Ss. 378 & 386 — Before reversing the acquittal, the appellate court must give cogent reasons for rejecting the reasoning of the trial court

When a trial court, with full view of the witnesses, acquits an accused after disbelieving direct testimony, it will be essential for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds, from the record, for discarding the reasons of the trial court in order to be able to reach a contrary conclusion of guilt of accused. The High Court should be able to point out in its judgment that the trial court's reasons are palpably and unerringly shaky and its own reasons are demonstrably cogent. As a salutary rule of appreciation of evidence, in an appeal against acquittal, it is not legally sufficient that it is just possible for the High Court to take a contrary view about the credibility of witnesses but it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the trial court to reject their testimony. This is the quintessence of the jurisprudential aspect of criminal justice. *Rajendra Prasad* v. *State of Bihar*, (1977) 2 SCC 205: 1977 SCC (Cri) 308: AIR 1977 SC 1059: (1977) 3 SCR 68: 1977 Cri LJ 613.

Bench Strength **3**. Coram: *Y.V. Chandrachud*, **P.K. Goswami** and *P.N. Shinghal*, JJ. [Date of decision: 25-2-1977]

[5264] — Ss. 378 and 386 — Appeal against acquittal — Proper mode of disposal of — Duty of High Court under — Reasons for decision — Cardinality of recording of — Rationale for — *CPC, 1908, Or. 20 Rr. 4(2) & 5 — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 18*

(5) Approach of appellate court in disposal of appeal against acquittal: considerations involved *(contd.)*

The subject matter of the challenge is the refusal to grant leave to question acquittal in terms of Section 378(3) of the Code of Criminal Procedure, 1973.

The respondent (hereinafter referred to as "the accused") faced trial for alleged commission of offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

The trial court held that the prosecution version was entirely dependent upon the testimony of official witnesses and since no independent witness was involved, the prosecution version was vulnerable. The trial court therefore directed acquittal. The appellant State filed an appeal before the Punjab and Haryana High Court which refused to grant leave and disposed of the application for leave in the following manner:

"Heard. No merit.
Dismissed."

Allowing the appeal,

Held :

It was noted that the search and seizure was made at a thoroughfare and it is unbelievable that no independent witness was available. The trial court was required to carefully appraise the entire evidence and then come to a conclusion. If the trial court was at lapse in this regard the High Court was obliged to undertake such an exercise by entertaining the appeal. The trial court on the facts of this case did not perform its duties, as was enjoined on it by law. The questions involved were not trivial. The requirement of independent witnesses and discarding testimony of official witnesses even if it was reliable, cogent or trustworthy needed adjudication in appeal. The High Court ought to have in such circumstances granted leave and thereafter as a first court of appeal, reappreciated the entire evidence on the record independently and returned its findings objectively as regards guilt or otherwise of the accused. It has failed to do so. (Para 5)

Reasons introduce clarity in an order. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. (Para 6)

The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal, and seems to have been completely oblivious to the fact that by such refusal, a close scrutiny of the order of acquittal by the appellate forum has been lost once and for all. The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. (Para 5)

The requirement of indicating reasons in such cases has been judicially recognized as imperative. (Para 5)

Impugned judgment of the High Court is unsustainable and is set aside. Leave granted to the State to file the appeal. The High Court shall entertain the appeal and after formal notice to the respondents hear the appeal and dispose of it in accordance with law. (Para 7). *State of Punjab* v. *Bhag Singh*, (2004) 1 SCC 547: 2004 SCC (Cri) 341: AIR 2004 SC 1203: (2004) 164 ELT 137: 2004 Cri LJ 916.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-12-2003]

Breen v. Amalgamated Engg. Union, (1971) 1 All ER 1148: (1971) 2 QB 175: (1971) 2 WLR 742 (CA); Alexander Machinery (Dudley) Ltd. v. Crabtree, 1974 ICR 120 (NIRC); State of U.P. v. Battan, (2001) 10 SCC 607: 2003 SCC (Cri) 639; State of Maharashtra v. Vithal Rao Pritirao Chawan, (1981) 4 SCC 129: 1981 SCC (Cri) 807; Jawahar Lal Singh v. Naresh Singh, (1987) 2 SCC 222: 1987 SCC (Cri) 347, relied on

***Applied** in State of H.P. v. Mushtaq Ahmad, (2007) 9 SCC 528: (2007) 3 SCC (Cri) 168: (2007) 53 AIC 112 (SC); State of H.P. v. Shish Ram, (2008) 11 SCC 311*

***Followed** in Jagtamba Devi v. Hem Ram, (2008) 3 SCC 509; State of H.P. v. Paras Ram, (2008) 3 SCC 655*

[**Ed.**: *See* generally in this regard *Complete Digest of Supreme Court Cases*, **Vol. 1**, Administrative Law — Duty to give reasons, pp. 307 et seq.]

[5265] — Ss. 378 and 386 — Appeal against acquittal — Proper mode of disposal of — Duty of High Court under — Reasons for decision — Cardinality of recording of — Rationale for —

On facts, having perused the findings recorded in the judgment of the trial court, held, no interference called for. State of H.P. v. Mushtaq Ahmad, (2007) 9 SCC 528: (2007) 3 SCC (Cri) 168: (2007) 53 AIC 112 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 26-3-2007]

State of Punjab v. Bhag Singh, (2004) 1 SCC 547: 2004 SCC (Cri) 341, applied

[5266] — S. 378 — Respondent *R*, with his father and mother acquitted by trial court from charges under Ss. 306/304-B r/w S. 34, while only accused *R* convicted under S. 498-A — Appeal against acquittal dismissed by High Court in limine — *In Supreme Court, acquittal from offence under S. 306 only challenged on grounds that trial Judge had not considered the ingredients of S. 113-A of Evidence Act, 1872 and further he had not given any reason as to why he had acquitted the accused persons under S. 306 IPC particularly when he had convicted Accused 1 for offence under S. 498-A of Penal Code — Held, reasoning of trial Judge that no demand of dowry proved as also no case of abetment to commit suicide is made out was correct — High Court's approach to dismiss appeal in limine without assigning reasons, however disapproved — Penal Code, 1860, Ss. 498-A, 306/304-B r/w S. 34* (Paras 9 to 11). *State of Punjab* v. *Rajwinder Singh*, (2009) 16 SCC 778.

Bench Strength 2. Coram: *V.S. Sirpurkar* and *R.M. Lodha*, JJ. [Date of decision: 26-5-2009]

[5267] — Ss. 378, 384 and 386 — Appeal against acquittal — Penal Code, 1860 — Ss. 302/149 — Reasons for dismissal of appeal against acquittal held, mandatory — *Where the reasons given by Sessions Judge for disbelieving eyewitnesses and order of acquittal appeared wholly unsustainable, held, High Court's dismissal of leave to appeal at admission stage without giving reasons indicates non-application of mind — Must be set aside — Appeal remanded to High Court for disposal — Also held that Supreme Court would not finally dispose of appeal despite many years (nine) having passed since High Court dismissal, because at that stage it would cause prejudice to the accused* (Para 1). *State of Orissa* v. *Debaraj Tarini*, (2000) 10 SCC 173.

Bench Strength 2. Coram: *G.B. Pattanaik* and *M.B. Shah*, JJ. [Date of decision: 10-3-1999]

[5268] — Ss. 378, 386 and 154 — Reversal of acquittal by High Court — High Court must give reasons to show as to how findings of trial court were perverse or unreasonable and not sustainable on the basis of material on record — *Discrepancies and contradictions in the matter of recording of FIR relating to a murder found to be of serious nature — High Court not justified in upsetting the acquittal treating the same as insignificant or of no consequence. Padmanabhan Vijaykumar* v. *State of Kerala*, 1994 Supp (2) SCC 156: 1994 SCC (Cri) 892: AIR 1993 SC 2641.

Bench Strength 2. Coram: *Dr. A.S. Anand* and *N.P. Singh*, JJ. [Date of decision: 24-2-1993]

[5269] — Ss. 378, 386 and 393 — Appeal before High Court against acquittal — High Court confirming the judgment of trial court must pass a speaking order

The High Court in appeal should have considered the merits of the case and recorded the reasons for its decision. A confirming judgment needs to consider the contentions urged before the court and record reasons for agreeing with the order under appeal. (Para 3). *State of U.P.* v. *Kamarujjama*, (2002) 3 SCC 342: 2002 SCC (Cri) 629: AIR 2003 SC 2163: 2002 All LJ 851: 2002 Cri LJ 1775.

Bench Strength 2. Coram: *S.S.M. Quadri* and *S.N. Variava*, JJ. [Date of decision: 25-2-2002]

[5270] — Ss. 378(1) and (3) — Appeal against acquittal — Improper manner of disposal by High Court — Impermissibility of — Murder trial — *Appellant-accused faced trial for alleged commission of offences punishable under several sections of IPC — Trial court, referring to evidence of witnesses produced by prosecution, held that prosecution failed to fasten guilt on accused persons, hence, acquitted them — State's appeal against acquittal, allowed by High Court — Appellants contending that High Court, after referring to prosecution case and evidence of witnesses, came to abrupt conclusions regarding guilt of accused persons and upset judgment of acquittal — That, factors which weighed with trial court to direct acquittal were not taken note of by High Court — High Court's judgment did not meet parameters indicated by Supreme Court relating to appeals against acquittal — Tenability — Held, manner of disposal of appeal by High Court was highly unsatisfactory — As the manner of disposal left much to be desired, hence, matter remitted to High Court for disposal afresh — High Court directed to analyse the conclusions and decide whether any interference was called for and, if the answer was in the affirmative, the reason therefor — Penal Code, 1860, Ss. 147, 148, 324, 447, 448, 427, 379, 307 and 302 r/w S. 149* (Paras 12, 14 and 17 to 20). *Batcu Venkateshwarlu* v. *Public Prosecutor*, (2008) 16 SCC 256: (2009) 74 AIC 109 (SC).

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *V.S. Sirpurkar* and *G.S. Singhvi*, JJ. [Date of decision: 1-12-2008]

(5) Approach of appellate court in disposal of appeal against acquittal: considerations involved *(contd.)*

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; Krishnan v. State, (2003) 7 SCC 56: 2003 SCC (Cri) 1577, relied on

Glanville Williams: Proof of Guilt; The Mathematics of Proof II, Criminal Law Review, 1979, Sweet and Maxwell, p. 340 (342), cited

[5271] — Ss. 378(1) and (3) — Appeal against acquittal — Non-application of mind — High Court without assigning any reasons for differing from findings of trial court reversing acquittal under S. 304 Pt. II r/w S. 34 IPC — *High Court not even appreciating evidence of sole eyewitness (PW 1, mother of deceased) and simply placing reliance on her evidence when trial court had discarded the same — High Court not considering/discussing medical evidence, application of S. 34 IPC, recoveries made or reasons for conviction under S. 304 Pt. II r/w S. 34 IPC and not S. 302 r/w S. 34 IPC — Matter therefore, remanded to High Court for fresh disposal on merits — Penal Code, 1860, S. 304 Pt. II r/w S. 34*. (Paras 8 and 14). *Sangappa* v. *State of Karnataka*, (2010) 3 SCC 686. Bench Strength **2**. Coram: **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision: 9-3-2010]

Narendra Bhat v. State of Karnataka, (2009) 17 SCC 785, relied on

[5272] — Ss. 378(1) and (3) — Appeal against acquittal — Reversal of acquittal — Approach *— Judgment of trial court being wholly unsustainable and not being a plausible or possible view — High Court taking into consideration all relevant factors while convicting accused under Ss. 304 Pt. II/34 IPC by reversing acquittal and punishing them with 4 years' imprisonment and Rs 1000 fine in default of which to undergo imprisonment for one month — Penal Code, 1860, Ss. 304/34*

On 17-2-1994, PW 5 lodged an FIR stating inter alia that on that date at about 2.00 p.m. while his elder brother PW 4 was returning home from the masjid, six accused persons named in the FIR, assaulted him. On hearing the screams and loud cries for the help of PW 4, another elder brother (the deceased informant) and one of his neighbours, PW 2, rushed to the spot and intervened, whereupon those two persons were also assaulted and they sustained injuries. The injured persons were taken to the hospital and deceased succumbed to injuries after fourteen days.

Dismissing the appeal,

Held :

The High Court justly convicted the appellant under Section 304 Part II IPC. While reversing the order of acquittal, the High Court took into consideration all relevant factors. It was not a case that the view taken by the trial court was a plausible or a possible view. The judgment of the trial court was wholly unsustainable. There was overwhelming evidence against the appellant. The appellant was named in the FIR. All the eyewitnesses including the injured eyewitnesses categorically named the appellant and attributed specific role to him. The statements of all eyewitnesses including the injured eyewitnesses are wholly consistent and are fully corroborated with the medical evidence. (Paras 23, 21 and 12 to 17)

The trial court gravely erred in ignoring the medical evidence which was the most important and material aspect of the prosecution version. In the opinion of the doctor, death was a result of head injury sustained by the deceased. According to him, all the injuries were ante-mortem in nature caused by blunt force impact, homicidal in nature. The medical evidence corroborates the evidence of five eyewitnesses including the statements of the injured eyewitnesses. (Para 13)

In the instant case, the High Court clearly came to the conclusion that the entire approach of the trial court cannot be sustained both on the law and the facts. According to the High Court, the conclusion arrived at by the trial court can only be termed as perverse because no court acting reasonably and judiciously can ever take such a view. The High Court observed that this was not a case where two views were possible and the court below has taken the one view. (Paras 14 to 17)

In a case where the trial court has recorded acquittal, the appellate court should be slow in interfering with the judgment of acquittal. On evaluation of the evidence, if two views are possible, the appellate court should not substitute its own view and discard the judgment of the trial court. The court must examine the entire case comprehensively. Even if some inconsistency or discrepancy is discovered, then its impact on the total prosecution version must be carefully examined. (Paras 15 and 12)

The sentence awarded by the High Court is just and appropriate in the facts and circumstances of the case. The High Court awarded imprisonment for a period of four years and to pay a fine of rupees one thousand each, in default, to undergo further imprisonment for a period of one month each. (Para 23)

The High Court has also examined that this was a clear case of common intention in committing the crime. The Court observed that common intention can develop during the course of an occurrence. (Para 18). *Abdul Mannan* v. *State of Assam*, (2010) 3 SCC 381.

Bench Strength **2**. Coram: **Dalveer Bhandari** and *K.S. Radhakrishnan*, JJ. [Date of decision: 18-2-2010]

Sheoram Singh v. State of U.P., (1973) 3 SCC 110: 1973 SCC (Cri) 191; Joginder Singh v. State of Haryana, 1995 SCC (Cri) 178, relied on

(6) Authority that may file/direct filing/ Standing to file appeal against acquittal

[5273] — S. 378 — Application under, filed by a person authorised by notifications as PP would not become incompetent merely because its contents failed to disclose that it was being presented by a PP — *High Court bound to enquire into the status of the person presenting the application and reject it only if it is found as a fact that he did not enjoy the status of PP — Moreover, High Court could take judicial notice of such status after publication of the notification in Official Gazette. State of Rajasthan* v. *Manbhar*, (1981) 2 SCC 525: 1981 SCC (Cri) 531.

Bench Strength **2**. Coram: **A.D. Koshal** and *Baharul Islam*, JJ. [Date of decision: 12-3-1981]

[5274] — S. 378 — Appeal against acquittal — Competence of State Government to file appeal — Expression "save as otherwise provided in sub-section (2)" — How to be construed — State Government's appeal against order of acquittal passed by Special Judge, CBI — Case investigated by Delhi Special Police Establishment (CBI) — Maintainability — *Held, legislature has maintained a mutually exclusive division for appeals from order of acquittal — Competent authority to appeal from order of acquittal in the two types of cases referred to in S. 378(2) is Central Government only — Authority of State Government in relation to such cases is excluded — Thus, State Government not competent to direct its Public Prosecutor to present appeal from judgment passed by Special Judge, CBI — High Court's order on maintainability of appeal set aside — State Government's appeal presented before High Court rejected as not maintainable*

These appeals concerned the period when Lalu Prasad Yadav was the Chief Minister, Bihar and he was prosecuted for acquisition of assets—both movable and immovable—by corrupt or illegal means disproportionate to his known sources of income. A first information report (FIR) was lodged by the CBI against Lalu Prasad Yadav and his wife which was a sequel to direction by the Patna High Court to CBI to enquire and scrutinise all cases of excess drawals and expenditure in the Animal Husbandry Department, Government of Bihar during the period 1977-1978 to 1995-1996. CBI investigated into the matter and a charge-sheet was filed against Lalu Prasad Yadav and Rabri Devi in the Court of the Special Judge, CBI (AHD), Patna.

Charges were framed against Lalu Prasad Yadav under Section 13(1)(*e*) read with Section 13(2) of the Prevention of Corruption Act, 1988 (the PC Act) that during the said period, he acquired assets which were disproportionate to his known sources of income. Rabri Devi was charged under Section 109 of the Penal Code, 1860 (IPC) read with Sections 13(1)(*e*) and 13(2) of the PC Act for abetting her husband in the commission of the offence. The Court of the Special Judge, CBI (AHD), Patna, upon conclusion of trial, acquitted the accused holding that the prosecution had failed to prove the charges levelled against them.

The Central Government after considering the conclusions and findings of the trial court took a conscious and considered decision that no ground whatsoever was made for filing an appeal against the judgment of the trial court. The State Government, however, filed leave to appeal against the order of acquittal before the High Court. The Single Judge of the High Court issued notice to the respondents to show cause as to why leave to appeal be not granted. In response thereto, on behalf of Respondents 1 and 2, a preliminary objection was raised with regard to maintainability of appeal by the State Government. The preliminary objection about the maintainability of appeal raised by Respondents 1 and 2 was supported by Respondent 3 (CBI). The Single Judge heard the arguments on the question of maintainability of appeal and vide his order overruled the preliminary objection and held that the appeal preferred by the State Government was maintainable.

The appellants had thus filed the present appeal.

Allowing the appeals,

Held :

The opening words in Section 378(1)—"save as otherwise provided in sub-section (2)"—are in the nature of exception intended to exclude the classes of cases mentioned in sub-section (2) out of operation of the body of sub-section (1). These words have no other meaning in the context but to qualify the operation of sub-section (1) and take out of its purview the two types of cases referred in sub-section (2), namely, (*i*) the cases in which the offence

(6) Authority that may file/direct filing/Standing to file appeal against acquittal *(contd.)*

has been investigated by the Delhi Special Police Establishment constituted under the 1946 Act, and (*ii*) the cases in which the offence has been investigated by any other agency empowered to make investigation into an offence under any Central Act other than the 1973 Code. By construing Section 378 in a manner that permits appeal from an order of acquittal by the State Government in every case, except the two classes of cases mentioned in sub-section (2), full effect would be given to the exception (clause) articulated in the opening words. (Paras 35 and 25)

As noticed above, the words—"save as otherwise provided in sub-section (2)"—were added in the 1973 Code; Section 417 of the 1898 Code did not have these words. It is a familiar rule of construction that all changes in the wording and phrasing may be presumed to have been deliberate and with the purpose to limit, qualify or enlarge the pre-existing law as the changes of the words employ. Any construction that makes the exception (clause) with which the section opens unnecessary and redundant should be avoided. (Para 36)

If the legislature had intended to give the right of appeal under Section 378(1) to the State Government in all cases of acquittal including the classes of cases referred to in sub-section (2), it would not have been necessary to incorporate the exception (clause) in the opening words. This objective could have been achieved without the use of these words as the erstwhile Section 417 of the 1898 Code enabled the State Government to appeal from all cases of acquittal while in the two types of cases mentioned in sub-section (2) thereof, an appeal from the order of acquittal could be filed under the direction of the Central Government as well. (Para 37)

Parliament in the 1973 Code re-enacted the provision for appeal from an order of acquittal with certain modifications. It changed the language by addition of the words—"save as otherwise provided in sub-section (2)". The alteration in language by addition of these words gives rise to an inference that the legislature made conscious changes in Section 378 (the 1973 Code). The addition of words in Section 378(1) by way of exception (clause) cannot be set at naught by giving the same interpretation which has been given to Section 417 (the 1898 Code). The language used in Section 417 (the 1898 Code) and Section 378 (the 1973 Code) is not in pari materia. (Para 41)

One of the rules of construction of statutes is that the language of the statute should be read as it is and any construction that results in rejection of words has to be avoided; the effort should be made to give meaning to each and every word used by the legislature. However, such rule of construction of statutes is not without exceptions. (Para 43)

The main object and legislative intent by the opening words—"save as otherwise provided in sub-section (2)"—in sub-section (1) of Section 378 being clear i.e. to fetter the general power given to the State Government in filing appeal from the order of acquittal in two types of cases stated in sub-section (2), the use of word "also" in sub-section (2) does not make any sense. The word "also" in sub-section (2), if construed in the manner suggested by the State Government, may result in reducing the opening words in sub-section (1) a nullity and will deny these words their full play. Since exception (clause) in the beginning of sub-section (1) has been expressly added in Section 378 and it is not possible to harmonise the word "also" occurring in sub-section (2) with that, it appears that no sensible meaning can be given to the word "also" and the said word has to be treated as immaterial. To declare "also" enacted in sub-section (2) immaterial or insensible is not very satisfactory, but it is much more unsatisfactory to deprive the words—"save as otherwise provided in sub-section (2)"—of their true and plain meaning. In order that the exception (clause) expressly stated in the opening words of sub-section (1) might be preserved, it is necessary that word "also" in sub-section (2) is treated as immaterial and is held accordingly. The phrase "in any case" in sub-section (1) of Section 378, without hesitation, means "in all cases", but the opening words in the said section put fetters on the State Government in directing appeal to be filed in the two types of cases mentioned in sub-section (2). (Para 45)

A close look at the provisions of the 1946 Act would show that investigation thereunder is a Central investigation and the officers concerned are under the superintendence of the officer appointed by the Central Government. It is the Central Government that has the superintendence over the Delhi Special Police Establishment. What is, therefore, important to notice is that it is the Central Government which is concerned with the investigation of the case by Delhi Special Police Establishment and its ultimate result. It is for this reason that sub-section (2) of Section 378 provides for appeal against acquittal in two types of cases mentioned therein on the direction of the Central Government by its Public Prosecutor. The opening words in sub-section (1), thus, qualify the general power given to the State Government in filing appeal from an order of acquittal so that the Central agency, which is solely and intimately connected with the investigation of cases referred to in sub-section (2), may approach the Central Government for direction to appeal in appropriate cases. (Para 48)

The legislature has maintained a mutually exclusive division in the matter of appeal from an order of acquittal inasmuch as the competent authority to appeal from an order of acquittal in two types of cases referred to in sub-section (2) is the Central Government and the authority of the State Government in relation to such cases has been excluded. As a necessary corollary, it has to be held, that the State Government (of Bihar) is not competent to direct its Public Prosecutor to present appeal from the judgment passed by the Special Judge, CBI. (Para 54)

The reasons given by the High Court are not correct and the impugned order cannot be sustained. The result is, both the appeals are allowed, the order passed by the High Court is set aside and the appeal presented before the High Court of Judicature at Patna is rejected as not maintainable. (Para 56). *Lalu Prasad Yadav* v. *State of Bihar*, (2010) 5 SCC 1.

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and **R.M. Lodha** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 1-4-2010]

Union of India v. Hansoli Devi, (2002) 7 SCC 273, relied on

Eknath Shankarrao Mukkawar v. State of Maharashtra, (1977) 3 SCC 25: 1977 SCC (Cri) 410; Mitchell v. Torup, 1766 Parker 227: 145 ER 764; Becke v. Smith, (1836) 2 M&W 191: 150 ER 724; Attorney General v. Lockwood, (1842) 9 M&W 378: 152 ER 160; Sussex Peerage, (1843-60) All ER Rep 55 (HL): (1844) 11 Cl & Fin 85: 8 ER 1034; Bengal Immunity Co. Ltd. v. State of Bihar, AIR 1955 SC 661: (1955) 2 SCR 603; D.R. Fraser & Co. Ltd. v. Minister of National Revenue, AIR 1949 PC 120; Williams v. Milotin, (1957) 97 CLR 465; Stone v. Yeovil Corpn., (1876) 1 CPD 691; Salmon v. Duncombe, (1886) 11 AC 627 (PC); State of Orissa v. Sudhansu Sekhar Misra, AIR 1968 SC 647, referred to

Khemraj v. State of M.P., (1976) 1 SCC 385: 1976 SCC (Cri) 3; Eknath Shankarrao Mukkawar v. State of Maharashtra, (1977) 3 SCC 25: 1977 SCC (Cri) 410, distinguished on facts

Kirkness v. John Hudson & Co. Ltd., 1955 AC 696: (1955) 2 WLR 1135: (1955) 2 All ER 345 (HL); Aswini Kumar Ghose v. Arabinda Bose, AIR 1952 SC 369; Quebec Railway, Light, Heat & Power Co. Ltd. v. Vandry, AIR 1920 PC 181, cited

G.P. Singh: Principles of Statutory Interpretation; Concise Oxford English Dictionary (10th Edn., Revised); Websters Comprehensive Dictionary (International Edition); Bryan A. Garner: A Dictionary of Modern Legal Usage (1987), referred to

(2007) 4 Pat LJ 228, reversed

[5275] — S. 378 — Scheme of the Act and powers of superintendence over CBI in whom vested — *Held, Central Government has the superintendence over the Delhi Special Police Establishment (CBI) — Therefore, opening words in S. 378(1) CrPC qualify the general power given to State Government in filing appeal from order of acquittal — CBI is solely and intimately connected with investigation of cases referred in S. 378(2) CrPC, who may approach the Central Government for direction to appeal in appropriate cases — 'Delhi Special Police Establishment Act, 1946', Ss. 3 to 5.* (Para 56). *Lalu Prasad Yadav* v. *State of Bihar*, (2010) 5 SCC 1.

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and **R.M. Lodha** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 1-4-2010]

[5276] — Ss. 378 and 386 — Appeal before High Court against acquittal — Presentation of appeal — *Where clear direction to Public Prosecutor to file the appeal exists, High Court cannot make further inquiry as to what prevailed when the matter was under Government's consideration*

Whenever the Government seeks opinion it consults various agencies, namely, the Advocate-General, Public Prosecutor, Legal Remembrancer and others and thereafter the order is passed by the Government through the Secretary-in-charge. In the present case various agencies may have expressed different views but by and large the final decision taken by the Under-Secretary prevailed as a result of which the Public Prosecutor was authorised to file an appeal before the High Court against the acquitted accused. In such a situation, therefore, the High Court cannot go deeper into the matter by making a roving inquiry into what had happened when the matter was under consideration of the Government and how things shaped and hold that the appeal presented by the State was not properly presented as against the acquitted accused. *Mohinder Singh* v. *State of Punjab*, (1985) 1 SCC 342: 1985 SCC (Cri) 87: AIR 1985 SC 383.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision: 20-12-1984]

[5277] — Ss. 378(1) & (4) and 401 — Appeal against acquittal — Standing — *Case instituted upon police report — State alone competent to file appeal against acquittal — Appeal filed by private complainant after obtaining leave of High Court under S. 378(4), held, incompetent — High Court directed to treat the memorandum of appeal filed by the complainant as application for revision and dispose of the same in accordance with law. Jagbir* v. *State of Punjab*, (1998) 6 SCC 629: 1998 SCC (Cri) 1524: AIR 1998 SC 3130.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *S.S.M. Quadri*, JJ. [Date of decision: 3-9-1998]

(6) Authority that may file/direct filing/Standing to file appeal against acquittal *(contd.)*

[5278] — Ss. 378(1) and 374(2) — Appeal against conviction — Some of the accused — Nature and scope of High Court's jurisdiction — Direction by High Court to file appeal against acquittal of remaining accused — *Conviction of some of the accused and acquittal of the remaining accused by Sessions Court — Appeal before High Court by the convicted accused against their conviction — Held, High Court while exercising appellate jurisdiction under S. 374(2) cannot direct the State Government to file an appeal against the accused who were acquitted by trial court even when period of limitation for filing appeal had already expired — It is a matter for the Government to decide*

About 20 persons died by reason of consumption of illicit country liquor. The Sessions Judge on appreciation of evidence convicted the seller and the vendor of the liquor under Section 302 read with Section 120-B IPC and sentenced them to life imprisonment and imposed a fine of Rs 10,000 on each of them but acquitted the other persons who were alleged to have supplied the same. Though the right of appeal against the acquittal was available to the State under Section 378 CrPC but the State did not choose to exercise the same and thereby abandoned that right. The two convicted accused moved the High Court against the order of conviction and sentence. In that appeal the High Court opined that prima facie acquittal of the remaining accused persons was not called for and that the matter required reconsideration. Accordingly, it directed the Advocate-General to file an application for leave to appeal against the acquittal. Being aggrieved the acquitted accused persons preferred appeal before the Supreme Court.

Allowing the appeal,

Held :

The High Court does not have authorisation by and under the existing legal system to exercise any advisory jurisdiction. The Government has its agencies to advise and in the event the Government feels it expedient to obtain the advice from such agency or agencies, it is for the Government to decide and not for the High Court to suggest. The State is otherwise capable of managing its own affairs in a manner conducive to the people at large and the State itself has got its own law officer/officers to advise in its legal affairs: the State Government in the contextual facts did not seek any opinion from the High Court as to the methodology of dealing with the matter. The methodology of filing an appeal lay with the State and the High Court has no authority or jurisdiction to issue such a directive. Direction to file appeal not only stands as an excessive user of jurisdiction but indicates exercise of advisory jurisdiction which the High Court does not possess and is unknown to law. (Paras 11 and 14)

Further, the criminal jurisprudence of the country proceeds on the basis that a person is innocent and the burden rests on the prosecution to prove beyond all reasonable doubts as regards the guilt of the accused persons. It is with this background that the Code of Criminal Procedure has conferred on to the hierarchy of the courts specific powers to deal with the matter as it seems just and proper. The words "just and proper" used herein do not however, mean and imply an arbitrary exercise of power — powers are circumscribed and have to be exercised in accordance with the provisions of law and not dehors the same. Even discretionary powers shall have to be exercised in a manner and in consonance with the known principles of law and not otherwise. The State Government has been directed to file an appeal much beyond the period of limitation: what about the rights of an accused for presentation of appeal beyond the period of limitation. While it is true an appeal barred by limitation does not confer a right but it amounts to extinguishment of a right. In criminal jurisprudence, however, extinguishment of right confers a benefit to an accused and it is in this perspective, it can be said that the High Court would not be within its jurisdiction to take away such a benefit as conferred by reason of extinguishment of right. (Para 13)

In this case, obviously the High Court was swayed by the nature of incident, namely, the deaths of about 20 people by reason of consumption of illicit country liquor. But it is not for the High Court but for the Government to decide as to whether there is any social evil. In the event of a positive reply it is the Government's responsibility to proceed with the matter further and it is not for the High Court to advise. The High Court has not only exceeded its jurisdiction but has transgressed all limits of jurisdiction. This is neither fair nor reasonable and thus cannot be sustained. (Paras 15 and 17)

The High Court would do well to deal with the pending appeal and decide the issue in accordance with the records available before the High Court expeditiously without however being inhibited by any observation of the High Court. (Para 18). *Dwarka Dass* v. *State of Haryana*, (2003) 1 SCC 204: 2003 SCC (Cri) 264: AIR 2003 SC 185.

Bench Strength **2**. Coram: **U.C. Banerjee** and *Y.K. Sabharwal*, JJ. [Date of decision: 13-11-2002]

Mohinder Singh v. State of Punjab, (1985) 1 SCC 342: 1985 SCC (Cri) 87, relied on

(7) Procedure re filing of appeals/ Delay/Laches

[5279] — S. 378 — Filing of appeals by State against acquittal — Procedure to avoid delay — *Liability of Public Prosecutor — Policy of State Government of Gujarat regarding obtaining opinion of DM of the district concerned on the proposal to file the appeal — With a view to ensure filing of appeals within a reasonable time, High Court in a case issuing directions not to route the proposals through DMs concerned henceforth and also attributing the liability for delay in filing appeals to Public Prosecutors and making some strong observations in that connection — Directions modified, observations deleted, being avoidable and proper procedure laid down by Supreme Court*

Although the High Court's anxiety can be appreciated that the appeal should be presented within reasonable time and procedural wrangles should be avoided so that unnecessary and avoidable delay does not take place, some of the observations of the High Court are quite strong and should have been avoided. Therefore, the observations made by the High Court are modified by deleting the directions regarding the liability of the Public Prosecutor in the event of delay attributable to the Public Prosecutor. Such deletion is made by hoping that the Public Prosecutors will be alive to their duties and responsibilities and the State Government will not fail to take appropriate action against the erring Public Prosecutors. In modification of the observations of the High Court, it is also directed that the Public Prosecutor concerned will initiate the proposal for preferring appeal against the order of acquittal and send such proposal directly to the Law Department of the State of Gujarat. But a copy of the proposal should also be sent by the Public Prosecutor to the District Magistrate of the district concerned so that the opinion of the District Magistrate is obtained by the State Government before final decision is taken by the State Government to prefer the proposed appeal. The State Government should issue necessary instruction to the District Magistrates that the District Magistrate concerned would send his views on the proposal as expeditiously as practicable so that the proposed appeal may be filed within the period of limitation. If such opinion of the District Magistrate is not received by the appropriate Legal Department of the State within a reasonable time, the Legal Department concerned will not wait for the response of the District Magistrate on the proposal given by the Public Prosecutor and a final decision will be taken by the State Government even in the absence of opinion of the District Magistrate so that the proposed appeal is not barred by limitation. The State Government should take final decision within such time-frame so that some reasonable time is left with the government counsel to draw up the memorandum of appeal and to present appeal petition before the Court within the period of limitation. The State Government may issue appropriate directions consistent with the guideline indicated in this order. *State of Gujarat* v. *Ratilal Laljibhai Tandol*, (1997) 7 SCC 227: 1997 SCC (Cri) 1046.

Bench Strength **2**. Coram: *G.N. Ray* and *G.B. Pattanaik*, JJ. [Date of decision: 20-8-1997]

[5280] — S. 378 — Period of limitation for filing appeal against acquittal by State/Central Government — *Held, is 90 days as provided under Art. 114(a) of Limitation Act, 1963*

The limitation provided in sub-section (5) is only in respect of applications under sub-section (4) i.e. application for special leave to appeal by a complainant. A complainant may be either a public servant or a private party. If the complainant is a public servant then the period of limitation for an application for special leave is 6 months. If the complainant is a private party then the period of limitation for an application for special leave is 60 days. The periods of 6 months and/or 60 days do not apply to appeals by the State Government [under sub-section (1)] or the Central Government [under sub-section (2)]. Appeals by the State Government or the Central Government continue to be governed by Article 114(*a*) of the Limitation Act. In other words, those appeals must be filed within 90 days from the date of the order appealed from. Needless to state if there is a delay in filing an appeal by the State Government or Central Government it would be open to them to file an application under Section 5 of the Limitation Act for condonation of such delay. That period can be extended if the court is satisfied that there was sufficient cause for not preferring the appeal within the period of 90 days. (Paras 22, 23 and 25). *State (Delhi Admn.)* v. *Dharampal*, (2001) 10 SCC 372: AIR 2001 SC 2924.

Bench Strength **2**. Coram: *K.T. Thomas* and **S.N. Variava**, JJ. [Date of decision: 19-10-2001]

Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87, relied on

[5281] — Ss. 378 and 386 — Delay of 25 days in filing appeal by State due to lack of enough stenographers — Condonability — *High Court not condoning the delay of 25 days and summoning the Chief Secretary and Law Secretary — Held, such*

(7) Procedure re filing of appeals/Delay/Laches *(contd.)*

summoning not justified — Delay condoned — Limitation Act, 1963, Ss. 5 and 3 (Para 13). *State of Gujarat* v. *Turabali Gulamhussain Hirani*, (2007) 14 SCC 94: AIR 2008 SC 86: (2007) 59 AIC 82 (SC): (2007) 4 KLT 656: (2008) 2 Guj LR 1061.

Bench Strength **2**. Coram: *A.K. Mathur* and **Markandey Katju**, JJ. [Date of decision: 4-10-2007]

[5282] — Ss. 378 and 386 — Appeal against acquittal — Delay in filing — *Respondent acquitted by trial court from charge under S. 376 for rape of a girl aged 11 years — Delay of 31 days in filing appeal before High Court by the State — Having regard to medical evidence and testimony of the prosecutrix, held, High Court should have gone into merits of the case in view of rise in crime against women, particularly minor children — Penal Code, 1860, S. 376* (Para 4). *State of Rajasthan* v. *Madan*, (2003) 11 SCC 730.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and *Brijesh Kumar*, JJ. [Date of decision: 6-11-2000]

[5283] — S. 378(3) — Delay of State in filing appeal — Condonation of — "Sufficient cause" for — Requirement of existence of — Approach of court and necessary considerations while dealing with such a case — *Held, expression sufficient cause should be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay — Having regard to considerable delay of procedural red tape in the decision-making process of the Government, certain amount of latitude is permissible — The State is an impersonal machinery working through its officers or servants — Hence, it cannot be put on the same footing as an individual — Public interest suffers if appeals by the State are lost because of such default — Court to decide the matters on merits unless the case is hopelessly without merit — State should constitute legal cells to examine whether cases involve legal principles for decision by court or require adjustment at governmental level — Officer concerned should be made personally responsible for the delay in filing the appeal — On facts, delay of 57 days in filing the application for grant of leave made in terms of S. 378(3) CrPC, held, deserved condonation — Limitation Act, 1963, S. 5*

An application for grant of leave to appeal was made in terms of Section 378(3) CrPC, 1973. As there was delay in making the said application, an application for condonation of delay was filed. The impugned judgment was pronounced on 18-12-2002. The copy of the order was received by the department concerned on 15-1-2003. Without wasting any time on the same date the relevant documents and papers were put up for necessary action before the Deputy Inspector General of Police (Headquarters). On the next day, the said Deputy Inspector General considered the matter and forwarded the file for consideration to the Deputy Inspector General of Police (M&P). Unfortunately the whole file along with note-sheet was found missing from the office and could not be traced in spite of best efforts made by the department. Finally it was traced on 15-3-2003 and the file was put up for necessary action by the Additional Director General of Police (Headquarters). The said officer opined that an appeal was to be filed on 26-3-2003, and finally the appeal was filed after appointing a Special Public Prosecutor. When it was noticed that no appeal had been filed, the Secretary to the Department of Law and Justice of the State Government concerned got in touch with the Additional Advocate General of the High Court concerned regarding the filing of the appeal and in fact the appeal was filed on 14-5-2003. In the application for condonation of delay it was clearly noted that when directions were given to reconstruct the file, the missing file suddenly appeared in the office of the Director General of Police.

Thus, on the basis of the said facts, it was submitted in support of the application for condonation of delay that the authorities were acting bona fide. Various decisions of the Supreme Court were pressed into service to seek condonation of delay. The High Court, however, refused to condone the delay of 57 days on the ground that it was the duty of the litigant to file an appeal before the expiry of the limitation period. Merely because the Additional Advocate General did not file an appeal in spite of the instructions issued to him, that did not constitute sufficient cause and further the fact that the records were purportedly missing was not a valid ground. It held that merely asking the Additional Advocate General to file an appeal was not sufficient and the department should have pursued the matter and should have made enquiries as to whether the appeal had in fact, been filed or not.

Allowing the appeal and setting aside the impugned order of the High Court,

Held :

The government decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay — intentional or otherwise — is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal, needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while the State is an impersonal machinery working through its officers or servants. (Para 15)

Considering the legal principles, the inevitable conclusion is that the delay of 57 days deserved condonation. Therefore, the order of the High Court refusing to condone the delay is set aside. (Para 17). *State of Nagaland* v. *Lipok Ao*, (2005) 3 SCC 752: 2005 SCC (Cri) 906: AIR 2005 SC 2191: (2005) 183 ELT 337: (2005) 2 KLT 547.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 1-4-2005]

[5284] — S. 378(3) — Appeal against acquittal — Limitation — *Not necessary to first obtain leave of the High Court and then file the appeal — A composite application can be made under S. 378(3) — Limitation Act, 1963, Art. 114*

Some of the respondents were acquitted under Ss. 304, Part II, 323, 324, Indian Penal Code, the case not being instituted upon a complaint. The judgment of the trial Court was delivered on March 30, 1974 and on April 1, 1974 the new Criminal Procedure Code came into force. The State of Rajasthan preferred a petition for leave to appeal under S. 378(3) of the Code of Criminal Procedure, 1973 on June 27, 1974, which was within the period of limitation prescribed under Art. 114*(b)* of the Limitation Act, 1963. It described it as a petition for leave to appeal under S. 378(3) of the Code of Criminal Procedure, 1973, with a prayer "to accept this petition to file an appeal in the present case...". Although the application was described as one under S. 378(3) of the Code of Criminal Procedure, all the facts and other requisites for a memorandum of appeal, including the grounds on which the appeal was founded, were given in as great a detail as was necessary. The High Court after hearing the State granted leave to appeal on August 16, 1974. The State thereafter filed again a petition of appeal on September 10, 1974 which was beyond the period of limitation of ninety days under Art. 114*(a)*. The High Court therefore dismissed the appeal as time-barred. No application for condonation of delay had been filed.

Held :

Under the law it will be perfectly in order if a composite application is made giving the necessary facts and circumstances of the case along with the grounds which may be urged in the appeal with a prayer for leave to entertain the appeal. It is not necessary, as a matter of law, that an application for leave to entertain the appeal should be lodged first and only after grant of leave by the High Court an appeal may be preferred against the order of acquittal. The possibility that the High Court may always in such cases condone the delay on application filed before it does not, in law, solve the legal issue. The right conferred by S. 378(1), Criminal Procedure Code, upon the State to prefer an appeal against acquittal will be jeopardised if such a procedure is adopted, for in certain cases it may so happen that the High Court may refuse to exercise its discretion to condone the delay.

It is, therefore, not necessary to wait until the grant of leave by the High Court to present a memorandum of appeal against acquittal at the instance of the State. Thus, appeal can be filed by the State within ninety days from the date of the order of acquittal and a prayer may be included in that appeal for entertaining the appeal under sub-section (3) of S. 378, Criminal Procedure Code. If the leave sought for is not granted by the High Court, the appeal is not entertained and stands dismissed.

(7) Procedure re filing of appeals/Delay/Laches *(contd.)*

In the present case the application for leave to appeal, which was made by the State in this case, is equivalent to a memorandum of appeal under S. 378(1) read with sub-section (3) of that section of the Code of Criminal Procedure, 1973. The fact that the application mentioned S. 378(3) is not decisive of the true character of the application which to all intents and purposes was a memorandum of appeal. There was, therefore, no need for presentation of a second petition of appeal nor for an application for condonation of delay in this case. The petition of appeal was filed within time and the High Court committed an error of law in dismissing the same as time-barred. *State of Rajasthan* v. *Ramdeen*, (1977) 2 SCC 630: 1977 SCC (Cri) 393: AIR 1977 SC 1328: 1977 Cri LJ 997.

Bench Strength **3**. Coram: *Y.V. Chandrachud*, **P.K. Goswami** and *P.N. Shinghal*, JJ. [Date of decision: 4-3-1977]

[5285] — Ss. 378(4) and 468 — Delay if bar to appeal against acquittal — Order of acquittal passed by the trial court in a complaint case under Ss. 420 and 498-A IPC — Refusal to grant leave on ground that the complaint was belated by two years — Held, improper — *Case remanded to the High Court with a direction to grant leave and dispose of the appeal on merits — Penal Code, 1860, Ss. 420 and 498-A*

When Section 498-A of the Indian Penal Code is brought to use in the case of cruelty on women, the law of limitation is not that rigid so as to non-suit the aggrieved wife. A fair dose of liberalities is warranted, so that the law as an instrument comes in aid of the aggrieved due to gender inequalities. *Vijaya* v. *Laxmanrao*, (1998) 8 SCC 415: 1998 SCC (Cri) 1543.

Bench Strength **2**. Coram: *M.M. Punchhi* and *S.P. Kurdukar*, JJ. [Date of decision: 19-8-1997]

(8) Leave to appeal — S. 378(3)

See also Section 378 '(9) Special leave to appeal in complaint cases — S. 378(4)', below

[5286] — S. 378(3) — State's appeal against acquittal — Prayer for grant of leave under sub-section (3) may be made in the petition of appeal filed under S. 382 itself or separately — *In former case, the appeal must be dealt with by a Bench of two Judges and not by a Single Judge — M.P. High Court Rules, R. 1(q)(ii), Chapter I, Part I*

The State Government of M.P. having decided to prefer an appeal under S. 378(1), CrPC, filed application for 'leave' to appeal under S. 378(3) setting out therein the grounds of appeal. The application was listed before a Single Judge of the High Court as per R. 1(*q*), Chapter I, Part I of the M.P. High Court Rules and the Single Judge refused to grant the leave. The State then made an application for grant of certificate under Art. 134(1)(*c*) of the Constitution. The application was heard by a Division Bench. The State contended that the leave application under sub-section (3) of S. 378 must be treated as a part of the appeal preferred by the State Government under sub-section (1) thereof, and therefore, should have been placed before a Bench of two Judges under R. 1(*q*)(ii), Chapter I, Part I of the aforesaid Rules and consequently the order of the Single Judge rejecting the application for grant of leave under sub-section (3) of S. 378 of the Code was a nullity. The Division Bench rejected the contention of the State.

Allowing the appeal,

Held:

The Code by enacting sub-section (3) of S. 378 brought about a change in that there is no longer an unrestricted right of appeal against the orders of acquittal passed in such cases. However, there is a difference in the procedure regulating entertainment of State appeals against acquittals under sub-section (1) or sub-section (2) of S. 378 and appeals against acquittals filed by a complainant under sub-section (3) of S. 378. The State Government or the Central Government may, while preferring an appeal against acquittal under sub-section (1) or sub-section (2) of S. 378, incorporate a prayer in the memorandum of appeal for grant of leave under sub-section (3) thereof, or make a separate application for grant of leave under sub-section (3) of S. 378, but the making of such an application is not a condition precedent for a State appeal.

Therefore, in the present case the Single Judge had no competence to entertain, hear or dispose of the question of grant of leave under sub-section (3) of S. 378, as it had virtually entailed dismissal of the appeal preferred by the State Government under sub-section (1) thereof. The matter should have been dealt with by a Bench of two Judges in terms of R. 1(*q*)(ii), Chapter I, Part I, of the Madhya Pradesh High Court Rules. *State of M.P.* v. *Devadas*, (1982) 1 SCC 552: 1982 SCC (Cri) 275: AIR 1982 SC 800: 1982 Cri LJ 614: 1982 MLJ (Cri) 341.

Bench Strength **3**. Coram: *A.D. Koshal*, **A.P. Sen** and *V. Balakrishna Eradi*, JJ. [Date of decision: 29-1-1982]

[5287] — S. 378(3) — Leave to appeal against acquittal — Relevant considerations for grant or refusal of leave to appeal — *Held, appellate powers of High Court are sufficiently broad — Questions of law as well as of facts are open to determination by appellate court — Evidence can also be reappreciated — High Court should not therefore have rejected application for leave to appeal on the ground that trial court's findings were not "perverse" — On facts held, leave to appeal ought to have been granted*

The complainant filed a written complaint with the police that the respondent had inflicted knife injuries on him whereas the respondent's version was that the complainant was flirting with the respondent's wife at the railway station, for which the complainant was beaten by his wife and other persons at the railway station. On the basis of a complaint, a police case was registered against the respondent. Trial was held against him but the trial court acquitted the respondent on the ground that prosecution failed to establish its case beyond reasonable doubt. The complainant filed revision petition and the State filed an application for leave to appeal in the High Court but the High Court dismissed both the petition as well as the application. Application for leave to appeal was dismissed on the ground that judgment of trial court could not be considered as perverse and therefore no interference was called for. The State challenged this order in the Supreme Court.

Allowing the appeal,

Held :

The case was instituted on the basis of first information report. It was thus a police case. The de facto complainant, therefore, has no right to file an appeal. He preferred revision. Revisional jurisdiction can however be exercised sparingly and only in exceptional cases. A Revisional Court cannot convert itself into a regular court of appeal. Powers of Revisional Court are limited. Rejection of revision application cannot affect powers of the State in invoking statutory remedy available under Section 378 CrPC. (Paras 16 and 17)

In terms of Section 378(3) CrPC, appeal can be registered and heard on merits by High Court only after leave has been granted. In deciding whether or not leave should be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it cannot also be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by trial court could not be said to be "perverse" and, hence, no leave should be granted. (Paras 19 to 21)

The principle of right to first appeal lies in the doctrine of human fallibility that "Men are fallible" and "Judges are also men". It is keeping in view the said object that the principles has to be understood and applied. (Para 22)

Every crime is considered as an offence against society as a whole and not only against an individual even though it is an individual who is the ultimate sufferer. It is therefore the duty of the State to take appropriate steps when an offence has been committed. This should not however be understood as an inviolable rule that no leave should be refused by the appellate court against an order of acquittal. In such cases, the appellate court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial court should not be disturbed. Where there is application of mind by the appellate court and reasons (may be in brief) in support of such view are recorded, the order of the court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and reappreciation, review or reconsideration of evidence, the appellate court must grant leave as sought and decide the appeal on merits. In the present case, the High Court did neither. The High Court expressed an opinion that the case did not require grant of leave but it failed to record reasons for refusal of such leave. (Paras 23 and 24)

The High Court should not have refused grant of leave by passing a brief order. Moreover, the High Court observed that judgment of the trial court could not be said to be "perverse". So far as powers of the appellate court in appeal against acquittal are concerned, no restrictions have been imposed by CrPC on such powers while dealing with an order against acquittal. The High Court has full power to reappreciate, review and reweigh at large the evidence on which the order of acquittal is founded, and to reach its own conclusion on such evidence. Both questions of fact and of law are open to determination by the appellate court. (Paras 31 and 32)

(8) Leave to appeal — S. 378(3) *(contd.)*

In a case of acquittal, there is a double presumption in favour of the respondent-accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced by the trial court (and certainly not weakened). Nonetheless, it is not correct to say that unless the appellate court in an appeal against acquittal under challenge is convinced that the finding of acquittal recorded by the trial court is "*perverse*", it cannot interfere. If the appellate court on reappreciation of evidence and keeping in view well-established principles, comes to a contrary conclusion and records conviction, such conviction cannot be said to be contrary to law. (Para 33)

The High Court was not right in rejecting the application for leave on the ground that judgment of the trial court could not be termed as "*perverse*". If, on the basis of entire evidence on record, the order of acquittal is illegal, unwarranted or contrary to law, such an order can be set aside by an appellate court. Various expressions, such as, "substantial and compelling reasons", "very strong circumstances", "distorted conclusions", "glaring mistakes", "judgment being perverse", etc. are more in the nature of "flourishes of language" than restricting the ambit and scope of powers of the appellate court. They do not curtail the authority of the appellate court in interfering with an order of acquittal recorded by the trial court. The judgment of the High Court falls short of the test laid down by the Supreme Court in various cases referred to in *Chandrappa case*, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325. The order of the High Court, therefore, cannot stand and must be set aside. (Para 35). *State of Maharashtra* v. *Sujay Mangesh Poyarekar*, (2008) 9 SCC 475: (2008) 3 SCC (Cri) 793: (2008) 70 AIC 15 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 19-9-2008]

K. Chinnaswamy Reddy v. State of A.P., AIR 1962 SC 1788: (1963) 3 SCR 412; Sita Ram v. State of U.P., (1979) 2 SCC 656: 1979 SCC (Cri) 576, relied on

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, followed

[5288] — S. 378(3) — Dismissal of leave to appeal on grounds of delay — Effect — *On facts held, when High Court declined to grant leave it had in effect refused to entertain the appeal against order of trial court acquitting the appellant, thus making it final — What was before the High Court was the appeal itself which considered the application for condonation of delay*

It is undoubtedly true that sub-section (3) of Section 378 CrPC specifically provides that the appeal under sub-sections (1) and (2) cannot be entertained except with the leave of the High Court and, therefore, an application for leave in such appeal filed by the State Government is a must. The limitation for filing the appeal is 90 days from the date of the order while the same article provides for 30 days of limitation from the date of grant of special leave. Therefore, what was before the High Court was the appeal itself and the petitioner prayed the condonation of delay of 801 days in filing the appeal against acquittal. When the High Court declined to grant that permission, it, in effect, refused to entertain the appeal against the order of the trial court, thus making it final. (Para 22). *K. Ramachandran* v. *V.N. Rajan*, (2009) 14 SCC 569: (2009) 82 AIC 119 (SC): 2009 Cri LJ 4413.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *R.M. Lodha*, JJ. [Date of decision: 7-7-2009]

[5289] — Ss. 378 and 401 — Refusal of leave to appeal — Effect on pending revision — Period of limitation for filing appeal against acquittal — *Submission by complainant that the High Court had dismissed the application for condonation of delay and had not considered appeal against acquittal on merits, hence, the Revisional Court was justified in considering the matter on merits and directing reconsideration of the same on basis of evidence already on record — Held, limitation aspect cannot be such as to be apart or distinct from the merits of the impugned judgment — It cannot be said that the appeal was only disposed of on the question of limitation because the result would, after all, be the same i.e. the impugned judgment gaining finality — Limitation Act, 1963, Art. 114* (Para 37). *K. Ramachandran* v. *V.N. Rajan*, (2009) 14 SCC 569: (2009) 82 AIC 119 (SC): 2009 Cri LJ 4413.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *R.M. Lodha*, JJ. [Date of decision: 7-7-2009]

[5290] — Ss. 378(3) and (1) — Applicability of S. 50 NDPS Act — *Trial court acquitting respondent-accused only on ground of non-compliance with requirements of S. 50 — High Court dismissing appellant State's application for grant of leave to file appeal — Sustainability — Appellant State contending that since recovery was made from a polythene bag, therefore, S. 50 had no application — Tenability — In present case, held, High Court did not consider the true effect of S. 50 — Hence, leave to appeal granted to appellant State to file* *appeal and High Court directed to hear the appeal on merits — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 50, 8 and 18* (Paras 4 to 7). *State of Rajasthan* v. *Ratan Lal*, (2009) 11 SCC 464: (2009) 3 SCC (Cri) 1443: (2009) 79 AIC 177 (SC).

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *D.K. Jain* and *Dr. M.K. Sharma*, JJ. [Date of decision: 31-3-2009]

State of H.P. v. Pawan Kumar, (2005) 4 SCC 350: 2005 SCC (Cri) 943, relied on

G.P. Singh: Principles of Statutory Interpretation; Craies on Statute Law, 7th Edn., pp. 83-85, cited

[5291] — Ss. 378(3) and (1) — Leave to appeal against acquittal — Non-application of mind — *Respondent-accused was acquitted of charges under Ss. 7, 13(1)(d) and (2) of PC Act, 1988 — High Court by the impugned order dismissed the application under S. 378(1) CrPC without giving any reasons — Held, High Court ought to have set forth its reasons, howsoever brief, indicative of an application of its mind, more so when its order is amenable to challenge*

In the absence of reasons, the dismissal of the application under Section 378(1) CrPC by the High Court is not sustainable. The High Court in its order, ought to have set forth its reasons, howsoever brief, indicative of an application of its mind; all the more when its order is amenable to further avenue of challenge. The High Court seems to have been completely oblivious to the fact that by such refusal, a close scrutiny of the order of acquittal, by the appellate forum, has been lost once and for all. (Paras 10 and 9). *State of Rajasthan* v. *Rajendra Prasad Jain*, (2008) 15 SCC 711: (2009) 3 SCC (Cri) 1163: AIR 2008 SC 1589: 2008 Cri LJ 1935.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 22-2-2008]

State of U.P. v. Battan, (2001) 10 SCC 607: 2003 SCC (Cri) 639; State of Orissa v. Dhaniram Luhar, (2004) 5 SCC 568: (2008) 2 SCC (Cri) 49, relied on

[5292] — Ss. 378 and 386 — Leave to appeal — Order disposing of application for — Proper mode of disposal for — Need for speaking order — *In the instant case High Court by a cryptic order dismissing the application for leave to appeal against an acquittal judgment without giving proper reasons and without showing due application of mind — Held, in such cases, though the order need not be as elaborate as a full-fledged judgment, but it is expected that the High Court should pass a speaking order showing due application of mind. State of Rajasthan* v. *Chanda*, (2007) 11 SCC 402.

Bench Strength **2**. Coram: *A.K. Mathur* and *Markandey Katju*, JJ. [Date of decision: 24-9-2007]

[5293] — S. 378(3) — Appeal against acquittal — Leave to appeal declined — Reasoned order/speaking order — Necessity — *High Court refusing to grant leave to appeal without indicating any reasons therefor — Impugned order set aside and High Court directed to grant leave to appeal — Need for passing a reasoned order emphasised and restated*

The trial court was required to carefully appraise the entire evidence and then come to a conclusion regarding applicability of a particular provision. If the trial court was at lapse in this regard the High Court was obliged to undertake such an exercise by entertaining the appeal. The High Court ought to have in such circumstances granted leave and thereafter as a first court of appeal, analysed entire evidence on the record independently and returned its findings objectively as regards guilt or otherwise of the accused and applicability of a particular provision. It has failed to do so. The questions involved were not trivial. The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal, and seems to have been completely oblivious to the fact that by such refusal, a close scrutiny of the order of acquittal, by the appellate forum, has been lost once and for all. The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired. Reasons introduce clarity in an order. On the plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. (Para 7). *State of Haryana* v. *Surjit Singh*, (2008) 17 SCC 196: AIR 2009 SC 1480: (2008) 72 AIC 100 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 28-11-2008]

State of U.P. v. Battan, (2001) 10 SCC 607: 2003 SCC (Cri) 639; State of H.P. v. Sardara Singh, (2008) 9 SCC 392: (2008) 3 SCC (Cri) 780; State of Punjab v. Bhag Singh, (2004) 1 SCC 547: 2004 SCC (Cri) 341, relied on

[5294] — S. 378(3) — Application filed by appellant State for grant of leave to appeal dismissed by High Court by a practically unreasoned order — *Impugned order therefore set aside and matter remitted to High Court for fresh disposal* (Paras 3, 6 and 7). *State of Rajasthan* v. *Rohitas*, (2008) 15 SCC 491: AIR 2008 SC 1524: (2008) 65 AIC 181 (SC): 2008 Cri LJ 1925.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 22-2-2008]

State of Orissa v. Dhaniram Luhar, (2004) 5 SCC 568: (2008) 2 SCC (Cri) 49, relied on

(8) Leave to appeal — S. 378(3) *(contd.)*

[5295] — Ss. 378(3) and (4) — Leave to appeal in case of acquittal — Application for — Rejected by High Court by a cryptic unreasoned order — Held, improper — *Further held on facts, in the instant case High Court ought to have granted such leave — High Court directed to hear appeal on merits — Negotiable Instruments Act, 1881, S. 138* (Paras 1, 3 and 5 to 8). *Mohindra Hire Purchase* v. *Jarnail Singh*, (2008) 17 SCC 9: (2009) 74 AIC 87 (SC): 2009 Cri LJ 1161.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 1-12-2008]

State of Punjab v. Bhag Singh, (2004) 1 SCC 547: 2004 SCC (Cri) 341, relied on

[5296] — Ss. 378(3) & (4) — Grant of leave to appeal under — Discretion of court — How to be exercised — Non-arbitrary exercise of judicial power held, imperative — *Further held, arbitrariness has always been anathema of judicial exercise of power*

Any judicial power has to be judiciously exercised and the mere fact that discretion is vested with the court/forum to exercise the same either way does not constitute any licence to exercise it at whims or fancies and arbitrarily. Arbitrariness has been always held to be the anathema of judicial exercise of any power, all the more so when such orders are amenable to challenge further before higher forums. (Para 3). *State of Rajasthan* v. *Sohan Lal*, (2004) 5 SCC 573.

Bench Strength **2**. Coram: *Doraiswamy Raju* and *Arijit Pasayat*, JJ. [Date of decision: 20-4-2004]

[5297] — Ss. 378(3) & (4) — Leave to appeal — Purpose of provision for prior obtaining of — *Held, is to ensure that no frivolous appeals are filed against acquittal, as a matter of course — Emphasised that this did not obviate the need for giving of reasons in refusing such leave — Especially since orders of High Court in this regard are amenable for further challenge before Supreme Court*

The provision for seeking leave to appeal is in order to ensure that no frivolous appeals are filed against orders of acquittal, as a matter of course; but that does not enable the High Court to mechanically refuse to grant leave by mere cryptic or readymade observations, as in this case ("the court does not find any error"), with no further indication on the face of it, of any application of mind whatsoever. All the more so when the orders of the High Court are amenable for further challenge before Supreme Court. Such ritualistic observations and summary disposal which has the effect of, at times, and as in this case, foreclosing a statutory right of appeal, though a regulated one, cannot be said to be a proper and judicious manner of disposing the claim before courts. (Para 3). *State of Rajasthan* v. *Sohan Lal*, (2004) 5 SCC 573.

Bench Strength **2**. Coram: *Doraiswamy Raju* and *Arijit Pasayat*, JJ. [Date of decision: 20-4-2004]

[5298] — Ss. 378(3) & (4) and 374 — Leave to appeal under S. 378 — When to be granted — *Distinction, if any, as regards extent and depth of consideration of appeal on basis of whether it was against acquittal or conviction, if envisaged — Held, the only distinction envisaged is that while choosing to interfere in an appeal against acquittal High Court should find an absolute assurance of guilt on basis of evidence on record and should not interfere merely when a different view is possible*

The Supreme Court has repeatedly laid down that as the first appellate court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well, to scan through and if need be reappreciate the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, in the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal. (Para 3). *State of Rajasthan* v. *Sohan Lal*, (2004) 5 SCC 573.

Bench Strength **2**. Coram: *Doraiswamy Raju* and *Arijit Pasayat*, JJ. [Date of decision: 20-4-2004]

[5299] — S. 378(3) — Leave to appeal against acquittal — Need for reasons to be given in determination of — Duty to give reasons/Recording of reasons/Speaking order — Reasons, held, are the hallmark of a judgment and exercise of judicial power — *Need for giving of reasons explained — Need all the more pronounced when refusal of leave to appeal has the effect of foreclosing scope for scrutiny of judgment of trial court at the hands of first appellate court*

The hallmark of a judgment/order and exercise of judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. (Para 3)

The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know of the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind. All the more so, when refusal of leave to appeal has the effect of foreclosing once and for all a scope for scrutiny of the judgment of the trial court even at the instance and hands of the first appellate court. (Para 3)

The Supreme Court in *Dhaniram Luhar case*, (2004) 5 SCC 568, while reiterating the view expressed in the earlier cases for the past two decades emphasised the necessity, duty and obligation of the High Court to record reasons in disposing of appeals arising under Section 378 CrPC, 1973. The fact that the entertaining of an appeal at the instance of the State against an order of acquittal for an effective consideration of the same on merits is made subject to the preliminary exercise of obtaining of leave to appeal from the High Court, is no reason to consider it as an appeal of any inferior quality or grade, when it has been specifically and statutorily provided for, or sufficient to obviate and dispense with the obvious necessity to record reasons. The need for recording reasons for the conclusion arrived at by the High Court under Section 378 has nothing to do with the fact that the appeal envisaged under Section 378 CrPC is conditioned upon the seeking for and obtaining of leave from the court. (Para 3). *State of Rajasthan* v. *Sohan Lal*, (2004) 5 SCC 573.

Bench Strength **2**. Coram: *Doraiswamy Raju* and *Arijit Pasayat*, JJ. [Date of decision: 20-4-2004]

State of Orissa v. Dhaniram Luhar, (2004) 5 SCC 568, relied on

[5300] — S. 378(3) — Leave to appeal against acquittal — Reasons for decision — *Cardinality of recording of, especially since orders of High Court in this regard are amenable to further challenge before Supreme Court — Rationale for giving of reasons — On facts held, High Court remiss in not giving reasons for refusing leave to appeal, especially in not following rulings of Supreme Court in this regard, which had recognised such need as being imperative*

Reasons introduce clarity in an order. Reason is the heartbeat of every conclusion, and without the same it becomes lifeless. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system: reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. (Paras 6 to 8)

The requirement of indicating reasons in cases involving the grant of leave to appeal against acquittal under Section 378(3) CrPC, 1973 has been judicially recognised as imperative. (Para 6). *State of Orissa* v. *Dhaniram Luhar*, (2004) 5 SCC 568: AIR 2004 SC 1794: 2004 Cri LJ 1385.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 4-2-2004]

Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212; Breen v. Amalgamated Engg. Union, (1971) 1 All ER 1148: (1971) 2 QB 175: (1971) 2 WLR 742 (CA); Alexander Machinery (Dudley) Ltd. v. Crabtree, 1974 ICR 120 (NIRC); State of Punjab v. Bhag Singh, (2004) 1 SCC 547, relied on

[5301] — S. 378(3) — Reasoned order — Absence of reasons in the order dismissing application for grant of leave to file appeal against acquittal — Unsustainability — *Reasoning in* Bhag Singh case, *(2004) 1 SCC 547 applied and appeal allowed. State of H.P.* v. *Shish Ram*, (2008) 11 SCC 311: (2008) 69 AIC 178 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 15-7-2008]

State of Punjab v. Bhag Singh, (2004) 1 SCC 547: 2004 SCC (Cri) 341, applied

[5302] — S. 378(3) — Refusal by High Court to grant leave to appeal against acquittal of respondent-accused without assigning reasons — Impropriety — *Counsel for appellant State contending that it was imperative for the High Court to indicate reasons as to why prayer for grant of leave was found untenable — In absence of any such reasons, the order of High Court, contended, was indefensible — Relying on* Bhag Singh case, *(2004) 1 SCC 547, held, impugned judgment of High Court is unsustainable and is set aside — Leave granted to the State to file appeal — High Court directed to entertain the appeal and after formal notice to the respondents, to hear and dispose it of in accordance with law, uninfluenced by any observation made in the present appeal — Penal Code, 1860, Ss. 436, 447, 427, 147 and 506* (Paras 2, 6 and 8). *State of H.P.* v. *Paras Ram*, (2008) 3 SCC 655: (2008) 2 SCC (Cri) 117: AIR 2008 SC 930: (2008) 62 AIC 47 (SC): 2008 Cri LJ 1026: (2008) 105 Cut LT 392.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Aftab Alam*, JJ. [Date of decision: 3-1-2008]

State of Punjab v. Bhag Singh, (2004) 1 SCC 547: 2004 SCC (Cri) 341, followed

(8) Leave to appeal — S. 378(3) *(contd.)*

[5303] — S. 378(3) — Appeal in case of acquittal — High Court refusing to grant leave to appeal against acquittal by an unreasoned order — Legality — *Reiterating the necessity of passing a reasoned order, impugned order set aside — Leave granted and High Court directed to entertain appeal and dispose of it in accordance with law* (Paras 2 and 7 to 9). *Goyal Enterprises* v. *State of Jharkhand*, (2008) 13 SCC 570: AIR 2008 SC 1510: 2008 Cri LJ 1923.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *J.M. Panchal*, JJ. [Date of decision: 25-2-2008]

State of U.P. v. Battan, (2001) 10 SCC 607: 2003 SCC (Cri) 639; State of Punjab v. Bhag Singh, (2004) 1 SCC 547: 2004 SCC (Cri) 341, relied on

[5304] — S. 378(4) — Summary dismissal of application by High Court for grant of leave under, held, not justified where brutal political murder committed by persons belonging to ruling political party — *On facts, leave must be granted under S. 378(4). Hareram Satpathy* v. *Premlal Suna*, 1984 Supp SCC 685: 1985 SCC (Cri) 143.

Bench Strength **2**. Coram: *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 2-12-1983]

[5305] — Ss. 378(1) and (3) — Petition for leave to appeal against acquittal filed by State under, dismissed in limine by High Court — *In absence of examination of reasons by High Court on the basis of which trial court discarded prosecution evidence and acquitted all accused persons charged under S. 396, Indian Penal Code, case remitted to High Court for disposal after hearing parties and giving reasons. Jawahar Lal Singh* v. *Naresh Singh*, (1987) 2 SCC 222: 1987 SCC (Cri) 347: AIR 1987 SC 724: 1987 Cri LJ 698.

Bench Strength **2**. Coram: **G.L. Oza** and *M.M. Dutt*, JJ. [Date of decision: 10-2-1987]

Followed *in State of Uttaranchal v. Sunil Kumar Singh Negi, (2008) 11 SCC 205*

[5306] — Ss. 378(1) & (3) — Refusal by High Court to grant leave to file appeal against acquittal — *Evidence of PWs to the effect that the accused caused the death of N — High Court passing the impugned order principally on the basis that there was no trace of the "chilli powder", alleged to have been used for the commission of the offence, either on the dead body or near the place of the incident — Question whether the aspects relating to the discrepancies pointed by the trial court in the evidence of PWs were appropriately explained in the evidence or were of such weight as to overwhelm the other evidence when it did point out that the accused caused the death of N because of a land dispute between them — On facts, held, present one was not a case in which the High Court should have refused to grant leave to appeal — Restoring the appeal, matter remitted to High Court for disposal afresh. Public Prosecutor* v. *Mahadi Thirupathi Reddy*, (2002) 7 SCC 36: 2002 SCC (Cri) 1566: AIR 2002 SC 3128.

Bench Strength **2**. Coram: **S. Rajendra Babu** and *P. Venkatarama Reddi*, JJ. [Date of decision: 4-9-2002]

[5307] — S. 378(3) — Appeal against acquittal — Application for grant of leave — *Casual or summary disposal of, held, not proper — High Court to indicate reasons when it refuses to grant leave* (Para 27). *Reema Aggarwal* v. *Anupam*, (2004) 3 SCC 199: 2004 SCC (Cri) 699: AIR 2004 SC 1418: 2004 Cri LJ 892: (2004) 2 KLT 822.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 8-1-2004]

State of Punjab v. Bhag Singh, (2004) 1 SCC 547, relied on

[5308] — S. 378(3) — Appeal against acquittal — Leave to appeal — *In limine dismissal of application by High Court, held, not justified when trial court's conclusion was not based on proper appraisal of entire evidence on the question of application of Ss. 302 and 149 IPC to the facts of the case — High Court should have granted leave and on reappreciation of evidence on record rendered its own findings — It should have at least given reasons for refusing to grant the leave, more so when its order is open to further challenge — Penal Code, 1860 — Ss. 302/149*

The accused persons were alleged to have formed an unlawful assembly, trespassed into the house of the deceased and inflicted injuries on him and his son by deadly weapons as a result of which the deceased died. The trial court held that some of the accused persons did not inflict any injury and assault made by accused *R* was an individual act for which he must be convicted under Section 304 Part II IPC and the other two accused persons were to be convicted under Sections 452 and 323 r/w Section 34 IPC. Other accused persons were acquitted of the charges. The State filed an application under Section 378(3) CrPC taking the stand that for attracting Section 149 IPC it was not necessary to attribute any particular overt act and that merely because accused *R* had assaulted with the blunt side of the gandasa, it cannot mean that he did not have the requisite intention to commit the offence of murder. The trial court having noticed that the blow was given with such great force that it caused multiple fractures and laceration of the brain, the alteration of the conviction from Section 302 IPC to Section 304 Part II was not correct. The High Court dismissed the State's application under Section 378(3) with the following words:

"We find no good ground to interfere with the reasoned judgment of the trial court. Dismissed."

Before the Supreme Court the State questioned the legality of the order of the High Court.

Allowing the appeal,

Held :

The trial court was required to carefully appraise the entire evidence and then come to a conclusion. If the trial court was at lapse in this regard the High Court was obliged to undertake such an exercise by entertaining the appeal. The trial court on the facts of this case did not perform its duties, as was enjoined on it by law. The High Court ought to have in such circumstances granted leave and thereafter as a first court of appeal, reappreciated the entire evidence on the record independently and returned its findings objectively as regards guilt or otherwise of the accused. It has failed to do so. The questions involved were not trivial. The question regarding application of Sections 302 and 149 IPC as raised does require consideration, keeping in view the evidence adduced and conclusions of the trial court. The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal, and seems to have been completely oblivious to the fact that by such refusal, a close scrutiny of the order of acquittal, by the appellate forum, has been lost once and for all. The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order, indicative of an application of its mind; all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. (Para 9). *State of Haryana* v. *Ram Pal*, (2005) 3 SCC 347: 2005 SCC (Cri) 731: AIR 2005 SC 1552: 2005 Cri LJ 1718.
Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 7-2-2005]

State of U.P. v. Battan, (2001) 10 SCC 607: 2003 SCC (Cri) 639; State of Maharashtra v. Vithal Rao Pritirao Chawan, (1981) 4 SCC 129: 1981 SCC (Cri) 807; Jawahar Lal Singh v. Naresh Singh, (1987) 2 SCC 222: 1987 SCC (Cri) 347; Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212; Breen v. Amalgamated Engg. Union, (1971) 1 All ER 1148: (1971) 2 QB 175: (1971) 2 WLR 742 (CA); Alexander Machinery (Dudley) Ltd. v. Crabtree, 1974 ICR 120 (NIRC); State of Punjab v. Bhag Singh, (2004) 1 SCC 547: 2004 SCC (Cri) 341, relied on

[5309] — S. 378(3) — Application for leave to appeal under — *Held, on facts and in circumstances of case, High Court not justified in dismissing the application in limine — High Court directed to entertain and decide the appeal on merits. State (Delhi Admn.)* v. *Shiv Kumar*, 1990 Supp SCC 673: 1991 SCC (Cri) 158.
Bench Strength 2. Coram: *A.P. Sen* and *L.M. Sharma*, JJ. [Date of decision: 4-4-1988]

[5310] — S. 378(3) — Grant of leave to appeal, in circumstance of case, by Supreme Court itself — Remand when not warranted — *High Court dismissing application of State in limine — Instead of remanding matter to High Court, given the nature of the appeal and the time lag, Supreme Court itself granting leave and directing High Court to entertain appeal — Constitution of India — Art. 136*

Considering the nature of the appeal and the time lag already involved interest of justice would be better served by granting the leave, without expressing any view on the merits of the claims in the appeal before the High Court, to enable the same to be disposed of on its own merits without any further delay. Leave is granted. The High Court will do well to entertain the appeal and after issuing notice to the respondents, will consider and dispose of the same in accordance with law. (Para 5). *State of Rajasthan* v. *Sohan Lal*, (2004) 5 SCC 573.
Bench Strength 2. Coram: *Doraiswamy Raju* and *Arijit Pasayat*, JJ. [Date of decision: 20-4-2004]

[5311] — S. 378 — Nature and scope — Comparison with Constitution of India, Art. 136 — Leave to appeal under Ss. 378(3) & (4) — Reasons — *Giving of, in disposal of application seeking — Analogy whether can be drawn with practice of Supreme Court in disposing of SLPs under Art. 136 without assigning reasons — Held, such an analogy cannot be drawn since (i) High Court not final court in hierarchy and its orders are amenable to challenge before Supreme Court; and (ii) powers under Art. 136 are special and extraordinary, being only to ensure that there is no miscarriage of justice and not for correction of every error and conferring no right of appeal — Further held, requirement to obtain leave does not render nature, extent or scope of appeal under S. 378 CrPC precarious — Constitution of India — Art.136*

The attempt to draw an analogy with the power of the Supreme Court under Article 136 of the Constitution and the practice of rejecting appeals at the SLP stage invariably without assigning reasons with the one to be exercised while dealing with an application for leave to appeal under Section 378 CrPC has no meaning and is illogical. First of all, the High Court is not the final court in the hierarchy and its orders are amenable to challenge before Supreme Court, unlike the obvious position that there is no scope for any further appeal from the order made declining to grant special leave to appeal. It has been on more than one occasion reiterated that Article 136 of the Constitution does not confer any right of appeal in favour of any party as such and it is not that any and every error is envisaged to be corrected in exercising powers under

(8) Leave to appeal — S. 378(3) *(contd.)*

Article 136. The powers of Supreme Court under Article 136 of the Constitution are special and extraordinary and the main object is to ensure that there has been no miscarriage of justice. That cannot be said to be the same with an appeal envisaged under Section 378 CrPC despite the fact that it is made subject to the obtaining of leave to file the appeal. The requirement to obtain leave does not render the nature, extent or the scope of the appeal under the Code a precarious one as sought to be assumed, on behalf of the appellant. Consequently, this appeal is allowed and the order of the High Court is set aside. (Para 4). *State of Rajasthan* v. *Sohan Lal*, (2004) 5 SCC 573.

Bench Strength **2**. Coram: *Doraiswamy Raju* and *Arijit Pasayat*, JJ. [Date of decision: 20-4-2004]

[5312] — S. 378 — Application for leave to file appeal against acquittal — Manner of disposal of for serious offences — Objective and independent reappreciation of entire evidence, stressed — *Non-application of mind by High Court in a case for offences under Ss. 376, 506 and 511 IPC — Unsustainability — High Court dismissing S. 378(3) CrPC application by summarily stating "Dismissed" — The dismissal of S. 378(3) application without giving reasons, held, is not sustainable — Matter therefore, remanded to High Court — Penal Code, 1860 — Ss. 376, 506 and 511*

The trial court, giving benefit of doubt, acquitted the respondent-accused for alleged commission of offences under Sections 376/511 IPC r/w Section 506 IPC. By the impugned order, the High Court dismissed an application for grant of leave under Section 378(3) CrPC by summarily stating "Dismissed".

Allowing the appeal,

Held :

In the absence of reason, the impugned judgment of the High Court is unsustainable. Reasons introduce clarity in an order. The High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal and seems to have been completely oblivious to the fact that by such refusal a close scrutiny of the order of acquittal, by the appellate forum, has been lost once and for all. (Paras 9, 7 and 6)

The questions of giving benefit of doubt for alleged offences under Sections 376/511 IPC r/w Section 506 IPC are not trivial. The High Court ought to have in such circumstances granted leave and thereafter as a first court of appeal, reappreciated the entire evidence on the record independently and returned its findings objectively as regards guilt or otherwise of the accused. It has failed to do so. The impugned judgment of the High Court is unsustainable. The State was granted leave to file the appeal. The High Court is, therefore, directed to entertain the appeal and after formal notice to the respondent hear the appeal and dispose of it in accordance with law. (Paras 6 and 9)

The trial court on the facts of the case did not perform its duties, as was enjoined on it by law. The trial court is required to carefully appraise the entire evidence and then come to a conclusion. If the trial court was at a lapse in this regard, the High Court was obliged to undertake such an exercise by entertaining an appeal thereagainst. (Para 6). *State of H.P.* v. *Manoj Kumar*, (2008) 13 SCC 654.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 29-9-2008]

State of U.P. v. Battan, (2001) 10 SCC 607: 2003 SCC (Cri) 639; State of Punjab v. Bhag Singh, (2004) 1 SCC 547, relied on

[5313] — S. 378 — Grant of leave to appeal under — When warranted — Reappreciation of evidence — Duty of High Court — *If trial court had lapsed in its duty to carefully appraise evidence, held, High Court obliged to undertake such an exercise by entertaining the appeal, and thereafter as first court of appeal reappreciate the entire evidence on record independently and return its findings objectively*

The trial court was required to carefully appraise the entire evidence and then come to a conclusion. The trial court on the facts of this case did not perform its duties, as was enjoined on it by law. The questions involved were not trivial. The effect of the admission of the accused in the background of testimony of official witnesses and the documents exhibited needed adjudication in appeal. If the trial court was at lapse in this regard the High Court was obliged to undertake such an exercise by entertaining the appeal. The High Court ought to have in such circumstances granted leave and thereafter as a first court of appeal, reappreciated the entire evidence on the record independently and returned its findings objectively as regards guilt or otherwise of the accused. It has failed to do so. The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired. (Para 6). *State of Orissa* v. *Dhaniram Luhar*, (2004) 5 SCC 568: AIR 2004 SC 1794: 2004 Cri LJ 1385.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 4-2-2004]

[5314] — S. 378 — Leave to file appeal against acquittal — Refusal of, by High Court without giving reasons — Propriety — *Trial court acquitting accused persons without appraising the entire evidence — Held, High Court should have reappreciated the entire evidence and not refused to grant leave to file appeal against acquittal without setting forth its reasons — Penal Code, 1860, Ss. 148 and 302 r/w S. 149 — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, S. 3(2)*

The trial court was required to carefully appraise the entire evidence and then come to a conclusion. If the trial court was at lapse in this regard the High Court was obliged to undertake such an exercise by entertaining the appeal. The trial court on the facts of this case did not perform its duties, as was enjoined on it by law. The High Court ought to have in such circumstances granted leave and thereafter as a first court of appeal, reappreciated the entire evidence on the record independently and returned its findings objectively as regards guilt or otherwise of the accused. It has failed to do so. The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal. The manner in which the appeal against acquittal has been dealt with by the High Court leaves much to be desired. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. (Para 6). *Suga Ram* v. *State of Rajasthan*, (2006) 8 SCC 641: AIR 2006 SC 3258.

Bench Strength **2**. Coram: **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 18-9-2006]

State of U.P. v. Battan, (2001) 10 SCC 607: 2003 SCC (Cri) 639; State of Maharashtra v. Vithal Rao Pritirao Chawan, (1981) 4 SCC 129: 1981 SCC (Cri) 807; Jawahar Lal Singh v. Naresh Singh, (1987) 2 SCC 222: 1987 SCC (Cri) 347; State of Punjab v. Bhag Singh, (2004) 1 SCC 547: 2004 SCC (Cri) 341, relied on

[5315] — S. 378 — Leave to file appeal against acquittal — Refusal of by High Court without giving reasons — Propriety — *Trial court acquitting accused persons without appreciating material evidence and aspects — Held, High Court should have reappreciated the entire evidence and not refused to grant leave to file appeal against acquittal without setting forth the reasons for it — Granting special leave to State, High Court directed to decide the matter on merits — Penal Code, 1860, S. 302 — Constitution of India — Art.136*

The trial court was required to carefully appraise the entire evidence and then come to a conclusion. The trial court did not do so. It was, therefore, necessary for the High Court to have granted leave and as a first court of appeal, reappreciated the entire evidence on the record and returned its findings as regards guilt or otherwise of the accused. It has failed to do so. The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal. The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order. The absence of reasons has rendered the High Court order not sustainable. (Para 4). *State of U.P.* v. *Battan*, (2001) 10 SCC 607.

Bench Strength **3**. Coram: *Dr. A.S. Anand*, C.J. and *D.P. Wadhwa* and *Ruma Pal*, JJ. [Date of decision: 4-5-2000]

Followed in State of Uttaranchal v. Sunil Kumar Singh Negi, (2008) 11 SCC 205

[5316] — Ss. 378 & 386 — Appeal against acquittal — Leave to appeal declined — *Prosecution case not proved by reliable evidence and suffering from grave improbabilities and conclusion arrived at by trial Court reasonable — On facts held, acquittal of accused recorded by trial Court and dismissal of application under S. 378, CrPC for leave to appeal by High Court justified. State of Kerala* v. *Chellappan Sanal Kumar*, 1981 Supp SCC 15: 1981 SCC (Cri) 614.

Bench Strength **2**. Coram: **A.D. Koshal** and *Baharul Islam*, JJ. [Date of decision: 12-3-1981]

[5317] — Ss. 378 and 386 — Appeal against acquittal — High Court without indicating any reasons refusing to grant leave — Sustainability — *Trial court directing acquittal primarily on ground that the alleged eyewitnesses did not support the prosecution case and, therefore, their presence was doubtful i.e. it failed to carefully appraise the entire evidence and then come to a conclusion — Held, if the trial court was at lapse in this regard and failed to perform its duties, as was enjoined on it by law, the High Court was obliged to undertake such an exercise by entertaining the appeal — High Court ought to have in such circumstances granted leave and thereafter as a first court of appeal, reappreciated the entire evidence on the record independently and returned its findings objectively as regards guilt or otherwise of the accused — Moreover, High Court failed to give any reasons in order impugned and seems to have been completely oblivious to the fact that by such refusal,*

(8) Leave to appeal — S. 378(3) *(contd.)*

a close scrutiny of the order of acquittal, by the appellate forum, had been lost once and for all — High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge — Absence of reasons rendered High Court's order unsustainable

The trial court was required to carefully appraise the entire evidence and then come to a conclusion. If the trial court was at lapse in this regard the High Court was obliged to undertake such an exercise by entertaining the appeal. The trial court on the facts of this case did not perform its duties, as was enjoined on it by law. The High Court ought to have in such circumstances granted leave and thereafter as a first court of appeal, reappreciated the entire evidence on the record independently and returned its findings objectively as regards guilt or otherwise of the accused. The questions involved were not trivial. (Paras 8 and 9)

The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal, and seems to have been completely oblivious to the fact that by such refusal, a close scrutiny of the order of acquittal, by the appellate forum, has been lost once and for all. The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. (Para 9). *State of H.P.* v. *Sardara Singh*, (2008) 9 SCC 392: (2008) 3 SCC (Cri) 780: (2008) 70 AIC 235 (SC): (2008) 229 ELT 496.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 27-8-2008]

State of U.P. v. Battan, (2001) 10 SCC 607: 2003 SCC (Cri) 639; State of Punjab v. Bhag Singh, (2004) 1 SCC 547: 2004 SCC (Cri) 341, relied on

[5318] — Ss. 378 & 386 — Denial of State's appeal before High Court against acquittal — Appeal by special leave preferred by one of the injured before Supreme Court — *Two persons sustained serious injuries in the incident — One of the injured rushed to the village and reported the matter to PW who later lodged FIR — Accused acquitted by trial court — In appeal, High Court declined to interfere and to grant leave to appeal — Held, High Court erred in refusing to grant leave to appeal — This is one of those cases where High Court should have at least considered on merit the appeal against acquittal — Matter remitted to High Court to grant leave to appeal to the State* (Paras 8, 9 and 10). *Badrilal* v. *Chandan Singh*, (2005) 9 SCC 221: 2005 SCC (Cri) 1224.

Bench Strength 2. Coram: **B.P. Singh** and *B.N. Srikrishna*, JJ. [Date of decision: 3-2-2005]

(9) Special leave to appeal in complaint cases — S. 378(4)

See also Section 378, '(8) Leave to appeal — S. 378(3)', above

[5319] — Ss. 378(3) & (4) — For filing appeal against acquittal, while a complainant is required to obtain "special leave" under sub-section (4), State/Central Government is only required to obtain "leave" under sub-section (3)

Under Section 417 of the Criminal Procedure Code, 1898 no application for special leave to appeal had to be made by the State Government or the Central Government, if they filed an appeal against acquittal. The right of the State Government to file an appeal under Section 417(1) was subject to sub-section (5) which provided that if special leave to appeal had been refused to a complainant then the State Government could not maintain an appeal. A comparison of Section 378 with the old Section 417 shows that whilst under the old section no application for leave to appeal had to be made by the State Government or the Central Government, now by virtue of Section 378(3) the State Government or the Central Government have to obtain leave of the High Court before their appeal could be entertained. Sub-section (4) of Section 378 is identical to sub-section (3) of Section 417. Thus a complainant desirous of filing an appeal against acquittal must still obtain special leave. Section 378 makes a distinction between an appeal filed by the State Government or the Central Government, who only need to obtain "leave", and an appeal by a complainant who needs to obtain "special leave". (Paras 22, 23 and 25). *State (Delhi Admn.)* v. *Dharampal*, (2001) 10 SCC 372: AIR 2001 SC 2924.

Bench Strength 2. Coram: *K.T. Thomas* and **S.N. Variava**, JJ. [Date of decision: 19-10-2001]

Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87, relied on

[5320] — Ss. 378 & 401 and 190 — Appeal against acquittal — Locus standi — *Held, in prosecution based on police report, State has a statutory right to appeal, while the private party does not — Private complainant, in such cases, can only excite general powers of revision by High Court*

The Division Bench in not allowing the condonation of delay has effectively dismissed the appeal in the sense that it has not allowed the State Government to proceed with the appeal for which there was a provision. This was a prosecution not based on a private complaint but on the police report. Therefore, the State Government had a right under Section 378(2) CrPC to file an appeal and very conspicuously the private party did not have that right. The private complainant, therefore, could only excite the general powers of revision by the High Court. (Para 20). *K. Ramachandran* v. *V.N. Rajan*, (2009) 14 SCC 569: (2009) 82 AIC 119 (SC): 2009 Cri LJ 4413.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *R.M. Lodha*, JJ. [Date of decision: 7-7-2009]

Akalu Ahir v. Ramdeo Ram, (1973) 2 SCC 583: 1973 SCC (Cri) 903, considered and relied on

— S. 378(4) *See* Ss. 377(2) and 378(4)
See also Ss. 378(1) & (4) and 401

[5321] — S. 378(4) — Appeal by complainant against acquittal — Ex parte leave granted by the High Court even though notices not served on the accused — Propriety — *Once at the preliminary stage court decides to hear the accused before granting leave and directs issuance of notice, held, court should see that subsequently the accused are served and should hear them before granting the leave — High Court erred in granting ex parte leave*

After the order of acquittal was recorded by the Magistrate, appeals were filed by the aggrieved respondents herein before the High Court under Section 378(4) CrPC which requires the grant of leave to appeal by the High Court before entertaining the appeals. When such an application for grant of leave came up before the Court, the Court having considered it necessary to hear the appellants herein (respondent before it) before granting leave, issued notice in this regard but the respondent-accused were not actually served with the court notice and the Court adjourned the matter to take out fresh notice. When the fact situation remained the same inasmuch as the respondents before the High Court were not properly served, the Judge proceeded to hear the petitioners before it and granted leave to appeal.

Held :

On facts of this case since at a preliminary stage the Court considered it necessary to hear the respondent-accused before granting leave and directed the issuance of notice, judicial propriety required the Court at a subsequent stage to see that the respondents were served with court notice and to hear them before granting leave. Had the Court not issued the notice earlier it might have been a different thing in law. The Court once having thought it necessary to hear the respondents before granting leave, ought not to have granted leave ex parte, more so in the background of the fact that the notices earlier directed to be issued were not served because of lack of steps taken by the petitioners before it. Therefore, it is appropriate that the impugned order granting leave should be set aside and the matter be remanded back to the High Court to hear the appellants on the question of grant of leave to appeal. (Para 9). *J.J. Merchant* v. *S.N. Chaturvedi*, (2005) 1 SCC 587: 2005 SCC (Cri) 432: AIR 2005 SC 490: (2005) 1 KLT 217.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 9-12-2004]

[5322] — S. 378(5) — Applies only to application by special leave by complainants, who may be a public servant or a private party, but not to appeal by State/Central Government

The limitation provided in sub-section (5) is only in respect of applications under sub-section (4) i.e. application for special leave to appeal by a complainant. A complainant may be either a public servant or a private party. If the complainant is a public servant then the period of limitation for an application for special leave is 6 months. If the complainant is a private party then the period of limitation for an application for special leave is 60 days. The periods of 6 months and/or 60 days do not apply to appeals by the State Government [under sub-section (1)] or the Central Government [under sub-section (2)]. Appeals by the State Government or the Central Government continue to be governed by Article 114(*a*) of the Limitation Act. *State (Delhi Admn.)* v. *Dharampal*, (2001) 10 SCC 372: AIR 2001 SC 2924.

Bench Strength **2**. Coram: *K.T. Thomas* and **S.N. Variava**, JJ. [Date of decision: 19-10-2001]

Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87, relied on

[5323] — S. 378(5) — Period of limitation under — Applicability — *Applies only to application for special leave filed by complainants, who may be a public servant or a private party, but not to appeal by State/Central Government*

The limitation provided in sub-section (5) is only in respect of applications under sub-section (4) i.e. application for special leave to appeal by a complainant. A complainant may be either a public servant or a private party. If the complainant is a public servant then the period of limitation for an application for special leave is 6 months. If the complainant is a private party then the period of limitation for an

(9) Special leave to appeal in complaint cases — S. 378(4) *(contd.)*

application for special leave is 60 days. The periods of 6 months and/or 60 days do not apply to appeals by the State Government [under sub-section (1)] or the Central Government [under sub-section (2)]. Appeals by the State Government or the Central Government continue to be governed by Article 114(*a*) of the Limitation Act. In other words, those appeals must be filed within 90 days from the date of the order appealed from. If there is a delay in filing an appeal by the State Government or Central Government it would be open to them to file an application under Section 5 of the Limitation Act for condonation of such delay. That period can be extended if the court is satisfied that there was sufficient cause for not preferring the appeal within the period of 90 days. (Para 25). *State (Delhi Admn.)* v. *Dharampal*, (2001) 10 SCC 372: AIR 2001 SC 2924.

Bench Strength 2. Coram: *K.T. Thomas* and **S.N. Variava**, JJ. [Date of decision: 19-10-2001]

[5324] — S. 378(4) and Ch. 15 — Special leave to appeal in cases instituted on a complaint under Ch. 15 — Manner of disposal — *High Court examined evidence that complainant's version lacked credibility or cogency — Hence, dismissal of appeal after leave under S. 378(4) had been granted, on facts, held, was not erroneous*

A complaint case under Chapter 15 CrPC filed by the appellant complainant was dismissed by the Magistrate. The High Court, by the impugned order, dismissed the appeal preferred thereagainst, though leave had been granted under Section 378(4) CrPC.

Dismissing the appeal,

Held:

No interference is called for. The High Court has indicated several reasons as to why the complainant's version lacks credibility or cogency. The High Court referred to the various conclusions of the trial court and held that the accusations have not been established. The trial court with reference to the evidence of witnesses came to hold that the accusations were without substance and there was no material to show the alleged commission of offence. Since the order was passed in a complaint case, appeal was preferred by grant of leave under Section 378(4) CrPC. (Paras 6 and 4). *M. Dhandapani* v. *R. Muthu Naliappan*, (2008) 14 SCC 501.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 21-10-2008]

[5325] — S. 378 — State Government cannot maintain an appeal under if special leave to appeal is refused to a complainant

Sub-section (5) provided that if special leave to appeal had been refused to a complainant then the State Government could not maintain an appeal. *State (Delhi Admn.)* v. *Dharampal*, (2001) 10 SCC 372: AIR 2001 SC 2924.

Bench Strength 2. Coram: *K.T. Thomas* and **S.N. Variava**, JJ. [Date of decision: 19-10-2001]

[5326] — S. 378(6) — Appeal against acquittal — Case instituted by complainant — Leave to appeal — Refusal of — Power of State Government to prefer appeal — Scope — *Held, even the State Government in such cases cannot prefer any appeal against impugned judgment of acquittal*

Section 378(6) also envisages that if a case is instituted by the complainant and such leave is refused, even the State Government would be unable to pursue any appeal under sub-sections (1) or (2) against the impugned judgment of acquittal. If this is the effect of the finality attained by the judgment, even in case of an offence which was tried on the basis of a private complaint, then there would be no reason not to give the same effect to the finality attained by the judgment of acquittal by reason of the order passed in appeal filed by the State Government. Moreover, finality confirmed by the Division Bench should not be upset by the judgment of the Single Bench of the same Court. Such incongruous results would follow if the revision is allowed to be entertained and decided. (Paras 33 to 35). *K. Ramachandran* v. *V.N. Rajan*, (2009) 14 SCC 569: (2009) 82 AIC 119 (SC): 2009 Cri LJ 4413.

Bench Strength 2. Coram: **V.S. Sirpurkar** and *R.M. Lodha*, JJ. [Date of decision: 7-7-2009]

(10) Practice and procedure re disposal of appeals

[5327] — Ss. 378 and 386 — Acquittal set aside by High Court without serving notice on the accused and at his back without hearing him, held, not justified. *Anwar Hussain* v. *State of U.P.*, (1982) 1 SCC 491: 1982 SCC (Cri) 263: AIR 1981 SC 2072: 1981 Cri LJ 1700.

Bench Strength 2. Coram: **D.A. Desai** and *A.P. Sen*, JJ. [Date of decision: 13-2-1981]

[5328] — Ss. 378 and 386 — Appeal against acquittal — Notice to accused essential — *High Court allowing the appeal without issuing notice to the accused — Held, on the ground of want of notice alone the appeal before the High Court can be restored to its file for fresh disposal after notice to the accused. P. Ramachandra Rao* v. *State of Karnataka*, (2002) 4 SCC 607.

Bench Strength 3. Coram: *S.P. Bharucha*, *S.N. Phukan* and *Shivaraj V. Patil*, JJ. [Date of decision: 19-9-2000]

[5329] — S. 378 — Appeal against acquittal — High Court can hear appeal in the absence of the accused. *Rambachan Hardwar* v. *State of Gujarat*, (1975) 3 SCC 139: 1974 SCC (Cri) 763: AIR 1974 SC 855.

Bench Strength **3**. Coram: *A.N. Ray, C.J.* and **Y.V. Chandrachud** and *V.R. Krishna Iyer*, JJ. [Date of decision: 4-4-1974]

[5330] — Ss. 378 and 386 — Appeal before High Court against acquittal — Remand — *Remanding a case to trial court for writing a proper judgment not proper — High Court being final court of facts should either reappraise the evidence and decide the appeal itself or send the case for retrial — Question whether the first appellate court of facts can send the case back to Sessions Court for writing a fresh judgment not considered — A different Bench of High Court directed to rehear the appeals on merits. Mohinder Singh* v. *State of Punjab*, (1985) 1 SCC 342: 1985 SCC (Cri) 87: AIR 1985 SC 383.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision: 20-12-1984]

[5331] — Ss. 378 and 374 — Appellate court to correct error in judgment and refrain from commenting on Judge — *Constitution of India — Article 136*

The higher courts in exercise of their appellate or original jurisdiction may find patent errors of law or fact on appreciation of evidence in the judgment which has been challenged before them. Despite this, what is of significance is that, the courts should correct the error in judgment and not normally comment upon the Judge. The possibility of taking a contrary view is part of the system. Judicial propriety and discipline demand that strictures or lacerating language should not be used by the higher courts in exercise of their appellate or supervisory jurisdiction. Judicial discipline requires that errors of judgments should be corrected by reasons of law, and the practice of passing comments against the lower courts needs to be deprecated in no uncertain terms. The individuals come and go but what actually stands forever is the institution. (Para 281)

In the present case the High Court in its judgment, on the one hand, explicitly referred to certain criticism/comments/remarks made by the trial Judge against the investigating agency, and observed that they were uncalled for and that they should have been avoided. But, on the other hand, the Division Bench itself while criticising the reasoning in the judgment under appeal made certain sweeping remarks against the trial Judge. It is also desirable, that the language which may imply an allegation of suspicion in the performance of function of the court should be carefully examined and unless it is absolutely established on record, comments should be avoided. (Paras 282 and 283)

The Division Bench could have avoided making such observations which directly or impliedly indicate impropriety in the functioning of the court, appreciation of evidence by the learned Judge and/or any other ancillary matter. The content and merit of the judgment would have remained unaffected even if such language or comments were not made against the trial Judge. The respect of judiciary and for the judiciary, is of paramount consideration. Every possible effort should be made and precaution taken which will help in preservation of public faith and individual dignity. A judicial consensus would require that the judgment should be set aside or affirmed as the case may be but preferably without offering any undesirable comments, disparaging remarks or indications which would impinge upon the dignity and respect of judicial system, *actus curiae neminem gravabit*. Despite exercise of such restraint, if, in a given case, the court finds compelling reasons for making any comments in that event it will be in consonance with the basic rule of law and adherence to the principles of natural justice that viewpoint of the Judge concerned should also be invited. Expunction of all remarks made by trial Judge against prosecution and by Division Bench against trial Judge is directed. [Paras 293, 294 and 303(10)]. *Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1.

Bench Strength **2**. Coram: **P. Sathasivam** and *Swatanter Kumar*, JJ. [Date of decision: 19-4-2010]

Samya Sett v. Shambhu Sarkar, (2005) 6 SCC 767: 2005 SCC (Cri) 1483, followed

A.M. Mathur v. Pramod Kumar Gupta, (1990) 2 SCC 533; 'K' A Judicial Officer, In re, (2001) 3 SCC 54; Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158: 2004 SCC (Cri) 999; Parkash Singh Teji v. Northern India Goods Transport Co. (P) Ltd., (2009) 12 SCC 577: (2010) 1 SCC (L&S) 160; Alok Kumar Roy v. Dr. S.N. Sarma, AIR 1968 SC 453: (1968) 1 SCR 813; State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566, relied on

Raghubir Saran (Dr.) v. State of Bihar, AIR 1964 SC 1: (1964) 1 Cri LJ 1: (1964) 2 SCR 336, cited

(11) Acquittal justified

See also under Section 378, '(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted', above

[5332] — S. 378 — Related eyewitness — His testimony on participation of the four accused and various injuries caused by them resulting in his uncle's death — Conflicting with medical evidence — Other witness turing hostile — *Held, reversal of*

(11) Acquittal justified *(contd.)*

acquittal by High Court was not justified — View taken by trial court was not unreasonable. Kathi Odhabhai Bhimabhai v. *State of Gujarat*, 1993 Supp (3) SCC 421: 1993 SCC (Cri) 1049: AIR 1993 SC 1193: 1993 Cri LJ 187.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 5-8-1992]

[5333] — S. 378 — Acquittal on the ground of lack of participation or involvement in crime — Two of the three acquitted accused persons arriving at the scene after the assault and not participating in crime — *Third one though present and participating in crime, yet her involvement not satisfactorily established — Hence, acquittal of all the three above accused, held, was justified — Penal Code, 1860, Ss. 34, 302, 307 and 323*

The two of the three acquitted accused persons do not seem to have participated in the assault and they seem to have arrived at the scene of occurrence later on. So far as the third one is concerned, it was found that though she was present and participated, yet her involvement has not been satisfactorily established. (Para 31). *Dharminder* v. *State of H.P.*, (2002) 7 SCC 488: 2003 SCC (Cri) 58: AIR 2002 SC 3097.

Bench Strength **2**. Coram: *R.C. Lahoti* and **Brijesh Kumar**, JJ. [Date of decision: 3-9-2002]

[5334] — S. 378 — Acquittal restored — Entrapment to falsely implicate — Acquittal restored — *In a trap case tainted money recovered from appellant and on conducting phenolphthalein test, solution turned pink — Appellant's defence from very inception was that money recovered from him was towards repayment of a loan — All parties living in close proximity and having substantial animosity — Also on record that loan was to be paid in the first week of June 1991 and significantly, trap was laid on 6-6-1991 — No witness other than complainant examined regarding passing over of tainted money — Trial Judge passed order of acquittal — In appeal against acquittal, High Court set aside order of acquittal in a casual manner and convicted accused — Supreme Court finding that there was clear concoction of a false story using excuse of repayment of loan as a means of reaching appellant on vital day — Held, view taken by the trial court was not merely a possible one but was the correct one, interference by High Court, was not called for — Approach of High Court in disposing of appeal under S. 378 CrPC, disapproved — Prevention of Corruption Act, 1988, Ss. 11 and 13(2) r/w S. 13(1)(d)* (Paras 8, 9, 12 and 13). *N. Raja Kantham* v. *State*, (2009) 17 SCC 415.

Bench Strength **2**. Coram: *H.S. Bedi* and *Dr. B.S. Chauhan*, JJ. [Date of decision: 23-7-2009]

[5335] — Ss. 378 and 386 — Appeal against acquittal — Acquittal justified — No interference, on facts — *No mention or identification of the accused by the injured eyewitness — Acquittal by High Court held valid — Benefit of doubt given — No interference called for* (Paras 13 and 14). *Subash Chander* v. *Krishan Lal*, (2001) 4 SCC 458: 2001 SCC (Cri) 735: AIR 2001 SC 1903: 2001 Cri LJ 1825.

Bench Strength **2**. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 29-3-2001]

[5336] — Ss. 378 and 386 — Appeal against acquittal — Nature and scope of appellate court's power — Judgment of acquittal recorded by trial court, reversed by High Court in appeal — Sustainability — *Accused alleged to have assaulted the complainant's party resulting in death of one and causing injuries to two others — Trial court acquitting the accused raising a number of doubts not only in regard to availability of sufficient light to identify the accused, but also having regard to the grave inconsistencies in the depositions of the witnesses, inconsistencies in the evidence of two medical experts in regard to number, nature and place of injuries, inconsistencies in regard to the place of occurrence and non-examination of the investigating officer — High Court in appeal reversing the said judgment opining that sufficient evidence was led by prosecution to establish the charges against accused — High Court neither taking note of glaring inconsistencies between evidence of witnesses as recorded by trial court nor meeting its reasonings — Held on facts, view taken by the trial court was a possible view — Hence, High Court was not justified in reversing the same — Ranbir Penal Code, 1932 (1989 Smvt.), Ss. 302, 323 and 324* (Paras 2, 3, 27, 28 and 29). *Rattanlal* v. *State of J&K*, (2007) 13 SCC 18: 2007 Cri LJ 2955: (2007) 53 AIC 105 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 10-4-2007]

Samghaji Hariba Patil v. State of Karnataka, (2006) 10 SCC 494: (2007) 1 SCC (Cri) 113; Kallu v. State of M.P., (2006) 10 SCC 313: (2006) 3 SCC (Cri) 546; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; Swami Prasad v. State of M.P., (2007) 13 SCC 25, relied on

[5337] — S. 378 — Appeal against acquittal — Scope of High Court's power — Acquittal justified — *As per ballistic expert's report empties seized were not fired from the rifle seized from R-1 — Evidence of the so-called eyewitnesses found to be not reliable — Acquittal recorded by trial court confirmed in appeal by High Court — As no perversity or illegality found in the reasoning of trial court, held, High Court rightly confirmed the order of acquittal*

The power of the High Court while hearing an appeal against acquittal is as wide and comprehensive as in an appeal against the conviction and it has full power to reappreciate the entire evidence, but if two views on the evidence are possible, one supporting the acquittal and the other indicating conviction, then, the High Court would not be justified in interfering with the acquittal, merely because it is of the view that sitting as a trial court, a different view could have been taken. But if the judgment of the trial court is admittedly perverse, legally erroneous and based on a wrong appreciation of the evidence, then it cannot but be just and proper for the High Court to reverse the judgment of acquittal recorded by the trial court as otherwise there would be gross miscarriage of justice. (Para 8). *State of M.P.* v. *Munshi Singh*, (2009) 14 SCC 170.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 23-4-2009]

[5338] — Ss. 378 and 386 — Appeal against acquittal — Acquittal confirmed — *On facts held, view taken by High Court in acquitting A-1, A-2, A-3 and A-6 was a plausible view, and hence, no interference therewith in exercise of jurisdiction under Art. 136 called for* (Para 47). *Musheer Khan* v. *State of M.P.*, (2010) 2 SCC 748.

Bench Strength **2**. Coram: *G.S. Singhvi* and **A.K. Ganguly**, JJ. [Date of decision: 28-1-2010]

State of Haryana v. Krishan, (2008) 15 SCC 208: (2009) 3 SCC (Cri) 786; State of A.P. v. S. Swarnalatha, (2009) 8 SCC 383: (2009) 3 SCC (Cri) 873, relied on

[5339] — Ss. 378 and 386 — Appeal against acquittal — Reversal of acquittal — Sustainability — Held, unless judgment of trial court is perverse, appellate court would not be justified in substituting its own view and reverse judgment of acquittal — *Death due to harassment for dowry — Accused acquitted since trial court did not find credibility in testimony of PW 1 (father of deceased) because for the first time before trial court, he stated about demand of dowry — PW 1 neither reported same in FIR, nor in investigation, nor before Revenue Divisional Officer's enquiry — Veracity of PW 1 disbelieved since it was not corroborated by evidence of other PWs — Suicide note not implicating any of the accused — High Court though agreed that prosecution story unbelievable, but holding demand of dowry proved and setting aside acquittal — Sustainability — To arrive at correct conclusion, held, comprehensive view of entire evidence in proper perspective is imperative — In present case, trial court minutely examined entire evidence, documents and exhibits on record — Judgment of trial court could not be said to be perverse — Conclusion arrived at by trial court is possible and plausible view — High Court ought to have considered suicide note and evidence in proper perspective — In the circumstances, held, approach of High Court not correct — Acquittal restored — Penal Code, 1860, Ss. 304-B and 489-A* (Paras 16 to 23 and 41). *Arulvelu* v. *State*, (2009) 10 SCC 206: (2009) 83 AIC 253 (SC).

Bench Strength **2**. Coram: **Dalveer Bhandari** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 7-10-2009]

Sheo Swarup v. King Emperor, (1933-34) 61 IA 398: AIR 1934 PC 227 (2), followed

Shailendra Pratap v. State of U.P., (2003) 1 SCC 761: 2003 SCC (Cri) 432; Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10: 1999 SCC (L&S) 429; Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312, relied on

[5340] — Ss. 378 and 386 — Reversal of acquittal of accused by High Court — Sustainability — Acquittal restored — *Discrepancies in evidence — When material — Prosecution case of single bullet being allegedly fired by appellant-accused, causing injuries to four persons, thereby resulting in death of one of them — Held, discrepancies in the evidence of the eyewitnesses were in no circumstance minor in nature, which were vital for disbelieving and discrediting their evidence — Evidence of eyewitnesses, including injured witnesses, did not at all inspire confidence and their evidence was in conflict and contradiction with medical evidence and ballistic expert's report in regard to weapon of offence, which was different from the one sealed in police station — Again, there was suppression of genesis of occurrence by prosecution — In the facts and circumstances, prosecution failed to prove its case beyond all reasonable doubt — Hence, interference by High Court with trial court's order of acquittal, held, erroneous — Penal Code, 1860, Ss. 304 Pt. II, 307 and 324 — Arms Act, 1959, Ss. 25 and 27 — Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, S. 2(a) — Evidence Act, 1872, S. 45. Mahendra Pratap Singh* v. *State of U.P.*, (2009) 11 SCC 334: (2009) 3 SCC (Cri) 1352: (2009) 2 ECrN 772 (SC): (2009) 3 All LJ 794.

Bench Strength **2**. Coram: **L.S. Panta** and *B. Sudershan Reddy*, JJ. [Date of decision: 24-2-2009]

Awadhesh v. State of M.P., (1988) 2 SCC 557: 1988 SCC (Cri) 361; Ganesh Bhavan Patel v. State of Maharashtra, (1978) 4 SCC 371: 1979 SCC (Cri) 1; Sheo Swarup v. King Emperor, AIR 1934 PC 227(2): (1933-34) 61 IA 398; Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248: 1995 SCC (Cri) 355; Ram Narain Singh v. State of Punjab, (1975) 4 SCC 497: 1975 SCC (Cri) 571; Mohinder Singh v. State, AIR 1953 SC 415: 1950 SCR 821; Inder Singh v. State (Delhi Admn.), (1978) 4 SCC 161: 1978 SCC (Cri) 564, relied on

(11) Acquittal justified *(contd.)*

[5341] — Ss. 378 and 386 — Acquittal by High Court based on discrepancy between High Court medical evidence and ocular evidence, and possibility of there being more than two assailants and use of several kinds of weapons — *Additionally, no time of lodging FIR was mentioned and in the inquest report, time appeared to have been overwritten with different inks — Besides, the first informant had left the police station much prior to 6.00 a.m. while report was claimed to have been written at 8.00 a.m. — Hence, High Court was of the view that the possibility of consultation and manipulation could not be ruled out — Held, factors which weighed when the High Court concluded that there were many manipulations and a new story was concocted, cannot be said to be a finding without any rational basis — No interference with impugned judgment called for — Penal Code, 1860 — Ss. 302/34* (Paras 11 and 12). *State of U.P.* v. *Chandra Pal*, (2008) 17 SCC 459: (2009) 3 All LJ 163.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 22-10-2008]

[5342] — Ss. 378 and 386 — Acquittal confirmed — *Guilt not established — Respondent-accused alleged to have murdered the deceased and taken away her ornaments — He also alleged to have amputated her feet and taken away her silver anklets — Trial court on basis of circumstantial evidence convicting accused finding following circumstances proved by the prosecution: (i) accused had followed the deceased towards the field; (ii) accused had washed his hands after committing the offence and blood of the deceased was found at the field; (iii) accused returned from the field smeared with mud with a "potli" in his hand; (iv) jewellery of the deceased, as well as the "khurpi" (weapon of offence) were recovered at his instance; and (v) strap of wristwatch which allegedly belonged to accused found near dead body of deceased — Held, none of the circumstances relied upon by the prosecution stands proved against the accused leading to a definite conclusion that it was the accused who had committed the offence — View taken by the High Court acquitting accused was a plausible view, and therefore, benefit whereof must always go to the accused and not to the prosecution — If prosecution wants to prove the fact, the same must be proved by leading evidence, which is reliable and trustworthy, which pinpoints and conclusively proves the guilt of the accused — In the instant case, same fell short of the required standard, and hence, impugned judgment acquitting accused cannot be interfered with — Penal Code, 1860 — Ss. 302 and 394* (Paras 19 and 24 to 38). *State of Rajasthan* v. *Naresh*, (2009) 9 SCC 368: (2009) 3 SCC (Cri) 1069.

Bench Strength **2**. Coram: *Dalveer Bhandari* and **Dr. M.K. Sharma**, JJ. [Date of decision: 26-8-2009]

Ramanand Yadav v. Prabhu Nath Jha, (2003) 12 SCC 606: 2004 SCC (Cri) Supp 526, followed

Anil Kumar v. State of U.P., (2004) 13 SCC 257: 2005 SCC (Cri) 178; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; State of U.P. v. Gambhir Singh, (2005) 11 SCC 271: (2006) 1 SCC (Cri) 125, considered and relied on

[5343] — Ss. 378 and 386 — Conviction reversed — *Appellant armed with datar alleged to have assaulted the deceased, when he along with his brothers PWs 4 and 5 had gone outside the village to answer call of nature, while the co-accused raised a lalkara that complainant be taught a lesson for selling adulterated liquor with water — It was further alleged that co-accused M gave a datar-blow on PW 5, but said allegation was withdrawn in supplementary statement — Motive alleged to be sale of illicit liquor by complainant's mother — In FIR, informant PW 4 stating that his mother sold illicit liquor to maintain her children, while in his evidence he stating that she sold only two bottles of liquor occasionally — Held, if brothers had nothing to do with sale of liquor, as rightly held by trial court, motive must be held to have not been proved — Moreover, PW 5 had categorically denied that his mother sold any liquor or earned her livelihood by doing liquor work — Further, there were significant contradictions in matter of number of injuries, time and place of occurrence, sequence of events, manner of identification of accused — There was also lack of motive and false implication of co-accused M — PW 4 had made vital contradictions in his FIR vis-à-vis the supplementary statement when it was found that right hand of M was amputated and he was not in a position to inflict any injury — Hence, impugned judgment reversing the judgment of acquittal and convicting appellant cannot be maintained — Penal Code, 1860, S. 302 and S. 307 r/w S. 34*

Allowing the appeal,

Held :

In FIR, it was alleged by PW 4 that his mother sold illicit liquor to maintain her children. In his evidence, however, he stated that his mother sold only two bottles of liquor occasionally. It brothers had nothing to do with sale of liquor, as rightly pointed out by trial court, motive must be held to have not been proved. Besides, PW 5 categorically denied that his mother sold any liquor or earned her livelihood by doing liquor work. (Para 8)

Further, there were some discrepancies with regard to the time of occurrence of the incident also. Whereas according to PW 4, the assailants of his brothers were identified in a torchlight, PW 5 stated that they had identified the accused in the daylight. Even PW 4, in his evidence, admitted that he did not have any torch in his possession and, therefore, he did not see the accused under the torchlight which was introduced for the first time in his supplementary evidence. However, in FIR it was stated, he produced a torch containing three cells. The same was neither seized nor produced. PW 4 furthermore denied that *M* had given any lalkara. He also accepted that *M*'s right arm was amputated. (Para 11)

The place of occurrence was at a distance of about one km from their house. No evidence was brought on record as to how the parties were known to each other. There is, therefore, significant contradiction in the matter of the number of injuries, time of occurrence, place of occurrence, sequence of events, the manner of identification of the accused, lack of motive and false implication of *M*. PW 4 made vital contradictions in his FIR vis-à-vis the supplementary statement evidently keeping in view the physical condition of *M*. It is, therefore, difficult to rely upon his testimony. He furthermore denied to have made a statement before the police that the appellant had given a datar blow on PW 5. Also, he could not deny that *M* was an employee in private company and remained at his work place from morning to evening. (Paras 12 and 13)

In such circumstances, impugned judgment convicting the appellant cannot be maintained. The judgment of trial court acquitting appellant restored. (Para 14). *Sucha Singh* v. *State of Punjab*, (2009) 11 SCC 584: (2009) 3 SCC (Cri) 1498: 2009 Cri LJ 3444: (2009) 78 AIC 112 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 13-5-2009]

[5344] — Ss. 378 and 386 — Conviction reversed — Political rivalry — *Appellant, leader of political party alleged to have thrown bomb at deceased resulting in his instantaneous death, while other accused (sixteen in all), also armed with deadly weapons assaulted complainant party injuring them — Some more bombs also said to have been hurled during occurrence — Testimonies of PWs neither inspiring confidence nor corroborating each other and their version against appellant parrot-like — Most of them figuring as accused in counter-case — Even testimonies of police witnesses contradicting each other in matter of timings and also timing of complaint (Ext. P-1) — Discrepancy between medical and ocular evidence — Non-explanation of grievous injuries sustained by some accused — No traces of explosion found at place of occurrence — IO also failing to show places where explosions were alleged, in his sketch map — Significantly another report was lodged by A-14 on same day at 7.45 a.m. wherein hurling of bombs was attributed to complainants — Besides, when PWs 7 and 1 who had contested election against appellant were present at scene of occurrence, there was no reason for appellant to throw bomb at deceased who was a mere coolie — Even before complaint (Ext. P-1) was recorded at behest of PW 1, an MLA and legal advisors of the party had reached hospital which create doubt as regards its veracity as well as testimony of PW 1 — In such circumstances, held, High Court erred in interfering with well-reasoned judgment of acquittal of trial court and convicting appellant alone — Impugned judgment set aside — Penal Code, 1860 — S. 302 and Ss. 147, 148, 324, 326, 307 and 302 r/w S. 149* (Paras 16 to 22 and 26 to 36)

Political rivalry between TDP and the Congress Party resulting in frequent faction clashes. One such incident had occurred on 13-12-1998 on account of passage used by both groups wherein PW 1 and his party members belonging to Congress Party were accused. On 16-12-1998, at about 7.30 a.m., when PW 1 along with others had gone to cart the paddy hay of one *R*, appellant (A-1) and 15 others came there armed with bombs and deadly weapons. Appellant alleged to have hurled a bomb on chest of deceased resulting in his instantaneous death, while other accused attacked prosecution party with their respective weapons. PW 9, who was the constable on bandobast duty came to the scene of offence and opened fire in air to disperse the mob. Accused thereafter ran away while injured were taken to the hospital. PW 1 gave a complaint Ext. P-1 there.

The trial court acquitted all accused finding that: (*i*) there was deliberate delay in filing FIR which was lodged after due deliberations with political leaders: (*ii*) evidence of PWs was not inspiring confidence; (*iii*) there was discrepancy between ocular and medical evidence; (*iv*) injuries on accused were not explained. The High Court by impugned judgment, in appeal filed thereagainst, while confirming acquittal of other accused, convicted appellant alone under Section 302 IPC. Hence, the present appeal.

(11) Acquittal justified *(contd.)*

Allowing the appeal, the Supreme Court held as above. *Boddella Babul Reddy* v. *Public Prosecutor*, (2010) 3 SCC 648.

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-1-2010]

State of U.P. v. Sahai, (1982) 1 SCC 352: 1982 SCC (Cri) 223; V. Sathyamaiah v. State of A.P., (1978) 1 APLJ 83; Raghunath v. State of Haryana, (2003) 1 SCC 398: 2003 SCC (Cri) 326; Mool Chand v. Jagdish Singh Bedi, 1993 Supp (2) SCC 714: 1993 SCC (Cri) 767, considered

[5345] — Ss. 378 and 386 — Acquittal by High Court — Sustainability — Evidence of sole eyewitness found to be unreliable — *Further, considerable delay occurred in dispatch of copy of FIR to court, which factor may not always be determinative but considering with other aspects, that assumed importance — Having regard to these aspects, High Court took a possible view in recording acquittal of the accused — Held, no interference called for.* *Mubarik Khan* v. *Nababkha*, (2008) 15 SCC 672: (2009) 3 SCC (Cri) 1168.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 1-10-2008]

[5346] — Ss. 378 and 386 — Acquittal by High Court being a possible view, sustained — Accused alleged to have hit deceased with a crowbar on his head — *High Court acquitting respondent-accused after analysing evidence and categorically concluding that there was discrepancy between the injuries and also of size of the injuries as stated by the doctor, eyewitnesses were not reliable, and genesis of the prosecution version was doubtful — Held, view taken by High Court is a possible view where no interference is called for — Penal Code, 1860, S. 304 Pt. II* (Paras 2 and 5). *Ashok Kumar Mondal* v. *Samir Kumar Mondal*, (2008) 17 SCC 464: AIR 2009 SC 754: (2009) 1 ECrN 657 (SC).

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 21-10-2008]

[5347] — Ss. 378 and 386 — Appeal against acquittal — Non-interference with acquittal — *Delay in lodging and/or despatching FIR to Ilaqa Magistrate, and/or discrepancy between ocular and medical evidence — Effect — Held, not fatal to prosecution case in all circumstances — However, in the instant case combined effect thereof leads to conclusion that prosecution had failed to substantiate accusations — View taken by High Court directing acquittal being a possible view, no interference therewith called for* (Paras 3 and 5). *State of Punjab* v. *Avtar Singh*, (2009) 10 SCC 800: (2009) 1 ECrN 658 (SC).

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 21-10-2008]

[5348] — Ss. 378 and 386 — Prosecution alleging that appellant-accused with intention of pressurising the witnesses for changing their statements in the sessions trial they had come to depose, conspired and made homicidal attack resulting in death of two witnesses — *Gallery outside Court of IIIrd Additional Sessions Judge where occurrence had taken place was visible to the persons sitting in Courts of Ist, IIIrd and IVth Additional Judges, CCD counters, counters of District Court, Nazarat Office and Office of COC — But staff sitting in those offices not examined by prosecution, neither statements of advocates and advocates' clerks recorded during investigation — Further, statements of Reader and Adeshik Lekhak though recorded by police, but they were not examined in Court — **MP** who was the informant, eyewitness and examined as PW 1 not supporting the prosecution case — Besides, PWs 2 to 8 who were also eyewitnesses to the alleged occurrence and could have been independent witnesses, did not support the prosecution case, and as such also declared hostile — Also, presence of accused at place of occurrence highly doubtful — Further, medical evidence and that of forensic expert not supporting the prosecution case — In such circumstances, held, prosecution had failed to prove its case beyond reasonable doubt and High Court was not justified in reversing the judgment of acquittal — Penal Code, 1860 — Ss. 302/149 and 148* (Paras 15 to 27). *Asif Mamu* v. *State of M.P.*, (2008) 15 SCC 405: (2009) 3 SCC (Cri) 1011: AIR 2009 SC 600: (2009) 1 ECrN 872 (SC).

Bench Strength 2. Coram: **B.N. Agrawal** and *G.S. Singhvi*, JJ. [Date of decision: 14-11-2008]

[5349] — Ss. 378 and 386 — Appeal against acquittal — Acquittal justified — *High Court by impugned judgment while confirming conviction of A-1 under S. 302 IPC, acquitting respondent-accused A-2 — Incriminating circumstances which were pressed into service to fasten the guilt on the accused were: (i) Illicit intimacy between A-1 and A-2 which was objected to by deceased; (ii) Accused 2 purchased two packets of rat killing poison from the shop of PW 5 and gunny bag, cotton rope and nylon rope from shop of PW 6; (iii) Discovery of dead body of deceased at the instance of Accused 2; and (iv) Dead body of deceased found in a gunny bag, dead body was tied by means of cotton rope and two stones were found to have been tied to gunny bag by means of nylon rope — Held, so far as the purchase of rat killing poison and the gunny bag is concerned, there was no evidence to show that either the rat killing poison or the gunny bag was purchased prior to the date of occurrence — Besides, the body of the deceased was found in a* *decomposed state and doctor who conducted the post-mortem categorically stated that in view of the decomposed state of the dead body, it was not possible to say whether any rat killing poison was used — Further purported discovery of the dead body at the instance of the respondent had not been established — Hence, High Court's judgment does not suffer from any infirmity to warrant interference — Penal Code, 1860 — Ss. 302/34* (Paras 2 and 5 to 8). *State of Maharashtra* v. *Arjun*, (2008) 17 SCC 53: AIR 2009 SC 733: (2009) 1 ECrN 428 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-11-2008]

[5350] — Ss. 378 and 386 — Appeal against acquittal — Dismissed — *Free fight — Injuries sustained by accused — Deceased alleged to have been assaulted with gandasi and lathis by respondent-accused, while PW 10 was injured during occurrence — Thereafter there was a free fight wherein more serious injuries were caused on person of all the three accused than the deceased and so-called eyewitness — Deceased succumbing to the injuries four days later in the hospital — High Court observing that number of injuries indicated that it was a free fight and it could not be ascertained who the aggressor was — Accordingly, it did not interfere with the judgment of acquittal recorded by trial court, because it was a possible view — Held, no interference with impugned judgment called for — Penal Code, 1860 — Ss. 302 and 323 r/w S. 34* (Paras 9 and 11). *State of Haryana* v. *Balkar Singh*, (2009) 11 SCC 592: (2009) 3 SCC (Cri) 1505: (2009) 78 AIC 80 (SC).

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *L.S. Panta* and *P. Sathasivam*, JJ. [Date of decision: 26-3-2009]

[5351] — Ss. 378 and 386 — Appeal against acquittal — Interference when warranted — Two views — *Held, when a possible view is taken there cannot be interference in appeal against acquittal, unless it is shown to be unsustainable or perverse — In the instant case acquittal of Accused 6 was a possible view supported by good reasons, hence, calls for no interference* (Para 36). *Bheru Lal* v. *State of Rajasthan*, (2009) 9 SCC 119: (2009) 3 SCC (Cri) 1059: (2009) 81 AIC 33 (SC): 2009 Cri LJ 4118: (2009) 3 APLJ 127 (SC).

Bench Strength 2. Coram: **V.S. Sirpurkar** and *J.M. Panchal*, JJ. [Date of decision: 10-8-2009]

[5352] — Ss. 378 and 386 — Appeal against acquittal — Nature and scope of powers of appellate court — Conviction on basis of — Last seen together theory — Proof of — *High Court by impugned judgment acquitting respondent-accused finding evidence against him inadequate to sustain conviction — Prosecution case resting primarily on circumstantial evidence — PWs 3 and 8 claiming that they had seen the accused last in the company of deceased — But both claiming to have seen the accused at the same time and to have carried him on the motorcycle, which itself was an impossibility — Additionally, neither of them claiming to have seen the other witness with the accused at the relevant time — Deceased had gone missing on 1-3-1998, his dead body at instance of accused was recovered on 2-3-1998, while FIR was lodged on 3-3-1998 — Statement of accused was also recorded on 2-3-1998 and discovery panchnama of dead body prepared on that day — But, statement of PW 3, in spite of he being available in the police station on 2-3-1998 not recorded on that day — Stand of State that FIR was registered at 1.30 a.m. on 3-3-1998 and thereafter investigation started, and therefore statement of PW 3 was recorded afterwards, rejected, taking into consideration that police was already treating respondent as accused on 2-3-1998 and had obtained his signature on panchnama as such, and had started investigation — There was thus no difficulty in recording statement of PW 3 on 2-3-1998 itself — Considering parameters relating to appeal against acquittal, conviction based on circumstantial evidence, and last seen together theory, held, no interference with impugned judgment called for — Penal Code, 1860 — Ss. 302, 392 and 201* (Paras 12 to 20). *State of Goa* v. *Pandurang Mohite*, (2008) 16 SCC 714: AIR 2009 SC 1066: (2009) 73 AIC 100 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 8-12-2008]

State of U.P. v. Satish, (2005) 3 SCC 114: 2005 SCC (Cri) 642; Ramreddy Rajesh Khanna Reddy v. State of A.P., (2006) 10 SCC 172: (2006) 3 SCC (Cri) 512; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, considered and relied on

State of Rajasthan v. Raja Ram, (2003) 8 SCC 180: 2003 SCC (Cri) 1965; State of Haryana v. Jagbir Singh, (2003) 11 SCC 261: 2004 SCC (Cri) 126; Kusuma Ankama Rao v. State of A.P., (2008) 13 SCC 257: (2009) 2 SCC (Cri) 298; Jaswant Gir v. State of Punjab, (2005) 12 SCC 438: (2006) 1 SCC (Cri) 579; Krishnan v. State, (2003) 7 SCC 56: 2003 SCC (Cri) 1577, relied on

[5353] — Ss. 378 and 386 — Appeal against acquittal by High Court — Dismissed — *Accused shown to witness (PW 1) before TI parade held — Held, in such circumstances High Court rightly disbelieved prosecution version and directed acquittal of respondent-accused — Moreover, it was a possible view and therefore no interference called for — Evidence Act, 1872, S. 9* (Para 2). *State of A.P.* v. *Sayyaad Siraj Mohammed*, (2009) 13 SCC 417: AIR 2009 SC 2446.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 15-4-2009]

(11) Acquittal justified *(contd.)*

[5354] — Ss. 378 and 386 — Reversal of acquittal merely because another view was possible, held, improper — *Deceased chasing the accused with something like scissors or knife and threatening to kill them, besides shouting abusive and obscene words — Appellant picking up a stick and giving a blow on the left side of the neck near the ear as a result of which deceased falling down — Accused even thereafter continuing giving further blows resulting in his death — Accused acquitted by the trial court holding that right of private defence had been validly exercised — High Court though noticing that it was the deceased who had offered provocation by his words and acts and the three blows delivered by the appellant could not be said to be delivered in a cruel or unusual manner, yet convicting the appellant under S. 304 Pt. II IPC, merely observing that the appellant "overreacted perhaps under heat of passion" and it was a case of "overkill" — Held, High Court was not justified in doing so — It not only failed to give due importance and weight to the extenuating circumstances and advantages in favour of the appellant which inevitably go to show that he acted well within his reasonable limits but committed a grave error in interfering with his acquittal merely because there could also be another possible view — Penal Code, 1860 — Ss. 302 and 96, 97 & 100*

It could not have been possible, in the heat of passion for the appellant who himself was under the threat of his life having regard to the weapon which the deceased was having and also found to have been in an abusive and aggressive mood, to weigh in such a situation on the spur of the moment as to what injury the deceased is going to cause and what amount of force in retaliation would alone be sufficient to disarm his assailant. In moments of excitement or disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use only so much of force in retaliation commensurate with the danger apprehended to him. Where an assault is about to take place by use of force, it would be lawful to repel the force in self-defence and the right of private defence would commence as soon as the threat to him becomes imminent. Such situations have to be judged in the light of what happens on the spur of the moment on the spot and keeping in view the normal reaction in the ordinary course of human conduct as to how each person would react under such circumstances in a sudden manner with an instinct of self-preservation. (Para 3). *Thankachan* v. *State of Kerala*, (2008) 17 SCC 760.

Bench Strength **2**. Coram: *Doraiswamy Raju* and *Arijit Pasayat*, JJ. [Date of decision: 4-9-2003]

Buta Singh v. State of Punjab, (1991) 2 SCC 612: 1991 SCC (Cri) 494; Wassan Singh v. State of Punjab, (1996) 1 SCC 458: 1996 SCC (Cri) 119; Sekar v. State, (2002) 8 SCC 354: 2003 SCC (Cri) 16, relied on

[5355] — Ss. 378 and 386(a) — High Court reversing acquittal — On facts, not sustainable — Custodial death — *High Court reversing acquittal by trial court of all appellant-accused (police personnel), thereby convicting them under Ss. 302/34 and 201/34 — Held, there is a rise in incidents of custodial deaths but accused cannot be convicted completely dehors the evidence and its admissibility according to law — Court cannot act on presumption merely on a strong suspicion or assumption and presumption — Presumption can only be drawn which is permissible under the law — Rushing into conclusions without there being any proper link with commission of crime is improper — Herein, view taken by trial court was just and proper in the given facts and circumstances of the case and it was not proper for High Court to reverse the finding — Reasons given by High Court in reversing the order of acquittal of accused persons were not cogent and did not appeal to reason so as to justify conviction of the appellants — Hence, impugned judgment of High Court set aside — Penal Code, 1860 — Ss. 302/34 and 201/34. Sadashio Mundaji Bhalerao* v. *State of Maharashtra*, (2007) 15 SCC 421.

Bench Strength **2**. Coram: *G.P. Mathur* and **A.K. Mathur**, JJ. [Date of decision: 28-11-2006]

[5356] — Ss. 378 and 386(a) — Scope of exercise of power by appellate court against judgment of acquittal under — Murder trial — Reversal of acquittal by High Court, held, improper — *Trial court meticulously examined entire evidence and concluded that prosecution failed to prove case beyond reasonable doubt — However, High Court, giving credence to prosecution version, but forming entirely different opinion — Omissions and inconsistencies present in prosecution case rendering very genesis of crime doubtful and full of suspicion — Truthfulness of prosecution case doubtful and false implication could not be ruled out — Also, testimony of PWs 1 and 2 did not conform with collateral circumstances and probabilities — Circumstances brought on record showing that reliance on their testimony was not safe — Their testimony was shrouded with grave suspicion and serious doubts — In the circumstances, held, principles culled out in* Ghurey Lal case, *(2008) 10 SCC 450, must be kept in mind by appellate court before venturing to overturn trial court's judgment of acquittal — Herein, view taken by trial court was possible as well as plausible — High Court, thus,* *seriously erred in disturbing judgment of acquittal — Penal Code, 1860 — Ss. 302/34 — Arms Act, 1959, Ss. 4/25. Mahtab Singh* v. *State of U.P.*, (2009) 13 SCC 670: AIR 2009 SC 2298: (2009) 5 All LJ 268: (2009) 78 AIC 254 (SC).

Bench Strength **3**. Coram: *S.B. Sinha, Dr. M.K. Sharma* and **R.M. Lodha**, JJ. [Date of decision: 13-4-2009]

Ghurey Lal v. State of U.P., (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60, followed

Kalyan Singh v. State of M.P., (2006) 13 SCC 303: (2007) 3 SCC (Cri) 173; K. Prakashan v. P.K. Surenderan, (2008) 1 SCC 258: (2008) 1 SCC (Cri) 200, relied on

[5357] — Ss. 378 and 386 — Acquittal, reversal of — Whether justified — *Held, a strong reasoning was warranted when High Court in appeal interfered with the acquittal order of lower court — Prosecution evidence, on appreciation, not found firm enough to warrant such interference in the present case — Acquittal therefore restored — Penal Code, 1860 — S. 302*

A-4, an old man, his son (A-1) and two grandsons (A-3 and A-4), were tried for murder of their neighbour. Quarrel was said to have erupted on account of playing of obscene songs over a tape recorder by one of the grandsons, A-3 against which complaint was made to the Panchayat. According to the prosecution, A-3 inflicted three blows on the deceased with *gandasi*. A-3's grandfather i.e. A-4 inflicted a deep stab injury which proved fatal. At this stage, PW 2 and PW 1, father and the brother of the deceased arrived at the scene. They too were attacked by the assailants. It is said that when the injured party started counter-attacking the assailants, the latter vanished from the scene. The trial court acquitted A-4 but convicted others. The High Court while sustaining conviction of others, convicted A-4 also. The accused made a plea that the deceased and his kith and kin were the aggressors. Their further case was that A-4 was not at all present at the scene.

Allowing the appeal of A-4, and modifying the conviction of A-1 to A-3,

Held:

This is a case where both sides sustained injuries. (Para 7)

A strong reasoning was expected when the High Court chose to convict A-4 by reversing acquittal order of the lower court. PW 1 and PW 2 who attributed fatal injury to A-4 when they were examined in chief, have candidly admitted during cross-examination that they did not say that aspect when they were interrogated by the investigating officer. If so, the evidence of PW 1 and PW 2 could not be used against A-4. (Para 8)

It was submitted on behalf of the State that evidence of PW 3 being an independent witness was enough to show that A-4 had inflicted fatal blow. There is difficulty in accepting this contention. PW 3 said in the cross-examination that A-4 was not present at the scene at all as he was away. An attempt was made on behalf of the State to show that reference to Tarsem Singh in cross-examination was some other person but not A-4. This possibility is not ruled out but that is not enough to definitely conclude that PW 3 did not mean A-4 when he mentioned the name of Tarsem Singh in the said context. It has to be kept in view that A-4 secured an order of acquittal from the trial court. (Para 9)

Second reason is that PW 3's version regarding commencement of occurrence, runs counter to the version of PW 1 and PW 2. When PW 3 said that he saw the deceased as well as PW 1 and PW 2 standing at the scene of occurrence right from the beginning, PW 1 and PW 2 have said that they were inside the house during the beginning stage and they went out only after hearing the commotion and the cry made by the deceased for help. (Para 10)

For the above reasons, it is difficult to place absolute reliance on the testimony of PW 3 insofar as the involvement of A-4 is concerned. The High Court wrongly interfered with the order of acquittal of A-4. (Para 11). *Resham Singh* v. *State of Punjab*, (2002) 10 SCC 151: 2004 SCC (Cri) 452: AIR 2002 SC 2625.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Phukan*, JJ. [Date of decision: 8-11-2001]

[5358] — Ss. 378 & 386 — Appeal against acquittal by trial Court of charge of forgery of thumb impression in a will — No direct evidence available — *Circumstantial evidence conflicting and the circumstances clearly explainable and not very relevant — Trial Court therefore, finding it unsafe to convict the accused — High Court, held, not justified in reversing the acquittal order without giving any cogent reasons for disbelieving the trial Court's findings — Penal Code, 1860, Ss. 467 and 471. Arjan Singh* v. *Hazara Singh*, (1980) 1 SCC 613: 1980 SCC (Cri) 309: AIR 1979 SC 1236: 1979 Cri LJ 1029.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 14-2-1979]

[5359] — S. 378 — High Court when not justified in interfering under, with the order of acquittal passed by trial court — *Where conviction under S. 396, IPC not possible in view of unreliability of evidence regarding identification of the accused in T.I. parade, High Court not justified in interfering. Wakil Singh* v. *State of Bihar*, 1981 Supp SCC 28: 1981 SCC (Cri) 634: AIR 1981 SC 1392: 1981 Cri LJ 1014.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision: 31-3-1981]

(11) Acquittal justified *(contd.)*

[5360] — S. 378 — Reversal of acquittal not justified — *After holding the appellant and co-accused individually responsible for their acts, High Court wrongly convicted the appellant for the murder caused by co-accused — Reversal of acquittal by High Court not justified. Ram Kumar Pandey* v. *State of M.P.*, (1975) 3 SCC 815: 1975 SCC (Cri) 225: AIR 1975 SC 1026: (1975) 3 SCR 519: 1975 Cri LJ 870.

Bench Strength **2**. Coram: **M.H. Beg** and *A. Alagiriswami*, JJ. [Date of decision: 11-2-1975]

[5361] — Ss. 378 and 384 — Appeal against acquittal — Finding of acquittal by High Court — No interference is called for — *No law point laid down. State of Punjab* v. *Om Parkash*, 1995 Cri LJ 3655.

Bench Strength **2**. Coram: *G.N. Ray* and *Faizan Uddin*, JJ. [Date of decision: 22-3-1995]

[5362] — Ss. 378 and 386 — Appeal against acquittal — Acquittal justified — High Court's interference with acquittal, when not called for — *Prosecution case against accused persons of causing death of deceased woman by tying her with a tree and inflicting blows with iron rod, trishul and chimta while treating her from evil spirit — Trial court, having regard to various material contradictions, omissions and improvements in the prosecution case, disbelieving the testimony of the sole eyewitness, deceased's husband and acquitting the accused giving sound reasons — Held, High Court by a casual approach was not justified in setting aside the order of acquittal and convicting them under Ss. 304 Pt. II/34 IPC — Penal Code, 1860, Ss. 304 Pt. II/34*

In this case there was a delay of 18 hours in lodging the FIR, no ligature marks were found on the body of the deceased as against the prosecution story that the deceased was tied to a tree with a rope and that was the position throughout the night; no burn marks were found on the clothes of the deceased though there were several burn injuries on the body of the deceased as per the prosecution; the body was not identified by the husband of the deceased at the place of the occurrence or at inquest raising serious doubts about his presence itself. The doctor, in his evidence has stated that when he gave opinion the weapons stated to have been seized were not shown to him by the police; the weapons when produced were not sealed; on them the name of the accused, case number and name of the deceased were not mentioned. The deceased's husband, the sole eyewitness, in his evidence has stated that when the police went to the spot with him all these weapons were lying at the spot and were taken into possession. The investigating officer deposed that the weapons were recovered several days after the incident at the instance of one of the accused, who was not before the Court. The rope with which the deceased was alleged to have been tied to the tree was also not recovered. The trial court preferred not to convict the accused on the solitary testimony of the deceased's husband which suffered from infirmities and was not corroborated by independent circumstances in the shape of medical evidence and other evidence. In appeal the High Court opined that the findings recorded by the trial court were palpably erroneous. In the judgment of the High Court there was no reference to the statements of the witnesses at least on material aspects of the prosecution case. The judgment contained narration as to the prosecution story, arguments of the learned counsel and reproduction of injuries found on the deceased running into four pages, the reasons and discussion were only found in one paragraph. In the penultimate paragraph the High Court only stated that the case of murder was not spelt out as there was no intention on the part of the accused to cause death but they could be safely attributed with the knowledge that death could be caused in such a situation and as such convicted them for offence punishable under Section 304 Part II IPC.

Allowing the appeal,

Held :

The infirmities in the prosecution case gave rise to serious doubts as to the prosecution case and involvement of the appellants in the commission of the offence. When the material contradictions and omissions and improvements in the evidence of the deceased's husband were found and there was no corroboration to his evidence by other independent witnesses, it was fatal to the prosecution case. The trial court was right in not relying on his evidence. (Para 12)

The approach of the High Court and consideration of the case that too for reversal of the order of acquittal has been unsatisfactory and casual. The High Court did not consider the case before it, as it ought to have been by a court of first appeal on facts. The High Court did not dislodge the reasons given by the trial court for acquittal. Further the evidence was neither discussed nor scrutinized nor analysed to show how the trial court was wrong in appreciating the evidence, considering the probabilities of the case and recording findings. (Para 11)

No interference by the High Court in such an appeal was called for or warranted when the reasons given by the trial court for recording acquittal are good and sturdy. The trial court had the advantage and benefit of observing during the trial the demeanour and conduct of the witnesses from its commencement to completion and with that background on proper and objective appreciation of the evidence as a whole recorded a finding of acquittal supported by reasons. The High Court could not upset an order of acquittal as if it was another trial court to record conviction forgetting that it was sitting in first appeal against an order of acquittal. The High Court failed to keep in its mind the well-settled principles in the matter of reversing an order of acquittal. (Para 13)

Assuming one other view was possible to be taken by the High Court, that was not enough in the light of the well-settled position in law. In this case, having regard to the discussion made and reasons given by the trial court, it cannot be said that the appreciation of evidence was perverse or arbitrary or findings recorded were based on no evidence or material evidence was not considered. The High Court committed a grave error in convicting and sentencing the accused, reversing the order of acquittal merely because it could take a different view. In a case like this, it is the duty of the Supreme Court to interfere with the impugned judgment and order so as to do substantial justice. (Para 14)

In the result, for the reasons stated above the impugned judgment of the High Court is set aside, that of the trial court is restored and the appellants be set at liberty forthwith, if they are not required in any other case. (Para 15). *Pritam Nath* v. *State of Punjab*, (2002) 6 SCC 321: 2002 SCC (Cri) 1320: AIR 2002 SC 2846.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Shivaraj V. Patil**, JJ. [Date of decision: 1-8-2002]

State of Punjab v. Kewal Nath, (2001) 4 All Cri LR 414 (P&H), reversed

[5363] — S. 378 — Interference with order of acquittal — If warranted — *Held, both trial court and High Court analysed the evidence in great detail and found prosecution version to be not cogent and credible — Hence, no scope for interference with order of acquittal passed by High Court* (Paras 5 to 7). *State of Kerala* v. *Suresh*, (2009) 15 SCC 121: (2009) 78 AIC 96 (SC).

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *D.K. Jain* and *Dr. M.K. Sharma*, JJ. [Date of decision: 1-4-2009]

[5364] — Ss. 378 & 386 — Bride burning — Acquittal justified — *Dying declaration of deceased implicating all members of husband's brother's family — Death taking place in nuptial home — Trial court not inclined to convict on this solitary evidence but High Court reversing the decision — Supreme Court taking note of the fact that deceased's husband, daughter and even her relations from parental side had deposed that she committed suicide — Prosecution treating them as hostile — Dying declaration disbelieved by the Supreme Court — Further held, conclusion reached by trial court was not perverse or unreasonable and therefore High Court ought not to have reversed appellants' acquittal merely on the basis of dying declaration — Evidence Act, 1872, Ss. 32 and 145 — Penal Code, 1860, S. 304-B* (Paras 4 to 8). *Muneer Khan* v. *State of M.P.*, (2002) 9 SCC 523.

Bench Strength **2**. Coram: *K.T. Thomas* and *S.N. Phukan*, JJ. [Date of decision: 15-1-2002]

[5365] — Ss. 378 and 386 — Appeal against acquittal — High Court cannot reverse the finding concerning credibility of a witness unless there are strong and cogent reasons — *PW 1 who was injured in the incident lodged FIR soon after the occurrence giving vivid details of the attack by A-2 and A-5 on two deceased persons — PW 1 was admitted in hospital on complaint that he was subjected to beating — Trial court declining to place reliance on his evidence solely because the doctor who examined PW 1 did not notice any external injury on his person — Held, trial court erred in doing so — On facts, there were strong reasons to persuade High Court to reverse the findings of trial court* (Para 7). *Mulavani Kannan* v. *State of Kerala*, (2002) 10 SCC 172.

Bench Strength **2**. Coram: *K.T. Thomas* and *D.P. Mohapatra*, JJ. [Date of decision: 23-3-1999]

[5366] — Ss. 378 and 386 — Circumstantial evidence — Acquittal justified — *Held, on reappraisal of evidence that an important fact such as identity of the accused not fully established — High Court was therefore not justified in reversing the acquittal of the accused. Phoolchand* v. *State of Rajasthan*, (1976) 4 SCC 405: 1976 SCC (Cri) 682: AIR 1977 SC 315: 1977 Cri LJ 207.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *P.N. Shinghal*, JJ. [Date of decision: 2-9-1976]

[5367] — Ss. 378 and 386 — Search, seizure and arrest — Whether in compliance with statutory requirements — Search of vehicle vis-à-vis search of persons of accused — Difference in requirements — *Court below recording a judgment of acquittal, holding that the search and seizure was vitiated in law as mandatory statutory requirements contained in Ss. 50 and 42 were not complied with — Also, that the seizure witness did not support the prosecution case and the informant*

(11) Acquittal justified *(contd.)*

also not complying with the requirements of S. 57 of the NDPS Act — Further, that the sealing of the contraband materials were not carried out in accordance with law — High Court reversing the judgment without meeting the reasonings of the court below — Held, on facts, the provisions of S. 50 might not have been required to be complied with so far as the search of scooter is concerned — However, since the person of the appellants was also searched, it was obligatory to comply with the said provisions, which was not done — Also, held, High Court could not have brushed aside the findings of the court below without meeting the reasonings assigned by it as it was dealing with a judgment of acquittal — Hence, impugned judgment cannot be sustained which is set aside — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 50, 42 and 57

The appellant was prosecuted for commission of offence under Sections 8/18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 on the basis of a first information report lodged by the officer in charge of PS Kumbhraj alleging that while he was posted as SHO at the said police station, when he came out for arresting one *S* he found two persons coming at a fast speed in a scooter. They were stopped and on searching their person nothing was found, but, on search of the scooter, some black-coloured liquid substance contained in six big plastic bags and one small plastic bag was seen said to be containing opium. Allegedly, the SDOP of the place Raghogarh was informed and 5 kg 890 gm opium was recovered. They were arrested at the spot. The Sessions Judge recorded a judgment of acquittal, inter alia, holding that the search and seizure was vitiated in law as mandatory statutory requirements contained in Sections 50 and 42 of the NDPS Act were not complied with. The seizure witness did not support the prosecution case. The informant also did not comply with the requirements of Section 57 of the NDPS Act. Sealing of the contraband materials was not carried out in accordance with law as no responsible officer fixed seal on the seized samples. The State preferred an appeal before the High Court against the said judgment of acquittal. The High Court reversed the said judgment of the Sessions Judge. Hence this present appeal.

Allowing the appeal,

Held :

It is now well settled that the offence committed under the Act is a grave one. Procedural safeguards provided therefor in terms of Sections 41, 42 and 50 of the NDPS Act should be complied with. (Para 6)

Before seizure of the contraband from the scooter, personal search of the appellants had been carried out and, admittedly, even at that time the provisions of Section 50 of the Act, although required in law, had not been complied with. The provisions of Section 50 might not have been required to be complied with so far as the search of scooter is concerned, but, keeping in view the fact that the person of the appellants was also searched, it was obligatory to comply with the said provisions. It was not done. (Paras 12 and 16)

The High Court could not have brushed aside the findings of the learned Sessions Judge without meeting the reasonings assigned by him as it was dealing with a judgment of acquittal. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. (Para 22). *Dilip* v. *State of M.P.*, (2007) 1 SCC 450: (2007) 1 SCC (Cri) 377: AIR 2007 SC 369: 2007 Cri LJ 880: (2007) 49 AIC 715 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 24-11-2006]

State of Punjab v. Baldev Singh, (1999) 6 SCC 172: 1999 SCC (Cri) 1080; Jagdish v. State of M.P., (2003) 9 SCC 159: 2004 SCC (Cri) 1171; Ritesh Chakarvarti v. State of M.P., (2006) 12 SCC 321, relied on

[5368] — Ss. 378 & 386 — Appeal against acquittal — When High Court should not interfere with trial court's order of acquittal — *Murder of wife — Husband accused — Held, not guilty — Circumstances not so overwhelming as to exclude hypothesis of innocence of accused — Deceased found in seriously injured condition in the room in which she used to live with her husband — Husband accused last seen with deceased about 4½ hours prior to the occurrence in daytime — During this long gap possibility of accused leaving the house for any purpose not ruled out — No evidence to establish presence of accused in the house proximate to the time of occurrence — On being asked by a PW, the injured stating "they have given beatings"* (ve mar gaye) *— No evidence that expression "ve" was used not in normal plural sense but was used as a respectful term with reference to her husband — Theory of robbery and fatal assault by some stranger though inconsistent with probabilities but that would not absolve the prosecution of the burden to connect the accused with the crime by eliminating the hypothesis of innocence of accused, which prosecution failing to do — Prosecution also failing to adduce evidence as to the subsequent conduct of accused, which could provide one of the links in the chain of circumstantial evidence — Circumstance of presence of dried-up blood traces on chest and arm of the accused not examined in absence of blood analysis report — No* *motive proved or seriously suggested for inflicting fatal injuries on wife who was then pregnant — Testimony of no PW leading to an inference that accused had committed the crime — Circumstantial links lacking — Trial court giving benefit of doubt to accused — View taken by trial court not unreasonable or perverse and against settled principles of standard of proof and evaluation of evidence in a criminal case — Held, High Court was not justified in disturbing the findings reached by trial court on an elaborate consideration of evidence adduced by prosecution — High Court erred in treating statement of deceased virtually as a dying declaration — Conviction of accused-appellant by High Court under S. 302 cannot be sustained though suspicion looms large against him — Evidence Act, 1872, S. 32. Rajkumar* v. *State of M.P.*, (2004) 12 SCC 77: AIR 2004 SC 4408.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *B.P. Singh*, JJ. [Date of decision: 14-9-2004]

[5369] — Ss. 378 and 386 — Suicide by housewife by sprinkling kerosene on her body and setting herself on fire — Acquittal justified — *Trial court on appreciation of evidence finding that ingredients necessary to attract S. 306 satisfied — High Court on reappreciation of evidence also affirming that conclusion and taking the view that there was no evidence to establish the case of instigation or abetment of the accused persons to commit suicide — In view of order of acquittal passed by the trial court and High Court, held, there was no justification for Supreme Court's interference with the same — Penal Code, 1860, S. 306. State of Haryana* v. *Jasvinder Singh*, (2000) 9 SCC 387: 2001 SCC (Cri) 402.

Bench Strength 2. Coram: *G.B. Pattanaik* and *Shivaraj V. Patil*, JJ. [Date of decision: 28-3-2000]

[5370] — Ss. 378 & 386 — Prosecution's failure to prove its case — Acquittal justified — *According to prosecution, pursuant to a quarrel ensued over ploughing of land alleged to be of deceased by Accused 1, appellant who was a friend of Accused 1, assaulted deceased with a hammer causing his death and other accused assaulted deceased's family members with bamboo sticks causing injuries — Whether the land belonged to deceased in dispute — Motive of appellant not established — Having regard to various inconsistencies, trial court acquitting the appellant — Held, High Court erred in reversing the judgment of acquittal — Penal Code, 1860 — Ss. 302, 307 and 34. Samghaji Hariba Patil* v. *State of Karnataka*, (2006) 10 SCC 494: (2007) 1 SCC (Cri) 113.

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 19-10-2006]

[5371] — Ss. 378 and 386 — Acquittal justified — *Accused alleged to have assaulted the deceased with sticks and rods resulting in his death, pursuant to some altercation and also threatened to set his motorcycle on fire — Discrepancy in evidence of PWs as regards place of occurrence and other material aspects like non-disclosure and non-possibility of identification of accused due to darkness — Held, in such circumstances, impugned judgment directing acquittal of respondent-accused calls for no interference — Penal Code, 1860 — S. 302 r/w S. 149 and S. 148* (Paras 2 and 9). *State of M.P.* v. *Makhan*, (2008) 10 SCC 615.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 16-10-2008]

[5372] — Ss. 378 and 386 — Prosecution case based on evidence of highly interested witnesses — Acquittal justified — *Their presence at the scene of occurrence doubtful — Witnesses making certain improvements regarding nature of weapon used — No other person of locality examined by the prosecution — Evidence of defence witness who resided near the place of occurrence found reliable — Held, in the circumstances, it is highly unsafe to convict the accused in appeal against acquittal — Penal Code, 1860 — S. 302. State of Haryana* v. *Inderaj*, 1995 SCC (Cri) 151: AIR 1994 SC 115.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 30-3-1993]

[5373] — Ss. 378 and 386 — Appreciation of evidence — Causing death of a housewife by strangulation in her in-laws' house — Acquittal justified — *A-2, younger brother of deceased's husband, going upstairs of the same house to call PWs 3 and 4 and when they came down, they saw deceased lying dead with injuries on her neck — It was not the prosecution case that A-2 was present inside the house when deceased was strangulated nor was it the version of PWs 3 and 4 that A-2 had participated along with A-1 and A-3 (father-in-law and mother-in-law of deceased) in causing strangulation of the deceased — Held, on facts, charge of murder not established against A-2 beyond reasonable doubt and therefore, trial court had rightly given him benefit of doubt — Trial court was also justified in acquitting A-2 of offence under S. 201 — High Court erred in interfering with the order of acquittal — Penal Code, 1860 — Ss. 302/34 and 201* (Paras 5 and 6). *Asokan* v. *State*, (2000) 4 SCC 68: 2000 SCC (Cri) 749: AIR 2000 SC 3444: 2000 Cri LJ 2988.

Bench Strength 2. Coram: **G.B. Pattanaik** and *Shivaraj V. Patil*, JJ. [Date of decision: 5-4-2000]

(11) Acquittal justified *(contd.)*

[5374] — Ss. 378 and 386 — Appeal against acquittal of co-accused — Though all the accused persons came by the same taxi to secure the main accused's beloved, but while the main accused entered the deceased's house holding a knife in his hand, co-accused only followed him unarmed — *After main accused inflicted knife blows on his beloved's mother on the spur of the moment, escaped alone by running towards a different direction while the co-accused escaped by the taxi — Co-accused in the age group of 19-22 years — In absence of common intention between the accused persons, held on facts, High Court justified in acquitting the co-accused — Proper charge against them was house trespass but in absence of any charge on that count they cannot be convicted for that offence also — Penal Code, 1860 — S. 302 r/w S. 34. R.N. Aggarwal* v. *Dharam Pal*, 1989 Supp (1) SCC 386: 1989 SCC (Cri) 451.

Bench Strength **2**. Coram: *G.L. Oza* and **K. Jagannatha Shetty**, JJ. [Date of decision: 11-8-1988]

[5375] — Ss. 378 and 386 — Prosecution evidence not leading to the only conclusion of offence under — Acquittal justified — *Eyewitnesses not disclosing the incident to anybody on the day of occurrence — Extra-judicial confession not reliable — Prosecution story disclosed in FIR doubtful — Appreciation of evidence by trial court not shown to be perverse — On facts, held, High Court erred in reversing trial court's order of acquittal — Penal Code, 1860 — S. 302. Sonia Bahera* v. *State of Orissa*, (1983) 2 SCC 327: 1983 SCC (Cri) 444: AIR 1983 SC 491: 1983 Cri LJ 829: 1983 MLJ (Cri) 503: (1983) 56 CLT 311.

Bench Strength **2**. Coram: **E.S. Venkataramiah** and *R.B. Misra*, JJ. [Date of decision: 4-1-1983]

[5376] — Ss. 378 and 386 — Premises specified in licence — Acquittal justified — *Licence granted for conducting business in a multi-storied building — Entire building bearing a single municipal number and third floor of the building not shown to be not forming part of the licensed premises — Merely because showroom was located in the ground floor, storage of some gold ornaments which were accounted for in the third floor room cannot necessarily lead to the inference that the ornaments were stored in an unlicensed premises — Trial court's order of acquittal based on such view, being a possible view, not open to interference by High Court — Gold (Control) Act, 1968, S. 27(7)(b). C.D. George* v. *Asstt. CCE*, (1990) 2 SCC 345: 1990 SCC (Cri) 320: AIR 1990 SC 847: (1990) 28 ECC 1: (1990) 1 KLT 890: 1990 BBCJ 81: (1990) 2 Crimes 34.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 2-3-1990]

[5377] — Ss. 378 and 386 — On facts, reversal of acquittal by the High Court not justified. *Ramaswami Ayyangar* v. *State of T.N.*, (1976) 3 SCC 779: 1976 SCC (Cri) 518: AIR 1976 SC 2027: 1976 Cri LJ 1563.

Bench Strength **2**. Coram: *R.S. Sarkaria* and **N.L. Untwalia**, JJ. [Date of decision: 24-3-1976]

[5378] — Ss. 378 and 386 — Acquittal justified — Time of giving FIR doubtful and names of accused-appellants deliberately introduced at a later stage — *In view of discrepancies in FIR and in other evidence, High Court, held, not justified in reversing the order of acquittal of the trial Court and convicting the appellants under Ss. 302/34 Indian Penal Code. Bandi Mallaiah* v. *State of A.P.*, (1980) 3 SCC 136: 1980 SCC (Cri) 672: AIR 1980 SC 1160: 1980 Cri LJ 914.

Bench Strength **2**. Coram: *R.S. Sarkaria* and **O. Chinnappa Reddy**, JJ. [Date of decision: 16-11-1979]

[5379] — Ss. 378 and 386 — Acquittal justified — *Trial Court acquitting accused since : (i) innocent persons had also been roped in ; (ii) FIR lodged in suspicious manner; (iii) FIR not mentioning important eyewitnesses or overt acts of the accused — Held, view taken by trial Court not so unreasonable as to warrant interference by the High Court — Basis of conviction by High Court also not found sound — Acquittal restored. Yamanappa Goolappa Shirgumpi* v. *State of Karnataka*, 1980 Supp SCC 345: 1981 SCC (Cri) 271: AIR 1981 SC 646: 1981 Cri LJ 164.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 5-11-1980]

[5380] — Ss. 378 and 386 — Allegations relating to offence under S. 498-A IPC could not be established by prosecution — Acquittal justified — *As regards offence under S. 304-B IPC, in absence of any evidence to suggest that soon before the occurrence, deceased was subjected to torture and harassment, conviction thereunder as recorded by trial court also cannot be sustained — Order of acquittal by High Court, being based on evidence on record and on proper appreciation of evidence, held, proper — Penal Code, 1860, Ss. 498-A and 304-B. State of Orissa* v. *Niranjan Mohapatra*, (2005) 9 SCC 578: 2005 SCC (Cri) 1251: AIR 2005 SC 970: 2005 Cri LJ 1427.

Bench Strength **2**. Coram: **B.P. Singh** and *B.N. Srikrishna*, JJ. [Date of decision: 3-2-2005]

[5381] — Ss. 378 & 386 — Appeal against acquittal — Acquittal justified — Interference with, when not called for — Accused alleged to have caused injuries to PWs 1 and 2 — *PW 2 turned hostile — PW 1, who was also the first infor-*

mant and had sustained simple injury on his back, while lodging FIR stated that he had suffered a scratch on his back at the hands of some unknown persons — He had not named the accused as his assailant though he admitted in his deposition that he knew the accused from before — High Court, having regard to all the facts and circumstances, concluding that prosecution had not made out a case against the accused — Held, conclusion reached by High Court was reasonable which could reasonably be taken on the basis of evidence on record — Hence even if another view is possible, order of acquittal must be sustained (Para 4). *State of Kerala* v. *Nazar*, (2005) 9 SCC 246: AIR 2005 SC 1280.

Bench Strength 2. Coram: **B.P. Singh** and *Arun Kumar*, JJ. [Date of decision: 24-11-2004]

[5382] — Ss. 378 and 386 — Appeal against acquittal — Contradictory versions given by trap witnesses — Acquittal justified — *Their testimony not corroborated by independent evidence — High Court, finding their testimony unreliable, recording acquittal of the accused — High Court's judgment being one of acquittal and there being nothing wrong in it, Supreme Court would not interfere under Art. 136 — Prevention of Corruption Act, 1947, S. 5(2) — Penal Code, 1860, S. 161 — Constitution of India — Art.136. State of Punjab* v. *Kuldip Prakash*, (1981) 3 SCC 207: 1981 SCC (Cri) 713: AIR 1981 SC 1008: 1981 Cri LJ 713.

Bench Strength 3. Coram: **A.D. Koshal**, *V. Balakrishna Eradi* and *R.B. Misra*, JJ. [Date of decision: 30-1-1981]

[5383] — Ss. 378 and 386 — Appeal against acquittal — Acquittal justified — *Finding of the trial court that R's name was not disclosed in the FIR as a person who shared the common intention with other accused and evidence regarding participation of N was contradictory — Such findings based on proper appreciation of evidence — High Court not justified in setting aside order of acquittal merely because a different view of evidence could be taken* (Para 4). *Mubbi* v. *State of M.P.*, 1999 SCC (Cri) 1314.

Bench Strength 2. Coram: *M.K. Mukherjee* and *S.P. Kurdukar*, JJ. [Date of decision: 9-4-1996]

[5384] — Ss. 378 and 386 — Appeal against acquittal — Acquittal justified — *On facts held, High Court completely misdirected itself in construing the evidence adduced by prosecution and acquitting accused persons leading to miscarriage of justice — Reversal of acquittal by High Court set aside — Constitution of India — Art.136. State of U.P.* v. *Jodha Singh*, (1989) 3 SCC 465: 1989 SCC (Cri) 591: AIR 1989 SC 1822.

Bench Strength 2. Coram: **S. Natarajan** and *Kuldip Singh*, JJ. [Date of decision: 19-7-1989]

[5385] — Ss. 378 and 386 — Appeal against acquittal — Factors to be considered — Acquittal justified — *Held, though it cannot be said as a rule of universal application that whenever there is delay in lodging the FIR and/or there is delay in dispatching the report to the Ilaqa Magistrate and/or the medical evidence is at some variance with the ocular evidence the prosecution has to fail, but in the instant case the combined effect of the above factors leaves no manner of doubt that prosecution has failed to establish the accusations — View taken by High Court is a possible view and hence no interference with impugned judgment called for — Penal Code, 1860, Ss. 302/34* (Paras 3 and 5). *State of Punjab* v. *Gurdip Kaur*, (2009) 1 SCC 120.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 21-10-2008]

[5386] — Ss. 378 and 386 — Appeal against acquittal — Acquittal justified — *Subsequently law amended conforming it with High Court's view on which it had reversed the trial court's order of conviction — Eighteen years elapsed since lodging of complaint against the accused — In the circumstances, no necessity to examine the view expressed by High Court and hence criminal proceedings against the accused should be dropped — Prevention of Food Adulteration Act, 1954, Ss. 16(1)(c) and 20(1) — Constitution of India — Art.136. Distt. Board, Gaya* v. *Suleman Mian*, (1983) 2 SCC 269: 1983 SCC (Cri) 397.

Bench Strength 2. Coram: **E.S. Venkataramiah** and *R.B. Misra*, JJ. [Date of decision: 6-1-1983]

[5387] — Ss. 378 and 386 — Appeal against acquittal — Acquittal justified — *Trial Court giving benefit of doubt to accused by its careful judgment after exhaustively considering all the evidence and carefully analysing the case — High Court ignoring its limits in appeal against acquittal, concentrating on some of the materials only and taking into particular regard a few facts unconnected with the accused and his guilt and omitting to consider in the process that integrality of the evidence alone can ensure the guilt of the accused — Held on facts, High Court erred in interfering with the judgment of the trial Court. Ajit Singh Thakur Singh* v. *State of Gujarat*, (1981) 1 SCC 495: 1981 SCC (Cri) 184: AIR 1981 SC 733: (1981) 2 SCR 509: 1981 Cri LJ 293: 1981 MLJ (Cri) 357.

Bench Strength 2. Coram: *R.S. Sarkaria* and **R.S. Pathak**, JJ. [Date of decision: 9-1-1981]

(11) Acquittal justified *(contd.)*

[5388] — Ss. 378 and 386 — Appeal against acquittal — Acquittal justified — View taken by trial court while recording acquittal, reasonably possible — *Name of accused-appellant not mentioned in FIR while names of other suspects mentioned — Retracted confession made before Magistrate not properly corroborated — Evidence regarding recovery of crime articles also not reliable — Held, High Court erred in reversing the acquittal order — Penal Code, 1860 — S. 302. Kora Ghasi* v. *State of Orissa*, (1983) 2 SCC 251: 1983 SCC (Cri) 387: AIR 1983 SC 360: 1983 Cri LJ 692(2).

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *O. Chinnappa Reddy*, JJ. [Date of decision: 3-2-1983]

[5389] — Ss. 378 and 386 — Appeal against acquittal — Acquittal justified — *When trial court gave cogent reasons for acquittal, High Court should not interfere with the acquittal merely because another view was possible* (Para 12). *Joseph* v. *State of Kerala*, (2003) 1 SCC 465: AIR 2003 SC 507.

Bench Strength **2**. Coram: **S. Rajendra Babu** and *Arun Kumar*, JJ. [Date of decision: 3-12-2002]

[5390] — Ss. 378 and 386 — Appeal against acquittal — Acquittal justified — Conviction and sentence by Magistrate but acquittal by Session Court and High Court — *Considering the triviality of offence and lapse of time (6 years) no interference with order of acquittal called for — Prevention of Food Adulteration Act, 1954, Ss. 7 & 16. Food Inspector* v. *Madanlal Ramlal Sharma*, (1983) 1 SCC 135: 1983 SCC (Cri) 131: AIR 1983 SC 176: 1983 Cri LJ 337.

Bench Strength **2**. Coram: *D.A. Desai* and **R.B. Misra**, JJ. [Date of decision: 14-12-1982]

[5391] — Ss. 378 and 386 — Appeal against acquittal — Acquittal justified — Accused tried under S. 406 IPC and acquitted — *Appellate court not justified in convicting him under S. 409 IPC without giving him a prior notice — In view of long lapse of time and the dispute being of civil nature instead of remanding the case trial court's order of acquittal restored. Suresh T. Kilachand* v. *Sampat Shripat Lambate*, 1994 Supp (1) SCC 543: 1994 SCC (Cri) 407: AIR 1994 SC 583: 1994 Cri LJ 611: (1993) 3 Crimes 531.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 24-9-1993]

[5392] — Ss. 378 and 386 — Appeal against acquittal — Acquittal of co-accused upheld — *Four of the accused persons impleaded only to mislead the court and provide protection to real culprits — On facts, held, no evidence against A-2 to A-5 and trial court rightly acquitted 4-5 and the High Court A-2 to A-4* (Para 12). *Subash Chander* v. *Krishan Lal*, (2001) 4 SCC 458: 2001 SCC (Cri) 735: AIR 2001 SC 1903: 2001 Cri LJ 1825.

Bench Strength **2**. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 29-3-2001]

[5393] — Ss. 378 and 386 — Appeal against acquittal — Acquittal justified — Evidence of eyewitnesses that the deceased and the injured were assaulted with sharp-cutting weapons — *Finding of doctor who held post-mortem examination that the injuries were caused by blunt weapon and not by sharp-cutting weapon — Trial court finding it unsafe to rely on ocular version of incident as given by the eyewitnesses — Held, it could not be said that the finding of the trial court in this regard was against the weight of evidence or perverse so as to justify the High Court to set aside the acquittal. Niranjan Prasad* v. *State of M.P.*, 1996 SCC (Cri) 503: AIR 1996 SC 3010.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *G.B. Pattanaik*, JJ. [Date of decision: 14-3-1996]

[5394] — Ss. 378 and 386 — Appeal against acquittal — Acquittal justified — Prosecution for selling adulterated oil — *Contradictions in depositions of witnesses about nature of bottles in which samples drawn — High Court not justified in ignoring the said contradictions and reversing the acquittal on the footing that the accused being a seller was expected to protest against the irregularities in drawing the samples — Prevention of Food Adulteration Act, 1954, S. 7/16. Haripada Das* v. *State of W.B.*, (1998) 9 SCC 678: AIR 1999 SC 1482.

Bench Strength **2**. Coram: *G.N. Ray* and *G.B. Pattanaik*, JJ. [Date of decision: 3-3-1998]

[5395] — Ss. 378 and 386 — Appeal before High Court against acquittal — Reversal of aquittal — Propriety of — Acquittal justified — *Though judgment of trial court acquitting the accused was somewhat perfunctory and lacking clarity in certain respects, on the whole, the approach and conclusions of the trial court were not perverse or vitiated by any serious error warranting interference with the verdict of acquittal — View taken by trial court was a reasonably possible view — Held, High Court was not justified in reversing the acquittal — Conviction and sentence of appellant under S. 302 IPC, on facts, set aside — Penal Code, 1860, S. 302* (Para 14). *Thanedar Singh* v. *State of M.P.*, (2002) 1 SCC 487: 2002 SCC (Cri) 153: AIR 2002 SC 175: 2002 Cri LJ 254.

Bench Strength **3**. Coram: *Dr. A.S. Anand*, C.J. and *R.C. Lahoti* and **P. Venkatarama Reddi**, JJ. [Date of decision: 30-10-2001]

[5396] — Ss. 378 and 386 — Reversal of acquittal by High Court, held on facts, not justified — *Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, S. 2(a) — Evidence Act, 1872, S. 60* (Paras 10 to 12 and 14 to 19). *Pratap Singh* v. *State of M.P.*, (2005) 13 SCC 624: (2006) 2 SCC (Cri) 284: AIR 2006 SC 514: 2006 Cri LJ 310.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 23-11-2005]

[5397] — Ss. 378 & 386 — Acquittal justified — Conviction based solely on testimony of panch witness, on facts held, not proper and hence reversal by High Court of the acquittal not justified. *Gulam Mahmood A. Malek* v. *State of Gujarat*, 1980 Supp SCC 684: 1981 SCC (Cri) 586: AIR 1980 SC 1558: 1980 Cri LJ 1096: (1980) 21 GLR 965.

Bench Strength **2**. Coram: *R.S. Sarkaria* and **P.S. Kailasam**, JJ. [Date of decision: 10-6-1980]

(12) Reversal of acquittal justified/ Acquittal not justified

See also S. 378, '(3) Nature and scope of power under — Interference when called for/Reversal of acquittal when permissible/warranted', above

[5398] — Ss. 378 and 386 — Acquittal order reserved — High Court effectively dispelling all the reasons given by the trial court for order of acquittal — Reversal of acquittal justified — *No interference called for. Jhabla* v. *State of M.P.*, (1982) 2 SCC 145: 1982 SCC (Cri) 371.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *A.C. Gupta*, JJ. [Date of decision: 5-8-1980]

[5399] — S. 378 — Reversal of acquittal by High Court — *High Court on reappreciation of evidence on record in detail finding that the only conclusion possible was the guilt of the accused which was established beyond reasonable doubt — Held on facts, High Court was justified in reaching that conclusion — Hence Supreme Court's interference not called for. N.M. Parthasarathy* v. *State by S.P.E.*, (1992) 2 SCC 198: 1992 SCC (Cri) 367: AIR 1992 SC 988: 1992 Cri LJ 1284.

Bench Strength **2**. Coram: **Kuldip Singh** and *R.M. Sahai*, JJ. [Date of decision: 21-1-1992]

[5400] — S. 378 — Appeal against acquittal — Interference by High Court — Acquittal reversed — If was justified — *Trial court erroneously considering a particular demand for dowry in isolation from the previous ones and concluding that demand of dowry and harassment had ceased during the intervening period — Moreover, the trial court failing to notice material evidence on record — In view of such patent infirmity in judgment of trial court, setting aside of acquittal and conviction of the accused under S. 304-B IPC by High Court, upheld — Penal Code, 1860, Ss. 304-B(1) and 498-A. Rajayyan* v. *State of Kerala*, (1998) 4 SCC 85: 1998 SCC (Cri) 811: AIR 1998 SC 1211: 1998 Cri LJ 1633.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 3-3-1998]

[5401] — Ss. 378, 386(a) and 161 — Acquittal by trial court — Reversed by High Court with regard to appellants — Held, justified — *Deceased contesting elections along with A-6 (co-accused) — While deceased was standing before polling station along with PW 1 (his nephew), accused persons, including A-1 to A-3 (appellants herein), armed with lethal weapons like axes, knives, sticks and stones, attacked him — A-1 caught hold of deceased by his hair, gave two blows with a stone on his forehead and also stabbed him with a knife on his chest — A-2 and A-3, both armed with axes, caused injuries on the back of head of deceased whereafter A-1 again stabbed deceased on his shoulder — Attack resulting in his eventual death — Incident witnessed by PW 1 and PW 5 (vegetable hawker) — Held, presence of eyewitnesses PWs 1 and 5 stands fully explained — Medical evidence not contradicting ocular evidence in any way — Injuries found on dead body correspond fully with weapons used — Even assuming that three injuries out of eight were unexplained, held, this one circumstance alone would not destroy flow of other evidence — Incident happened in course of elections with several people being involved and a large group of spectators being present at the spot — Hence, it is well-nigh impossible for any witness to give mathematical or precise description of all injuries caused and that too in a melee — Evidence recorded after about eight years — Some discrepancies, therefore, bound to occur — Hence, so-called improvements/inconsistencies in statements given by PWs 1 and 5 to police vis-à-vis that in court, held, innocuous and could be ignored as they do not go to the root of matter and affect veracity of prosecution story — In the facts and circumstances, held, High Court fully justified in convicting appellants* (Paras 15 to 23). *Gamini Bala Koteswara Rao* v. *State of A.P.*, (2009) 10 SCC 636: (2009) 83 AIC 166 (SC).

Bench Strength **2**. Coram: *H.S. Bedi* and *Dr. B.S. Chauhan*, JJ. [Date of decision: 19-8-2009]

(12) Reversal of acquittal justified/Acquittal not justified *(contd.)*

[5402] — Ss. 378, 386(a) and 313 — Conviction confirmed — *Dispute related to land, leading to appellant-accused along with co-accused repeatedly stabbing deceased with knives, thereby causing him multiple injuries on vital parts of body, which resulted in his death — Appellant stating that deceased attempted to murder him with a knife and during the course of struggle between them, even accused sustained injuries and that he was also beaten by deceased and, therefore, deceased was stabbed in self-defence — Held, injuries on accused were very minor and superficial in nature, whereas 20 incised injuries inflicted on deceased were of very serious nature and character — Also, statement under S. 313 CrPC not corroborated by medical evidence — Moreover, there is no reason for eyewitnesses PWs 1 and 2 (mother and nephew of deceased, respectively) to falsely implicate accused and let off real assailant — Trial court gravely erred in acquitting accused on the face of testimony of such witnesses — In the facts and circumstances, appellant must be at least convicted under S. 304 Pt. I as there was no appeal by the State — Hence, no interference warranted with appellant's conviction by High Court — Penal Code, 1860, S. 304 Pt. I [S. 300 Exception 2]* (Paras 18 to 20). *Moorthy* v. *State of T.N.*, (2009) 16 SCC 443.

Bench Strength 2. Coram: **Dalveer Bhandari** and *H.S. Bedi*, JJ. [Date of decision: 19-11-2008]

State v. Rathinam, 2001 Cri LJ 1052 (Mad), affirmed

[5403] — Ss. 378 and 374 — Appreciation of evidence — Appellate court's approach — Conviction restored — *Deceased alleged to have been fired at by respondent-accused with their country-made pistols, one shot each, while he was returning home after easing himself, resulting in his death — High Court by impugned judgment setting aside conviction of respondent-accused on inferences and probabilities, ignoring evidence on record — Further, conclusion that deceased had committed suicide after defecation, or that prosecution had shifted place of occurrence, was never case of respondents at any stage of trial — Such setting up of totally new case, impermissible — Moreover, it doubted presence of eyewitnesses at place of occurrence on surmises and inferences not warranted from proved facts and ignored their sworn testimony as well as probative value of FIR — Hence, impugned judgment unsustainable* (Paras 2, 9 to 12 and 16 to 18). *State of U.P.* v. *Rashid*, (2010) 1 SCC 153.

Bench Strength 2. Coram: *B. Sudershan Reddy* and **J.M. Panchal**, JJ. [Date of decision: 3-11-2009]

[5404] — Ss. 378 and 386 — Appeal against acquittal — Death due to gunshot injuries — *Oral testimony of eyewitnesses not at variance with medical evidence — When there was direct evidence of eyewitnesses, alleged inconsistency relating to distance from which gunshots were fired was of no consequence — On consideration of these aspects, High Court reversed trial court's judgment of acquittal — Held, there was no merit in the appeal before Supreme Court against judgment of High Court and no interference therewith called for* (Paras 7 and 13 to 18). *Suraj Singh* v. *State of U.P.*, (2008) 16 SCC 686: (2008) 5 All LJ 646: (2009) 75 AIC 227 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 24-7-2008]

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; Krishnan v. State, (2003) 7 SCC 56: 2003 SCC (Cri) 1577; Kamaljit Singh v. State of Punjab, (2003) 12 SCC 155: 2004 SCC (Cri) Supp 343; Leela Ram v. State of Haryana, (1999) 9 SCC 525: 2000 SCC (Cri) 222; State of U.P. v. Sughar Singh, (1978) 1 SCC 178: 1978 SCC (Cri) 83, relied on

[5405] — Ss. 378 and 386 — Reversal of conviction by High Court improper — *High Court reversing conviction on grounds that there was discrepancy in the time and place of occurrence, delay in forwarding FIR to the Magistrate and doubt about the source of light so as to identify the accused — Held on facts, applying any standard of interference, the impugned judgment of the High Court cannot be sustained as the findings recorded therein are wholly and entirely contrary to the record — Penal Code, 1860 — S. 302* (Paras 3 and 4). *State of Karnataka* v. *Papanna Uruf Babavaraj Shivappa*, (2008) 17 SCC 739.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *H.K. Sema*, JJ. [Date of decision: 2-4-2003]

[5406] — Ss. 378 and 386 — Reversal of acquittal by High Court, held, not justified — *Appellant-accused husband charged under Ss. 302 & 498-A IPC and S. 4, DP Act, 1961 — Acquittal by trial court — High Court, while affirming acquittal under S. 498-A IPC and S. 4, DP Act, however, convicting him under S. 302, opining that trial court's findings were unreasonable — Sustainability — Held, opinion of doctor regarding death due to asphyxia not satisfying tests laid down in* Modi's Medical Jurisprudence — *No mark of violence present — Circumstance of appellant and deceased wife living together alone, in absence of any evidence of violence on deceased, cannot conclusively establish guilt of appellant — Conclusion that husband alone responsible for death of deceased, difficult to accept — Evidence regarding charges under S. 498-A IPC and S. 4, DP Act, disbelieved by courts below — That part of prosecution story, suggesting* *strong motive on part of appellant to commit murder, thus, ruled out — Failure to prove plea of alibi and/or giving of false evidence itself may not be sufficient to arrive at verdict of guilt — It may be additional circumstance — But before such additional circumstance is taken into consideration, prosecution must prove all other circumstances to prove appellant's guilt — PW 2 (mother of deceased) stating that police had already arrived when they reached place of occurrence — Police must have received some information — Why other information suppressed by prosecution, not explained — Conclusion that because a plastic bottle, which at some point of time contained poison, was found near cot of deceased, appellant must have deliberately kept it to raise a false plea, amounts to surmise and conjecture — High Court while considering judgment of acquittal, setting aside part of finding of trial court — It could not have interfered with judgment of acquittal if two views were possible — Trial court's judgment was not wholly unreasonable or perverse — Circumstances brought on record by prosecution not such which would lead to definite conclusion of guilt of appellant — Hence, impugned judgment, unsustainable — Dowry Prohibition Act, 1961, S. 4 — Penal Code, 1860 — Ss. 302 and 498-A. Subramaniam* v. *State of T.N.*, (2009) 14 SCC 415: (2009) 78 AIC 19 (SC): 2009 Cri LJ 3002.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 13-5-2009]

Mohd. Zahid v. State of T.N., (1999) 6 SCC 120: 1999 SCC (Cri) 1066; Modi's Medical Jurisprudence and Toxicology, 23rd Edn.; Mohd. Zahid v. State of T.N., (1999) 6 SCC 120: 1999 SCC (Cri) 1066; Mohar Singh v. State of Rajasthan, (1998) 9 SCC 654: 1998 SCC (Cri) 1338; Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116: 1984 SCC (Cri) 487; Vinay D. Nagar v. State of Rajasthan, (2008) 5 SCC 597: (2008) 2 SCC (Cri) 666; K.T. Palanisamy v. State of T.N., (2008) 3 SCC 100: (2008) 1 SCC (Cri) 627; K. Prakashan v. P.K. Surenderan, (2008) 1 SCC 258: (2008) 1 SCC (Cri) 200, relied on

Ponnusamy v. State of T.N., (2008) 5 SCC 587: (2008) 2 SCC (Cri) 656, distinguished

State of H.P. v. Jeet Singh, (1999) 4 SCC 370: 1999 SCC (Cri) 539, considered

[5407] — Ss. 378 and 386 — Appeal against acquittal — Interference, held, justified — Attempt to murder — Conviction upheld — *Due to minor quarrel between mother of PWs 1, 2 and wife of A-3, A-1 nursed a grudge and A-1 to A-3 waylaid PWs 1 and 2 on their way to the well — A-1 and A-2 attacked PW 2 with an "aruval" (sword) inflicting several injuries — PW 2 was taken to hospital and PW 1 had complaint recorded — Trial court finding prosecution evidence not credible and contradictory acquitting the accused — High Court on analysis and review of evidence of PWs 1, 2 and 5 convicted appellants under S. 307 IPC — Sustainability — Held, analysis made by High Court to set aside acquittal does not suffer from any infirmity — Penal Code, 1860, S. 307 r/w S. 109. Murugan* v. *State*, (2008) 16 SCC 40: AIR 2009 SC 72: (2008) 71 AIC 201 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 30-9-2008]

[5408] — Ss. 378 and 386 — Appeal against acquittal — Jurisdiction of appellate court — Scope — Acquittal reversed — High Court convicting Accused 1 only, while acquitting others — *Submission by respondent-accused that instant appeal being against an order of acquittal, it involved only appreciation of evidence and Supreme Court may not interfere with the findings of facts resulting from appreciation of evidence — Held, guilt of the respondents had been established by the prosecution beyond reasonable doubt and their acquittal resulted in grave miscarriage of justice — Paramount consideration of the court is to ensure that miscarriage of justice is avoided — Miscarriage of justice which may arise from the acquittal of the guilty is no less than from the conviction of an innocent — On facts held, materials placed by the prosecution clearly showed that the acquitted accused along with convicted Accused 1 and three others had formed an unlawful assembly and all came with firearms and caused firearm injuries on the deceased persons as well as on the injured persons and the case of the prosecution was fully corroborated by medical evidence — High Court erred in acquitting those persons and the same deserves to be set aside* (Paras 57 to 59). *State of U.P.* v. *Kishanpal*, (2008) 16 SCC 73.

Bench Strength **2**. Coram: *R.V. Raveendran* and **P. Sathasivam**, JJ. [Date of decision: 8-8-2008]

Virsa Singh v. State of Punjab, AIR 1958 SC 465, considered and relied on

[5409] — Ss. 378 and 386 — Reversal of acquittal — When justified — *High Court while considering judgment of acquittal, setting aside part of finding of trial court — Trial court's judgment was not wholly unreasonable or perverse — Circumstances brought on record by prosecution not such which would lead to definite conclusion of guilt of appellant — High Court could not have interfered with judgment of acquittal if two views were possible*

The High Court was considering a judgment of acquittal; it set aside a part of the finding of the trial court. It could not have interfered with the judgment of acquittal if two views were possible. The judgment of the trial court cannot be said to be wholly unreasonable or otherwise perverse. Circumstances brought on record by the prosecution

(12) Reversal of acquittal justified/Acquittal not justified *(contd.)*

are not such which would lead to a definite conclusion that the appellant and the appellant alone had committed the offence. In the aforementioned situation, the High Court should have approached the case with some caution. (Para 39). *Subramaniam* v. *State of T.N.*, (2009) 14 SCC 415: (2009) 78 AIC 19 (SC): 2009 Cri LJ 3002.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 13-5-2009]

[5410] — Ss. 378 and 386 — Reversal of acquittal justified — *Having regard to trial court's failure to sift chaff from grain and its perversity of approach, held on facts, High Court acted within its jurisdiction in reversing acquittal recorded by trial court and convicting the appellant-accused*

The High Court had not exceeded its peripheral limits stated in various pronouncements for interfering with the order of acquittal passed by the trial court while dealing with the appeal against such order of acquittal. The reasons assigned by the trial Judge to disbelieve and totally reject the evidence of PWs 1 and 2 are not only too general but flimsy which cannot be sustained as tenable reasons in the eye of the law. The non-examination of the father whom the appellant could have also summoned as he did of others, the ill will both sides seem to have mutually carried for the other cannot by themselves be sufficient reasons when the whole episode was inside the house and in the presence of family and other related members. Perfunctory consideration and perversity of approach in unduly magnifying insignificant aspects appear to be patently on record in the judgment of the trial court. On the other hand the approach, process of reasoning and the ultimate conclusions and findings arrived at by the High Court to indict the appellant of the offence and convict him were justified. (Para 6). *Felix Ambrose D'Souza* v. *State of Karnataka*, (2009) 16 SCC 361.

Bench Strength **2**. Coram: *Doraiswamy Raju* and *Shivaraj V. Patil*, JJ. [Date of decision: 19-9-2002]

[5411] — Ss. 378 and 386(a) — Death and injuries caused by explosives — Acquittal reversed — Held, on facts, justified — *A-1, A-2, A-5 and A-19 were brothers and other accused were followers of A-19 — Previously, deceased and his followers had attacked A-19, causing him grievous injuries — Since then A-19 and his associates had decided to kill the deceased — On a day, when deceased was going by car along with PWs 1 to 4, as it slowed down to cross stagnant water, A-1 to A-13, A-16 and A-17 surrounded it — On exhortation of A-1, A-2 hurled a bomb on the deceased and A-3 to A-13, A-16 and A-17 hurled bombs on the car — Bomb hurled by A-3 hit the deceased on his head, blasting his skull, resulting in his instantaneous death — Bombs hurled by other accused also hit PWs 1 to 4, who suffered splinter injuries all over the body and car was also badly damaged — Trial court acquitted all accused persons — However, High Court, while partially allowing appeal of State, convicted A-1 to A-4, A-6, A-7 and A-9 to A-13, holding them (appellants herein) guilty for various offences — Sustainability — Held, no delay in sending FIR to Magistrate — Allegation that FIR was ante-timed, without any foundation — In the facts and circumstances of the case, interference with impugned judgment of High Court, not warranted — Penal Code, 1860 — Ss. 302, 307, 435, 148, 120-B and 149*

Dismissing the appeal,

Held :

In the instant case, the incident took place in front of MDO Office at *V* around 1.40 p.m. The finding of the trial court is to the effect that murder of the deceased took place at 1.40 p.m. at *V* and the same fact is not disputed by the accused persons. Between 2.40 and 2.45 p.m. the deceased and the injured were taken to the Government Hospital at *P*, which is also 12 km from the place of occurrence. The medical intimation is Ext. P-25 which was sent to the station-in-charge at 2.45 p.m. PW 1 (the de facto complainant) was examined by PW 22 (the doctor) at around 3.30 p.m. The Station-in-Charge, *P*, received information around that time. At 4.00 p.m. the statement of PW 1 was recorded by PW 25 (the Head Constable) in the presence of PW 22. (Para 15)

The statement of PW 1 (the de facto complainant) along with Ext. P-25 (medical intimation) was sent to *V* Police Station on the point of jurisdiction and the same was registered at *V* PS by PW 21. The inquest was held at around 9 p.m. to 12 midnight and copy of FIR was received by the Ilaqa Magistrate. It is to be noted that since the Magistrate at *P* was on leave and the Magistrate at another place was not the in-charge, it was sent to another court which is at a distance of 60 km as is evident from the evidence of PW 21. Therefore, there is no delay in sending the FIR to the Magistrate. The allegation that the FIR was ante-timed is without any foundation. (Para 16)

The impugned judgment cannot be said to be suffering from infirmity to warrant interference. (Para 17). *Perla Somasekhara Reddy* v. *State of A.P.*, (2009) 16 SCC 98.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 6-5-2009]

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, followed

Krishnan v. State, (2003) 7 SCC 56: 2003 SCC (Cri) 1577, relied on

Glanville Williams: Proof of Guilt; The Mathematics of Proof II, Criminal Law Review, 1979, Sweet and Maxwell, p. 340 (342), cited

[5412] — Ss. 378 and 379 — Reversal of acquittal by High Court, held, justified — Double murder arising out of accused having outraging modesty of woman on victim side — Conviction confirmed — *High Court convicted appellant-accused reappreciating evidence with aid of S. 34 and maintaining acquittal of other accused — Propriety of — Held, deep rooted enmity between parties — PWs 8 and 9 eyewitnesses, were relatives of deceased — PWs 8 and 9 following deceased when they going to house of accused and watching occurrence of event from close distance — PWs 8 and 9 trying to rescue deceased — PW 8 lodging FIR — PW 8 categorically stating A-1 attacked deceased with sharp weapons on his chest and abdomen — He further deposing that A-2 and A-4 armed with axes assaulting deceased on vital parts — PW 9 (younger brother of PW 8) supporting evidence of PW 8 — Medical evidence establishing that victim died due to injuries and supporting ocular evidence — Contents of post-mortem report not seriously challenged by accused — Seized weapons being identified by PWs 8 and 9, who had witnessed occurrence and tried to save victim — Serologist confirming bloodstains on weapons were those of human blood — Acquittal of A-1 in outraging modesty case inconsequential — Non-examination of independent witness not fatal to prosecution as no reason to disbelieve evidence of PW 8 — Being relatives of deceased, natural for PWs 8 and 9 to follow deceased while going to enquire of accused — Courts need to carefully scrutinise evidence of interested witnesses, but that alone would not be ground to reject their testimony — Therefore relationship between deceased and PWs 8 and 9 not ground to reject their evidence — Reversal of acquittal, justified — Penal Code, 1860, Ss. 302/34, 506 and 148/149* (Paras 15 to 22 and 24). *Sangappa Sanganabasappa M.* v. *State of Karnataka*, (2010) 11 SCC 782.

Bench Strength **2**. Coram: **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision: 13-9-2010]

[5413] — Ss. 378 and 386(a) — Appeal against acquittal — Acquittal reversed — Murder trial — Approach of trial court — *Held, entire approach of trial court in appreciating evidence of eyewitnesses perverse and grossly improper — Hence, acquittal rightly set aside by High Court — Penal Code, 1860 — Ss. 302/149 and 148*

The appellants contended that the statement of PW 4 (eyewitness) was recorded by the investigating officer after about 7-8 days from the date of occurrence which proves that PW 4 was not present on the spot as projected by the prosecution. (Para 22)

It is the evidence of PW 4 that in the early morning of the following day of occurrence, he had gone to Hamirpur for doing work and stayed there for about 7-8 days. The trial court disbelieved the testimony of this witness on the ground that the witness could not disclose the name of the shopkeeper from whom he purchased blade for his *randdha* at Sumerpur market on the day of occurrence. The approach of the trial court in appreciating the evidence of the eyewitness was wholly unwarranted and uncalled for. The presence of PW 4 at the time of the incident has been fully proved on record and his evidence is consistent and trustworthy to prove that the accused persons had fired gunshots at *J* (the deceased) on the day of occurrence when he along with deceased, his father PW 1, and other co-villagers were returning from the railway station to their village. (Para 23)

The trial court observed that as per the post-mortem report deceased was a young man of 35 years of age and of good built and, therefore, there was no need for PW 1 (father of the deceased), to go to the railway station to take a bag of *khalli* from his son (the deceased) and carry the same from the railway station to the village. It has come in the evidence of PW 1 that his son was a patient of asthma and therefore he used to be vigilant that his son should not take much physical strain and because of that reason he went to the railway station to share with his son the burden of the load of one bag containing 15 kg of *khalli*. There is nothing wrong if PW 1 had gone to the railway station for extending some help to his son. Thus, the entire approach of the trial court in appreciating the evidence of the eyewitnesses is perverse and grossly improper. (Para 24). *Indra Pal Singh* v. *State of U.P.*, (2008) 16 SCC 648: AIR 2009 SC 958: (2009) 74 AIC 244 (SC): (2009) 1 All LJ 666: 2009 Cri LJ 942.

Bench Strength **2**. Coram: **L.S. Panta** and *Aftab Alam*, JJ. [Date of decision: 2-12-2008]

[5414] — Ss. 378 and 386(a) — Appeal against acquittal — High Courts power under — Held, on facts, properly exercised — Culpable homicide — Appreciation of evidence — Conviction confirmed — *Deceased along with his brother (PW 2, complainant) and neighbour farmer (PW 3) went to irrigate their field from canal in village — When they opened canal for irrigation, at that time,*

(12) Reversal of acquittal justified/Acquittal not justified *(contd.)*

appellant-accused armed with a spear and co-accused armed with lathis came there and stopped them from opening it — Arguments ensued, as accused persons objected to complainant party taking water from canal while PW 2 insisted upon taking water, on which co-accused A-1 gave a lathi-blow upon PW 2 — When deceased came to his rescue, appellant-accused gave a spear-blow on back of deceased, as a result of which he fell down — Co-accused A-5, A-2 and A-3 also gave lathi-blows to injured deceased — Deceased eventually died of his injuries — Trial court acquitted all accused — Regarding appellant, High Court reversed his acquittal — Sustainability — Held, High Court, in its well-considered judgment, discussed all issues — It accepted evidence of two eyewitnesses PWs 2 and 3, who themselves were injured in the incident, after detailed consideration — Place of occurrence established — Instant case clearly an open and shut case where the two eyewitnesses in broad daylight witnessed attack by accused persons — Absolutely no variance in version of PWs 2 and 3 to the effect that it was appellant who gave spear-blow on back of deceased — PWs 2 and 3 were injured and there was no explanation for their injuries — Hence, High Court absolutely right in upsetting judgment of acquittal passed by trial court and convicting appellant- accused — Penal Code, 1860, S. 304 Pt. II. Bhagwati Prasad v. *State of M.P.*, (2010) 1 SCC 697.

Bench Strength **3**. Coram: *R.V. Raveendran*, **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 3-12-2009]

[5415] — Ss. 378 and 386(a) — Powers of appellate court in appeal against acquittal, restated — Rape — Reversal of acquittal confirmed — *Reiterated, appellate court has full power to review, reappreciate and reconsider evidence upon which order of acquittal is founded — Herein, High Court after evaluating manner in which evidence and other materials on record were appreciated as well as conclusions arrived at by trial court, concluded that findings of trial court were perverse and resulted in miscarriage of justice — Moreover, testimony of victim inspires confidence — Her testimony not only corroborated by other witnesses but also by medical evidence — Also, other corroborative evidence sufficient to connect appellant with crime — Hence, held, appellant committed rape — Therefore, his conviction by High Court justified* (Paras 10 to 13, 18 and 21 to 23). *Ram Singh* v. *State of H.P.*, (2010) 2 SCC 445.

Bench Strength **2**. Coram: *P. Sathasivam* and **H.L. Dattu**, JJ. [Date of decision: 28-1-2010]

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, relied on

Perla Somasekhara Reddy v. State of A.P., (2009) 16 SCC 98, distinguished

[5416] — Ss. 378 and 386(a) — Conviction confirmed — *Pursuant to long enmity, accused persons armed with firearms, entered house of S — Appellant J fired a shot at S — Four dying declarations recorded during investigation — Trial court found that accused persons had not been properly identified — Due to long enmity, false implication was possible — Accused were accordingly acquitted — High Court maintained the acquittal of four of the accused but reversed acquittal of appellant J — Eyewitnesses' account of several persons including wife of deceased — Dying declarations recorded before several independent persons including an Executive Magistrate — Conviction of appellant upheld — No fault could be found with conviction — Penal Code, 1860, S. 326* (Paras 3 and 5 to 7). *Jabar Singh* v. *State of M.P.*, (2010) 11 SCC 742.

Bench Strength **2**. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 12-8-2010]

[5417] — Ss. 378 and 386(a) — Minor contradictions or inconsistencies immaterial — Murder trial — Conviction justified — *Trial court noticed several contradictions and omissions in versions of eyewitnesses PWs 1 and 4, thereby rejecting their evidence — High Court reappreciated evidence and found accused guilty — There was minor discrepancy in evidence of PWs 1 and 4 — Hence, held, High Court rightly held that trial court gave undue importance to such minor inconsistencies which were of a very trivial nature — Therefore, accused could not have been acquitted on such insignificant contradictions — Penal Code, 1860 — Ss. 302/149 and 148* (Paras 16 to 21). *Indra Pal Singh* v. *State of U.P.*, (2008) 16 SCC 648: AIR 2009 SC 958: (2009) 74 AIC 244 (SC): (2009) 1 All LJ 666: 2009 Cri LJ 942.

Bench Strength **2**. Coram: **L.S. Panta** and *Aftab Alam*, JJ. [Date of decision: 2-12-2008]

[5418] — Ss. 378 and 386(a) — Acquittal based on inappropriate appreciation of evidence — Reversal of — Upheld — *Trial court acquitting all nine persons accused — However, High Court setting aside acquittal qua appellant (appeal abated against four accused because of their death and acquittal maintained against the rest) — Sustainability — Considering various aspects viz. contents and timing of FIR, medical evidence, presence of light source at the scene of occurrence, effectiveness of investigation, etc., held, trial court's judgment proceeded on surmises and con-*

jectures and was based on totally inappropriate appreciation of evidence — Relevant aspects were not considered and irrelevant aspects were taken into account — On the contrary, analysis made by High Court did not suffer from any infirmity — Therefore, High Court was justified in recording conviction — Penal Code, 1860 — Ss. 302, 307, 436 and 147 to 149 (Paras 15 to 21). *Ram Narayan* v. *State of U.P.*, (2009) 12 SCC 538: (2009) 4 All LJ 635: 2009 Cri LJ 2987: (2009) 78 AIC 216 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 22-4-2009]

[5419] — Ss. 378 and 386 — Eyewitness, brother of the deceased, throughout asserting that he knew the appellant by name and face — *His statement corroborated by another witness who brought him along with the victim on his rickshaw to the hospital — Injury received by the eyewitness during same occurrence establishing his presence at the scene of occurrence — Recovery of knife at the instance of appellant during investigation — No motive on the part of the eyewitness suggested for falsely implicating the appellant as the assailant of his brother — In facts and circumstances of the case High Court perfectly justified in setting aside the acquittal of the appellant — Penal Code, 1860 — S. 302. Ramsinh Bavaji Jadeja* v. *State of Gujarat*, (1994) 2 SCC 685: 1994 SCC (Cri) 609: 1994 Cri LJ 3067: (1994) 2 Punj LR 671: (1994) 1 MWN (Cri) 130: (1994) 1 GLH 329.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and **N.P. Singh**, JJ. [Date of decision: 1-3-1994]

[5420] — S. 378 — Absence of proof of motive — Held, does not ipso facto warrant an acquittal — *Held, motive, which is not always capable of precise proof, if proved, may only lend additional support to strengthen the probability of commission of the offence by the person accused but the absence of motive does not ipso facto warrant an acquittal — Evidence Act, 1872, S. 8* (Paras 9 and 7). *Sardul Singh* v. *State of Haryana*, (2002) 8 SCC 372: 2003 SCC (Cri) 23: AIR 2002 SC 3462.

Bench Strength **2**. Coram: **Doraiswamy Raju** and *Shivaraj V. Patil*, JJ. [Date of decision: 27-9-2002]

[5421] — Ss. 378 and 386 — Circumstances establishing guilt of the accused — Murder of five persons of a family — Land dispute *— Two days prior to the incident deceased party beating the appellant and coercing him to sign a promissory note — Recovery of a wrist watch belonging to the appellant from the scene of crime — Appellant found wearing a bloodstained lungi and having a promissory note at the time of his arrest — Recovery of an aruval pursuant to the statement made by the appellant which was found to be stained with human blood of 'B' group which was also the blood group of some of the deceased — Held, circumstances are consistent only with the hypothesis of the guilt of the appellant and wholly inconsistent with his innocence — Reversal of acquittal by High Court upheld. Govindaswami* v. *State of T.N.*, (1998) 4 SCC 531: 1998 SCC (Cri) 1092: AIR 1998 SC 2889.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 22-4-1998]

[5422] — Ss. 378 and 386 — Rape on a newly married teen-aged girl by a police officer after separating her husband by booking him on false charges — *On facts held, offence under S. 376 established — Conviction and sentence of 5 years' RI and fine of Rs 1000 recorded by trial court upheld — High Court's order of acquittal, based on erroneous appreciation of evidence, reversed — No two reasonably possible views present — Interference with High Court's order justified — Constitution of India — Art.136 — Penal Code, 1860, S. 376*

When a person in uniform commits such a serious crime of rape on a young girl in her late teens, there is no room for sympathy or pity. The punishment must in such cases be exemplary. Therefore, the sentence of five years' RI and fine of Rs 1000 and in default six months' RI awarded by the trial court is upheld. *State of Maharashtra* v. *Chandraprakash Kewalchand Jain*, (1990) 1 SCC 550: 1990 SCC (Cri) 210: AIR 1990 SC 658: 1990 Cri LJ 889.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *M. Fathima Beevi*, JJ. [Date of decision: 18-1-1990]

[5423] — Ss. 378 and 386 — Prosecution of Marketing Inspector for misappropriation of rent collected from stall-holders and fabrication of false record to conceal embezzlement — *Accused issuing receipt for higher amount but in corresponding counter-foils entering only lesser amount — Entries in receipts and counterfoils not disputed — On facts, held, finding of High Court in favour of accused clearly attributable to misreading of evidence leading to miscarriage of justice and therefore not sustainable — Absence of cash book, which had been destroyed in fire, not material — Order of acquittal passed by High Court set aside — However, in view of old age and retirement from service several years ago accused deserves leniency in punishment — Constitution of India — Art.136 — Penal Code, 1860, Ss. 409 and 467. State of Orissa* v. *Gangadhar Pande*, 1989 Supp (2) SCC 150: 1991 SCC (Cri) 389.

Bench Strength **3**. Coram: *S. Natarajan, K. Jagannatha Shetty* and *Kuldip Singh*, JJ. [Date of decision: 28-3-1989]

(12) Reversal of acquittal justified/Acquittal not justified *(contd.)*

[5424] — S. 378 — Reversal of acquittal justified — *Accused committing murder of his mistress by stabbing her with a dagger — He also injuring himself with same weapon in attempting to commit suicide — Defence plea that deceased stabbed him first and then committed suicide — Held, considering nature of injuries found on deceased's body being homicidal and not suicidal, defence plea not sustainable — Motive also present — High Court justified in reversing trial court's perverse findings and acquittal — Conviction upheld. Adabala Parsuramudu* v. *State of A.P.*, (1975) 4 SCC 116: 1975 SCC (Cri) 373: AIR 1975 SC 1100: 1975 Cri LJ 933.

Bench Strength 2. Coram: **N.L. Untwalia** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 8-4-1975]

[5425] — Ss. 378 and 386 — Sole prosecution witness — Gunshot firing — *On hearing the gunshot, witness turning to that side and noticing the deceased collapsing and accused appellant standing with the rifle — On being chased accused escaping and absconding for few days — Circumstances under which complaint lodged by the witness, narration of events and conduct of the appellant considered together revealing truthfulness of evidence of the sole witness and falsity of explanation given by appellant — Broad facts deposed by the witness convincing though there may be variations regarding postures of the victim, position of the appellant and even place where the witness was at the time of occurrence — Medical evidence not in conflict with testimony of the witness — Having regard to the entire evidence, held, prosecution case true and the charge of murder against the appellant proved to the hilt by circumstances established in the case — Hence trial court erred in acquitting the appellant of charge of murder and High Court in appeal justified in interfering with the acquittal — Penal Code, 1860 — S. 302. Ram Kumar* v. *State of U.P.*, 1992 Supp (1) SCC 438(II): 1992 SCC (Cri) 297: AIR 1992 SC 1602: 1992 ALJ 629: 1992 Cri LJ 2421.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and **M. Fathima Beevi**, JJ. [Date of decision: 12-12-1991]

[5426] — Ss. 378 and 386 — Circumstantial evidence — When can conviction be founded on, restated — *On facts held, prosecution case not proved beyond reasonable doubt — Reversal of trial court's order of conviction and sentence of death under S. 302 read with Ss. 34 and 449, 460 and 394, IPC and acquittal of accused-respondents on benefit of doubt by High Court affirmed in absence of any just and compelling reasons for Supreme Court's interference under Art. 136 with High Court's judgment of acquittal — Penal Code, 1860 — S. 302 read with Ss. 34 and 449, 460, 394 — Constitution of India — Art.136*

In a case in which the evidence is of a circumstantial nature, the facts and circumstances from which conclusion of guilt is sought to be drawn by the prosecution must be fully established beyond all reasonable doubt and the facts and circumstances so established should not only be consistent with the guilt of the accused, but they must be entirely incompatible with the innocence of the accused and must exclude every reasonable hypothesis consistent with his innocence. *State of U.P.* v. *Sukhbasi*, 1985 Supp SCC 79: 1985 SCC (Cri) 387: AIR 1985 SC 1224: 1985 Cri LJ 1479.

Bench Strength 2. Coram: **A.P. Sen** and *E.S. Venkataramiah*, JJ. [Date of decision: 10-5-1985]

[5427] — Ss. 378 and 386 — Acquittal reversed — Accused persons assaulting the witnesses and the deceased with sticks and thereafter causing gunshot injury to the deceased — *Merely because the doctor who performed post-mortem did not find injuries caused by stick blows it cannot be said that no stick blow was given to the deceased — Also FIR promptly lodged — Besides throwing of hand grenade established by evidence of prosecution witnesses — Defence version that the hand grenade was thrown by nephew of the complainant not acceptable as it does not explain presence of other accused at the place of occurrence and injuries on the deceased and two witnesses — Reversal of acquittal by High Court justified. Ram Singh* v. *State of U.P.*, (1999) 9 SCC 146: 1999 SCC (Cri) 572: AIR 1999 SC 1754: 1999 All LJ 1264.

Bench Strength 2. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 22-4-1999]

[5428] — Ss. 378, 386 and 379 — Reversal of acquittal by High Court — Trial Court's judgment perverse — *Held, reversal justified — Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. Sone Lal* v. *State of U.P.*, (1978) 4 SCC 302: 1978 SCC (Cri) 587: AIR 1978 SC 1142: 1978 Cri LJ 1122: 1978 ALJ 530.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 6-4-1978]

[5429] — Ss. 378 and 379 — In an appeal against acquittal, High Court relying on circumstantial evidence and convicting accused under S. 302 IPC — Sustainability — *Circumstances relied on by the High Court were:- (i) Existence of bad relationship between the accused and his wife and that he used to beat her; (ii) accused last seen with the* *deceased; and (iii) he had set up false plea of alibi — PWs who were examined to prove that the accused used to beat his deceased wife, in spite of being available, not questioned by the IO within a reasonable time i.e. while one of them was questioned after 20-22 days, the other was questioned after 8 days of the incident — Hence held, there was every possibility that they were planted witnesses — Apart from their evidence, no other evidence to show that there was bad relationship between the accused and the deceased — Moreover, prosecution failing to throw light on complicity or otherwise of the other inmates of the house — Setting up of false alibi not indicative that the accused was positively responsible for murder — Under these circumstances held, High Court was not justified in reversing the acquittal of the accused — However, since the accused had participated in the cremation of the dead body, knowledge that the deceased had died of multiple injuries could be attributed to him — Even if the appellant had not participated in the commission of murder, he was certainly aware that a criminal offence had been committed and instead of informing the police about the incident, he hastily made preparation for cremating the dead body of the deceased — Hence, accused guilty of offence punishable under S. 201 IPC — Penal Code, 1860 — S. 302*

There is no case that the two PWs were not available in the locality during the time of the incident so that the police could have ascertained the facts from these neighbours. There is every possibility that these witnesses could have been planted witnesses just to help the prosecution. This fact should have been taken note of by the High Court, especially when the High Court was considering a case of an appeal against acquittal. Apart from the evidence of these PWs there is no other evidence to show the bad relationship between the appellant and the deceased. Of course, the evidence adduced by the appellant to prove his alibi was not very convincing but merely because he had set up a false alibi, it cannot be held that he was positively responsible for the murder. Apart from the accused, there were 5 other inmates in the house. The prosecution evidence is not able to throw any light on the complicity or otherwise of any one of the inmates of the house in this case. There is no evidence to point out that the appellant alone was responsible for causing death of the deceased. Under these circumstances, the High Court was not justified in reversing the acquittal of the appellant for the charge of murder punishable under Section 302 IPC. (Paras 5 to 7)

However, even as per the statement of the appellant and the prosecution evidence it is clinchingly proved that the appellant had actually participated in cremation of the dead body of the deceased, the appellant can certainly be attributed with the knowledge that the deceased died of multiple injuries as there were series of serious injuries on her body. Even if the appellant had not participated in the commission of murder, he was certainly aware that a criminal offence had been committed and instead of informing the police about the incident, he hastily made preparation for cremating the dead body of the deceased. The act committed by the appellant thus proves that the appellant committed the offence punishable under Section 201 IPC. Already a charge against the appellant was there and he faced trial and defended his case and hence no prejudice is caused to him. He is found guilty of offence punishable under Section 201 IPC. (Para 7). *Gayadin* v. *State of M.P.*, (2005) 12 SCC 267.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *B.N. Srikrishna*, JJ. [Date of decision: 10-2-2005]

[5430] — Ss. 378 and 384 — Appeal against acquittal — High Court rightly interfered with the acquittal by trial Court

Because certain important aspects of the case had been overlooked by the trial Judge, the High Court was justified in having a reappraisal of the evidence and coming to its own conclusions on these points contrary to those of the trial Court. The evidence also establishes that the charge of criminal breach of trust under S. 408, Indian Penal Code in respect of the amount of Rs 1607.50, as also the charge of falsification of accounts under S. 477-A, have been established by the prosecution. *B.K. Maarfatia* v. *State of Maharashtra*, (1978) 1 SCC 596: 1978 SCC (Cri) 149: AIR 1978 SC 434: 1978 Cri LJ 507.

Bench Strength **2**. Coram: *P.K. Goswami* and **V.D. Tulzapurkar**, JJ. [Date of decision: 16-12-1977]

[5431] — Ss. 378 and 386 — Appeal against acquittal — On facts, held, interference justified — Acquittal by trial court — Conviction on appeal by High Court — Sustainability — *Appellant alleged to have killed his minor step-brother with an axe on refusal by PW 3 (father of appellant as well as of the deceased) to give him half-share of his property — Appellant was PW 3's son born through his first wife, while the deceased, PW 4 and PW 6 (daughter) were born through his second wife — Appellant, after the occurrence going to police station with blood-stained axe and stating before the officer-in-charge that a murder had been committed by the axe he was holding — PWs 1, 2 and 3 turning hostile during trial — PW 4 was not an*

(12) Reversal of acquittal justified/Acquittal not justified *(contd.)*

*eyewitness while testimony of PW 6 was disbelieved by trial court (but partly accepted by High Court) — Consequently trial court acquitting the appellant — High Court in appeal, however, examining the matter in detail and holding appellant guilty under S. 302 — Facts proved by prosecution were: (i) dispute regarding share in property and on refusal by PW 3 to give half-share, appellant becoming angry; (ii) PW 4 while in his house heard a cry that **R** had been killed by the appellant; (iii) appellant was seen at the place of occurrence with an axe; and (iv) he went to the police station with the axe and blood-stained clothes — Held, in such circumstances although he did not make any categorical statement that he had killed the deceased, his statement to the effect that **R** had been killed with the axe which he had been holding is sufficiently indicative of the fact that it was he who had killed the deceased — His statement is to be read reasonably and in its entirety and so read, no other meaning can be attributed thereto — Though a judgment of acquittal should not be interfered with if two views are possible but it is equally true that the High Court while entertaining an appeal against a judgment of acquittal would be entitled to consider the entire materials on record for the purpose of analysing the evidence — Presumption of innocence of accused is strengthened by acquittal but it would not be correct to contend that despite overwhelming evidence available on the record, the appellate court would not interfere with a judgment of acquittal — Impugned judgment of conviction calls for no interference — Appeal against acquittal — On facts, held, interference justified — Penal Code, 1860 — S. 302* (Paras 3, 4, 24, 25, 26 and 27). *Swami Prasad* v. *State of M.P.*, (2007) 13 SCC 25: (2007) 52 AIC 45 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 8-3-2007]

Samghaji Hariba Patil v. State of Karnataka, (2006) 10 SCC 494: (2007) 1 SCC (Cri) 113; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, relied on

[5432] — Ss. 378 and 386 — Gunshot fired by accused from 'bada' of his house at unarmed deceased causing his instantaneous death — *That deceased was shot while he was outside and not inside the accused's premises supported by ballistic expert — Plea of self-defence therefore not substantiated — Hence High Court justified in reversing trial court's order of acquittal and convicting the accused-appellant under S. 302 — Penal Code, 1860, Ss. 100 and 302. Raza Pasha* v. *State of M.P.*, 1984 Supp SCC 354: 1984 SCC (Cri) 469: AIR 1983 SC 575: 1984 MLJ (Cri) 1.

Bench Strength **2**. Coram: *A.P. Sen* and **V. Balakrishna Eradi**, JJ. [Date of decision: 4-3-1983]

[5433] — Ss. 378 and 386 — Five injuries caused by a knife having a blade of six inches on vital part of victim's body — Other accused catching hold of victim's hand preventing him from running away or warding off the stabs — Victim dying instantaneously — *Held, offence falls under S. 302 and not under S. 304 Pt. II IPC — On facts view taken by trial court not plausible and hence High Court rightly altered the conviction of accused persons from S. 304 Pt. II to one under S. 302 — Penal Code, 1860 — Ss. 302 and 304 Pt. II. Chandrakant Somnath Kudale* v. *State of Maharashtra*, 1989 Supp (2) SCC 107: 1990 SCC (Cri) 29.

Bench Strength **2**. Coram: *S. Natarajan* and *Kuldip Singh*, JJ. [Date of decision: 31-3-1989]

[5434] — Ss. 378 and 386 — Vicarious liability — Scope of — Acquittal not justified — *Mere fact that High Court gave benefit of doubt to some of the accused persons, is not decisive in that other accused would also be entitled to acquittal on that basis when overt act on the part of the other accused was evident — Penal Code, 1860, Ss. 149 and 302* (Para 29). *Ramappa Halappa Pujar* v. *State of Karnataka*, (2007) 13 SCC 31: (2007) 55 AIC 191 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 27-4-2007]

Munivel v. State of T.N., (2006) 9 SCC 394: (2006) 2 SCC (Cri) 581; Mohinder Singh v. State of Punjab, (2006) 10 SCC 418: (2006) 3 SCC (Cri) 578; Kallu v. State of M.P., (2006) 10 SCC 313: (2006) 3 SCC (Cri) 546, relied on

[5435] — Ss. 378 and 386 — Appreciation of evidence — Murder — Trial court disbelieving prosecution case acquitted the accused persons — But High Court, relying on evidence of parents and brother of deceased held that charges against Accused 1 to 6 were proved — *Accused 1 having died during pendency of the appeal, Accused 2 to 6 were convicted by High Court — On reappreciation of evidence, held, trial court rightly found that there were material inconsistencies and large gaps in prosecution case and prosecution had failed to explain several material aspects, that evidence of deceased's parents and brother, the alleged eyewitnesses, were unreliable in view of material contradictions and inconsistencies, that attempts were also made by PWs to falsely implicate the accused on account of previous enmity, that entire evidence regarding recovery of weapons at the instance of Accused 2 and 5 was liable to be rejected as panch witnesses had turned hostile — Besides, there were several strange unexplained circumstances in regard to death of deceased and subsequent discovery of dead body — Only evi-*

dence without contradictions was about Accused 1 attacking deceased's father with a sword but there was no reliable evidence showing the other accused persons attacking deceased's father — There was no reliable evidence to show that Accused 2 to 6 with common intent assaulted or caused injuries either to deceased or any of his family members — Their presence at the site of the incident was doubtful — Hence, trial court rightly acquitted the accused — High Court was not justified in reversing the acquittal — Penal Code, 1860 — S. 302 r/w Ss. 149, 143, 147, 148, 323, 324, 325 and S. 326 r/w S. 149 (Paras 14 to 40). *Sambhaji Hindurao Deshmukh* v. *State of Maharashtra*, (2008) 11 SCC 186.

Bench Strength **2**. Coram: *G.P. Mathur* and **R.V. Raveendran**, JJ. [Date of decision: 17-1-2008]

Ganesh Bhavan Patel v. State of Maharashtra, (1978) 4 SCC 371: 1979 SCC (Cri) 1; Babu v. State of U.P., (1983) 2 SCC 21: 1983 SCC (Cri) 332; Awadhesh v. State of M.P., (1988) 2 SCC 557: 1988 SCC (Cri) 361; Thanedar Singh v. State of M.P., (2002) 1 SCC 487: 2002 SCC (Cri) 153; State of Rajasthan v. Raja Ram, (2003) 8 SCC 180: 2003 SCC (Cri) 1965, relied on

[5436] — Ss. 378 and 386 — Testimony of eyewitnesses inconsistent with medical evidence — Their conduct also found to be unnatural — Acquittal not justified — *Accordingly, High Court acquitting the accused-respondent — Having regard to the evidence on record and the reasons given by High Court, held, in the facts and circumstances of the case the view taken by High Court cannot be said to be not a possible view, let alone it being perverse or unreasonable — The testimony of the eyewitnesses was untrustworthy and unreliable — Interference with the High Court's order of acquittal not called for — Penal Code, 1860 — S. 302. State of Rajasthan* v. *Magni Ram*, (2001) 9 SCC 589: AIR 2001 SC 2430: 2001 Cri LJ 3283.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti, Doraiswamy Raju*, JJ. [Date of decision: 10-1-2001]

[5437] — Ss. 378 and 386 — Appreciation of evidence — Murder — Political rivalry — Acquittal not justified — *Appellants, S and R, along with others entering the room where the deceased and others were sleeping — R raising a lalkara and thereafter K firing a shot resulting in death of the deceased — Fact that R removed the gun from the side of the pillow is sufficient to show his participation and his intention in going to that place — Words uttered just before killing the deceased and the manner in which he was killed immediately thereafter indicating that all the accused had gone there to eliminate the deceased — High Court not giving due weight to all aspects of the matter and the reasons given by the trial court in support of its findings — In the circumstances of the case, acquittal of R and S by High Court set aside — Penal Code, 1860 — Ss. 302/149*

The words uttered just before killing the deceased and the manner in which he was killed immediately thereafter, leave no manner of doubt that all those four accused had gone there with a view to eliminate him. This aspect having not been considered by the High Court, the finding recorded by it with respect to these two respondents stands vitiated and this non-consideration has led to failure of justice. It is not a question of mere reappreciation of evidence but determining the guilt of the accused on the basis of the findings recorded by the High Court. The High Court has not given due weight to all the aspects and the reasons given by the trial court in support of its findings. All the four of them had gone together to the place of the occurrence and had gone away also together. They had come armed with weapons and with a definite purpose. Thus, there was no scope for entertaining any doubt regarding their involvement in commission of the crime and also as regards the said crime that the said crime having been committed by them in prosecution of common object of the unlawful assault consisting of them and other persons who had come along with them up to the place of the incident. (Para 9). *State of Haryana* v. *Pradeep Kumar*, (1999) 9 SCC 72: 1999 SCC (Cri) 358.

Bench Strength **2**. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 10-12-1998]

[5438] — Ss. 378 and 386 — Murder — Acquittal not justified — *Accused earlier working with the deceased who terminated accused's services — There being enough light when incident took place — FIR lodged within 45 minutes of the incident — Deceased disclosing names of his assailants to IO and the doctor who recorded his dying declaration within a short time — Dying declaration corroborated by evidence of other witnesses who saw the accused running away from the place of the incident — Accused known to the witnesses from before — Held, in the circumstances, reversal of acquittal by the High Court justified Penal Code, 1860 — Ss. 302/34* (Paras 3 and 4). *Thiru Sudali* v. *State of T.N.*, (1999) 9 SCC 88: 1999 SCC (Cri) 370: AIR 1999 SC 1434.

Bench Strength **2**. Coram: **G.T. Nanavati** and *N. Santosh Hegde*, JJ. [Date of decision: 4-2-1999]

[5439] — Ss. 378 and 386 — Death of housewife by burning — Suicide or homicide — Mental set-up of deceased and other circumstantial evidence considered — Acquittal not justified — *Held on facts, homicidal death established beyond reasonable doubt — Since only deceased, her husband and her sister-in-law were present in the house at the time of the occurrence, assassin identifiable —*

(12) Reversal of acquittal justified/Acquittal not justified *(contd.)*

Trial court's view confirmed and acquittal recorded by High Court set aside — But in the circumstances sentence of death awarded by trial court altered to that of life imprisonment — Constitution of India — Art.134 — Penal Code, 1860 — S. 302

Two situations could be visualised in the context of the suicide theory. First, that the deceased was contemplating suicide since long and on the night of the occurrence she effectuated her resolve. Second, that something happened on that night which so upset her that she yielded to an irrepressible impulse to snap her life. Having regard to the frame of mind of the deceased and other circumstances it is clear that neither of these situations was reasonably possible. Taking an overall view of the circumstances, it must be held that it is established beyond reasonable doubt that the death of the deceased was not accidental or suicidal but it was homicidal.

Having held so, the identity of the assassin is not difficult. The evidence is conclusive on the point that there was no other inmate in the flat except the deceased, her husband and her sister-in-law. If, therefore, the deceased died a homicidal death none but her husband could have been the assassin in this case. Insofar as he is concerned, the crime is established beyond reasonable doubt. Insofar as his sister is concerned, the possibility of her not having been a party to the crime proper but having associated with her brother after the crime was committed, cannot be excluded beyond reasonable doubt. Since the High Court has acquitted her, its finding of acquittal as regards her need not be interfered with.

But the finding of acquittal recorded by the High Court in favour of the accused-husband of the deceased is set aside and he is convicted under S. 302. As regards the sentence, taking into account the relevant circumstances a sentence of imprisonment for life, instead of death sentence awarded by the trial court, will meet the ends of justice. *Subedar Tewari* v. *State of U.P.*, 1989 Supp (1) SCC 91: 1989 SCC (Cri) 218: AIR 1989 SC 733.

Bench Strength 2. Coram: **M.P. Thakkar** and *B.C. Ray*, JJ. [Date of decision: 3-11-1988]

[5440] — Ss. 378 and 386 — Setting fire to deceased's body and his shop after sprinkling kerosene — Conviction justified — *One of the accused caught red-handed — Dying declaration made before witnesses reliable — Testimony of witnesses truthful and reliable — On reappraisal of evidence on record, held, prosecution case against accused proved beyond reasonable doubt — Conviction under Ss. 302/34 and 436/34 and sentences of life imprisonment and of RI for 5 years (to run concurrently) ordered by trial court upheld and judgment of acquittal passed by High Court set aside — Constitution of India — Art.136 — Penal Code, 1860 — Ss. 302/34 and 436/34. State of Assam* v. *Muhim Barkataki*, (1986) 4 SCC 439: 1986 SCC (Cri) 503: AIR 1987 SC 98.

Bench Strength 2. Coram: *A.P. Sen* and **B.C. Ray**, JJ. [Date of decision: 20-10-1986]

[5441] — Ss. 378 and 386 — Brutal murder of Gram Pradhan and severing his head — Acquittal not justified — *Trial court convicting accused persons under S. 302 read with S. 34 and sentencing them to death — High Court setting aside the conviction and sentence on flimsy grounds — Testimony of prosecution witnesses trustworthy and FIR in order — Two views on evidence on record not possible — Held on facts, High Court erred in reversing judgment of the trial court — Conviction under S. 302 read with S. 34 by trial court upheld — But the occurrence having taken place a decade ago, death sentence reduced to life imprisonment even though the accused committed gruesome and cold-blooded murder deserving death sentence — Constitution of India — Art.136 — Penal Code, 1860 — S. 302/34. State of U.P.* v. *Lalloo*, 1985 Supp SCC 379: 1985 SCC (Cri) 478: AIR 1986 SC 576.

Bench Strength 2. Coram: *S. Murtaza Fazal Ali* and **A. Varadarajan**, JJ. [Date of decision: 13-8-1985]

[5442] — Ss. 378 and 386 — Rape — Acquittal not justified — *Appellant-accused alleged to have raped the prosecutrix after felling her to the ground while she, PW 8 and PW 2 were collecting cow dung in a "jungle"/"kokad" (land covered by bushes) — Testimony of prosecutrix and other PWs inspiring confidence — No motive imputed to her to falsely implicate the accused — Simple abrasions found on her person corroborating the version that she was felled to the ground and raped — No possibility that such injuries were self-inflicted, in absence of any evidence therefor and in view of clear and categorical case of the prosecution — Absence of any blood or stains of semen on the clothes of the prosecutrix or the appellant inconsequential as the clothes were seized and examined after four days of the occurrence — Conclusion of the trial court that it was consensual sexual intercourse, unwarranted and based solely on conjectures and suspicion, and hence perverse — Held, High Court was fully justified in setting aside judgment and order of the trial court and convicting the accused — Penal Code, 1860 — Ss. 376(2)(e) and 375*

Appellant-accused alleged to have raped one *V* (PW 1), a pregnant woman, after felling her to the ground when she had gone to a "jungle"/"kokad" (meaning land covered with bushes) to collect cow dung along with PW 2 and PW 8. The trial court acquitted the appellant finding that: (*i*) It was not possible to commit rape in an open field with a "*rasta*" nearby; (*ii*) No blood or broken bangles were found at the place of occurrence; (*iii*) Medical evidence did not support the prosecution case; (*iv*) Absence of any stains of semen on the clothes of the prosecutrix or the appellant; (*v*) Testimony of PW 2 and PW 8 (eyewitnesses) not inspiring confidence; and (*vi*) It was a consensual sexual course.

The High Court by the impugned judgment reversed the findings of the trial court and held the appellant guilty, and sentenced him to undergo 10 years' rigorous imprisonment and to pay a fine of Rs 1000 with default stipulation. Hence, the present appeal by the appellant-accused.

Dismissing the appeal,

Held :

No interference is called for with the reasoning of the High Court. (Para 5)

The trial court was unduly influenced by the fact that the occurrence took place in an open field and there was a "*rasta*" nearby and hence it was not possible to commit rape at such a location. The finding of the trial court is not supported by any evidence on record because the consistent evidence of the prosecution witnesses is that the place where the occurrence took place was a forest or at least a place where bushes were growing and, therefore, the trial court was not justified in jumping to the conclusion that it was an open field where the offence was committed. (Para 6)

The prosecutrix has fully supported the case of the prosecution. The fact that there was no bleeding or no broken bangles were found at the place of occurrence has been unduly exaggerated by the trial court to disbelieve the witness. There is no good reason to disbelieve the prosecutrix when she has fully supported the case against the appellant. It is not suggested that she had any enmity with the appellant or there was any particular reason for her to involve the appellant in this offence. Some far-fetched disputes were sought to be highlighted, but there is nothing on record to suggest that the prosecutrix or her husband had any motive to falsely implicate the appellant. (Para 7)

Further, the trial court was also impressed by the fact that the medical evidence does not support the case of the prosecution. This is also a finding contrary to the record. Some simple injuries were caused to the prosecutrix when she was felled on the ground and raped. The abrasions found on her person certainly corroborate the case of the prosecution. The fact that abrasions may also be caused by self-infliction is no ground for holding that in this case they were so caused, when there is direct evidence to the effect that she was pushed on the ground and rape was committed. The fact that in his cross-examination the doctor admitted that such injuries may be self-inflicted, is no basis for holding that the injuries were in fact self-inflicted, in the absence of any evidence to prove that. This is particularly so when the case of the prosecution is clear and categorical that the appellant caught the prosecutrix by her neck and felled her on the ground and committed rape. Therefore, the medical evidence does support the case of the prosecution. The absence of any stains of semen on the clothes of the prosecutrix or the appellant is of no consequence in this case since the clothes of the appellant were seized and examined after four days of the occurrence. (Para 8)

The trial court has really not recorded any convincing reason for not accepting the testimonies of PW 2 and PW 8. Their evidence appears to be natural having a ring of truth. Much was sought to be made of minor discrepancies in the evidence of the two eyewitnesses, which have been described as glaring contradictions. Some variation in matters of detail is but natural, and much depends on the capacity of a witness to observe and remember events, particularly in matters of minor details. Moreover, the two witnesses came from two different directions, and they may have observed the incident at different stages, though in quick succession. However, such minor discrepancies do not warrant rejection of their evidence. Their deposition is natural and consistent with the case of the prosecution and there is no reason to disbelieve them. (Para 9)

Lastly, there was no justification for the trial court to have concluded that it was sexual intercourse by consent. This finding is based solely on conjectures and suspicion. The medical evidence discloses that the internal wall of the vagina of the prosecutrix was congested, having reddish colour. In his cross-examination, the doctor did state that this could be caused by sexual intercourse in ordinary course. From this, the trial court jumped to the conclusion that since the prosecutrix, who was pregnant did not abort and gave birth to a normal healthy child after three months, this was a case in which it must be held that the prosecutrix was a consenting party. Such reasoning of the trial court is perverse. (Para 10)

(12) Reversal of acquittal justified/Acquittal not justified *(contd.)*

The findings of the trial court are not such as could possibly be reached on the basis of the evidence on record, much less can they be said to be a possible reasonable view of the evidence on record. The High Court was, therefore, fully justified in setting aside the judgment and order of the trial court. (Para 10). *Parbata* v. *State of Rajasthan*, (2005) 13 SCC 398: (2006) 2 SCC (Cri) 252: AIR 2006 SC 747: 2006 Cri LJ 562.

Bench Strength **2**. Coram: *B.P. Singh* and *R.V. Raveendran*, JJ. [Date of decision: 16-11-2005]

[5443] — Ss. 378 and 386 — Contravention of cl. (3) of Inter-State Wheat and Wheat Product (Movement Control) Or., 1964 — Reversal of acquittal by High Court upheld — On reappreciation of evidence, conviction, held, proper — *Essential Commodities Act, 1955, Ss. 3 and 7. Prabhu Lal* v. *State of Rajasthan*, (1976) 1 SCC 665: 1976 SCC (Cri) 154: AIR 1976 SC 826: 1976 Cri LJ 634.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *R.S. Sarkaria*, JJ. [Date of decision: 26-9-1975]

[5444] — Ss. 378 and 386 — Request for identification parade by accused opposed by prosecution — Acquittal not justified — *Trial Court influenced by this factor and holding the oral testimony inconclusive — High Court reversing acquittal — Propriety — Whether oral testimony should always be corroborated by evidence of identification — Evidence Act, 1872, S. 9*

The circumstance that the accused voluntarily accepted the risk of being identified in a parade but was denied that opportunity was an important point in his favour. It is correct to say that no rule of law requires that the oral testimony of a witness should be corroborated by evidence of identification. In fact, evidence of identification is itself a weak type of evidence. But the point of the matter is that the Court which acquitted the appellant was justifiably influenced by the consideration that though at the earliest stage he had asked that an identification parade be held, the demand was opposed by the prosecution and the parade was therefore not held.

Moreover there is serious infirmity in the testimony of the eyewitnesses who deposed against the appellant. The testimony of the person who filed the FIR was also not impressive. In such circumstances the reversal of acquittal by the High Court was not justified. *Shri Ram* v. *State of U.P.*, (1975) 3 SCC 495: 1975 SCC (Cri) 87: AIR 1975 SC 175: 1975 Cri LJ 240: 1976 MLJ (Cri) 78.

Bench Strength **2**. Coram: **Y.V. Chandrachud** and *P.N. Bhagwati*, JJ. [Date of decision: 6-11-1974]

[5445] — Ss. 378 and 386 — Sea Customs Act, 1878 — S. 167(81) — Conviction under, restored by High Court setting aside acquittal order of first appellate court — *Held, on facts, High Court neither exceeded its power nor acted erroneously in any manner — Hence conviction upheld — But having regard to old age and indifferent health of accused-appellants and the ordeal faced by them for 25 years of trial and subsequent proceedings, sentence modified to the period already undergone with an additional fine of Rs 5000 payable by each of the accused within one week — Customs Act, 1962, S. 135. Suraj Mal Saraf* v. *Asstt. Collector of Customs*, (1987) 2 SCC 283: 1987 SCC (Cri) 348: AIR 1987 SC 1158: 1987 Cri LJ 1057: (1987) 11 ECC 367.

Bench Strength **2**. Coram: *V. Balakrishna Eradi* and **S. Natarajan**, JJ. [Date of decision: 18-2-1987]

[5446] — Ss. 378 and 386 — Acquittal by High Court, on facts, unsustainable — *Penal Code, 1860 — S. 394 r/w Ss. 397 and 302 — Train dacoity with murder — Knife-blow given to the deceased in abdomen while co-passenger (PW 13) injured with a pistol — Accused (four in number), refusing to take part in TI parade — High Court acquitting the accused — Sustainability — Evidence of eyewitnesses PW 13 and PW 14, who were also injured not discussed — No reason indicated as to why High Court discarded the plea of the State that the accused persons having denied to participate in TI parade cannot make a grievance about identification in court — Only reason given by High Court while directing acquittal was identification of the appellants had taken place in court after about two years of the occurrence for the first time and the statements of eyewitnesses were contrary to the recoveries of weapons from the appellants — Held, High Court's judgment unsustainable and hence set aside — Evidence Act, 1872, S. 9* (Paras 9, 7 and 2). *State of Haryana* v. *Surender*, (2007) 11 SCC 281: (2008) 1 SCC (Cri) 137: AIR 2007 SC 2312: (2007) 55 AIC 12 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 1-6-2007]

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of Punjab v. Phola Singh, (2003) 11 SCC 58: 2004 SCC (Cri) 276; V.N. Ratheesh v. State of Kerala, (2006) 10 SCC 617: (2007) 1 SCC (Cri) 50, relied on

[5447] — Ss. 378 and 386(a) — Dowry death by skull fracture/burning or suicide — Determination of — Skull bones of deceased found broken in addition to burns — Inference — Appreciation of evidence — Conviction upheld — *On facts, High Court reversing acquittal of appellant (mother-in-law of the deceased) by trial court, thereby convicting her in the alleged case of dowry death — Sustainability — Reiterating principles governing and regulating hearing of appeal against acquittal by High Court and ingredients necessary for attracting S. 304-B, held, from the post-mortem report and doctor's statement, fact that deceased died because of burns was very well established and at time of post-mortem of deceased, her skull bones were found broken — In case of burning, held, fracture of skull is not a necessary corollary, but herein, skull bones were broken — Therefore, fact remains that deceased was killed before death — Hence, High Court justified in holding that trial court erroneously concluded that it was a case of suicide — Further, evidence of independent witness PW 7, neighbour of the accused, rightly highlighted by High Court to show that appellant's role as alleged by the prosecution was established — Again, evidence of PWs 1 to 5 clearly showed greed of accused who persistently taunted and harassed the deceased for not bringing sufficient dowry — High Court was, therefore, justified in upsetting order of acquittal by trial court and directing appellant's conviction — Dowry Prohibition Act, 1961, Ss. 2 and 4 — Penal Code, 1860 — Ss. 304-B and 306* (Paras 14, 15 and 18). *Prem Kanwar* v. *State of Rajasthan*, (2009) 3 SCC 726.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 7-1-2009]

State of A.P. v. Raj Gopal Asawa, (2004) 4 SCC 470; Ajit Savant Majagvai v. State of Karnataka, (1997) 7 SCC 110: 1997 SCC (Cri) 992; Balbir Singh v. State of Punjab, AIR 1957 SC 216; Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248: 1995 SCC (Cri) 355; Bharwad Jakshibhai Nagjibhai v. State of Gujarat, (1995) 5 SCC 602: 1995 SCC (Cri) 993; Hari Chand v. State of Delhi, (1996) 9 SCC 112: 1996 SCC (Cri) 950; Raghbir Singh v. State of Haryana, (2000) 9 SCC 88: 2000 SCC (Cri) 1169; Hari Ram v. State of Rajasthan, (2000) 9 SCC 136: 2000 SCC (Cri) 1178; Ashok Kumar v. State of Rajasthan, (1991) 1 SCC 166: 1991 SCC (Cri) 126, relied on

[5448] — Ss. 378 and 386 — Principles to be followed by appellate court while considering appeal against acquittal, nature and scope of S. 149 IPC, distinction between "common object" and "common intention" and how "common object" of an unlawful assembly is to be ascertained, restated — *Appellant-accused allegedly causing grievous injuries — Trial court acquitting appellants on ground that there were material contradictions and omissions in the evidence of injured eyewitnesses — However, while partly allowing appeal against acquittal by State, High Court noted that there may be minor omissions and contradictions but they were not of such magnitude to warrant rejection of evidence of eyewitnesses — It found that evidence of injured witnesses fully corroborated by medical evidence and trial court was not right in directing acquittal — Challenge to — Held, considering evidence on record, High Court's judgment was not deficient in any respect — However, considering the role ascribed to appellants and nature of injuries caused, while upholding the conviction, sentence reduced to the period already undergone which was a substantial part of sentence imposed — Penal Code, 1860 — Ss. 149, 148, 324 and 326* (Paras 3, 5 to 7 and 9 to 11). *Siyaram* v. *State of M.P.*, (2009) 4 SCC 792.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 16-3-2009]

Ramanand Yadav v. Prabhu Nath Jha, (2003) 12 SCC 606; Suchand Pal v. Phani Pal, (2003) 11 SCC 527: 2004 SCC (Cri) 220; Sachchey Lal Tiwari v. State of U.P., (2004) 11 SCC 410: 2004 SCC (Cri) Supp 105; State of Maharashtra v. Kashirao, (2003) 10 SCC 434; Shivjee Singh v. State of Bihar, (2008) 11 SCC 631: (2008) 3 SCC (Cri) 987, relied on

[5449] — Ss. 378 and 386 — Acquittal rightly reversed — Appreciation of evidence — *Appellant along with nine others tried for offence under S. 307 IPC — Trial court disbelieving eyewitnesses and acquitting the co-accused but convicting the appellant on the sole testimony of the victim, whose right hand was cut off from the wrist by the appellant and imposing a sentence of 5 years' RI — Motive was political rivalry — In the Court of Session appellant acquitted but on further appeal order of trial court restored by High Court — Held, the word of the victim stood singular and apart to the effect that the injury whereby his wrist was cut off was the first one and caused by the appellant — The Court of Session overlooked the fact that the victim could never have substituted the appellant who had dismembered his most important limb — In this state of affairs, there was no option to the High Court but to upset the Court of Session and to record conviction of the appellant — The contention that the offence fell under S. 326 IPC could not be accepted — Had the hand of the victim not been raised in a bid to defend, the aim was the head of the victim — The blow thus aimed clearly spelled out the murderous intent of the appellant — Penal Code, 1860, S. 307 or S. 326. Antony* v. *State of Kerala*, 1997 SCC (Cri) 218: AIR 1995 SC 2450: 1995 Cri LJ 4166.

Bench Strength 2. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 8-3-1995]

(12) Reversal of acquittal justified/Acquittal not justified *(contd.)*

[5450] — Ss. 378 and 386 — Acquittal by Sessions Court unjustified and rightly set aside by the High Court — *Appellants, 8 in number, who had enmity with the deceased, on Christmas night after consuming liquor assaulting the deceased who happened to pass by — Appellants allowing the victim to lie where he was slain — Eyewitness account accurately stating the happenings. Chellappan* v. *State of Kerala*, (1975) 4 SCC 238: 1975 SCC (Cri) 496: AIR 1975 SC 1808: 1975 Cri LJ 1551.

Bench Strength 3. Coram: *K.K. Mathew*, **Y.V. Chandrachud** and *V.R. Krishna Iyer*, JJ. [Date of decision: 1-4-1975]

[5451] — Ss. 378 and 386 — Acquittal not justified — Disregard by trial court of dying declaration not suffering from any infirmity would be a serious error of law justifying reversal of the acquittal — *Even otherwise order of the trial court was based on speculation and was manifestly wrong and rightly set aside by the High Court. Vithal Somnath Kore* v. *State of Maharashtra*, (1978) 1 SCC 622: 1978 SCC (Cri) 175: AIR 1978 SC 519: 1978 MLJ (Cri) 306: 1978 Cri LJ 644.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *D.A. Desai*, JJ. [Date of decision: 20-1-1978]

[5452] — Ss. 378 and 386 — Appeal against acquittal — Conviction upheld — *A-1 alleged to have stabbed the deceased repeatedly with a knife, while A-2 alleged to have caused injuries to him with iron pipe, while he and PW 1 were returning to the village — It was also alleged that the deceased had snatched the knife from A-1, but A-1 managed to snatch back the knife and in the process A-1 also suffered injuries — Motive for crime viz. dispute regarding borrowing of Rs 300 between A-1 and deceased, established by prosecution — Two days prior to occurrence hot words exchanged between them and A-1 declaring that he would kill the deceased — Three injuries found on right and left palm of A-1, and one incised wound on right palm of A-2, which completely corroborated version of PW 1 — Multiple cut injuries found on body of deceased besides contusions which substantiated prosecution version — No evidence brought on record to show that there was enmity between PW 1 and accused, on account of which he may have been falsely implicated — In such circumstances, held, High Court in an appeal against acquittal by the State rightly convicted the accused — Sessions Judge had committed manifest error of law in giving too much weight to some minor and insignificant contradictions — View taken by Sessions Judge being totally perverse was rightly set aside by High Court — Appeal against acquittal — Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, S. 2 — Penal Code, 1860 — Ss. 302/34* (Paras 2, 12 to 14). *Shaik China Brahmam* v. *State of A.P.*, (2007) 14 SCC 457: AIR 2008 SC 610: (2008) 62 AIC 99 (SC).

Bench Strength 2. Coram: **G.P. Mathur** and *D.K. Jain*, JJ. [Date of decision: 29-11-2007]

[5453] — Ss. 378 and 386 — Appeal against acquittal — Acquittal not justified — *Where the basis on which the trial court disbelieved the prosecution evidence was incorrect, held, the High Court was justified in reversing the acquittal — High Court had also found each and every reason given by the trial court for acquittal to be fallacious. Arvind Prakash* v. *State of U.P.*, (2002) 10 SCC 37: 2003 SCC (Cri) 1402.

Bench Strength 3. Coram: **S. Rajendra Babu**, *P. Venkatarama Reddi* and *Arun Kumar*, JJ. [Date of decision: 29-11-2002]

[5454] — Ss. 378 and 386 — Acquittal not justified — Incriminating circumstantial evidence of unimpeachable nature clinching the guilt of the accused corroborated by testimony of eyewitnesses — *Absence of any explanation from the accused in that regard forging a link that completes the chain of circumstances — Complicity and guilt of the accused thus proved beyond reasonable doubt — But High Court ignoring such evidence on the basis of certain trivial circumstances which do not impair the total effect of the prosecution evidence — Held, reversal of acquittal by High Court not justified — Conviction recorded by trial court restored — Penal Code, 1860 — Ss. 302, 148 and 149. State of Punjab* v. *Bhura Singh*, (1985) 1 SCC 37: 1985 SCC (Cri) 33: AIR 1985 SC 769: (1985) 33 BLJR 25.

Bench Strength 3. Coram: *V.D. Tulzapurkar*, **M.P. Thakkar** and *V. Khalid*, JJ. [Date of decision: 10-9-1984]

[5455] — Ss. 378 and 386 — Acquittal not justified — On an appreciation of the facts and circumstances of the case, held, reversal of acquittal by High Court justified — *CrPC, 1898, S. 423. Barot Ram Vishram* v. *State of Gujarat*, (1977) 1 SCC 194: 1977 SCC (Cri) 92: AIR 1976 SC 2597: 1976 Cri LJ 2001.

Bench Strength 3. Coram: **P.N. Bhagwati**, *A.C. Gupta* and *P.N. Shinghal*, JJ. [Date of decision: 4-11-1976]

[5456] — Ss. 378 and 386 — Acquittal not justified — On facts held, no interference called for with the High Court's order of conviction under

S. 302 read with S. 149, Indian Penal Code and sentence of life imprisonment as also reasons given therefor. *Ranchhod* v. *State of M.P.*, (1982) 1 SCC 436: 1982 SCC (Cri) 246.

Bench Strength **2**. Coram: **A.D. Koshal** and *A.P. Sen*, JJ. [Date of decision: 1-12-1981]

[5457] — Ss. 378 and 386 — Reversal of acquittal by High Court — When justified — *Death due to injury caused on chest with a pair of scissors — High Court recording several unimpeachable reasons and succinctly demonstrating how the reasons for acquittal recorded by the trial court were perverse — It elaborately considered the evidence of eyewitnesses and committed no error in appreciating their evidence — The FIR which was filed within one hour of the incident and the medical evidence corroborated the evidence of eyewitnesses — It was not possible to accept the contention that the appellant had any right of private defence — Hence, in the facts and circumstances of the case, the High Court was right in setting aside the acquittal. Mavila Thamban Nambiar* v. *State of Kerala*, 1997 SCC (Cri) 726: AIR 1997 SC 687: 1997 Cri LJ 831.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 9-1-1997]

[5458] — Ss. 378 and 386 — Appeal against acquittal — Reversal of acquittal — Parameters for — *PW 3 categorically stating that except A-3 all other accused were holding sticks — Failure to give cogent and convincing reasons for setting aside acquittal of A-3 — High Court predominantly moved by consideration that Accused 2 to 6 should not go scot-free — Held, cannot be proper reason for setting aside acquittal of A-3 — Penal Code, 1860, Ss. 147, 148, 302, 324 & 504 r/w S. 149* (Paras 10 to 17). *Basayya Prabhayya Hallur* v. *State of Karnataka*, (2009) 17 SCC 55.

Bench Strength **2**. Coram: *Dalveer Bhandari* and *Dr. M.K. Sharma*, JJ. [Date of decision: 7-10-2009]

Sheo Swarup v. King Emperor, (1933-34) 61 IA 398: AIR 1934 PC 227 (2); Ghurey Lal v. State of U.P., (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60; Surajpal Singh v. State, AIR 1952 SC 52: 1952 Cri LJ 331; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, relied on

[5459] — Ss. 378 and 386 — Reversal of acquittal by High Court, held, justified. *Biran Singh* v. *State of Bihar*, (1975) 4 SCC 161: 1975 SCC (Cri) 454: AIR 1975 SC 87: 1975 Cri LJ 44.

Bench Strength **2**. Coram: **Y.V. Chandrachud** and *R.S. Sarkaria*, JJ. [Date of decision: 17-10-1974]

[5460] — Ss. 378 and 386 — Reversal of acquittal by High Court, held, not justified on the facts — *Appellants charged with attempt to murder PW 3, under Ss. 307/34 IPC — As a result of injury to thyroid cartilage appellant unable to speak and give out the name of his assailants — PW 3 remaining in hospital for about a month — After discharge from hospital PW 3 alleged to have divulged the names of assailants to the police — The motive alleged for the crime was that PW 3 had filed a complaint to the police against the appellants for causing damage to his crops by driving their cart through his fields — Trial court acquitting the appellants on the ground that the identity of the appellants had not been established — High Court in appeal, however, setting aside the acquittal and convicting the appellants and imposing a sentence of 3 years' RI — Held, on the basis of the motive attributed the appellants could hardly be aggrieved so as to cause grievous hurt to the victim — Besides, the identity of the appellants remained in doldrums for nearly a month — In these circumstances when there was delay and hesitation in conveying to the police the names of the appellants, it becomes difficult to maintain their conviction — Even otherwise, when two views were possible, the High Court should have been slow in upsetting the order of acquittal, all the more so when the trial court laid emphasis on the victim not naming the assailants, even before the investigation, as the culprits — Penal Code, 1860, Ss. 307/34. Chandrabhan* v. *State of Maharashtra*, 1997 SCC (Cri) 220: AIR 1995 SC 2406.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 7-3-1995]

[5461] — Ss. 378 and 386 — Acquittal not justified — Reversal of acquittal by High Court, held, not based on mere reappraisal of evidence but on consideration of several important aspects of the case overlooked by the trial court. *Jai Ram* v. *State of U.P.*, (1976) 2 SCC 191: 1976 SCC (Cri) 246: AIR 1976 SC 1005: 1976 Cri LJ 725.

Bench Strength **3**. Coram: *Y.V. Chandrachud*, *V.R. Krishna Iyer* and **A.C. Gupta**, JJ. [Date of decision: 25-2-1976]

[5462] — Ss. 378 and 386 — Reversal of acquittal by High Court, held, on facts justified. *Jugal Gopal* v. *State of Bihar*, (1979) 3 SCC 272: 1979 SCC (Cri) 499: AIR 1981 SC 612: 1981 Cri LJ 4.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *A.D. Koshal*, JJ. [Date of decision: 20-3-1979]

[5463] — Ss. 378 and 386 — Reversal of acquittal by High Court held on reappreciation of evidence, was justified. *Jit Singh* v. *State of Punjab*, (1976) 2 SCC 836: 1976 SCC (Cri) 341: AIR 1976 SC 1421: 1976 Cri LJ 1162.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *P.N. Shinghal*, JJ. [Date of decision: 24-3-1976]

(12) Reversal of acquittal justified/Acquittal not justified *(contd.)*

[5464] — **Ss. 378 and 386 — Reversal of acquittal by High Court in respect of two of the three accused upheld** — *Penal Code, 1860, Ss. 302/34. Namdeo Daulata Dhayagude* v. *State of Maharashtra*, (1976) 4 SCC 441: 1977 SCC (Cri) 10: AIR 1977 SC 381: 1977 Cri LJ 238.

Bench Strength 2. Coram: **P.N. Bhagwati** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 19-8-1976]

[5465] — **Ss. 378 and 386 — Reversal of acquittal by High Court — When justified — Death due to injury caused on chest with a pair of scissors** — *High Court recording several unimpeachable reasons and succinctly demonstrating how reasons for acquittal recorded by trial court were perverse — It elaborately considered evidence of eyewitnesses and committed no error in appreciating their evidence — FIR which was filed within one hour of incident and medical evidence corroborated evidence of eyewitnesses — It was not possible to accept the contention that the appellant had any right of private defence — Hence, in facts and circumstances of case, High Court was right in setting aside acquittal. Mavila Thamban Nambiar* v. *State of Kerala*, (2009) 17 SCC 441: 1997 SCC (Cri) 726: AIR 1997 SC 687.

Bench Strength 2. Coram: *M.K. Mukherjee* and **S.P. Kurdukar**, JJ. [Date of decision: 9-1-1997]

[5466] — **Ss. 378 and 386 — Reversal of acquittal by High Court, on facts, held justified** — *Conviction based on absolutely independent and disinterested witnesses. Seerangan* v. *State of T.N.*, (1979) 3 SCC 800: 1979 SCC (Cri) 716: AIR 1979 SC 1508: 1979 Cri LJ 1124.

Bench Strength 2. Coram: *S. Murtaza Fazal Ali* and *O. Chinnappa Reddy*, JJ. [Date of decision: 2-3-1979]

[5467] — **Ss. 378 and 386 — Reversal of acquittal by High Court upheld** — *However conviction altered from that under S. 302, IPC to that under S. 304, Part I, IPC. Amrithalinga Nadar* v. *State of T.N.*, (1976) 2 SCC 194: 1976 SCC (Cri) 249: AIR 1976 SC 1133: 1976 Cri LJ 848.

Bench Strength 2. Coram: **P.N. Bhagwati** and *R.S. Sarkaria*, JJ. [Date of decision: 10-10-1975]

[5468] — **Ss. 378 and 386 — Reversal of acquittal justified** — *Appellants, 8 in number, who had enmity with the deceased, on Christmas night after consuming liquor assaulting the deceased who happened to pass by — Appellants allowing the victim to lie where he was slain — Eyewitness account accurately stating the happenings — Acquittal by Sessions Court unjustified and rightly set aside by the High Court. Chellappan* v. *State of Kerala*, (1975) 4 SCC 238: 1975 SCC (Cri) 496: AIR 1975 SC 1808: 1975 Cri LJ 1551.

Bench Strength 3. Coram: *K.K. Mathew*, **Y.V. Chandrachud** and *V.R. Krishna Iyer*, JJ. [Date of decision: 1-4-1975]

[5469] — **Ss. 378 and 386 — Appeal against acquittal — Sustainability of acquittal — Acquittal not justified** — *Murder trial — Accused convicted under Ss. 302/34 IPC by trial court — High Court reversing the well-reasoned and justified judgment of trial court — Findings of High Court contrary to evidence on record, perverse, far-fetched and imaginary — Held, High Court erred in rejecting the findings of trial court — Acquittal recorded by High Court set aside and conviction recorded by trial court restored — Penal Code, 1860 — Ss. 302/34* (Paras 16 and 17). *Jagdish Narain* v. *Krishna*, (2005) 13 SCC 255: (2006) 2 SCC (Cri) 168: AIR 2005 SC 4341: 2005 All LJ 3639: 2005 Cri LJ 4513.

Bench Strength 2. Coram: **H.K. Sema** and *G.P. Mathur*, JJ. [Date of decision: 4-10-2005]

[5470] — **Ss. 378 and 386 — Appeal against acquittal — Acquittal not justified — Trial court acquitting four persons on ground that their identity had not been properly established** — *On the material on record and in the facts and circumstances of the case, held, it was not a reasonable view to take and as such clearly the view taken by trial court was perverse — High Court for just and cogent reasons was justified in reversing the judgment of acquittal passed by trial court as no other reasonable view than that taken by High Court was possible* (Paras 12 and 13). *Rakesh* v. *State of U.P.*, (2002) 6 SCC 384: 2002 SCC (Cri) 1331: AIR 2002 SC 2721.

Bench Strength 2. Coram: **Y.K. Sabharwal** and *H.K. Sema*, JJ. [Date of decision: 18-7-2002]

[5471] — **Ss. 378 and 386 — Appeal against acquittal — Acquittal not justified — Trial court brushing aside prosecution evidence on trivial contradictions or small discrepancies** — *Acquittal based on speculations, misreading of evidence and unsustainable grounds — Held, trial court's approach artificial and unnatural and its judgment perverse — High Court justified in reversing the order of acquittal having regard to the well settled principles laid down by Supreme Court. Patil Hari Meghji* v. *State of Gujarat*, (1983) 2 SCC 270: 1983 SCC (Cri) 378: AIR 1983 SC 488: 1983 MLJ (Cri) 509: 1983 Cri LJ 826.

Bench Strength 2. Coram: *S. Murtaza Fazal Ali* and *O. Chinnappa Reddy*, JJ. [Date of decision: 10-2-1983]

[5472] — Ss. 378 and 386 — Appeal against acquittal — Triple murder based on circumstantial evidence — Acquittal not justified — *On facts, acquittal by High Court was improper. State of U.P.* v. *Babu Ram*, (2000) 4 SCC 515: 2000 SCC (Cri) 845: AIR 2000 SC 1735: 2000 Cri LJ 2457: 2000 All LJ 1439.

Bench Strength **2**. Coram: **K.T. Thomas** and *Y.K. Sabharwal*, JJ. [Date of decision: 11-4-2000]

State of H.P. v. Jeet Singh, (1999) 4 SCC 370: 1999 SCC (Cri) 539; Nathuni Yadav v. State of Bihar, (1998) 9 SCC 238: 1998 SCC (Cri) 992, relied on

[5473] — Ss. 378(1) and (3) — Appeal against acquittal — Reversal of acquittal — Proper approach, restated

The High Court before reaching its conclusion upon facts in exercise of its power under Sections 378(1) and (3) CrPC, should always give proper weight and consideration to such matters as: (*1*) the view of the trial Judge as to the credibility of the witnesses; (*2*) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that they have been acquitted at trial; (*3*) the right of the accused to the benefit of any doubt. (Para 11)

The High Court in the present case did not discuss and reappreciate the evidence of PW 1 (mother of the deceased) who is stated to be the only eyewitness to the incident but merely observed that the evidence of PW 1 is very natural and credible. Surely, this is not reappraisal or reappreciation of the evidence of PW 1. The High Court did not even notice the nature of injuries on the body of the deceased. No discussion was made about: (*1*) the medical evidence, (*2*) as to how all the accused could be convicted with the aid of Section 34 IPC, (*3*) the conclusion that the accused would be guilty of offence under Section 304 Part II and not for the offence under Section 302 read with Section 34 IPC, (*4*) the setting aside of the trial court finding that presence of PW 1 at the scene of offence was highly doubtful, and (*5*) any recoveries in the impugned judgment. (Paras 12 and 9)

The trial court discarded the evidence of PW 1 not only because she was an interested witness. The trial court after an elaborate consideration of the matter refused to place any reliance on the evidence of PW 1. The impugned order of the High Court is therefore, set aside and remitted back to High Court for fresh consideration on merits and disposal in accordance with law. It is made clear that no opinion has been expressed on the merits of the case. (Paras 8 and 14). *Sangappa* v. *State of Karnataka*, (2010) 3 SCC 686.

Bench Strength **2**. Coram: **B. Sudershan Reddy** and *S.S. Nijjar*, JJ. [Date of decision: 9-3-2010]

Narendra Bhat v. State of Karnataka, (2009) 17 SCC 785, relied on

(13) Interference by Supreme Court

See also in detail under CONSTITUTION OF INDIA, Arts. 134 to 136 in Vol. 8 *Complete Digest of Supreme Court Cases*, 2nd Edn.

[5474] — Ss. 378 and 386 — Appeal as of right by accused whose acquittal by trial Court reversed by the High Court — Scope of appeal before Supreme Court under S. 2(a) of Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 — *Held, extends to all questions of facts and law — Therefore tests laid down by Supreme Court in appeals by special leave under Art. 136 for finding substantial and compelling reasons on behalf of the High Court to sustain its exercise of power under Ss. 378 and 386, CrPC, 1973, held not relevant — Constitution of India — Arts. 136, 134(1) and (2)* (Para 13). *Bhajan Singh* v. *State of Punjab*, (1978) 4 SCC 77: 1978 SCC (Cri) 515: AIR 1978 SC 1759: 1979 Cri LJ 7.

Bench Strength **2**. Coram: *Jaswant Singh* and **P.S. Kailasam**, JJ. [Date of decision: 31-8-1978]

[5475] — Ss. 378 and 386 — Appeal against acquittal — Powers of appellate court — Scope — *Constitution of India — Art. 136*

It is well settled that ordinarily the Supreme Court would not interfere with the judgment of acquittal if two views are possible but having regard to the fact that the High Court has failed to take into consideration the relevant facts and misapplied the legal principles, interference under Article 136 of the Constitution is called for. Respondent sentenced to undergo rigorous imprisonment for life under Section 302 of the Penal Code. (Paras 43 to 46). *Raj Kumar Prasad Tamarkar* v. *State of Bihar*, (2007) 10 SCC 433: (2007) 3 SCC (Cri) 716: (2007) 50 AIC 31 (SC): 2007 Cri LJ 1174.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 4-1-2007]

State of U.P. v. Nawab Singh, (2005) 9 SCC 84: 2005 SCC (Cri) 33; Prithvi (Minor) v. Mam Raj, (2004) 13 SCC 279: 2005 SCC (Cri) 198; State of U.P. v. Satish, (2005) 3 SCC 114: 2005 SCC (Cri) 642, relied on

[5476] — Ss. 378 and 386 — Appeal against acquittal — Supreme Court's interference when called for — *Trial Court's order of conviction reversed by High Court on the basis of wrong assumptions, conjectures and surmises — On facts, trial court's view was the only reasonable view — On reappraisal of the entire evidence, held, High Court erred in acquitting the accused-respondent and hence trial court's order of conviction restored — Constitution of India — Art. 136 — Penal Code, 1860 — Ss. 302, 307, 323 — Arms Act, 1959, S. 27*

(13) Interference by Supreme Court *(contd.)*

Miscarriage of justice may arise from the acquittal of the guilty no less than from conviction of the innocent Although ordinarily Supreme Court should not interfere with judgments of acquittal on a mere appreciation of evidence, but if there are glaring infirmities in the judgment of the High Court resulting in a gross miscarriage of justice, it is the duty of the Supreme Court to interfere. On a consideration of the entire mass of evidence adduced in the present case it is clear that the prosecution had established beyond reasonable doubt that the respondent had committed the murder of the deceased. *State of U.P.* v. *Pussu*, (1983) 3 SCC 502: 1983 SCC (Cri) 713: AIR 1983 SC 867: 1983 Cri LJ 1356.

Bench Strength **2**. Coram: **E.S. Venkataramiah** and *V. Balakrishna Eradi*, JJ. [Date of decision: 2-6-1983]

[5477] — Ss. 378 and 386 — Appeal against acquittal — Order of acquittal recorded by trial court confirmed by High Court — Supreme Court on appeal has to see whether the view taken by the courts below were erroneous — *On reappraisal of the entire material, held, courts below gave sound reasons and there was no ground to hold that the reasoning was perverse or unsound — Hence no interference called for — Penal Code, 1860, Ss. 147, 302, 307, 148 read with Ss. 149 and 109 — Constitution of India — Art.136. State of Gujarat* v. *Rasulmiyan Ahmedmiyan Malek*, 1990 Supp SCC 179: 1990 SCC (Cri) 554: AIR 1990 SC 1359: 1990 Cri LJ 1495: 1990 Cri LR (SC) 316: (1990) 3 Crimes 31.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 12-4-1990]

[5478] — Ss. 378 and 386 — Appeal against acquittal by High Court — Interference by Supreme Court when called for

It is trite that while dealing with an appeal against an acquittal recorded by the High Court the Supreme Court does not ordinarily interfere with it but if it is found that relevant and reliable evidence on record has been lost sight of, ignored or brushed aside for reasons which are wholly unsustainable the Supreme Court will not only be justified — but it will be its duty — to interfere with the acquittal to make amends for the failure of justice. (Para 7). *State of Punjab* v. *Surja Ram*, 1995 Supp (3) SCC 419: 1995 SCC (Cri) 937: AIR 1995 SC 2413.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *G.T. Nanavati*, JJ. [Date of decision: 9-8-1995]

[5479] — Ss. 378 and 386 — Appeal against acquittal — No infirmity or perversity in the reasoning of High Court — *Supreme Court's interference not called for — Penal Code, 1860 — Ss. 302 and 149. State of T.N.* v. *Seeni Ambalam*, AIR 1990 SC 2133: 1990 Cri LJ 1918.

Bench Strength **2**. Coram: *P.B. Sawant* and *S.C. Agrawal*, JJ. [Date of decision: 1-8-1990]

[5480] — Ss. 378 and 386 — Appeal against conviction — Criminal appeal — Conviction concurrently recorded by trial court and High Court — *Supreme Court would interfere with the concurrent findings if the same are based on conjectures and suffer from serious infirmities and manifest errors in evaluation of evidence on record — Constitution of India — Arts. 136 and 133*

The fact that the judgments of the courts below were rendered concurrently cannot dissuade the Supreme Court from interfering in a case like this where such findings and conviction have been recorded on mere conjectures and erratic evaluation of the evidence on record. Consistency for the mere sake of it is no virtue. It is an obligation of judicial conscience to correct errors, where the same are manifest. The judgments of the courts below suffer from serious infirmities and manifest errors on account of unwarranted inferences liberally drawn by the courts below against the appellant, overlooking the fundamental principle of presumption of innocence of an accused till the charge levelled and his guilt is established beyond all reasonable doubt. (Para 12). *Meena* v. *State of Maharashtra*, (2000) 5 SCC 21: 2000 SCC (Cri) 878: AIR 2000 SC 3377: 2000 Cri LJ 2273.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and **Doraiswamy Raju**, JJ. [Date of decision: 17-4-2000]

[5481] — Ss. 378 and 386 — Appeal against High Court's order of acquittal — *High Court ignoring salient features of the case going into details of minor inconsistencies in evidence which are inevitable when a story is narrated under stress of grave crime and which do not affect the real issue — Supreme Court's interference called for — On facts order of acquittal reversed. State of U.P.* v. *Ram Sagar Yadav*, (1985) 1 SCC 552: 1985 SCC (Cri) 127: AIR 1985 SC 416.

Bench Strength **2**. Coram: **Y.V. Chandrachud, C.J.** and *A.N. Sen*, J. [Date of decision: 22-1-1985]

[5482] — Ss. 378 and 386 — Appeal against order of conviction by High Court reversing the order of acquittal — Principles for interference by Supreme Court restated — *On evidence, the appeal, held, meritless — Hence, dismissed — Penal Code, 1860 — Ss. 302/149 & 148*

If the trial court's answer to the question as to whether the appellants had caused the death of the person in question by beating him with axes on his neck, forearm and head and then by stabbing indiscriminately with knives, is found to be based on a reasonable view of the evidence, the impugned judgment of the High Court has got to be set aside, for law is now well settled that if two reasonable conclusions can be reached on the basis of the evidence, the appellate court should not disturb the order of acquittal. If, however, it is found that the finding of acquittal is manifestly wrong leading to miscarriage of justice — as has been found by the High Court — the convictions of the appellants have got to be upheld.

In view the evidence of the four eyewitnesses, the FIR and the medical evidence which fully corroborates the ocular version, it has to be held that the prosecution has been able to prove its case beyond all reasonable doubts. There being no merit in the instant appeal, the same has to be dismissed. *B. Subba Rao* v. *Public Prosecutor, High Court of A.P.*, (1997) 11 SCC 478: AIR 1997 SC 3427: 1997 Cri LJ 4072.

Bench Strength 2. Coram: **M.K. Mukherjee** and *S. Saghir Ahmad*, JJ. [Date of decision: 7-8-1997]

[5483] — Ss. 378 and 386 — Appeal before Supreme Court against acquittal — Judgment of High Court prima facie found to be erroneous and infirm on several counts requiring reconsideration — *Supreme Court instead of reviewing or reappreciating the evidence itself, remitting the appeal to High Court with the direction to re-admit it, and hear and dispose of the same on the merits afresh — Penal Code, 1860 — Ss. 302 and 34. State of U.P.* v. *Krishna Gopal*, (1988) 4 SCC 302: 1988 SCC (Cri) 928: AIR 1988 SC 2154.

Bench Strength 2. Coram: *A.P. Sen* and **M.N. Venkatachaliah**, JJ. [Date of decision: 12-8-1988]

Qamruddin v. Acqeel, 1981 Supp SCC 58: 1982 SCC (Cri) 135, followed

[5484] — Ss. 378 and 386 — Supreme Court's interference is called for where High Court's approach is illegal, speculative and erroneous resulting in grave miscarriage of justice — *Constitution of India — Art.136*

Normally, the Supreme Court is extremely reluctant to interfere with an order of acquittal and that too when passed by the High Court. But, in rarest of rare cases where the High Court on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case and ignoring some of the most vital facts, has acquitted the accused persons (respondents) who had been proved to be guilty of committing as many as four murders, the order of the acquittal would result in a grave and substantial miscarriage of justice so as to invoke the Court's extraordinary jurisdiction under Art. 136 of the Constitution. *State of U.P.* v. *Sahai*, (1982) 1 SCC 352: 1982 SCC (Cri) 223: AIR 1981 SC 1442: 1981 Cri LJ 1034.

Bench Strength 3. Coram: **S. Murtaza Fazal Ali**, *Baharul Islam* and *A. Varadarajan*, JJ. [Date of decision: 14-4-1981]

[5485] — Ss. 378 and 386 — When Supreme Court should deviate from its normal rule of non-interference with orders of acquittal recorded by High Courts

Ordinarily Supreme Court does not interfere with the acquittal recorded by the High Court. But when it comes across an acquittal recorded in the most perfunctory manner leading to great injustice, it cannot shirk its responsibility. In the present case, in recording the acquittal in favour of the accused grave injustice had been perpetrated and this was solely due to erroneous and almost perverse appreciation of the evidence and errors of law committed by the Sessions Court and High Court. Therefore, the acquittal order must be set aside. *Chander Kala* v. *Ram Kishan*, (1985) 4 SCC 212: 1985 SCC (Cri) 491: AIR 1985 SC 1268: 1985 Cri LJ 1490.

Bench Strength 3. Coram: **V.D. Tulzapurkar**, *D.A. Desai* and *A.P. Sen*, JJ. [Date of decision: 1-5-1985]

[5486] — Ss. 378 & 386 — Appeal before Supreme Court against acquittal — When interference not called for — *Held, since judgment of High Court does not suffer from any manifest illegality irregularity or perversity, no interference therewith called for. Supdt. of Customs* v. *Bhanabhai Khalpabhai Patel*, 1993 Supp (1) SCC 475: 1993 SCC (Cri) 258: AIR 1992 SC 1583.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and *Kuldip Singh*, JJ. [Date of decision: 6-3-1992]

[5487] — Ss. 378 and 386 — Appeal against acquittal — Powers of appellate court — Scope — Limited — *It is trite that only when two views are possible, Supreme Court cannot interfere with a judgment of acquittal; but that would not mean that despite existence of substantial and compelling reasons, the Court will refuse to interfere in a case where it would be just and proper to do so — But held, when the reasoning of High Court is perverse, Supreme Court can set aside the judgment of High Court of acquittal and restore the judgment of conviction and sentence passed by trial court — Constitution of India — Art.136* (Paras 50 and 40). *State of Maharashtra* v. *Tulshiram Bhanudas Kamble*, (2007) 14 SCC 627: AIR 2007 SC 3042: 2007 Cri LJ 4319.

Bench Strength 2. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 21-8-2007]

(13) Interference by Supreme Court *(contd.)*

Ramappa Halappa Pujar v. State of Karnataka, (2007) 13 SCC 31; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; Mohinder Singh v. State of Punjab, (2006) 10 SCC 418: (2006) 3 SCC (Cri) 578; State of U.P. v. Nawab Singh, (2005) 9 SCC 84: 2005 SCC (Cri) 33, relied on

[5488] — Ss. 378 and 386 — Criminal appeal against acquittal — Supreme Court's interference with High Court's judgment when called for, restated — *Constitution of India, Arts. 134 and 136*

In case acquittal has been recorded the appellate court should not lightly interfere with the same. But where the evidence has not been properly analysed or the Court has acted on surmises or conjectures, it is the duty of the appellate court to set right the wrong. The case at hand is one where the High Court ignored the relevant aspects and unnecessarily put emphasis on certain aspects which did not have any foundation. That being so, the Supreme Court's interference with the judgment of the High Court is called for. Therefore, the judgment of the trial court is restored by reversing the judgment of the High Court. (Para 15). *State of M.P.* v. *Dharkole*, (2004) 13 SCC 308: 2005 SCC (Cri) 225: AIR 2005 SC 44: 2005 Cri LJ 108.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 29-10-2004]

[5489] — S. 378 — Reversal of acquittal by High Court — Interference by Supreme Court when justified

The well-settled rule of practice in a case of an appeal against an acquittal is that the appellate court should not interfere with the acquittal merely because it can take one of the two reasonably possible views which favours conviction. But, if the view of the trial court is not reasonably sustainable, on the evidence on record, the appellate court will interfere with an acquittal. If the appellate court sets aside an acquittal and convicts, the Supreme Court has to be satisfied, after examining the prosecution and defence cases and the crucial points emerging for decision from the facts of the case, that the view taken by the trial court, on evidence on record, is at least as acceptable as the one taken by the High Court before it can interfere with the High Court's judgment. *Ram Kumar Pandey* v. *State of M.P.*, (1975) 3 SCC 815: 1975 SCC (Cri) 225: AIR 1975 SC 1026: (1975) 3 SCR 519: 1975 Cri LJ 870.

Bench Strength **2**. Coram: **M.H. Beg** and *A. Alagiriswami*, JJ. [Date of decision: 11-2-1975]

[5490] — Ss. 378 and 386 — Appeal by special leave against acquittal by trial court and High Court — Testimony of prosecution witnesses suffering from several weaknesses and infirmities — *Evidence and circumstances only giving rise to suspicion against accused — But no special reasons shown for holding a different view — Hence acquittal confirmed — Constitution of India — Art. 136. Chandigarh Admn.* v. *Dharam Singh*, 1985 Supp SCC 266: 1985 SCC (Cri) 439: AIR 1985 SC 1671.

Bench Strength **2**. Coram: **R.S. Pathak** and *A.N. Sen*, JJ. [Date of decision: 29-7-1985]

[5491] — Ss. 378 and 386 — Special circumstances justifying Supreme Courts' interference with High Court's judgment purely on ground of appreciation of evidence — *High Court failing to examine intrinsic merits of evidence of each of the witnesses and proceeding to acquit the accused on general and untenable grounds — Circumstantial evidence pointing towards the only conclusion of guilt of the accused — On facts held, High Court erred in reversing trial court's well-reasoned order of conviction and sentence based on careful appraisal of evidence — Constitution of India — Art. 136. State of U.P.* v. *P.A. Madhu*, (1984) 4 SCC 83: 1984 SCC (Cri) 598: AIR 1984 SC 1523: 1984 Cri LJ 1438.

Bench Strength **3**. Coram: **S. Murtaza Fazal Ali**, *A. Varadarajan* and *Sabyasachi Mukharji*, JJ. [Date of decision: 17-7-1984]

[5492] — Ss. 378 and 386 — Appeal against acquittal — Truth and falsehood so inextricably intertwined together in the case that an attempt to separate truth from falsehood would amount to restructuring a new case for the prosecution which cannot be done in criminal case — *In such a situation, view taken by High Court, in absence of any manifest perversity or illegality need not be interfered with. Biri Singh* v. *State of U.P.*, 1992 Supp (2) SCC 264: 1992 SCC (Cri) 915: 1992 Cri LJ 1510.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *M. Fathima Beevi*, JJ. [Date of decision: 6-3-1992]

[5493] — Ss. 378 and 386 — Appeal against acquittal — Acquittal justified — Murder of 13 persons in broad daylight in gruesome and ghastly manner — *Prosecution story so inextricably mixed up with falsehood that separation of truth from falsehood not possible — Evidence as a whole unworthy of credence — Acquittal recorded by High Court on a proper appraisal of evidence — Held, Supreme Court would not interfere with the acquittal order merely on the fact of multiplicity of victims — Penal Code, 1860 — Ss. 302, 109, 120-B, 307, 147, 148 and 149*

Though the offence of committing murder of 13 persons in broad daylight in the course of same transaction was diabolical in conception and executed in a gruesome and ghastly manner, nonetheless the court when satisfied that the evidence adduced by the prosecution is not only unworthy of credence, but also manifestly and inextricably mixed up with falsehood, it cannot be carried away merely on the fact of multiplicity of victims and on the basis of speculations and suppositions in the confused stream of facts. When the High Court appraised the evidence in the proper perspective and arrived at a correct conclusion which is neither perverse nor unreasonable, there was no reason to interfere with the finding of the High Court and dislodge the same. *State of U.P.* v. *Moti Ram*, (1990) 4 SCC 389: 1990 SCC (Cri) 585: AIR 1990 SC 1709: 1990 Cri LJ 1710: (1990) 2 Crimes 705.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 2-5-1990]

[5494] — Ss. 378 and 386 — Supreme Court justified in reversing acquittal by High Court where High Court committed serious errors of law in appreciating the evidence and based its decision on conjectures. *State of U.P.* v. *Hari Ram*, (1983) 4 SCC 453: 1983 SCC (Cri) 861: AIR 1983 SC 1081: 1983 Cri LJ 1638.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *M.P. Thakkar*, JJ. [Date of decision: 7-9-1983]

[5495] — Ss. 378 and 386 — Supreme Court's interference with acquittal recorded by High Court when called for — *Constitution of India — Art. 136*

Ordinarily Supreme Court does not interfere with the acquittal recorded by High Court but when incriminating evidence of a satisfactory character is brushed aside mainly by relying upon a few circumstances which do not go to detract from the value of such incriminating evidence it becomes the duty of Supreme Court to interfere with the acquittal in order to redeem the course of justice.

In the present case the High Court reversed the trial court's conviction and death sentence recorded on proper appreciation of evidence and acquitted the accused. In doing so the Court adopted a hyper-technical approach to the entire prosecution case, disbelieved the direct ocular evidence furnished by the injured witnesses whose presence at the scene of occurrence could not be doubted and relied upon some of the circumstances which were of inferential nature while some others were innocuous or immaterial and in any case none was of such a nature as would detract from the probative value of strong and consistent ocular evidence of the injured witnesses. In such a situation Supreme Court's interference under Art. 136 with the High Court's order of acquittal is called for.

The trial court had correctly appreciated evidence and its approach was preferable to that of the High Court in this case. Therefore, acquittal of the accused-respondent must be set aside and convictions and sentences imposed by the trial court under Ss. 436/149, 302 read with 149 and 307/149 IPC on all counts are restored. *State of U.P.* v. *Gokaran*, 1984 Supp SCC 482: 1985 SCC (Cri) 41: AIR 1985 SC 131.

Bench Strength 3. Coram: **V.D. Tulzapurkar**, *M.P. Thakkar* and *V. Khalid*, JJ. [Date of decision: 28-9-1984]

[5496] — Ss. 378 and 386 — When Supreme Court's interference with High Court's order of acquittal called for — *Constitution of India — Art. 136*

Though there is need for exercising care and restraint in the exercise of the Court's powers under Art. 136 in the matter of setting aside a judgment of acquittal but where the ends of justice require the exercise of such powers, the Court will be failing in its duty if it does not do so. The present case is eminently one such where the interests of justice call for the Court's intervention. In this case the entire premises on which the High Court had based its judgment for setting aside the well reasoned judgment of the Sessions Judge are totally in disregard of the clinching evidence in the case. The conclusions of the High Court have been drawn on assumptions and surmises without any foundation in evidence for them. The prosecution evidence, is of an unimpeachable nature and affords no scope for two views being taken, and one of them being more plausible than the other. As an abstract proposition of argument it may be stated that every case affords potential for two views being taken but it has to be realised that the alternate view must have some content of plausibility in it and without the same, the said view cannot be countenanced in law as a plausible alternative. *State of U.P.* v. *Chet Ram*, (1989) 2 SCC 425: 1989 SCC (Cri) 388: AIR 1989 SC 1543: 1989 Cri LJ 1785.

Bench Strength 2. Coram: **S. Natarajan** and *A.M. Ahmadi*, JJ. [Date of decision: 28-3-1989]

[5497] — Ss. 378 and 386 — When Supreme Court's interference with High Court's order of acquittal not called for — *Constitution of India — Art. 136 — Penal Code, 1860, Ss. 120-B, 384, 388, 342, 341, 193, 201, 218, 466, 420*

(13) Interference by Supreme Court *(contd.)*

The occurrence in the present case took place about 22 years before and the trial commenced about 7 years after the occurrence. The main victim, who was the material witness, died much earlier to commencement of the investigation. The case was, therefore, based on circumstances and mainly on the evidence of the victim's wife and his daughter. There was no Test identification parade for these two witnesses to identify the accused who had said to have gone to the victim's house. The main accused also died during pendency of the trial and as such the charges against him abated. The SLP filed against acquittal of another accused had been dismissed by the Supreme Court. The present appeals are against the acquittal of the remaining accused persons by the High Court setting aside the conviction recorded by the trial court. Dismissing the appeals:

Held :

From the evidence on record it appears that the prosecution has failed to establish the case against the accused. No finding can be rendered either on mere surmise or conjecture and every finding should be based on satisfactory and acceptable evidence. Bearing in mind this principle as well as the principle regarding power of the Supreme Court under Art. 136 to interfere with the order of acquittal as laid down in several of its decisions, it must be held that the impugned order of acquittal passed by the High Court is neither erroneous nor perverse nor improper and unreasonable resulting in miscarriage of justice and this is not a fit case for interference in exercise of the powers under Art. 136. Non-consideration of few pieces of non-material evidence by High Court would not compel the Supreme Court to interfere under Art. 136. *State of U.P.* v. *Pheru Singh*, 1989 Supp (1) SCC 288: 1989 SCC (Cri) 420: AIR 1989 SC 1205: 1989 Cri LJ 1135.

Bench Strength 2. Coram: *B.C. Ray* and **S. Ratnavel Pandian**, JJ. [Date of decision: 16-3-1989]

[5498] — Ss. 378 and 386 — Where view taken by High Court not manifestly wrong Supreme Court not to reverse order of acquittal even though view taken by High Court is less commendable than view of trial court in rejecting explanation given by accused and finding him guilty — *Constitution of India — Art. 136. State of Karnataka* v. *M. Obanna*, 1989 Supp (2) SCC 199: 1990 SCC (Cri) 49.

Bench Strength 2. Coram: *S. Natarajan* and *Kuldip Singh*, JJ. [Date of decision: 29-3-1989]

[5499] — Ss. 378 and 386 — Appeal against acquittal — Interference with acquittal — Held, not justified where the impugned judgment of High Court was reasonable and did not suffer from any infirmity much less any perversity — *Constitution of India — Art. 136* (Para 9). *Farooq* v. *State of Kerala*, (2002) 4 SCC 697: 2002 SCC (Cri) 876: AIR 2002 SC 1825.

Bench Strength 2. Coram: *M.B. Shah* and **B.N. Agrawal**, JJ. [Date of decision: 9-4-2002]

[5500] — Ss. 378 and 386 — Appeal against acquittal — *Appellate court can review the evidence and interfere for compelling reasons such as where admissible evidence has been unreasonably and unjustifiably ignored — Primary concern of the court is to prevent miscarriage of justice — If two views are possible, the one favourable to the accused, held, should be preferred — Constitution of India — Art. 136*

There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. (Para 14). *Gorle S. Naidu* v. *State of A.P.*, (2003) 12 SCC 449: AIR 2004 SC 1169: 2004 Cri LJ 924.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 15-12-2003]

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of Punjab v. Pohla Singh, (2003) 11 SCC 58: 2004 SCC (Cri) 276; Suchand Pal v. Phani Pal, (2003) 11 SCC 527: 2004 SCC (Cri) 220, relied on

See also (2003) 11 SCC 271: 2004 SCC (Cri) 135

[5501] — Ss. 378 and 386 — Interference by the Supreme Court — When called for — *Constitution of India — Art. 136*

Ordinarily the Supreme Court does not interfere with an order of acquittal recorded by the High Court; but if the High Court arrives at its findings overlooking important facts and relying upon few circumstances which do not in any way impair the probative value of the evidence adduced during trial, the Supreme Court would be failing in its duty to do complete justice if it does not interfere with such order of acquittal. *Satbir* v. *Surat Singh*, (1997) 4 SCC 192: 1997 SCC (Cri) 538: AIR 1997 SC 1160.

Bench Strength 2. Coram: **M.K. Mukherjee** and *B.N. Kirpal*, JJ. [Date of decision: 12-2-1997]

[5502] — Ss. 378 and 386 — Acquittal justified — High Court setting aside conviction under S. 25 of Arms Act and acquitting the accused on benefit of doubt by rejecting uncorroborated evidence regarding alleged recovery of weapon at the instance of the accused — *High Court's view being plausible one, Supreme Court would not interfere with the same — Arms Act, 1959, S. 25 — Evidence Act, 1872, S. 27. State of Punjab* v. *Gurnam Singh*, 1984 Supp SCC 502: 1985 SCC (Cri) 616: AIR 1984 SC 1799(1).

Bench Strength 3. Coram: *V.D. Tulzapurkar*, **M.P. Thakkar** and *V. Khalid*, JJ. [Date of decision: 10-9-1984]

[5503] — Ss. 378 and 386 — Supreme Court's interference with concurrent findings of trial court and High Court — *When called for — Constitution of India — Art. 136*

On reappreciation of evidence, allowing the accused's appeal,

Held:

The evidence of the two children who claimed to be the eyewitnesses does not inspire confidence. The judgment of the High Court is sketchy and slipshod. There was no critical evaluation of the evidence of the two child witnesses and there was no consideration of material aspects bearing on the veracity of the version given by the two child witnesses. In these circumstances, it is not possible to approve the conclusions of High Court though concurrent they are. Accordingly, the appellant's conviction and sentence is set aside. (Paras 8, 11 and 12). *Orsu Venkat Rao* v. *State of A.P.*, (2004) 13 SCC 243: 2005 SCC (Cri) 166: AIR 2004 SC 4961: (2005) 99 Cut LT 72: 2004 Cri LJ 4656: (2005) 1 Mah LJ 371.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *B.P. Singh*, JJ. [Date of decision: 15-10-2004]

[5504] — Ss. 378 & 386 — Concurrent finding of acquittal recorded by courts below — Reappraisal/review of evidence by Supreme Court under Art. 136 in case of — Scope of — *Reiterated, Supreme Court will normally not enter into reappraisal or review of evidence unless the trial court or High Court is shown to have committed an error of law or procedure and conclusions arrived at by them are perverse — Supreme Court may interfere where on proved facts wrong inference of law is shown to have been drawn — On facts, concurrent findings recorded by courts below with regard to acquittal for offence under S. 302 IPC suffering from no infirmity — Hence, not liable to be interfered with — Penal Code, 1860 — S. 302 — Constitution of India, Art. 136* (Paras 20 to 35). *Chikkarangaiah* v. *State of Karnataka*, (2009) 17 SCC 497: 2009 Cri LJ 4667: (2010) 1 ECrN 427 (SC): (2009) 82 AIC 233 (SC).

Bench Strength 2. Coram: *Dalveer Bhandari* and **Dr. M.K. Sharma**, JJ. [Date of decision: 2-9-2009]

State of U.P. v. Nahar Singh, (1998) 3 SCC 561: 1998 SCC (Cri) 850; K. Ramakrishnan Unnithan v. State of Kerala, (1999) 3 SCC 309: 1999 SCC (Cri) 410; Ghurey Lal v. State of U.P., (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60, relied on

Hari Ram v. State of Rajasthan, (2000) 9 SCC 136: 2000 SCC (Cri) 1178; Rajender Singh v. State of Bihar, (2000) 4 SCC 298: 2000 SCC (Cri) 796; Sheo Swarup v. King Emperor, (1933-34) 61 IA 398: AIR 1934 PC 227 (2); Prandas v. State, AIR 1954 SC 36; Sanwat Singh v. State of Rajasthan, AIR 1961 SC 715; State of U.P. v. Krishna Gopal, (1988) 4 SCC 302: 1988 SCC (Cri) 928; Ajit Savant Majagvai v. State of Karnataka, (1997) 7 SCC 110: 1997 SCC (Cri) 992, cited

[5505] — Ss. 378 and 386 — Appeal against acquittal — When Supreme Court's interference called for — *On appreciation of evidence, High Court found to have completely ignored the most important incriminating circumstance which appeared against accused-respondent — High Court also failed to appreciate the co-related circumstances — Held, High Court having ignored the important clinching evidence which proved the case of the prosecution, held, Supreme Court's interference with High Court's judgment is warranted — Constitution of India — Art. 136* (Para 31). *State of Rajasthan* v. *Kashi Ram*, (2006) 12 SCC 254: (2007) 1 SCC (Cri) 688: AIR 2007 SC 144.

Bench Strength 2. Coram: **B.P. Singh** and *Tarun Chatterjee*, JJ. [Date of decision: 7-11-2006]

(13) Interference by Supreme Court *(contd.)*

[5506] — Ss. 378 and 386 — If two views are possible, Supreme Court would not interfere with High Court's judgment of acquittal when State fails to show any illegality in the judgment — *Constitution of India — Art. 136*

Moreover, the impugned judgment is one of acquittal passed by the High Court. If two views are possible, ordinarily the Supreme Court would not interfere therewith. The State has not been able to show any illegality in the judgment of the High Court. Therefore, no interference is called for. (Para 22). *State of M.P.* v. *Mukesh*, (2006) 13 SCC 197: (2007) 2 SCC (Cri) 680: (2006) 48 AIC 766 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 19-10-2006]

[5507] — Ss. 378 and 386 — Appeal against acquittal by High Court — Interference by Supreme Court — *Where High Court's judgment reversing trial court's order of conviction suffers from glaring and serious errors, being based on conjectures, surmises and several distortions in perspective, Supreme Court will interfere, as omission to correct it will amount to gross failure of justice — Conviction under S. 302 r/w S. 34, Indian Penal Code and sentence of life imprisonment awarded by trial court restored by setting aside acquittal recorded by High Court. State of A.P.* v. *Bogam Chandraiah*, (1986) 3 SCC 637: 1986 SCC (Cri) 357: AIR 1986 SC 1899: 1986 Cri LJ 1903.

Bench Strength **2**. Coram: *M.P. Thakkar* and **S. Natarajan**, JJ. [Date of decision: 5-8-1986]

[5508] — Ss. 378 and 386 — Conviction and sentence under by Magistrate but acquittal by Sessions Court and High Court — *Only marginal adulteration found — Six years elapsed since purchase of the sample — In the circumstances Supreme Court declined to interfere with the order of acquittal — Prevention of Food Adulteration Act, 1954, Ss. 7 and 16. Food Inspector* v. *Madanlal Ramlal Sharma*, (1983) 1 SCC 135: 1983 SCC (Cri) 131: AIR 1983 SC 176: 1983 Cri LJ 337.

Bench Strength **2**. Coram: *D.A. Desai* and **R.B. Misra**, JJ. [Date of decision: 14-12-1982]

[5509] — Ss. 378 and 386 — Interference — *Held on facts in absence of any perversity, no interference with the judgment of High Court called for. Mool Chand* v. *Jagdish Singh Bedi*, 1993 Supp (2) SCC 714: 1993 SCC (Cri) 767.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **M. Fathima Beevi**, JJ. [Date of decision: 31-3-1992]

[5510] — Ss. 378 and 386 — Reversal of acquittal by Supreme Court, on facts, held not justified where the main testimony against the respondent-accused was partisan and suffered from material omissions — *Penal Code, 1860 — S. 302. Rajagopal* v. *Sadaya Gounder*, 1984 Supp SCC 619: 1983 SCC (Cri) 128.

Bench Strength **2**. Coram: *V.D. Tulzapurkar* and *Baharul Islam*, JJ. [Date of decision: 16-12-1982]

[5511] — Ss. 378 and 386 — Appeal against acquittal — Scope of interference and matters to be considered, reiterated — Acquittal whether supported by evidence/proper appraisal of evidence — Approach of High Court — Illustrations of circumstances where interference by Supreme Court would be justified, given

The scope of interference under Article 136 in appeals against acquittal is rather limited. It is the settled legal position which has been crystallised in a number of judgments that if the view taken by the High Court is plausible or possible, then it would not be proper to interfere with an order of acquittal. The following are some of the circumstances where interference with the judgment of the High Court may be justified, but these are illustrative and not exhaustive: (*i*) the High Court's decision is based on totally erroneous view of law by ignoring the settled legal position; (*ii*) the High Court's conclusions are contrary to evidence and documents on record; (*iii*) the entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice; (*iv*) the High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case. Proper weight and consideration to the findings of the High Court must be given and extreme reluctance must be shown in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal. (Paras 25, 27 and 28). *State of U.P.* v. *Banne*, (2009) 4 SCC 271.

Bench Strength **2**. Coram: *Dalveer Bhandari* and *H.S. Bedi*, JJ. [Date of decision: 10-2-2009]

Ghurey Lal v. State of U.P., (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60, relied on

[5512] — Ss. 378 and 386 — Appeal against acquittal — Conviction upheld — Appreciation of evidence — Reversal of acquittal by High Court — Appeal before Supreme Court against conviction — *Murder — Deceased suffered various ante-mortem injuries on almost all parts of her body and death being homicidal not in dispute — Manner in which deceased met her death showing* *that she had been brutally assaulted by number of persons — Motive being land dispute proved — Defence case that Accused 1 sustained grievous stab wound and remained admitted in hospital for two months unbelievable in the circumstances of the case and could not be established — No complaint made by Accused 1 to police about the injury and instead he made all attempts to conceal the circumstances under which he had allegedly sustained the injury — While prosecution gave an explanation as to how Accused 1 suffered the injury, no explanation offered by accused — Accused 1 has also not raised any plea of self-defence and suggestions given to PWs were self-inconsistent and wholly contradictory to each other — Although PWs turned hostile, they made no mention about the incident having occurred in the manner alleged by appellant-accused — Presence of injured PW at the scene of occurrence was accepted and High Court relied on his testimony by giving cogent reasons — Testimony of close relations of deceased also found to be reliable except some minor contradictions — In the circumstances held, there was no infirmity in the prosecution story — It was not necessary for the witnesses to prove the actual role played by each of the accused — Merely because High Court gave benefit of doubt to some of the accused that by itself is not decisive when overt act on the part of the appellant was evident — High Court committed no error in reversing the judgment of acquittal recorded by trial court — Jurisdiction of High Court is limited in this behalf but it did not exceed its jurisdiction — Appeal against acquittal — Conviction upheld — Penal Code, 1860 — Ss. 302, 143, 147, 148, 341, 342 r/w 149. Ramappa Halappa Pujar* v. *State of Karnataka*, (2007) 13 SCC 31: (2007) 55 AIC 191 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 27-4-2007]

Mano v. State of T.N., (2007) 13 SCC 795; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; Kallu v. State of M.P., (2006) 10 SCC 313: (2006) 3 SCC (Cri) 546, relied on

[5513] — **Ss. 378 and 386 — Appeal against acquittal — When defence version is probable though not so probable as compared to the prosecution version, the Supreme Court will not upset the finding of acquittal recorded by the High Court** — *Constitution of India — Art. 136. R.C. Paul* v. *Jai Inder Singh*, 1995 Cri LJ 2123.

Bench Strength 3. Coram: *A.M. Ahmadi, C.J.* and *S.C. Agrawal, Sujata V. Manohar*, JJ. [Date of decision: 14-12-1994]

(14) Other Instances

[5514] — **Ss. 378 and 386 — Appeal against acquittal — Conviction of government officials for serious offences** — *High Court awarding token sentence of fine of Rs 100 and detention till the rising of the court — In the circumstances of the case it was not unlikely that the High Court felt that some convincing evidences were lacking. A. Jayaram* v. *State of A.P.*, 1995 Supp (3) SCC 333: 1995 SCC (Cri) 864: AIR 1995 SC 2128: 1995 Cri LJ 3663.

Bench Strength 2. Coram: **G.N. Ray** and *Faizan Uddin*, JJ. [Date of decision: 13-7-1995]

[5515] — **Ss. 378 and 386 — Appeal against acquittal — On facts, held, no interference is called for** — *No law point laid down. State of Karnataka* v. *Mangmant Fakirappa Sarajad*, AIR 1994 SC 843.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 4-8-1993]

[5516] — **Ss. 378 and 386 — Appeal against acquittal — On facts, no interference by the Supreme Court is called for** — *No law point laid down. State of Karnataka* v. *Shrisail Sateeppa Karkalamethi*, AIR 1994 SC 1244: 1994 Cri LJ 1105.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *N.P. Singh*, JJ. [Date of decision: 15-4-1993]

[5517] — **Ss. 378 and 386 — Delay — Order of High Court reversing acquittal recorded by trial Judge — Inordinate delay in impugning legality of** — *High Court, convicting the accused under S. 498-A IPC, remanding the matter to trial Judge for considering question of sentence — Accused not assailing the remand order of High Court until the sentence was passed by the trial Judge and thereafter affirmed against him by District Court as well as High Court — Delay in impugning High Court's order, held, not liable to be condoned — Penal Code, 1860, S. 498-A* (Para 1). *C. Gopinathan* v. *Krishnan Ayyappan*, (2000) 9 SCC 430: 2001 SCC (Cri) 413.

Bench Strength 2. Coram: *G.B. Pattanaik* and *Shivaraj V. Patil*, JJ. [Date of decision: 28-3-2000]

[5518] — **Ss. 378 and 386 — In absence of Government's appeal against acquittal of the appellants of charge under Ss. 307/149, IPC and instead their conviction under Ss. 325/149, IPC recorded by trial court** — *Held, High Court erred in altering their conviction under Ss. 325/149 to Ss. 307/149, IPC — Sentence also altered accordingly — Penal Code, 1860, Ss. 307/149 and 325/149. Amar Singh* v. *State of Rajasthan*, 1987 Supp SCC 144: 1987 SCC (Cri) 670: AIR 1987 SC 2023.

Bench Strength 2. Coram: *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 12-2-1987]

(15) Effective date of conviction on reversal of acquittal on appeal

[5519] — Ss. 378 and 386 — Criminal Appeal — Judgment of appellate court convicting the accused who was acquitted by trial court — Deemed date of conviction in such case, held, is the date of judgment of the trial court — *Constitution of India — Art.136 — Penal Code, 1860 — Ss. 302 and 34. State of Haryana* v. *Nauratta Singh*, (2000) 3 SCC 514: 2000 SCC (Cri) 711: AIR 2000 SC 1179: 2000 Cri LJ 1710.

Bench Strength 2. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 10-3-2000]

[5520] — Ss. 378 and 374 — Appeal — Proper mode of disposal — Contradictory findings of guilt in respect of A-1 in order of trial court — High Court disposing of appeal without considering the same — Unsustainability — *Matter remanded for decision afresh in respect of guilt of A-1. Thanga Prakash* v. *State of Karnataka*, (2008) 14 SCC 698.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 26-11-2008]

— S. 379 *See* Ss. 372 to 382
See also Ss. 374(1), 379 and 384
See also Ss. 378 and 379
See also Ss. 378, 386 and 379
See also Ss. 386 and 378, 379
See also Ss. 392 and 379

[5521] — S. 379 — Appeal to Supreme Court, when arises as of right

Under Section 379 of the Code, which is now newly introduced in line with the constitutional provisions of Art. 134(1)(*a*) and (*b*) and with S. 2 of the Act of 1970, an appeal lies *as of right* to the Supreme Court in a case where the High Court has on appeal reversed an order of acquittal of an accused person and convicted and sentenced him either to death or to imprisonment for life or imprisonment for a term of 10 years or more. *Chandra Mohan Tiwari* v. *State of M.P.*, (1992) 2 SCC 105: 1992 SCC (Cri) 252: AIR 1992 SC 891: 1992 Cri LJ 1091.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 22-1-1992]

[5522] — S. 379 — Supreme Court acquitting the appellants — Case of co-accused, who did not prefer appeal before Supreme Court, standing on the same footing — *Held, he also entitled to benefit of acquittal — Hence, directed to be released forthwith — Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, S. 2(a)* (Para 37). *Hem Raj* v. *State of Punjab*, (2003) 12 SCC 241: AIR 2003 SC 4259: 2003 Cri LJ 4987.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 9-9-2003]

[5523] — S. 379 — Appeal against conviction — High Court reversing trial court's order of acquittal finding trial court's decision to be 'palpably wrong and perverse' — *Testimony of eye witnesses consistent and trivial discrepancies in their version not material — Held on facts, High Court's finding correct and it rightly reversed the acquittal order. M.A. Abdulla Kunhi* v. *State of Kerala*, (1991) 2 SCC 225: 1991 SCC (Cri) 457: AIR 1991 SC 452: 1991 Cri LJ 525: (1991) 1 GLH 444.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 15-1-1991]

[5524] — S. 379 — Appeal against reversal of acquittal by High Court — Appreciation of evidence — *Reiterated, it is for appellate court to reappreciate and reweigh the evidence as a whole and to come to its own conclusion on the evidence on record, in consonance with the principles of criminal jurisprudence — Penal Code, 1860 — S. 302* (Para 25). *Mahesh* v. *State of Maharashtra*, (2008) 13 SCC 271: (2008) 67 AIC 219 (SC): 2008 Cri LJ 3602.

Bench Strength 2. Coram: *P.P. Naolekar* and **L.S. Panta**, JJ. [Date of decision: 10-4-2008]

[5525] — S. 379 — Appeal against reversal of acquittal by High Court — Conviction upheld — *FIR immediately lodged — Strong motive to commit murder, established — Nothing to prove false implication — High Court properly appreciating evidence without any manifest error — Simply because there are some minor discrepancies in the evidence of witnesses* ***A*, *RP* and *SA*** *with regard to time of incident, held, are not sufficient grounds to believe that appellant had been booked in a false case — Penal Code, 1860 — S. 302*

The appellant-accused was in love with the deceased, *SU*. In spite of appellant-accused's warning, *SA* (PW 8) married *SU*. After the marriage, *SA* and *SU* had gone to the house of *N* (mother of *SU*). On 28-3-1988, when after an evening walk, *SA*, *SU*, *N*, *A* (PW 4, niece of *SU*) and *RP* (PW 16, son of maternal uncle of *SU*) were returning to the house of *N*, the appellant-accused armed with a gun and knife, fired a shot in the back of *SA*, who, as a result of bleeding injury, uttered "*are bapre*" and then lay down on the roadside. *SU* and *N* both tried to extend help to injured *SA*, but the appellant came near them, pulled *SU*'s hair and stabbed her on the vital parts of her head, neck and back. *SU* collapsed on receipt of severe injuries. *N* tried to save her daughter *SU*, but the appellant struck knife-blows to *N* also. The appellant, on seeing the gathering of people, ran away leaving all the three injured persons on the spot.

P (PW 1, complainant), a private medical practitioner, who lived nearby the place of occurrence, on hearing shouting of the people, went to the spot. He spotted *SU* lying with bleeding injuries on the roadside. He also spotted *N* and *SA* lying in injured condition at a little distance away from *SU*. *P* lifted *SA*, *SU* and *N* into a rickshaw and took them to government hospital, where they were admitted by *LX* (PW 10, Medical Officer). *SU* could not survive and succumbed to the injuries in the evening around 7.15 p.m. *LX* sent a memo to police station regarding admission of the injured persons. *P* at about 7.30 p.m. lodged a written complaint (Ext. 28) in the police station on the basis of which an FIR was registered by the IO (PW 18) under Sections 302 and 307 IPC.

The Sessions Court, after trial, acquitted the appellant-accused. The Sessions Court disbelieved the uncorroborated witness of interested injured relatives. The Sessions Court also based its acquittal on the facts that important witnesses turned hostile and recovery of weapons was not supported by panch witnesses. The High Court by the impugned order in appeal, convicted the appellant-accused under Section 302 IPC for murder of *SU*. The High Court by the impugned order, partly reversed the order of acquittal and convicted the appellant-accused under Section 302 IPC and sentenced him to imprisonment of life and fine and acquitted the appellant-accused for offences under Sections 307 and 324 IPC and Sections 25 and 27 of the Arms Act by giving benefit of doubt as the gunshot injuries on *SA* were not established.

Dismissing the appeal,

Held :

In an appeal against acquittal, it is for the appellate court to keep in view the relevant principles of law, to reappreciate and reweigh the evidence as a whole and to come to its own conclusion on such evidence in consonance with the principles of criminal jurisprudence. In the light of the evidence discussed and tested in the light of the principles of law highlighted, it must be held that the interference by the High Court with the order of acquittal passed by the Sessions Court, was wholly justified and warranted. The appellant was not framed on suspicion. Immediately after the occurrence, an FIR was lodged at the police station against the appellant who was identified by *SA* (an injured eyewitness). Further the appellant had strong motive to commit the murder of *SU* with malice towards *SA*, her husband, as well as her deceased mother *N*. Simply because there are some minor discrepancies in the evidence of witnesses *A*, *RP* and *SA* with regard to time of incident and preparation of memo by IO, which are of no consequence to the true genesis of the case and that some evidence had not been adduced by the prosecution, though might have been available, would not be sufficient grounds to believe that the appellant has been booked in a false case. There is nothing on record brought by the appellant to show that it was quite possible that the witnesses would spare the real culprit and implicate him in a false case. All the contentions, raised for the appellant, do not merit acceptance. The evaluation of the findings recorded by the High Court do not suffer from any manifest error and improper and misappreciation of evidence on record. The appellant is the real culprit and he has been rightly held guilty of the offence punishable under Section 302 IPC. (Paras 25, 77 and 76). *Mahesh* v. *State of Maharashtra*, (2008) 13 SCC 271: (2008) 67 AIC 219 (SC): 2008 Cri LJ 3602.

Bench Strength **2**. Coram: *P.P. Naolekar* and **L.S. Panta**, JJ. [Date of decision: 10-4-2008]

State of Rajasthan v. Raja Ram, (2003) 8 SCC 180: 2003 SCC (Cri) 1965; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; State of Goa v. Sanjay Thakran, (2007) 3 SCC 755: (2007) 2 SCC (Cri) 162; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; Girja Prasad v. State of M.P., (2007) 7 SCC 625: (2007) 3 SCC (Cri) 475, relied on

[5526] — S. 379 — Appeal against reversal of acquittal by High Court — Inconsistency between evidence of first informant and other two witnesses — *Conviction for S. 302, IPC set aside and judgment of trial court confirmed. Thakarde Malaji Ramsangji* v. *State of Gujarat*, 1993 SCC (Cri) 1022: AIR 1993 SC 1678: 1993 Cri LJ 1059.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 21-10-1992]

[5527] — S. 379 — Held, High Court rightly reversed trial court's order of acquittal and convicted the accused-appellant under S. 302 and imposed sentence of life imprisonment. *Ramesh Chander* v. *State (Delhi Admn.)*, 1992 Supp (2) SCC 477: 1992 SCC (Cri) 759: AIR 1992 SC 1987: 1992 Cri LJ 3584.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 6-8-1992]

[5528] — S. 379 — Held on facts, trial court erred in picking holes in the dying declaration by dissecting it to the point of hair splitting and terming most of it as unnecessary and tutored — *High Court justified in accepting the dying declaration and convicting accused husband under S. 302, its view being the only reasonable one in the circumstances. Dharam Pal* v. *State of Punjab*, 1993 Supp (1) SCC 517: 1993 SCC (Cri) 292: AIR 1992 SC 1852.

Bench Strength **2**. Coram: *M.M. Punchhi* and *B.P. Jeevan Reddy*, JJ. [Date of decision: 26-3-1992]

[5529] — S. 379 — Reassessment of evidence under — Scope — Test identification parade — *Omission to hold — Effect, if any, on admissibility of evidence of identification in court by a witness who did not know the accused from before — Such omission although not fatal, held, makes the substantive evidence of identification in court after a long lapse of time, a weak piece of evidence which, unless sufficiently and satisfactorily corroborated, cannot be relied upon — On facts, held, such omission had no adverse effect as regards the evidence against A-1 is concerned whose conviction, therefore, upheld — But in respect of the other accused their identification in the court for the first time not corroborated — They entitled to benefit of doubt — No motive also ascribed by prosecution against them — Penal Code, 1860 — Ss. 302, 449 & 34 — Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, S. 2 — Evidence Act, 1872, S. 9*

Though not fatal, absence of the corroborative evidence of prior identification in a Test identification parade makes the substantive evidence of identification in court after a long lapse of time a weak piece of evidence and no reliance can be placed upon it unless sufficiently and satisfactorily corroborated by other evidence. *George* v. *State of Kerala*, (1998) 4 SCC 605: AIR 1998 SC 1376: 1998 Cri LJ 2034.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 18-3-1998]

Kanta Prashad v. Delhi Admn., AIR 1958 SC 350: 1958 SCR 1218; Harbajan Singh v. State of J&K, (1975) 4 SCC 480: 1975 SCC (Cri) 545; Jadunath Singh v. State of U.P., (1970) 3 SCC 518: 1971 SCC (Cri) 124; Surendra Narain v. State of U.P., (1998) 1 SCC 76: 1998 SCC (Cri) 14, relied on

[5530] — S. 379 — Reversal of acquittal by High Court — Held on facts, not proper — *Finding of Sessions Court neither perverse nor such that it could not be arrived at by a reasonable person — That apart, the view taken by the trial court was the only possible view — Hence held, High Court ought not to have interfered with the order of acquittal* (Paras 19 and 20). *Kunju Mohd.* v. *State of Kerala*, (2004) 9 SCC 193: 2004 SCC (Cri) 1425.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 11-8-2003]

Dhanna v. State of M.P., (1996) 10 SCC 79: 1996 SCC (Cri) 1192; Shailendra Pratap v. State of U.P., (2003) 1 SCC 761: 2003 SCC (Cri) 432, applied

[5531] — S. 379 — View taken by the trial court not unreasonable as to warrant interference in appeal against acquittal — *High Court having also confirmed the acquittal of four accused, it was not safe to convict appellant alone — Hence conviction and sentence against appellant set aside. Makwana Takhat Singh Ratan Singh* v. *State of Gujarat*, 1992 Supp (2) SCC 564: 1992 SCC (Cri) 844: AIR 1992 SC 1989: 1992 Cri LJ 3596.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 11-8-1992]

[5532] — Ss. 379 and 378 — Reversal of acquittal by High Court — Held on facts, not proper — Interference with acquittal — Power of appellate court — *Possibility of two views — If view taken by trial court is a possible reasonable view, held, appellate court not justified in reversing the order of acquittal* (Paras 36 and 37). *Hem Raj* v. *State of Punjab*, (2003) 12 SCC 241: AIR 2003 SC 4259: 2003 Cri LJ 4987.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 9-9-2003]

[5533] — Ss. 379 and 386 — Test identification parade — Sole identifier — *Identification marks such as stature, complexion etc. or any other description of the accused not given by any of the witnesses in their earlier statements or in oral evidence — Identification made at T.I. parade about 3½ months after the occurrence — Instead of the identifier being asked to identify the accused when the first T.I. parade was held, identification made four days later — In the circumstances, reasonable possibility of mistake in identification cannot be excluded — Hence trial court justified in acquitting the accused who were identified by only one witness — Trial court's view being reasonably possible, High Court erred in reversing the order of acquittal. Wakil Singh* v. *State of Bihar*, 1981 Supp SCC 28: 1981 SCC (Cri) 634: AIR 1981 SC 1392: 1981 Cri LJ 1014.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision: 31-3-1981]

— S. 380 *See also* Ss. 372 to 382

[5534] — S. 380 — Special right of appeal under — Entitlement to — *Sessions Court convicting A-1 under S. 304 Pt. I IPC, but acquitting A-2 — High Court convicting A-2 under Ss. 302 and 307 IPC and A-1 under Ss. 302/34, 307/34 IPC and S. 27, Arms Act — A-2 filing criminal appeals before Supreme Court — Whereas A-1 filing SLPs — In view of the provisions of S. 380, held, an appealable judgment and order having been passed against co-accused A-2, A-1 also had a right of appeal to Supreme Court — However, Supreme Court granting special leave to A-1 — Constitution of India — Arts. 136 and 134* (Para 4). *Shingara Singh* v. *State of Haryana*, (2003) 12 SCC 758: AIR 2004 SC 124: 2004 Cri LJ 828.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 4-11-2003]

— S. 381 *See* Ss. 372 to 382

— S. 382 *See* Ss. 205, 206 and 382

See also Ss. 372 to 382

See also Ss. 384, 374, 382 and 383

— S. 383 *See also* S. 420, Criminal Procedure Code, 1898, p. 1209 in Vol. 2

— S. 383 *See also* Ss. 384, 374, 382 and 383

[5535] — Ss. 383, 374 and 386 — Appeal received from jail — Practice to be followed by appellate court in case of — *Held, appellate court may appoint an amicus curiae or may send the matter to the Legal Aid Committee for nominating a counsel to assist the Court and represent the case of the accused — In the instant case, direction made to High Court to hear the appeal afresh after following the said practice* (Paras 4 and 5). *Satbir* v. *State of Haryana*, (2006) 9 SCC 234: (2006) 2 SCC (Cri) 553.

Bench Strength 2. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 5-9-2005]

[5536] — Ss. 383 and 374 — Delay of 49 days in filing appeal by accused from jail — *In view of the circumstances explained by the accused for the delay, held, High Court not justified in dismissing the appeal without going into the merits of the case. Rajendra* v. *State of Rajasthan*, (1982) 3 SCC 382(2): 1983 SCC (Cri) 59(1).

Bench Strength 2. Coram: **D.A. Desai** and *A.P. Sen*, JJ. [Date of decision: 30-3-1981]

— S. 384 *See also* S. 421, Criminal Procedure Code, 1898, pp. 1209 et seq. in Vol. 2

— S. 384 *See* Ss. 303, 304, 384, 385 and 386

See also Ss. 354(3), 374 and 384

See also Ss. 374, 378, 384 and 386

See also Ss. 374, 384 and 386

See also Ss. 374, 384, 386, 401 & 397

See also Ss. 374(1), 379 and 384

See also Ss. 376, 384 and 397

See also Ss. 378 & 384

See also Ss. 378, 384 and 386

See also Ss. 386, 384 and 385

See also Ss. 386, 385 and 384

[5537] — S. 384 — Procedure for ex parte hearing and summary dismissal under Or. 21 R. 15(1)(c) of Supreme Court Rules, 1966 read with S. 384 CrPC — *Held, not violative of Art. 21 if the rule is read down and in serious cases (i) full records of the case are placed before the court (ii) notice given to the opposite party (iii) both parties heard and (iv) reasons recorded in the ultimate order — Constitution of India — Art. 21*

Per Kailasam and Koshal, JJ.:

The Rule does not offend Art. 21. Procedure established by law means the ordinary well-established Criminal Procedure, that is those settled usages and normal modes of procedure sanctioned by the Criminal Procedure Code which are the general law of criminal procedure in our country. The impugned procedure being the procedure prescribed under the Criminal Procedure Code cannot be assailed. Nor can it be said that the procedure prescribed by the Criminal Procedure Code is no procedure at all.

In fact Art. 21 cannot be invoked since a person convicted of an offence has no right of appeal unless such a right is conferred by the statute. *Sita Ram* v. *State of U.P.*, (1979) 2 SCC 656: 1979 SCC (Cri) 576: AIR 1979 SC 745: 1979 Cri LJ 659.

Bench Strength 5. Coram: **V.R. Krishna Iyer**[1], *P.N. Shinghal*[1], **P.S. Kailasam**[2], *D.A. Desai*[1] and *A.D. Koshal*[2], JJ. [Date of decision: 24-1-1979]

[5538] — S. 384 — High Court's power of summary dismissal — *Held, can only be exercised after a perusal of the petition and the copy of the judgment — High Court must give some reasons why no arguable case is made out on a perusal of those documents — Case remanded to High Court — Practice of summary dismissal by one word disapproved — Criminal Procedure Code, 1898, S. 421. Dhondiba Gundu Pomaje* v. *State of Maharashtra*, (1976) 1 SCC 162: 1975 SCC (Cri) 793: AIR 1976 SC 1151: 1976 Cri LJ 856.

Bench Strength 2. Coram: **P. Jaganmohan Reddy** and *P.K. Goswami*, JJ. [Date of decision: 17-9-1974]

[5539] — S. 384 — Scope of — Power of summary dismissal when to be exercised — *Where there are arguable points the High Court must give reasons — Practice of High Court in dismissing criminal appeals without giving reasons disapproved — Criminal Procedure Code, 1898, S. 421*

The power of a summary rejection of a criminal first appeal, even though it is exercisable under the provisions of S. 421, Criminal Procedure Code, should be only exercised when the court is satisfied, from a perusal of the judgment as well as the record, that there is absolutely no reasonable possibility of its success for the reasons mentioned in the order. (Para 3)

At least, in such cases, where there are arguable points, the High Court should give its grounds and reasons in support of its decision to reject summarily on some absolutely clinching ground. *Munir Sayed Ibna Hussain* v. *State of Maharashtra*, (1976) 3 SCC 548: 1976 SCC (Cri) 459: AIR 1976 SC 1992: 1976 Cri LJ 1546.

Bench Strength **2**. Coram: **M.H. Beg** and *P.K. Goswami*, JJ. [Date of decision: 12-11-1975]

[5540] — S. 384 — Summary dismissal of appeal by High Court without recording any reasons — *Subsequently appeal by co-accused who were earlier absconding admitted — Held, since the evidence in both the cases was the same, the present appeal should also be admitted — Criminal Procedure Code, 1898, S. 421. Vithal Kandiba Kamble* v. *State of Maharashtra*, (1977) 1 SCC 493: 1977 SCC (Cri) 127: AIR 1977 SC 1615: 1977 Cri LJ 1119.

Bench Strength **3**. Coram: **P.N. Bhagwati**, *A.C. Gupta* and *P.N. Shinghal*, JJ. [Date of decision: 8-12-1976]

[5541] — S. 384 — Where arguable issues of fact or law arise, it is desirable that the High Court give reason for summary dismissal of appeal — *Case remanded for disposal on merits — Criminal Procedure Code, 1898, S. 421. Gulab* v. *State of Maharashtra*, (1977) 1 SCC 495: 1977 SCC (Cri) 129: AIR 1977 SC 1913: 1977 Cri LJ 1556.

Bench Strength **3**. Coram: **P.N. Bhagwati**, *A.C. Gupta* and *P.N. Shinghal*, JJ. [Date of decision: 8-12-1976]

[5542] — S. 384 — High Court not justified in summarily dismissing a first appeal against conviction involving serious offence such as one under S. 302, IPC — *It should consider such appeal on merits and even if it chooses to dismiss the appeal summarily it must at least give some reasons in brief therefor. Dagadu* v. *State of Maharashtra*, (1981) 2 SCC 575: 1981 SCC (Cri) 564: AIR 1981 SC 1218: (1981) 3 SCR 288: 1981 MLJ (Cri) 575: 1981 Cri LJ 724.

Bench Strength **3**. Coram: *S. Murtaza Fazal Ali, Baharul Islam* and *A. Varadarajan*, JJ. [Date of decision: 24-3-1981]

[5543] — S. 384 — Dismissal in limine — *Summary dismissal of appeal involving serious issues with one word 'dismissed' amounts to denial of right of appeal — Supreme Court in second appeal would set aside such a laconic order of dismissal and direct the High Court to admit the appeal — Constitution of India — Art.136*

The appellate court's power under S. 384, CrPC to dismiss an appeal in limine must be exercised sparingly and with great circumspection. Serious matters, such as a conviction for murder and a sentence of life imprisonment warrants 'admission' of the appeal and fair and independent consideration of the evidence by the High Court. Summary rejection of the appeal involving such matters with the laconic expression 'dismissed' is a drastic step amounting to denial of the right of appeal. The order of the appellate court should be a speaking order recording reasons for summary dismissal, however, concise. There must be some indication that the court addressed itself to the question at issue and had the record before it. In absence of such an indication in the present case, the High Court's one word order of dismissal must be set aside under Art. 136 and it must be directed to admit the appeal and dispose it of in accordance with law. *Shivaji Narayan Bachhav* v. *State of Maharashtra*, (1983) 4 SCC 129: 1983 SCC (Cri) 786: AIR 1983 SC 1014: 1983 Cri LJ 1497.

Bench Strength **2**. Coram: **O. Chinnappa Reddy** and *E.S. Venkataramiah*, JJ. [Date of decision: 18-8-1983]

[5544] — S. 384 — Dismissal of first appeal in limine with one word 'dismissed' — *Held, not justified where serious questions of law and disputed decision on facts raised — Such appeal should be admitted and disposed of on merits — CPC, 1908, Or. 41 R. 11 and S. 107. Kiranmal Zumerlal Borana Marwadi* v. *Dnyanoba Bajirao Khot*, (1983) 4 SCC 223: 1983 SCC (Cri) 812: AIR 1983 SC 461.

Bench Strength **2**. Coram: *D.A. Desai* and *A.N. Sen*, JJ. [Date of decision: 7-3-1983]

[5545] — S. 384 — Reasons for summary dismissal should be recorded at least in brief — *Criminal Procedure Code, 1898, S. 421*

It is very necessary for High Courts to at least record their reasons briefly even when they dismiss criminal appeals summarily on facts found. It is often difficult in criminal cases to say whether any material error was committed by trial Court in arriving at its findings of fact without at least some examination and consideration of the main feature of the evidence which only a reasoned order could disclose. *Rajendra Kumar Chaturvedi* v. *State of Maharashtra*, (1974) 4 SCC 586: 1974 SCC (Cri) 622: AIR 1974 SC 852: (1974) 3 SCR 847: 1974 Cri LJ 737.

Bench Strength **2**. Coram: **M.H. Beg** and *R.S. Sarkaria*, JJ. [Date of decision: 4-4-1974]

[5546] — S. 384 — Summary dismissal by High Court of appeal against conviction under S. 376, IPC and sentence of imprisonment for one year, held, not justified — *Appeal therefore, remanded to the High Court for disposal on merits after issuing notice to the State. Mayur Panabhai Shah* v. *State of Gujarat*, (1982) 2 SCC 396: 1982 SCC (Cri) 442: AIR 1983 SC 66: 1982 Cri LJ 1972.

Bench Strength 2. Coram: *P.N. Bhagwati* and *E.S. Venkataramiah*, JJ. [Date of decision: 22-1-1982]

[5547] — S. 384 — Summary dismissal by High Court when arguable point raised — *Criminal Procedure Code, 1898, S. 421*

Though the High Courts possess the power to dismiss criminal appeals summarily, appeals involving serious or substantial questions which are prima facie arguable should not be dismissed summarily without recording brief reasons in support of the order of dismissal. (Para 2). *Dattu Genu Gaikwad* v. *State of Maharashtra*, (1974) 3 SCC 678: 1974 SCC (Cri) 208: AIR 1974 SC 387: 1974 Cri LJ 446: 1975 MLJ (Cri) 619.

Bench Strength 2. Coram: *M.H. Beg* and **Y.V. Chandrachud**, JJ. [Date of decision: 23-11-1973]

[5548] — S. 384 — Summary dismissal of criminal appeal — When permissible — Illustrative cases discussed

Though a full-dressed hearing of an appeal is an integral part of fundamental fairness or procedure in a criminal matter, a few illustrative cases to which *ex parte* summary procedure will still apply in criminal appeals are where the only ground urged is a point of law which has been squarely covered by a ruling of the Supreme Court, for to keep the appeal lingering longer is survival after death. Where the accused has pleaded guilty of murder and the High Court, on the evidence, is satisfied with the pleas and has awarded the lesser penalty, a mere appeal *ex misericordia* is an exercise in futility. Where a minor procedural irregularity, clearly curable under CrPC, is all that the appellant has to urge, the full panoply of an appellate hearing is an act of supererogation. Where the grounds, taken at their face value, are frivolous, vexatious, malicious, wholly dilatory or blatantly mendacious, the prolongation of an appeal is a premium on abuse of the process of court. However the preceding list is not exhaustive. (Para 19). *Bolin Chetia* v. *Jogadish Bhuyan*, (2005) 6 SCC 81: AIR 2005 SC 1872.

Bench Strength 2. Coram: **R.C. Lahoti, C.J.** and *G.P. Mathur*, J. [Date of decision: 11-3-2005]

[5549] — S. 384 — Summary dismissal under — *High Court in an elaborate judgment after thoroughly scrutinising the evidence of eyewitnesses accepting their testimony and reversing trial Court's order of acquittal — Supreme Court after hearing the counsel, examining the relevant parts of the judgments of High Court and trial Court, finding no sufficient grounds for interference — Appeal, therefore, summarily dismissed — Sita Ram case no authority regarding scope of S. 384. Rajput Ruda Meha* v. *State of Gujarat*, (1980) 1 SCC 677: 1980 SCC (Cri) 317: AIR 1980 SC 1707: 1980 Cri LJ 1246: (1980) 21 GLR 411.

Bench Strength 3. Coram: **S. Murtaza Fazal Ali**, *P.S. Kailasam* and *A.D. Koshal*, JJ. [Date of decision: 5-12-1979]

[5550] — S. 384 — Summary disposal of appeal — Propriety — *Criminal Procedure Code, 1898, S. 421*

An appeal which raises arguable questions, either factual or legal, should not be summarily dismissed without recording a reasoned order. *Sampat Tatyada Shinde* v. *State of Maharashtra*, (1974) 4 SCC 213: 1974 SCC (Cri) 382: AIR 1974 SC 791.

Bench Strength 2. Coram: *V.R. Krishna Iyer* and **R.S. Sarkaria**, JJ. [Date of decision: 14-2-1974]

[5551] — Ss. 384, 374, 382 and 383 — Summary dismissal of appeal against conviction for non-appearance of the appellant or his counsel — *Held, illegal — Appellate court must examine the petition of appeal and the judgment under challenge and consider the case on merits — If the appellant has been sentenced to imprisonment and is not in custody the appellate court can require him to surrender and on his failure to obey the direction can dismiss the appeal without consideration of the merits — Position of a criminal appeal is not the same as in a civil appeal governed by the CPC — CPC, 1908, Or. 41 Rr. 11, 17 and 19*

The duty of the appellate court to examine the petition of appeal and the judgment under challenge and to consider the merits of the case before dismissing the appeal summarily is not dependent on the appellant or his counsel appearing before the Court to press the appeal. As soon as a petition of appeal is presented under Section 382 or 383 it becomes the duty of the appellate court to consider the same on merits, even in the absence of the appellant and his counsel before dismissing the same summarily. In a case where the appellant has been sentenced to imprisonment and he is not in custody when the appeal is taken up for preliminary hearing, the appellate court can require him to surrender, and if the appellant fails to obey the direction, other considerations may arise, which may render the appeal liable to be dismissed without consideration of the merits. In the present case the High Court should have either examined the appellant's petition of appeal and the judgment under challenge itself or appointed a counsel to assist the Court, but could not have proceeded to dismiss the same on the ground that the advocate for the appellant was not present. The position of a criminal appeal is not the same as in a civil appeal governed by the Civil Procedure Code. A comparison of the provisions of Section 384 with those of Order 41, Rules 11 and 17 of the Civil Procedure Code clearly brings out the difference. Rule 17, Order 41 of the Civil Procedure Code in express terms provides that an appeal may be dismissed on the ground of absence of the appellant when the appeal is called out, and Rule 19 provides for its restoration on the appellant offering sufficient cause for his non-appearance. In the case of a criminal appeal the corresponding provisions are not to be found in the Code of Criminal Procedure. On the other hand the Code in express terms requires the matter to be considered on merits. Thus a criminal appeal cannot be dismissed for non-prosecution, and this is the reason as to why the Criminal Procedure does not contain any special provision like Order 41, Rule 19. *Kishan Singh* v. *State of U.P.*, (1996) 9 SCC 372.

Bench Strength **3**. Coram: *L.M. Sharma, K. Ramaswamy* and *N. Venkatachala*, JJ. [Date of decision: 2-11-1992]

Ram Naresh Yadav v. State of Bihar, AIR 1987 SC 1500: 1986 PLJR 52, overruled

Shyam Deo Pandey v. State of Bihar, (1971) 1 SCC 855: 1971 SCC (Cri) 353: 1971 Supp SCR 133, affirmed

Emperor v. Balumal Hotchand, (1938) 39 Cri LJ 890: AIR 1938 Sind 171; Ramesh Nanu v. State of Gujarat, (1976) 17 Guj LR 350, approved

[**Ed.**: Decisions in *Ram Naresh Yadav* and *Shyam Deo Pandey* relate to post admission stage.]

—S. 384(3) *See* Ss. 354, 355, 361, 264, 412 and 384(3)

— S. 385 *See also* Ss. 422 and 423, Criminal Procedure Code, 1898, pp. 1217 et seq. in Vol. 2

—S. 385 *See* Ss. 303, 304, 384, 385 and 386

See also Ss. 386, 384 and 385

See also Ss. 386, 385 and 384

[5552] — S. 385 — Appeal against dismissal of complaint case for dishonour of cheque — Appellate stage procedure — *Appellate court (High Court) deciding on merits rather than strictly observing the principles of natural justice — Appellate court appointing legal aid counsel but not giving notice — Though not approved, not interfered with*

Dismissing the appeal,

Held :

The complainant did not examine herself as a witness. She was sought to be summoned again for cross-examination. The said prayer had not yet been allowed. But, that would not mean that on that ground the court would exercise its discretionary jurisdiction under Section 256 CrPC at that stage or the defence would not examine his witnesses. When the prosecution has closed its case and the accused has been examined under Section 311 CrPC, the court was required to pass a judgment on merit of the matter. (Paras 14 and 15)

Before passing the impugned order of acquittal, the High Court did not choose to serve notice upon the appellant opining that no useful purpose would be served in keeping the appeal pending and appointed a legal aid counsel. Although, the manner in which the appeal had been disposed of by the High Court was not approved, it is not a fit case for exercise of jurisdiction under Article 136 of the Constitution of India. (Paras 6 and 19). *S. Anand* v. *Vasumathi Chandrasekar*, (2008) 4 SCC 67: (2008) 2 SCC (Cri) 178: AIR 2008 SC 1296: (2008) 64 AIC 62 (SC): 2008 Cri LJ 1943.

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 14-2-2008]

[5553] — Ss. 385 and 386 — Appeal to High Courts — Reasoned order/Speaking order necessity — Duty of High Court — *Held, High Court is under bounden obligation to deal with and discuss the matter after considering relevant evidence and thereafter to conclude whether the Sessions Judge erred in dealing with the matter — Liberty of an individual has to be kept in mind and a cherished right ought not to be affected unless there is proper application of mind in accordance with law — In the instant case, held, High Court dealt summarily with the matter, which was neither fair nor proper — Hence matter remitted to High Court for disposal afresh* (Paras 1 and 2). *Harpal* v. *State of Haryana*, (2009) 16 SCC 371.

Bench Strength **2**. Coram: *U.C. Banerjee* and *B.N. Agrawal*, JJ. [Date of decision: 16-9-2002]

[5554] — Ss. 385, 374, 378 and 386 — Disposal of appeal on merits without hearing the appellant or his counsel — Legality — *Cause list not showing names of appellant's advocate but showing name of advocate who had retired from the case — Decision in the case without hearing the appellant or his counsel, held, resulted in miscarriage of justice — Matter remitted to the High Court for disposal in accordance with law by restoring the appeal to its original number*

It is no doubt true that it is open to the court to dispose of an appeal on merits even in the absence of the counsel appearing for the parties when the case is set down for hearing and the advocate or the party concerned does not appear. However, when the counsel could not appear before the court not on account of the fault either of the appellant or the advocates themselves, but on account of mistake committed by the Registry of the High Court in not showing the names of the counsel in the cause list properly and the counsel not being aware of the listing of the case before the court in such a matter the principle cannot be extended.

In the present case the case was set down for hearing on different dates without notifying the names of the advocates appearing for the appellant, but showing the name of the advocate who had retired from the case. Therefore, it could not be stated that the appellant or his advocate had notice of hearing of the case on the dates set down for hearing. Hence the decision in the case without hearing the appellants or their advocate has resulted in miscarriage of justice and the principle stated in the decision in *Bani Singh case* would not apply. *G. Raj Mallaiah* v. *State of A.P.*, (1998) 5 SCC 123: 1998 SCC (Cri) 1281: AIR 1998 SC 2315.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **S. Rajendra Babu**, JJ. [Date of decision: 27-4-1998]

Bani Singh v. State of U.P., (1996) 4 SCC 720: 1996 SCC (Cri) 848, explained and distinguished

[5555] — Ss. 385 and 386 — Disposal of appeal in absence of counsel — Criminal appeal filed before High Court against conviction under NDPS Act — Sentence of 10 years' RI and fine — *None appeared for appellant-accused — State, represented by Deputy Advocate General — Grounds raised in memorandum of appeal considered — Appeal rejected — Appellant was behind bars and could not make alternative arrangement — One more opportunity given to appellant to put forth his case through a lawyer — Matter remitted to High Court* (Paras 2 to 6). *Harjinder Singh* v. *State of Punjab*, (2010) 13 SCC 533.

Bench Strength **2**. Coram: *P. Sathasivam* and *Dr. B.S. Chauhan*, JJ. [Date of decision: 16-8-2010]

Bani Singh v. State of U.P., (1996) 4 SCC 720: 1996 SCC (Cri) 848, relied on

Shyam Deo Pandey v. State of Bihar, (1971) 1 SCC 855: 1971 SCC (Cri) 353; Ram Naresh Yadav v. State of Bihar, AIR 1987 SC 1500: 1987 Cri LJ 1856, referred to

[5556] — S. 385 — Ex parte proceedings in an appeal — Impropriety of — *Matter in which accused persons sentenced to 10 years' imprisonment, dealt with ex parte by High Court with assistance of APP — Lack of assistance from accused's point of view — Held, such matters ought to be dealt with some amount of seriousness as otherwise entire justice delivery system of country would be at peril — More so, absence of lawyer may be for some special reasons, and without even ascertaining that, the continuance of the ex parte hearing cannot be ascribed to be in accordance with law* (Para 2). *Ganesh* v. *State of Maharashtra*, (2007) 15 SCC 587.

Bench Strength **2**. Coram: *U.C. Banerjee* and *B.N. Agrawal*, JJ. [Date of decision: 26-8-2002]

[5557] — Ss. 385 and 386 — Appeal — Non-appearance of appellants — Disposal by High Court ex parte, held, permissible — *Trial court sentenced the accused to imprisonment for life under Ss. 302/34 IPC — In appeal, the appellants' counsel stated that despite repeated letters, the appellants were not responding therefore he was not in a position to argue the appeal — High Court with the assistance of the Assistant Government Advocate decided the case on merits, sentencing accused to rigorous imprisonment of 7 years under S. 304 Pt. II r/w S. 34 IPC — Propriety of — Held, High Court had arrived at a well-merited judgment after a careful consideration of the materials on record — Judgment of the High Court clearly shows that evidence before the trial court has been carefully deliberated upon and weighed and it is only then that the conclusions have been arrived at — It cannot be said that the High Court had ignored the basic principles of criminal justice while disposing of the appeal ex parte — There has been substantial compliance with the guidelines made in* Bani Singh case, *(1996) 4 SCC 720*

At the time of hearing of the appeal, the appellants were already enlarged on bail. Only after the judgment was delivered by the High Court, was the bail cancelled and they were directed to surrender before the appropriate authority. Having examined the provisions under Sections 385 and 386 of the Code and applying the principles laid down by the Supreme Court in *Bani Singh case*, (1996) 4 SCC 720 would clearly show that when the accused does not appear, it is the bounden duty of the High Court to look into the records and the other materials on record, including the judgment of the trial court and thereafter, decide the appeal on merits which would be due compliance with Sections 385 and 386 of the Code in disposing of criminal appeals. While dealing with the procedure for disposing of a criminal appeal, the Supreme Court in *Bani Singh case* has clearly laid down that the dismissal of an appeal for default or non-prosecution without going into the merits of the case is clearly illegal and that the appellate court must dispose of the appeal on merits after perusal and scrutiny of record and after giving a hearing to the parties, if present, before disposal of the appeal on merits. Further held that the appellate court must dispose of the appeal after perusal of the record and judgment of the trial court even if the appellant or his counsel was not present at the time of hearing of the appeal. The only exception, as we find from the aforesaid decision of the Supreme Court, is that if the appellant is in jail and his counsel is not present, the court should adjourn the case to facilitate the appearance of the appellant. (Paras 10, 12 and 13)

There is yet another exception to this rule, namely, that in an appropriate case, the court can appoint a lawyer at the State's expense to assist the court. Therefore, the High Court was justified in taking the assistance of the Assistant Government Advocate and after taking such assistance and considering the entire evidence on record, the High Court passed the judgment holding that the appellants were guilty of the offence, not under Sections 302/34 IPC but under Section 304 Part II IPC and directed them to undergo 7 years' rigorous imprisonment. In doing so, the High Court affirmed the findings of the trial court but differed on the point of the offence committed by the appellants and the corresponding punishment to be awarded to them. (Para 14)

It is abundantly clear that the High Court had arrived at a well-merited judgment after a careful consideration of the materials on record. The position, of course, would have been different if the High Court had simply dismissed the appeal without going into the merits. However, nothing of this sort has been done in the present case. The judgment of the High Court clearly shows that evidence before the trial court has been carefully deliberated upon and weighed and it is only then that the conclusions have been arrived at. That being the position, it cannot be said that the High Court had ignored the basic principles of criminal justice while disposing of the appeal ex parte. There has been substantial compliance with the guidelines made in *Bani Singh case*. (Para 15). *Dharam Pal* v. *State of U.P.*, (2008) 17 SCC 337: AIR 2008 SC 920: (2008) 62 AIC 65 (SC): (2008) 1 All LJ 721: 2008 Cri LJ 1016.

Bench Strength **2**. Coram: *C.K. Thakker* and **Tarun Chatterjee**, JJ. [Date of decision: 4-1-2008]

Bani Singh v. State of U.P., (1996) 4 SCC 720: 1996 SCC (Cri) 848, followed

[5558] — Ss. 385 and 386 — Service of notice of appeal — Denial of, by appellant counsel — Proceeding with appeal nevertheless — Propriety — *Held, even if it is assumed that the notice of appeal was not served on the appellants, then also, it was an admitted position that the counsel for the appellants appeared for them to prosecute the appeal — After appearance of counsel for the appellants, it must be held that the notice of appeal was duly served* (Paras 10 and 11). *Dharam Pal* v. *State of U.P.*, (2008) 17 SCC 337: AIR 2008 SC 920: (2008) 62 AIC 65 (SC): (2008) 1 All LJ 721: 2008 Cri LJ 1016.

Bench Strength **2**. Coram: *C.K. Thakker* and **Tarun Chatterjee**, JJ. [Date of decision: 4-1-2008]

State of H.P. v. Mast Ram, (2004) 8 SCC 660, followed

[5559] — Ss. 385 and 386 — Appeal dismissed ex parte without issuing notice — Propriety — *Case transferred from Patna High Court to Jharkhand High Court on reorganisation of State — However, appeal disposed of ex parte without issuing notice thereof to appellant — Hence, he unable to make representation — Impugned judgment dismissing the appeal set aside and matter remitted to High Court for expeditious disposal* (Paras 2 to 6). *Ambika Mandal* v. *State of Bihar*, (2008) 15 SCC 743: (2009) 3 SCC (Cri) 1185: (2008) 72 AIC 113 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 28-11-2008]

[5560] — Ss. 385 and 386 — High Court allowing of appeal against conviction on concession by Public Prosecutor without having the records of the court of Session before it and without perusal of prosecution evidence, held, illegal — *High Court must fix a date for hearing of the appeal, send for the records of the Sessions Court and hear the parties on merits*

Under S. 385 of the Code of Criminal Procedure, it was obligatory for the High Court to fix a date for the hearing of the appeal and then send for the records of the Court of Session and hear the parties on merits. There was no warrant for the procedure adopted by the learned Judges in disposing of the appeal in this cavalier manner. It does no credit to any branch of administration of justice that an appeal against conviction should be allowed without the appellate court having the records before it and without perusing the evidence adduced by the prosecution. To say the least, there has been a flagrant miscarriage of justice. It may be as the High Court records in its order, that the Public Prosecutor conceded that there was no evidence but then the High Court had to satisfy itself upon perusal of the records that there was no reliable and credible evidence to warrant the conviction of the accused. The High Court is directed to admit the appeal and dispose it of on merits after issue of notice afresh. *Biswanath Ghosh* v. *State of W.B.*, (1987) 2 SCC 55: 1987 SCC (Cri) 259: AIR 1987 SC 1155: 1987 Cri LJ 1052.

Bench Strength 2. Coram: *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 16-2-1987]

— S. 385(1) *See* Ss. 385(2) & (1), 386

See also Ss. 406, 432(7), 385(1), 225, 2(u), 24 and 378

— S. 385(2) *See also* Ss. 386, 374 and 385(2)

[5561] — S. 385(2) — Whether record of the case was sent for not questioned before High Court — *Appellant admitting that the appeal could be allowed on the findings recorded by the Sessions Judge — On facts held, either the record was summoned or in any case, the summoning of the record was not thought to be necessary by the parties — In any event failure to summon record not fatal. Hanumant Dass* v. *Vinay Kumar*, (1982) 2 SCC 177: 1982 SCC (Cri) 379(2): AIR 1982 SC 1052: 1982 Cri LJ 977.

Bench Strength 2. Coram: *O. Chinnappa Reddy* and **R.B. Misra**, JJ. [Date of decision: 5-4-1982]

[5562] — Ss. 385(2) & (1), 386 — Appellate court's duty to send for record of the case — Object — Court's obligation to decide only after perusal of the record — When can be waived

Once the appellate court, on an examination of the grounds of appeal and the impugned judgment, decides to admit the appeal for hearing, it must send for the record and then decide the appeal finally, unless the appeal is restricted to the extent and legality of the sentence. Obviously, the requirement to send for the record is provided for to enable the appellate court to peruse the record before finally deciding the appeal. It is not an idle formality but casts an obligation on the court to decide the appeal only after it has perused the record. This is not to say that it cannot be waived even where the parties consent to its waiver. This becomes clear from the opening words of Section 386 which say that "after perusing such record" the court may dispose of the appeal. However, this section imposes a further requirement of hearing the appellant or his pleader, if he appears, and the public prosecutor, if he appears. This is an extension of the requirement of Section 385(1) which requires the court to cause notice to issue as to the time and place of hearing of the appeal. Once such a notice is issued the accused or his pleader, if he appears, must be heard. *Bani Singh* v. *State of U.P.*, (1996) 4 SCC 720: 1996 SCC (Cri) 848: AIR 1996 SC 2439.

Bench Strength 3. Coram: **A.M. Ahmadi, C.J.** and *N.P. Singh* and *Sujata V. Manohar*, JJ. [Date of decision: 9-7-1996]

But see also (1996) 4 SCC 720

[5563] — Ss. 385(2) and 386(b) — Reconstruction of records — Necessity of — *Acquittal by High Court as lower court records not available to it, without taking steps for reconstruction of records, in spite of appellant State's willingness to supply relevant records — Impropriety — Held, High Court was not right in acquitting accused on this ground — CPC, 1908, Or. 20 R. 20, Or. 13 R. 10, Or. 41 R. 24. State of U.P.* v. *Raj Narain Pandey*, (2005) 13 SCC 444: (2006) 2 SCC (Cri) 343.

Bench Strength 2. Coram: *B.N. Agrawal* and *P.K. Balasubramanyan*, JJ. [Date of decision: 7-2-2005]

[**Ed.**: *See also* (2004) 4 SCC 6]

[5564] — Ss. 385(2) and 386(b) — Records of trial court destroyed or not made available to appellate court — *Held, acquittal not justified on this ground alone — Appeal before High Court against conviction — Records at trial court destroyed in fire — Hence, not placed before High Court — Acquittal by High Court in absence of such records — Held, improper — The proper course for the appellate court in such case would be to direct reconstruction of the records and then hear the appeal and dispose of the same on merits — If reconstruction is not possible, direction for retrial should be issued — On facts, trial court informing High Court about destruction of records — Order for reconstruction of records issued by High Court after nine years of receiving the said information — No response from trial court — High Court drawing inference that reconstruction not possible and, therefore, acquitting the accused — Held, the course adopted by High Court was not proper — High Court directed to rehear the appeals on merits after adopting the proper course as stated above — Further held, the impugned judgment of the High Court would operate only if the reconstruction of records or retrial is impossible*

A question of seminal importance arose in these appeals as to whether in exercise of power under Section 386 CrPC, the appellate court would be justified in directing acquittal, where the records of the trial court are not placed before it on some ground or the other.

The accused-respondents in the instant case were found guilty of the offence punishable under Section 302 IPC by the trial court. Two criminal appeals against the judgment of the trial court were preferred before the High Court by the accused persons. After admission of the appeal, Registry of the High Court sent for the records from the trial court. By letter dated 27-6-1984 the Office-in-charge

(Record Room), Judges Court, Bareilly informed the High Court that the records of the case were not available as the same got destroyed in the fire that broke out in the night between 18-11-1979/19-11-1979. By order dated 1-11-1993 i.e. more than nine years after the letter was received from the lower court, three months' time was allowed for reconstruction of the record at the Sessions Judge level. The High Court while disposing of Criminal Appeal No. 1970 of 1979 on 25-2-1994 noted that no communication had been received about the reconstruction of the record and, therefore, it inferred that it was not possible for the Sessions Judge to reconstruct the record. Thus in this background, the High Court held that the mandate of law contained in Sections 385 and 386 of the Code could not be complied with and, therefore, directed acquittal of the accused persons. The appellant State challenged the said judgment of the High Court by filing the instant appeals.

Setting aside the order of the High Court and remitting the matter back for fresh consideration,

Held :

While dealing with an appeal against conviction, the appellate court is empowered by Section 386 to reverse the finding and sentence and acquit. The appellate court is also empowered to discharge the accused. The third category which seems to be applicable to the present case is where the appellate court can order the accused to be retried by a court of competent jurisdiction subordinate to the appellate court or committed for trial. (Para 6)

For exercise of the powers in cases of first two categories, obviously a finding on merits after consideration of the materials on record is imperative. Where that is not possible because of circumstances like the case at hand i.e. destruction of the records, the proper course for the appellate court would be to direct retrial after reconstruction of the records if in spite of positive and constructive efforts to reconstruct the records the same was impossible. If on the other hand, from the copies available with the prosecuting agency or the defence and/or their respective counsel, reconstruction is possible, the said course should be adopted and the appeal can be disposed of as it deserved under course indicated in clause (*b*) of Section 386. (Para 6)

The High Court did not keep the relevant aspects and considerations in view and came to the abrupt conclusion that reconstruction was not possible merely because there was no response from the Sessions Judge. It is not clear as to why the High Court did not require the Sessions Court to furnish the information about reconstruction of records; and/or itself take initiative by issuing positive directions as to the manner, method and nature of attempts, efforts and exercise to be undertaken to effectively achieve the purpose in the best interests of justice and to avoid ultimately any miscarriage of justice resulting from any lapse, inaction or inappropriate or perfunctory action, in this regard; particularly when no action was taken by the High Court to pass necessary orders for about a decade when it received information about destruction of record. The course adopted by the High Court, if approved, would encourage dubious persons and detractors of justice by allowing undeserved premium to violators of law by acting hand in glove with those anti-social elements coming to hold sway, behind the screen, in the ordinary and normal course of justice. (Para 9)

Hence, the order of the High Court is set aside and the matter is remitted back for fresh consideration. The High Court shall direct reconstruction of the records within a period of six months from the date of receipt of this judgment from all available or possible sources with the assistance of the prosecuting agency as well as the defending parties and their respective counsel. If it is possible to have the records reconstructed to enable the High Court itself to hear and dispose of the appeals in the manner envisaged under Section 386 of the Code, rehear the appeals and dispose of the same, on their own merits and in accordance with law. If it finds that reconstruction is not practicable but by ordering retrial interest of justice could be better served — adopt that course and direct retrial — and from that stage law shall take its normal course. If only reconstruction is not possible to facilitate the High Court to hear and dispose of the appeals and the further course of retrial and fresh adjudication by the Sessions Court is also rendered impossible due to loss of vitally important basic records — in that case and situation only, the direction given in the impugned judgment shall operate and the matter shall stand closed. (Para 10). *State of U.P.* v. *Abhai Raj Singh*, (2004) 4 SCC 6: 2004 SCC (Cri) 901: 2004 All LJ 2043.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 8-3-2004]

Bani Singh v. State of U.P., (1996) 4 SCC 720: 1996 SCC (Cri) 848, relied on

Queen Empress v. Khimat Singh, 1889 AWN 55; Sevugaperumal, Re, AIR 1943 Mad 391 (2): 44 Cri LJ 611, approved

Section 386 — Powers of Appellate Court

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(1) Powers of Appellate Court - Generally

— **S. 386(a)** *See* Ss. 378 and 386(a)

— **S. 386(b)** *See* Ss. 385(2) and 386(b)

— **S. 386(c)** *See* Ss. 377 and 386(c)

— **S. 386(c)(iii)** *See* Ss. 377(3) & 386(c)(iii)

— **S. 386(d)** *See* Ss. 482, 407 and 386(d)

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(1) Generally

See also Ss. 397 to 401, below

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[5565] — Ss. 386, 401 and 247 — Distinction between appeal and revision — *Appellate court competent to review the evidence but powers of revisional court are confined to legality and propriety of the findings — Acquittal of accused by trial court on ground of non-appearance of the complainant — Appellate court, held, competent to reach a fresh decision as to whether in the situation the trial court was justified in acquitting the accused*

Appellate jurisdiction is coextensive with original court's jurisdiction as for appraisal and appreciation of evidence and reaching findings on facts and the appellate court is free to reach its own conclusion on evidence untrammelled by any finding entered by the trial court. Revisional powers on the other hand belong to supervisory jurisdiction of a superior court. While exercising revisional powers the court has to confine itself to the legality and propriety of the findings and also whether the subordinate court has kept itself within the bounds of its jurisdiction including the question whether the court has failed to exercise the jurisdiction vested in it. Though the difference between the two jurisdictions is subtle, it is quite real and has now become well recognised in legal provinces.

When a trial court had acquitted an accused due to non-appearance of the complainant the appellate court has the same powers as the trial court to reach a fresh decision as to whether in the particular situation the Magistrate should have acquitted the accused. What the trial court did not then ascertain and consider could, perhaps, be known to the appellate court and a decision different from the trial court can be taken by the appellate court, whether the order of acquittal should have been passed in the particular situation. *Associated Cement Co. Ltd.* v. *Keshvanand*, (1998) 1 SCC 687: 1998 SCC (Cri) 475: AIR 1998 SC 596: (1998) 91 Comp Cas 361: 1998 Cri LJ 856: (1998) 1 KLT 179.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 16-12-1997]

[5566] — Ss. 386, 401 and 399 — Appellate or revisional jurisdiction — Scope of — Decision on vires of a provision in a statute — *Held, cannot be made by any court in exercise of its appellate or revisional jurisdiction under the Code — The vires of a provision can only be questioned in a writ proceeding before a Constitutional Court — CPC, 1908, Ss. 96, 100 and 115*

It is well settled that creature of any statute cannot consider the vires of a particular provision in that statute or any other statute as well. While exercising appellate or revisional jurisdiction under the Code it is impermissible for any court to decide on the vires of the provision. That is precisely what the Sessions Judge and the High Court have done in the present case. The vires of a provision can only be questioned in a writ proceeding before the Constitutional Court. (Para 6). *State (Union of India)* v. *Ram Saran*, (2003) 12 SCC 578: AIR 2004 SC 481: (2004) 101 FLR 447.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 4-12-2003]

(2) Nature and scope of powers of appellate court

See also Ss. 374 and 378, above

[5567] — S. 386 — First appellate court — Powers of — *Held, can reappreciate the evidence on record to arrive at a just conclusion — But it should first analyse the findings of the trial court and then for valid reasons to be recorded it can reverse such finding — It should not substitute the finding of the trial court merely because another view is possible*

It is a well-settled principle in law that though the first appellate court like the High Court in this case sits as a court of appeal on facts also while considering an appeal from the judgment of the trial court and in that process it can reappreciate the evidence on record to arrive at a just conclusion, the Supreme Court in more than one case has held that while so reappreciating the evidence, the appellate court should first analyse the findings of the trial court and then for valid reasons to be recorded the appellate court can reverse such finding of the trial court. The said decisions also hold that the appellate court while sitting as a court of appeal should not substitute the finding of the trial court merely because another view is possible to be taken on the same sets of facts. (Para 5). *Devatha Venkataswamy* v. *Public Prosecutor, High Court of A.P.*, (2003) 10 SCC 700: AIR 2003 SC 3217: 2003 Cri LJ 4332.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 9-9-2003]

Rajendra Prasad v. State of Bihar, (1977) 2 SCC 205; Harisingh M. Vasava v. State of Gujarat, (2002) 3 SCC 475: 2002 SCC (Cri) 654; Joseph v. State of Kerala, (2003) 1 SCC 465: 2003 SCC (Cri) 356, relied on

[5568] — S. 386 — Jurisdiction of appellate court is coextensive with that of the trial court in the matter of assessment, appraisal and appreciation of evidence and also to determine disputed issues — *High Court erred in disposing of an appeal like a revision petition — Matter remitted back to the High Court to dispose of it afresh in accordance with law. Rajan* v. *State of M.P.*, (1999) 6 SCC 29: 1999 SCC (Cri) 1056.

Bench Strength 2. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 12-4-1999]

[5569] — S. 386 — Power of appellate court under, to order that the case be committed for trial — Held, is not circumscribed to cases exclusively triable by the Court of Session

Section 386 empowers the appellate court to order that the case be committed for trial and this power is not circumscribed to cases exclusively triable by the Court of Session. (Para 7). *State of U.P.* v. *Abhai Raj Singh*, (2004) 4 SCC 6: 2004 SCC (Cri) 901: 2004 All LJ 2043.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 8-3-2004]

State of U.P. v. Shankar, AIR 1962 SC 1154: (1962) 2 Cri LJ 261, relied on

[5570] — Ss. 386, 374 and 378 — Appeal against conviction — No distinction between judgment of conviction or acquittal in appeal — *When Supreme Court's interference called for indicated. Mahesh Chander* v. *Delhi Admn.*, 1991 Supp (1) SCC 257: 1991 SCC (Cri) 551: AIR 1991 SC 1108.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *M. Fathima Beevi*, JJ. [Date of decision: 3-4-1991]

[5571] — Ss. 386 and 374 — High Court's power to reappreciate the evidence and interfere with the findings of trial court — Scope — *Conclusion arrived at by High Court should be rational and based on proper appreciation of evidence*

The High Court has full power to reappreciate the evidence and come to a conclusion independently but the High Court should be very slow in reversing the decision of the trial court because the trial court has the occasion to watch the demeanour of the witnesses very closely. The conclusion which is arrived at by the High Court should be rational and proper appreciation of the testimony of the witnesses. In the present case, the High Court has not examined the statement of the witnesses and just on a bald statement that when the prosecution version has been accepted in full and the witnesses have tendency to overimplicate, then what is the guarantee that other part is also true, the High Court disbelieved the entire prosecution evidence. This approach of the High Court, is not correct. There should be proper appreciation of evidence and finding has to be recorded against each witness as to why the said witness is not being believed when he was believed by the trial court. (Para 10). *State of Karnataka* v. *Papanaika*, (2004) 13 SCC 180: 2005 SCC (Cri) 104: AIR 2004 SC 4967: 2004 Cri LJ 4667.

Bench Strength 2. Coram: *B.N. Agrawal* and **A.K. Mathur**, JJ. [Date of decision: 14-10-2004]

Surinder Singh v. State of U.P., (2003) 10 SCC 26: 2004 SCC (Cri) 717; Kalyan v. State of U.P., (2001) 9 SCC 632: 2002 SCC (Cri) 780; Wilayat Khan v. State of U.P., AIR 1953 SC 122: 1953 Cri LJ 662, relied on

[5572] — Ss. 386 and 378 — Interference in appeal — Power of High Court in respect of, restated — Appellate court's approach — *Where the trial court wrongly read and thereby misappreciated the evidence and arrived at grossly unjust conclusions, held, the appellate court is entitled to interfere in appeal to set right the manifest injustice resulting from the decision of the trial court — Therefore, on facts, High Court did not commit any error while reversing the verdict of acquittal recorded by trial court in respect of appellant A-3* (Para 12). *Sardul Singh* v. *State of Haryana*, (2002) 8 SCC 372: 2003 SCC (Cri) 23: AIR 2002 SC 3462.

Bench Strength 2. Coram: **Doraiswamy Raju** and *Shivaraj V. Patil*, JJ. [Date of decision: 27-9-2002]

[5573] — Ss. 386, 374 and 378 — Interference in appeal — Scope of — Held, the appellate court should not lightly brush aside the appreciation done by the trial court except for cogent reasons — *On facts, reasons given by High Court for reversing conviction were not sufficient to doubt the prosecution case which was fully established — Acquittal by High Court set aside — Constitution of India — Art.136* (Paras 13 to 15). *State of W.B.* v. *Kailash Chandra Pandey*, (2004) 12 SCC 29.

Bench Strength 2. Coram: *D.M. Dharmadhikari* and **A.K. Mathur**, JJ. [Date of decision: 13-10-2004]

State of Punjab v. Hari Singh, (1974) 4 SCC 552: 1974 SCC (Cri) 588; Khem Karan v. State of U.P., (1974) 4 SCC 603: 1974 SCC (Cri) 639; State of Rajasthan v. Bhawani, (2003) 7 SCC 291: 2003 SCC (Cri) 1628; Govt. of NCT of Delhi v. Jaspal Singh, (2003) 10 SCC 586: 2004 SCC (Cri) 933, relied on

(2) Nature and scope of powers of appellate court *(contd.)*

[5574] — Ss. 386 and 374, 378 — When the view taken by trial court is the only possible view on a proper appraisement of evidence and no otherview is reasonably possible, held, High Court erred in interfering and taking a contrary view. *Gurbachan Singh* v. *Satpal Singh*, (1990) 1 SCC 445: 1990 SCC (Cri) 151: AIR 1990 SC 209: 1990 Cri LJ 562.

Bench Strength **2**. Coram: **Sabyasachi Mukharji**[1] and **B.C. Ray**[2], JJ. [Date of decision: 26-9-1989]

(3) Appeal against acquittal — S. 386(a)

See also S. 378, above

See also S. 386, '(12) Acquittal/Reversal of conviction justified', and

'(13) Conviction/Reversal of acquittal justified', below

[5575] — S. 386 — Appeal against acquittal — Appellate Court's powers — *Trial Court chasing bare possibilities of doubt and exalting them into sufficiently militating factors justifying acquittal of accused — Reconsideration of circumstantial evidence by High Court — High Court not failing to observe built-in restraints on exercise of power while upsetting the acquittal — Held, High Court's approach correct — Criminal Procedure Code, 1898, S. 417*

Merely because a different view of the evidence is possible a finding against guilt cannot be cancelled. But the appellate Court is untrammelled in its power to re-evaluate the evidence bearing in mind the seriousness of overthrowing an acquittal once recorded. There is no error of law in the High Court reconsidering the probative value of the oral and circumstantial evidence in the case. Nor the appellate Court has failed to observe the built-in restraints on exercise of power while upsetting an acquittal. On the other hand, the Court has made the correct approach that only those accused against whom there was additional probative reinforcement could be convicted. *Khem Karan* v. *State of U.P.*, (1974) 4 SCC 603: 1974 SCC (Cri) 639: AIR 1974 SC 1567: (1974) 3 SCR 863: 1974 Cri LJ 1033: (1974) 2 ACC 307.

Bench Strength **3**. Coram: *M.H. Beg*, *Y.V. Chandrachud* and **V.R. Krishna Iyer**, JJ. [Date of decision: 8-4-1974]

[5576] — S. 386 — Acquittal in appeal — Benefit of — Would not extend to co- accused who do not surrender after conviction in addition to not filing appeal against the conviction — *However, appellant not surrendering initially but doing so subsequently and suffering custody for more than two years — Held, after surrender, benefit of acquittal in the case of co-accused on similar accusations can be extended* (Paras 1 and 5 to 7). *Deepak Rajak* v. *State of W.B.*, (2007) 15 SCC 305.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *B.P. Singh*, JJ. [Date of decision: 14-6-2007]

[5577] — Ss. 386 and 378 — Appeal against acquittal — *Appellate court can review the evidence and interfere for compelling reasons such as where admissible evidence has been unreasonably and unjustifiably ignored — Primary concern of the court is to prevent miscarriage of justice — If two views are possible, the one favourable to the accused should be preferred — Constitution of India — Art. 136*

There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. (Para 18). *Chanakya Dhibar* v. *State of W.B.*, (2004) 12 SCC 398.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 19-12-2003]

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of Punjab v. Phola Singh, (2003) 11 SCC 58: 2004 SCC (Cri) 276; Suchand Pal v. Phani Pal, (2003) 11 SCC 527: 2004 SCC (Cri) 220, relied on

[5578] — Ss. 386 and 378 — Appeal against acquittal — Powers of appellate court — Scope — *Held, there is no embargo on the appellate court to review, reappreciate or reconsider the evidence upon which the order of acquittal is founded — Yet, generally, the order of acquittal is not interfered with because the presumption of innocence gets further reinforced and strengthened by acquittal of accused — It is also trite that if two views are possible on the evidence adduced in the case and the one favourable to the accused has been taken by the trial court, it should not be disturbed — Nevertheless, where the approach of the lower court in considering the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse, then, to prevent miscarriage of justice, the appellate court is obliged to interfere* (Paras 20 and 21). *State of A.P.* v. *M. Madhusudhan Rao*, (2008) 15 SCC 582: (2009) 3 SCC (Cri) 1123: (2009) 1 ECrN 489 (SC): (2008) 71 AIC 8 (SC).

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 24-10-2008]

Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, relied on

[5579] — Ss. 386 & 378 — Appeal against acquittal — *Trial Court rejecting prosecution case based on uncorroborated testimony of interested and partisan witnesses and drawing adverse inference on failure to examine independent witnesses named in the FIR — Held, on facts, that such a view in the present case was neither manifestly wrong or perverse nor so unreasonable so as to justify reversal of the acquittal by the High Court — Possibility of another view not sufficient — Moreover High Court's opinion based on conjectures. Bir Singh* v. *State of U.P.*, (1977) 4 SCC 420: 1977 SCC (Cri) 640: AIR 1978 SC 59: 1978 Cri LJ 177: 1978 ALJ 365.

Bench Strength **2**. Coram: *A.C. Gupta* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 18-8-1977]

[5580] — Ss. 386 and 376 — Part allowing of appeal against acquittal — Approach — *High Court upholding acquittal for offences under Ss. 341, 326, 504 and 506 r/w S. 34 IPC and setting aside acquittal for offences under Ss. 324 and 325 r/w S. 34 IPC without assigning distinct reason — PWs 1 to 3 were attacked and injured with stones and wooden sticks and PW 1 was threatened due to past hostility — High Court in an appeal against acquittal partly allowed the appeal by simply observing that benefit of doubt could not be given because the inconsistencies and contradictions were minor and there was past hostility between the parties — Matter therefore, remanded to High Court for proper appreciation of evidence — Penal Code, 1860, Ss. 341, 326, 504, & 506 r/w S. 34 and Ss. 324 & 325 r/w S. 34*

The appellant-accused along with others attacked a couple (PWs 1 and 3) and their coolie (PW 2) with stones and wooden sticks. The complainant also threatened to kill the husband (PW 1, complainant). The prosecution examined two doctors (PWs 4 and 5). The Magistrate acquitted all the accused along with the appellant-accused by finding discrepancies in medical and ocular evidence and contradictions in the deposition of witnesses. The High Court allowed the appeal under Section 378 CrPC by relying on medical certificate, past hostility (due to long standing civil dispute), and by observing that the inconsistencies and contradictions were minor and that it was a case of extenuating circumstance and not a case where benefit of doubt could have been given. By the impugned order the High Court upheld the acquittal for offences under Sections 341, 326, 504 and 506 read with Section 34 IPC and set aside the acquittal and recorded conviction for offences under Sections 324 and 325 read with Section 34 IPC without assigning any reason.

Allowing the appeal,

Held :

In a brief order, the High Court partly allowed the appeal, but there was no reasoning or basis as to what weighed with the High Court in confirming the order of acquittal recorded in favour of the appellant-accused for offences (under Sections 341, 326, 504 and 506 read with Section 34 IPC) and for setting aside the order of acquittal and ordering conviction of the accused for the offences punishable under Sections 324 and 325 read with Section 34 IPC. The High Court was exercising appellate power as the first appellate court. It was, therefore, expected of the High Court to consider the evidence of the prosecution witnesses, particularly because the three eyewitnesses (PWs 1 to 3) were also injured witnesses. The High Court failed to discharge its duty of exercising appellate power as a regular court of appeal. The order passed by the High Court, therefore, deserves to be set aside by remitting the matter for fresh disposal in accordance with law. (Paras 15 to 17). *Manjunath Ganesh Hegde* v. *State of Karnataka*, (2008) 14 SCC 555.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 5-11-2008]

(3) Appeal against acquittal — S. 386(a) *(contd.)*

[5581] — Ss. 386 and 378 — Appeal against acquittal — High Court cannot set aside the acquittal without finding the acquittal erroneous — *Setting aside the acquittal merely on the ground that a further charge should have been framed and also ordering retrial, held, improper — Case remanded to High Court to consider merits of the acquittal. Patel Jethabhai Chatur* v. *State of Gujarat*, (1976) 4 SCC 522: 1977 SCC (Cri) 1: AIR 1977 SC 294: 1977 Cri LJ 201: (1977) 1 SCR 872: (1977) 1 GLR 360.

Bench Strength 2. Coram: **P.N. Bhagwati** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 20-10-1976]

[5582] — Ss. 386 and 378 — Appeal against acquittal — Improper disposal of — *High Court after disbelieving the substratum of the prosecution case as also that of the defence, evolving a new case which was neither deposed to by the prosecution nor by the defence — Held, it was not open to High Court to do so*

The approach of the High Court while dealing with an appeal against acquittal was wholly incorrect. While dealing with an appeal against acquittal, it was obligatory on the High Court to have considered and discussed each of the reasons given by the trial court to acquit the accused and then to dislodge those reasons. In this case no reasons were given by the High Court for dis-lodging the findings recorded by trial court. (Para 7). *Chandu* v. *State of Maharashtra*, (2002) 9 SCC 408.

Bench Strength 3. Coram: *Dr. A.S. Anand*, C.J. and *N. Santosh Hegde, Shivaraj V. Patil*, JJ. [Date of decision: 22-3-2001]

[5583] — Ss. 386 and 378 — Appeal against acquittal — Interference by appellate court — *Held, not permissible unless the order of acquittal is found to be perverse — In the instant case, the view taken by the trial court was a reasonable one — High Court erred in interfering with the order of acquittal as the same did not suffer from the vice of perversity — Penal Code, 1860 — Ss. 302/34, 307/34, 324/34 and 394* (Para 8). *Shailendra Pratap* v. *State of U.P.*, (2003) 1 SCC 761: 2003 SCC (Cri) 432: AIR 2003 SC 1104.

Bench Strength 2. Coram: *S.N. Variava* and **B.N. Agrawal**, JJ. [Date of decision: 8-1-2003]

[5584] — Ss. 386 and 378 — Appeal against acquittal — Interference by appellate court — *Where the consideration reflects total non-application of mind, interference is not only desirable but proper* (Para 18). *Vilas Pandurang Patil* v. *State of Maharashtra*, (2004) 6 SCC 158: 2004 SCC (Cri) 1750: AIR 2004 SC 3562: (2004) 4 MPLJ 68.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 6-5-2004]

[5585] — Ss. 386 and 378 — Appeal against acquittal — Interference by appellate court — Scope of — *Held, interference should not be made if the view taken by the trial court is a reasonable and possible view — But where the evidence has not been properly analysed by the trial court and the conclusions drawn are based on surmises and conjectures, held, it is not only permissible but also desirable that the appellate court should interfere with the order of acquittal* (Para 9). *N. Somashekar* v. *State of Karnataka*, (2004) 11 SCC 334.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 6-5-2004]

[5586] — Ss. 386 and 378 — Appeal against acquittal — Interference by High Court — *Whether on facts, warranted — Acquittal based on unwarranted assumptions and manifestly erroneous appreciation of evidence by ignoring valuable and credible evidence resulting in serious and substantial miscarriage of justice — Held, High Court was justified in reversing the acquittal — Penal Code, 1860 — Ss. 302 and 307* (Para 8). *Kamaljit Singh* v. *State of Punjab*, (2003) 12 SCC 155: AIR 2004 SC 69: 2004 Cri LJ 28.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-10-2003]

[5587] — Ss. 386 and 378 — Appeal against acquittal — Interference by High Court — Scope — *Though High Court can appreciate the evidence, it should not interfere with the order of acquittal if the view taken by the trial court is also a reasonable view of the evidence on record and the findings recorded by the trial court are not manifestly erroneous, contrary to the evidence on record or perverse* (Para 25). *Ram Swaroop* v. *State of Rajasthan*, (2004) 13 SCC 134: 2005 SCC (Cri) 61: AIR 2004 SC 2943: 2004 Cri LJ 5043.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 15-3-2004]

***Distinguished** in Shivappa v. State of Karnataka, (2008) 11 SCC 337*

[5588] — Ss. 386 and 378 — Appeal against acquittal — Interference by High Court — Scope — Two views reasonably possible — *View taken by trial court a possible reasonable view — Interference by High Court with acquittal in such case, held, not justified — High Court can interfere only in cases where the findings recorded by the trial court are unreasonable or perverse or where the court has committed a serious error of law, or the trial court had recorded its findings in ignorance of relevant material on record or by taking into consideration evidence which is not admissible* (Para 26). *Shingara Singh* v. *State of Haryana*, (2003) 12 SCC 758: AIR 2004 SC 124: 2004 Cri LJ 828.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 4-11-2003]

[5589] — Ss. 386 and 378 — Appeal against acquittal — Interference by High Court — Scope and power — *Applying the principle in* Main Pal case, *(2004) 10 SCC 692 that there is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based, appeal dismissed. State of Haryana* v. *Shibu*, (2008) 11 SCC 377.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 25-7-2008]

[5590] — Ss. 386 and 378 — Appeal against acquittal — Interference by High Court — Scope and power — *Generally, order of acquittal not to be interfered with because presumption of innocence of accused further strengthened by acquittal — But, held, appellate court can review the evidence and interfere for compelling reasons such as where admissible evidence has been unreasonably and unjustifiably ignored — Primary concern of the court is to prevent miscarriage of justice — If two views are possible, one which is favourable to the accused should be adopted — On facts held, where the judgment of the trial court was practically unreasoned without any attempt to critically and objectively analyse the evidence, High Court was justified in reappreciating the evidence and reversing the acquittal — Penal Code, 1860 — S. 302 r/w S. 34 — Arms Act, 1959, Ss. 25 and 27*

Deceased *H* (son of PW 2) was earlier married to one *M*, sister of the two accused-appellants. But *M* had committed suicide sometime earlier and so the relationship between *H* and the appellants had become strained. On 15-11-1993 at about 5 to 5.50 p.m. when PW 1 (relative of *H*) was returning to his village on foot, he met *H* and PW 2. A short while later, the two appellants came from behind on a motorcycle and one sitting on the pillion fired a shot from his country-made pistol at *H* as a result of which he died. The trial court acquitted the appellants by holding that (*i*) the prosecution failed to establish any plausible motive, (*ii*) the conduct of PW 2, who ran away from the spot on account of fear, was unnatural, and (*iii*) the presence of PW 1 was doubtful. The High Court, after reappreciating the evidence, convicted the appellants. Before the Supreme Court, the appellants challenged the judgment of the High Court by contending that the High Court in an appeal against acquittal erred in substituting its view in place of that expressed by the trial court. They further contended that the doctor's evidence indicated that the firing was done from a higher level and, therefore, since both the deceased and the accused who allegedly fired the gun were almost of the same height, the version given by PWs 1 and 2 was clearly negatived by the medical evidence. It was also argued that only relatives were made witnesses to the alleged recoveries, the pellets and wads allegedly recovered were not sent to the Forensic Science Laboratory and no firearms expert was examined.

Dismissing the appeals,

Held :

There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. As a matter of fact, in an appeal against acquittal, the High Court as the court of first appeal is obligated to go into greater detail of the evidence to see whether any miscarriage has resulted from the order of acquittal, though it has to act with great circumspection and utmost care before ordering the reversal of an acquittal. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. (Para 12)

The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. (Para 12)

In the present case, the judgment of the trial court was practically unreasoned without any attempt to critically and objectively analyse the evidence. The High Court was justified in undertaking a reappreciation of the evidence and it has taken into account all the relevant aspects of the case to hold the accused persons guilty. (Paras 13 and 10). *Main Pal* v. *State of Haryana*, (2004) 10 SCC 692: 2004 SCC (Cri) 1882: AIR 2004 SC 2158.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 5-4-2004]

(3) Appeal against acquittal — S. 386(a) *(contd.)*

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Joseph v. State of Kerala, (2003) 1 SCC 465: 2003 SCC (Cri) 356; Devatha Venkataswamy v. Public Prosecutor, High Court of A.P., (2003) 10 SCC 700; State of Punjab v. Phola Singh, (2003) 11 SCC 58: 2004 SCC (Cri) 276; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135; State of U.P. v. Babu, (2003) 11 SCC 280: 2004 SCC (Cri) 144; Suchand Pal v. Phani Pal, (2003) 11 SCC 527: 2004 SCC (Cri) 220, relied on

[5591] — Ss. 386 and 378 — Appeal against acquittal — Interference by High Court — Scope of — Possibility of two views — *View taken by the trial court a reasonably possible view — In such circumstances, held, reversal of acquittal by High Court was not justified* (Para 24). *Dasari Siva Prasad Reddy* v. *Public Prosecutor, High Court of A.P.*, (2004) 11 SCC 282: AIR 2004 SC 4383.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *B.P. Singh*, JJ. [Date of decision: 20-8-2004]

[5592] — Ss. 386 and 378 — Appeal against acquittal — Power and duty of High Court — *Held, has full power to review the evidence upon which order of acquittal founded — But, it is obligatory on the High Court while reversing an order of acquittal to consider and discuss each of the reasons given by the trial court to acquit the accused and then to dislodge those reasons — On facts, reversal of acquittal by High Court, held, was proper — Penal Code, 1860 — S. 302*

An order of acquittal should not be lightly interfered with. Though the appellate court has full power to review the evidence upon which the order of acquittal is founded, still while exercising such an appellate power in a case of acquittal, the appellate court should not only consider every matter on record having a bearing on the question of fact and the reasons given by the courts below in support of its order of acquittal, it must express its reasons in the judgment which led it to hold that the acquittal is not justified. (Para 18)

Thus, it is obligatory on the High Court while reversing an order of acquittal to consider and discuss each of the reasons given by the trial court to acquit the accused and then to dislodge those reasons. In the instant case, the High Court has discharged the aforesaid obligation as required and by careful analysis demolished each one of the fundamentally weak reasonings given by the trial court. (Paras 19 and 20). *Surinder Singh* v. *State of U.P.*, (2003) 10 SCC 26: 2004 SCC (Cri) 717: AIR 2003 SC 3811.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 5-9-2003]

Chandu v. State of Maharashtra, (2002) 9 SCC 408: 2003 SCC (Cri) 1213; Kashiram v. State of M.P., (2002) 1 SCC 71: 2002 SCC (Cri) 68, relied on

[5593] — Ss. 386 and 378 — Appeal against acquittal — Power of appellate court in, to reappreciate and reweigh the evidence and come to its own conclusion

In an appeal against acquittal the appellate court has every power to reappreciate, review and reconsider the evidence as a whole before it. It is, no doubt, true that there is presumption of innocence in favour of the accused and that presumption is reinforced by an order of acquittal recorded by the trial court. But that is not the end of the matter. It is for the appellate court to keep in view the relevant principles of law, to reappreciate and reweigh the evidence as a whole and to come to its own conclusion on such evidence in consonance with the principles of criminal jurisprudence. (Para 28)

In the present case, the High Court was justified in setting aside the order of acquittal and in convicting the accused for the offences with which he was charged. (Para 31). *Girja Prasad* v. *State of M.P.*, (2007) 7 SCC 625: (2007) 3 SCC (Cri) 475: (2007) 4 KLT 99: (2007) 58 AIC 230 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *Tarun Chatterjee*, JJ. [Date of decision: 27-8-2007]

Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325, relied on

[5594] — Ss. 386 and 378 — Appeal against acquittal — Power of appellate court to interfere in — Scope — *Held, appellate court can review the evidence and interfere with the order of acquittal only if the approach of lower court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record — Mere possibility of two views would not be a ground for appellate court to take the view which would upset the decision of the court below — Penal Code, 1860, Ss. 302, 120-B, 364 and 392 r/w S. 34*

While exercising the powers in an appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterised as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgment delivered by the court below. However, the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with. (Para 16). *State of Goa* v. *Sanjay Thakran*, (2007) 3 SCC 755: (2007) 2 SCC (Cri) 162: (2007) 2 Guj LH 122: (2007) 54 AIC 240 (SC).

Bench Strength **2**. Coram: *B.N. Agrawal* and **P.P. Naolekar**, JJ. [Date of decision: 2-3-2007]

Tota Singh v. State of Punjab, (1987) 2 SCC 529: 1987 SCC (Cri) 381; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; State of Rajasthan v. Raja Ram, (2003) 8 SCC 180: 2003 SCC (Cri) 1965, relied on

[5595] — Ss. 386 & 378 — Appeal against acquittal — Power of appellate court to interfere in — Scope — *Held, the appellate court should not ordinarily interfere with the judgment of acquittal if two views are possible — Where the appellate court reverses the judgment of acquittal, it is incumbent on its part to arrive at the conclusion that no two views are possible — In the present case, there was possibility of two views — Hence held, High Court should not have interfered with the judgment of acquittal passed by Sessions Judge — Judgment of High Court set aside — Accused-appellant directed to be released forthwith if not required in connection with any other case — Penal Code, 1860 — Ss. 302/34* (Paras 7 and 8). *Kalyan Singh* v. *State of M.P.*, (2006) 13 SCC 303: (2007) 3 SCC (Cri) 173: (2007) 49 AIC 84 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and *Markandey Katju*, JJ. [Date of decision: 21-11-2006]

[5596] — Ss. 386 and 378 — Appeal against acquittal — Powers and duty of appellate court — *Held, where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence even where the accused has been acquitted — The principle to be followed while considering such appeal is to interfere only when there are compelling and substantial reasons for doing so — If the impugned judgment is clearly unreasonable, it is a compelling reason for interference — Also, presumption of innocence of accused, held, is further strengthened by acquittal*

There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence even where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. (Para 9). *State of Punjab* v. *Phola Singh*, (2003) 11 SCC 58: 2004 SCC (Cri) 276: AIR 2003 SC 4407.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 22-9-2003]

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991; State of Punjab v. Karnail Singh, (2003) 11 SCC 271: 2004 SCC (Cri) 135, relied on

[5597] — Ss. 386 and 378 — Appeal against acquittal — Powers of appellate court — *Approach in dealing with such an appeal should be different from that of an appeal against a conviction — In an appeal against the acquittal, the appellate court has to proceed more cautiously and unless there is absolute assurance of the guilt of the accused on the basis of the evidence on record, the order of acquittal is not liable to be interfered with — The general principle of presumption of innocence of the accused and the benefit of reasonable doubt given by the trial court to the accused should be kept in mind by the appellate court while dealing with such an appeal. Patel Hiralal Joitaram* v. *State of Gujarat*, (2002) 1 SCC 22: 2002 SCC (Cri) 1: AIR 2001 SC 2944: (2002) 1 Guj LR 248.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 18-10-2001]

Dhanna v. State of M.P., (1996) 10 SCC 79: 1996 SCC (Cri) 1192, followed

[5598] — Ss. 386 and 378 — Appeal against acquittal — Powers of appellate Court — Scope and ambit of — Restated — *Appellate Court should give reasons why acquittal of trial Court was not justified — Criminal Procedure Code, 1898, Ss. 417 and 423*

The appellate Court has full powers to review the evidence upon which the order of acquittal is founded. However, in exercising this power the appellate Court, while dealing with an order of acquittal, should not

(3) Appeal against acquittal — S. 386(a) *(contd.)*

only consider every matter on record having a bearing on the question of facts and the reasons given by the Court below in support of its order of acquittal, but it must express its reasons in its judgment which led it to hold that the acquittal is not justified.

In cases where a large number of persons are involved and in the commotion some persons cause injuries to others and the evidence is of a partisan character, it is often safer for the judge of fact to be guided by the compass of probabilities along the rock-ribbed contours of the case converging on the heart of the matter. Once the Court goes astray from the basic features of the case it is apt to lose itself in the labyrinths of immaterial details, desultory discussion and vacillation arising from unfounded suspicions. *Bava Haji Hamsa* v. *State of Kerala*, (1974) 4 SCC 479: 1974 SCC (Cri) 515: AIR 1974 SC 902: 1974 Cri LJ 755.

Bench Strength 3. Coram: *M.H. Beg*, *Y.V. Chandrachud* and **R.S. Sarkaria**, JJ. [Date of decision: 21-2-1974]

[5599] — Ss. 386 and 378 — Appeal against acquittal — Reversal of acquittal by High Court — When can be justified — *High Court had discussed all the findings given by the trial court with reference to the evidence relied upon by the prosecution and found the finding of the trial court to be perverse and arbitrary arrived at by misreading of the evidence — Held, High Court was justified in reversing the finding of the trial court* (Para 7). *Munna* v. *State of M.P.*, (2003) 11 SCC 480: 2004 SCC (Cri) 179: AIR 2003 SC 3346.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 16-9-2003]

[5600] — Ss. 386 and 378 — Appeal against acquittal by High Court — Interference only justified if there are special reasons or a substantial error has been committed by the High Court — *Practice — That the Supreme Court would take a different view on the evidence can be no ground for reversing the acquittal. State of Punjab* v. *Balraj Singh*, (1978) 3 SCC 129: 1978 SCC (Cri) 359: AIR 1978 SC 1136: 1978 Cri LJ 1092.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 20-2-1978]

[5601] — Ss. 386 and 378 — Appeal before High Court against acquittal — Possibility of two views — *Held, High Court was not justified in reversing the acquittal — Possibility of two views — Held, the view which favours the accused should be upheld — Evidence Act, 1872, S. 3* (Para 33). *Narendra Singh* v. *State of M.P.*, (2004) 10 SCC 699: 2004 SCC (Cri) 1893: AIR 2004 SC 3249.

Bench Strength 2. Coram: *Y.K. Sabharwal* and **S.B. Sinha**, JJ. [Date of decision: 12-4-2004]

Dhanna v. State of M.P., (1996) 10 SCC 79: 1996 SCC (Cri) 1192; Mahabir Singh v. State of Haryana, (2001) 7 SCC 148: 2001 SCC (Cri) 1262; Shailendra Pratap v. State of U.P., (2003) 1 SCC 761: 2003 SCC (Cri) 432, relied on

[5602] — Ss. 386 and 378 — Duty and power of court in an appeal against acquittal — Scope — *Held, reappreciation of evidence in such appeal permissible where admissible evidence has been ignored — Appellate court can interfere only when there are compelling or substantial reasons for doing so — If the impugned judgment is clearly unreasonable, held, it is a compelling reason for interference — Penal Code, 1860 — S. 302*

Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. (Para 7). *State of Rajasthan* v. *Raja Ram*, (2003) 8 SCC 180: 2003 SCC (Cri) 1965: AIR 2003 SC 3601.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 13-8-2003]

Bhagwan Singh v. State of M.P., (2002) 4 SCC 85: 2002 SCC (Cri) 736; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225: 1996 SCC (Cri) 972; Jaswant Singh v. State of Haryana, (2000) 4 SCC 484: 2000 SCC (Cri) 991, relied on

[5603] — Ss. 386 and 378 — High Court should not reverse order of acquittal where two views are reasonably possible. *Hallu* v. *State of M.P.*, (1974) 4 SCC 300: 1974 SCC (Cri) 462: AIR 1974 SC 1936: (1974) 3 SCR 652: 1974 Cri LJ 1385.

Bench Strength 2. Coram: *M.H. Beg* and **Y.V. Chandrachud**, JJ. [Date of decision: 19-3-1974]

[5604] — Ss. 386 and 378 — Interference with acquittal — Power of appellate court — *Possibility of two views — If view taken by trial court is a possible reasonable view, held, appellate court not justified in reversing the order of acquittal* (Paras 36 and 37). *Hem Raj* v. *State of Punjab*, (2003) 12 SCC 241: AIR 2003 SC 4259: 2003 Cri LJ 4987.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 9-9-2003]

[5605] — Ss. 386 and 378 — Power of High Court in appeal against acquittal — Possibility of two views — Extent of interference by High Court — *Held, where two views are possible and the trial court has taken a reasonable view and acquitted the accused, the High Court in appeal cannot interfere with such finding — However, if there is perverse finding based on erroneous appreciation of evidence causing serious miscarriage of justice, the High Court has ample power to reverse that finding — Penal Code, 1860, S. 302 r/w Ss. 34 and 376*

It is true that where two views are possible and the trial court has taken a reasonable view and acquitted the accused, the High Court in appeal cannot interfere with such finding. But, when there is perverse finding based on erroneous appreciation of evidence and a serious miscarriage was caused, the High Court has ample power to reverse that finding. (Para 7)

There is convincing and satisfactory evidence to prove that the appellant was responsible for the murder of the deceased. The Sessions Judge disbelieved the dying declaration on flimsy grounds based on irrelevant considerations. (Paras 9 and 11)

The High Court considered all the evidence adduced in the case and rightly reversed the judgment of the Sessions Court. (Para 15). *Shambhu* v. *State of M.P.*, (2002) 3 SCC 561: 2002 SCC (Cri) 684: AIR 2002 SC 1307: 2002 Cri LJ 1778.

Bench Strength **2**. Coram: *R.P. Sethi* and **K.G. Balakrishnan**, JJ. [Date of decision: 6-3-2002]

Surjan v. State of Rajasthan, AIR 1956 SC 425: 1956 Cri LJ 815; Harbans Singh v. State of Punjab, AIR 1962 SC 439: (1962) 1 Cri LJ 479, relied on

[5606] — Ss. 386 and 378 — Reversal of acquittal by High Court — Propriety of — *Held, where two views are possible, the view in favour of the accused has to be preferred — But, where the relevant materials are not considered to arrive at a view by the trial court, the High Court has a duty to arrive at a correct conclusion taking a view different from the one adopted by the trial court — On facts, reversal of acquittal by High Court, held, was proper*

Coming to the case of the four appellants who were acquitted by the trial court but convicted by the High Court, it is to be noticed that the trial court placed reliance on the evidence of PW 18 for the purpose of convicting accused *R*, but so far as the other four accused are concerned, it was not held to be reliable. There was no cogent reason indicated as to why the same was termed to be unreliable. Additionally, recoveries were made pursuant to the disclosure made by them. Though arguments were advanced that due procedure was not followed, in view of the evidence of the witnesses examined by the prosecution in that regard, there is nothing illegal ruling out its acceptance. There are certain additional features also. Further, even if the evidence of PW 7 was held to be not reliable, the evidence relating to recovery established by the evidence of PW 18 cannot be lost sight of. Evidence of PWs 8 and 9 has been analysed in great detail by the High Court and has been held to be reliable. (Paras 28 and 29)

There can be no dispute with the proposition that when two views are possible, the one in favour of the accused has to be preferred. But where the relevant materials have not been considered to arrive at a view by the trial court, certainly the High Court has a duty to arrive at a correct conclusion taking a view different from the one adopted by the trial court. In the case at hand, the course adopted by the High Court is proper. (Para 29). *Bodhraj* v. *State of J&K*, (2002) 8 SCC 45: AIR 2002 SC 3164.

Bench Strength **2**. Coram: *Ruma Pal* and **Arijit Pasayat**, JJ. [Date of decision: 3-9-2002]

[5607] — Ss. 386 and 378 — Powers of High Court in an appeal against acquittal — *Held, the High Court has same powers as that of a trial court in examining the evidence — If view taken by the trial court is unreasonable or against the weight of evidence, the High Court could reject the finding of the trial court*

In an appeal against the order of acquittal, the High Court has same powers which the trial court has in examining the evidence and if it comes to the conclusion that the view taken by the trial court was unreasonable or against the weight of evidence, it could reject the finding recorded by the trial court. It is not a case where the High Court has interfered with the order of acquittal merely because it could take a different view. On the other hand, the High Court has shown how the reasons recorded by the trial court for acquittal were wrong and that the view taken by the trial court was not a reasonable view and it was opposed to the weight of evidence. (Paras 4 and 8). *Dila* v. *State of U.P.*, (2002) 7 SCC 450: 2002 SCC (Cri) 1782: AIR 2002 SC 3387.

Bench Strength **3**. Coram: *S. Rajendra Babu*, **Shivaraj V. Patil** and *Ashok Bhan*, JJ. [Date of decision: 20-9-2002]

(3) Appeal against acquittal — S. 386(a) *(contd.)*

[5608] — Ss. 386 and 378 — Powers of High Court to reverse acquittal in appeal — *Held, the High Court should refrain from disturbing the finding of fact arrived at by the trial court, particularly when the interference is sought on mere possibility of an alternative view in respect of the evidence adduced in the case — Having regard to the variance between the FIR and the depositions made in the court, held, High Court erred in setting aside the acquittal of appellants merely on possibility of an alternative view — Penal Code, 1860 — Ss. 302, 307, 147, 148 read with Ss. 149 and 120-B*

The High Court reversed the trial court's order of acquittal by taking a different possible view. Restating the powers of the High Court in an appeal against acquittal, the Supreme Court set aside the impugned judgment of the High Court, and

Held :

The settled position of law on the powers to be exercised by the High Court in an appeal against an order of acquittal is that though the High Court has full powers to review the evidence upon which an order of acquittal is passed, the principle of presumption of innocence of the accused persons is also equally well settled. Normally the views of the trial court, as to the credibility of the witnesses, must be given proper weight and consideration because the trial court is supposed to have watched the demeanour and conduct of the witnesses and is in a better position to appreciate their testimony. The High Court should be slow in disturbing a finding of fact arrived at by the trial court. (Para 8)

The prosecution had failed to prove the case beyond reasonable doubt and the sequence of circumstances narrated by the witnesses in the court was totally different from the occurrence detailed in the first information report. The incident stated in the FIR, being the first version of the occurrence has to be given due weight. The trial court does not appear to have committed any glaring irregularity in disbelieving the alleged eyewitnesses whose testimony was concededly contrary to the case of the prosecution as projected in the FIR. The case of the prosecution, as sought to be proved at the trial, appears to be different than the one as narrated in the FIR. When the testimony of eyewitnesses is totally different from the story set out in the FIR, the trial court cannot be held to have taken a view which was not at all possible. The view taken by the trial court could have been disturbed only if there were compelling reasons. Even if another view regarding the occurrence was possible, as taken by the High Court, the same could not be made a basis for setting aside the order of the trial court in view of the settled position of law on the point. (Paras 15 and 18)

In view of the facts and circumstances of the case, particularly the variance between the FIR and the depositions made in the court, the mention of gunshot injuries in the panchnama and their absence in the FIR, the conflict between the statements of eyewitnesses and the medical evidence and major contradictions and improvements in the depositions of the eyewitnesses, it is held that the prosecution failed to prove their case against the appellants beyond all shadow of doubt. The appellants are, therefore, held entitled to the benefit of reasonable doubt. (Para 19). *Kalyan* v. *State of U.P.*, (2001) 9 SCC 632: AIR 2001 SC 3976.

Bench Strength **2**. Coram: *M.B. Shah* and **R.P. Sethi**, JJ. [Date of decision: 28-9-2001]

Kali Ram v. State of H.P., (1973) 2 SCC 808: 1973 SCC (Cri) 1048: AIR 1973 SC 2773; Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033: AIR 1973 SC 2622, relied on

Antar Singh v. State of M.P., (1979) 1 SCC 79: 1979 SCC (Cri) 147: AIR 1979 SC 1188; Harijan Magha Jesha v. State of Gujarat, 1979 SCC (Cri) 652: AIR 1979 SC 1566; Tara Singh v. State of M.P., 1980 Supp SCC 466: 1981 SCC (Cri) 375: AIR 1981 SC 950; Kora Ghasi v. State of Orissa, (1983) 2 SCC 251: 1983 SCC (Cri) 387: AIR 1983 SC 360, considered

State of U.P. v. Hori Lal, 1999 Cri LJ 1039 (All), reversed

[5609] — Ss. 386 and 378 — Reversal of acquittal by High Court — *Held, the order of acquittal cannot be lightly reversed merely because the High Court could take a different view — However, where the trial court did not appreciate the evidence properly by keeping in view the broad probabilities of the case and nature of the evidence, held, the High Court was fully justified in setting aside the order of acquittal recorded by the trial court*

The order of acquittal cannot be lightly reversed merely because the High Court could take a different view. But in this case having regard to the evidence, the view taken by the trial court was not a reasonable but an untenable one. The appreciation of the evidence by the trial court was not objective and appropriate keeping in view the broad probabilities of the case and nature of the evidence. The High Court in a case like this was fully justified in setting aside the order of acquittal recorded by the trial court by dislodging the reasons given by the trial court for acquittal. (Para 9)

The enmity between the deceased and the appellants was not disputed. The High Court has taken pains to say that merely because PW 8 is the brother of the deceased and PW 13 was the servant of another brother of the deceased, their evidence could not be discarded when their evidence was corroborated and supported by the evidence of other witnesses. (Para 9)

Merely because one of the eyewitnesses was not examined, that itself could not be put against the prosecution when two eyewitnesses were examined, who fully supported the prosecution case. (Para 9)

The High Court was also right in saying that there was nothing unnatural when PW 8 did not make efforts to save the deceased as there were six accused persons who armed with *lathis* attacked the deceased and it was neither safe nor desirable for the witness to endanger his life. (Para 9)

The High Court was right in saying that the trial court was wrong in observing that PW 8 could not witness the incident from the place where he was standing. The High Court correctly held that the accused were known to the witnesses and could be identified even in faint darkness. (Para 9)

The trial court also committed an error in giving undue importance to minor discrepancies that too in regard to the subsequent events and not relating to the actual incident. (Para 9). *Bharosi* v. *State of M.P.*, (2002) 7 SCC 239: 2002 SCC (Cri) 1686: AIR 2002 SC 3299.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Shivaraj V. Patil**, JJ. [Date of decision: 12-9-2002]

[5610] — Ss. 386 and 378 — Reversal of acquittal by High Court — Propriety of — *Where the High Court did not give due weight to omissions and discrepancies while appreciating the prosecution case and proceeded mechanically to accept the evidence of the prosecution in spite of the fact that the trial court had taken into consideration all the circumstances while giving the benefit of doubt to the accused persons, held, the High Court erred in reversing the findings of the trial court* (Para 10). *Khima Vikamshi* v. *State of Gujarat*, (2003) 9 SCC 420: AIR 2003 SC 1326: 2003 Cri LJ 2025.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 27-3-2003]

[5611] — Ss. 386 and 378, 379 — Appeal against acquittal — *High Court should have strong and good reasons for reversal of the acquittal* (Paras 16 and 17). *Mahabir Singh* v. *State of Haryana*, (2001) 7 SCC 148: 2001 SCC (Cri) 1262: AIR 2001 SC 2503.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 26-7-2001]

Dhanna v. State of M.P., (1996) 10 SCC 79: 1996 SCC (Cri) 1192, relied on

[5612] — S. 386(a) — Punishment for dishonour of cheque due to insufficiency of funds — Imposition of sentence by appellate court — Remission of case to trial court for imposition of sentence, if not proper — *Held, appellate court itself is empowered under S. 386(a) CrPC to impose sentence once it concludes that offence under S. 138 has been committed — Appellate court is not supposed to remit the case to trial court for imposing sentence — Negotiable Instruments Act, 1881 — S. 138*

The powers of the appellate court, in an appeal from an order of acquittal, are enumerated in Section 386(*a*) CrPC. Those powers do not contemplate that an appellate court, after recording conviction, can remit the matter to the trial court for passing appropriate order of sentence. The judicial function of imposing appropriate sentence can be performed only by the appellate court when it reverses the order of acquittal and not by any other court. Having regard to the scheme of the Code of Criminal Procedure, 1973 after finding the appellant guilty under Section 138 of the Negotiable Instruments Act, the judicial discretion of imposing appropriate sentence could not have been abdicated by the Single Judge of the High Court, in favour of the Magistrate. Having found the appellant guilty under Section 138 of the Act it was the bounden duty of the High Court to impose appropriate sentence commensurate with the facts of the case. (Para 26). *Kumar Exports* v. *Sharma Carpets*, (2009) 2 SCC 513.

Bench Strength **2**. Coram: *R.V. Raveendran* and **J.M. Panchal**, JJ. [Date of decision: 16-12-2008]

[**Ed.**: The Supreme Court however reversed the High Court's finding that the appellant was guilty under Section 138.]

(4) Appeal against conviction — S. 386(b)

See also S. 374, above

See also S. 386, '(12) Acquittal/Reversal of conviction justified', and

'(13) Conviction/Reversal of acquittal justified', below

[5613] — S. 386 — Appeal against conviction — Improper disposal — *High Court, instead of examining and reappreciating the evidence of the eyewitnesses, disposing of the matter by holding that it was not necessary to give detailed reasons as the conclusion of the trial Judge in convicting and sentencing the appellant was correct in High Court's view also — Setting aside the High Court's judgment, held, the said approach cannot be held to be a consideration of the evidence by an appellate court in a criminal appeal — Penal Code, 1860 — S. 302. Mohd. Shahid* v. *State of M.P.*, (2002) 9 SCC 731.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 30-3-2001]

(4) Appeal against conviction — S. 386(b) *(contd.)*

[5614] — Ss. 386, 374 and 378 — Appeal against conviction — Scope of appellate court's power *— Appellate court must itself appreciate the evidence on record and arrive at an independent finding based on the appraisal of such evidence — If two views possible, benefit of doubt must be given to the accused — Though powers are equally wide while dealing with appeal against conviction or acquittal but presumption of innocence of accused which gets strengthened on his acquittal, is not available in an appeal against conviction*

In an appeal against conviction, the appellate court has the duty to itself appreciate the evidence on the record and if two views are possible on the appraisal of the evidence, the benefit of reasonable doubt has to be given to the accused. It is not correct to suggest that the "Appellate Court cannot legally interfere with" the order of conviction where the trial court has found the evidence as reliable and that it cannot substitute the findings of the Sessions Judge by its own, if it arrives at a different conclusion on reassessment of the evidence. Though, the powers of an appellate court, while dealing with an appeal against acquittal and an appeal against conviction are equally wide but the considerations which weigh with it while dealing with an appeal against an order of acquittal and in an appeal against conviction are distinct and separate. The presumption of innocence of an accused which gets strengthened on his acquittal is not available on his conviction. An appellate court may give every reasonable weight to the conclusions arrived at by the trial court but it must be remembered that an appellate court is duty-bound, in the same way as the trial court, to test the evidence extrinsically as well as intrinsically and to consider as thoroughly as the trial court, all the circumstances available on the record so as to arrive at an independent finding regarding guilt or innocence of the convict. An appellate court fails in the discharge of one of its essential duties, if it fails to itself appreciate the evidence on the record and arrive at an independent finding based on the appraisal of such evidence. (Para 5). *Lal Mandi* v. *State of W.B.*, (1995) 3 SCC 603: 1995 SCC (Cri) 560: AIR 1995 SC 2265: 1995 Cri LJ 2659.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *M.K. Mukherjee*, JJ. [Date of decision: 4-4-1995]

Tota Singh v. State of Punjab, (1987) 2 SCC 529: 1987 SCC (Cri) 381: AIR 1987 SC 1083, distinguished

[5615] — Ss. 386 and 374 — Appeal before High Court from conviction — Scope of High Court's power under S. 386 to interfere with the finding and sentence of trial court *— High Court can reappraise the evidence — When Supreme Court's interference under Art. 136 with High Court's findings called for*

The High Court, exercising power under S. 386, CrPC, in an appeal from a conviction may reverse the finding and sentence and acquit the accused or alter the finding maintaining the sentence or with or without altering the finding alter the nature or the extent or the nature and extent of the sentence but not so as to enhance the same. The powers of the High Court in dealing with the evidence are as wide as that of the trial court. As the final court of facts, the High Court has also duty to examine the evidence and arrive at its own conclusion on the entire material on record as to the guilt or otherwise of the appellants before it. Thus the High Court is entitled to reappraise the evidence in the case.

Though the Supreme Court under Art. 136 does not ordinarily reappraise the evidence for itself for determining whether or not the High Court has come to a correct conclusion on facts but where the High Court has completely missed the real point requiring determination and has also on erroneous grounds discredited the evidence and has further failed to consider the fact that on account of long standing enmity between the parties, there is a tendency to involve innocent persons and to exaggerate and lead pre-judged evidence in regard to the occurrence, the Supreme Court would be justified in going into the evidence for the purpose of satisfying itself that grave injustice has not resulted in the case.

In the present case respondents along with five others had been found guilty by the trial court accepting the testimony of two eyewitnesses and other material evidence on record and had been convicted and sentenced under S. 302 and Ss. 323, 325 read with S. 149 IPC. But the High Court by its cryptic order, acquitted respondents of the major charge under S. 302, IPC, and recorded their conviction under S. 304 Part I reducing the sentence of life imprisonment to a term of imprisonment already undergone while enhancing the sentence of fine. There was no discussion of the evidence much less any reasoning. The line of approach adopted by the High Court was wholly wrong. In the circumstances the Supreme Court would interfere under Art. 136 to prevent failure of justice. *Sham Sunder* v. *Puran*, (1990) 4 SCC 731: 1991 SCC (Cri) 38: AIR 1991 SC 8.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and **M. Fathima Beevi**, JJ. [Date of decision: 21-9-1990]

[5616] — Ss. 386, 374 and 385(2) — Appeal against conviction — *Reversal of conviction by appellate court without considering or examining testimony of eyewitnesses on which prosecution case was based would amount to violation of S. 386*

It is mandatory for the appellate court to peruse the record which will necessarily mean the statement of the witnesses. In a case based upon direct eyewitness account, the testimony of the eyewitnesses is of paramount importance and if the appellate court reverses the finding recorded by the trial court and acquits the accused without considering or examining the testimony of the eyewitnesses, it will be a clear infraction of Section 386 CrPC. In this case, the Sessions Judge after placing reliance on the testimony of the eyewitnesses and the medical evidence on record was of the opinion that the case of the prosecution was fully established. But the High Court did not at all consider the testimony of the eyewitnesses and completely ignored the same. However, on reappraisal of evidence of the injured eyewitnesses it is clear that the evidence on record fully establishes the case of the prosecution. (Paras 7 and 8). *Amar Singh* v. *Balwinder Singh*, (2003) 2 SCC 518: 2003 SCC (Cri) 641: AIR 2003 SC 1164: 2003 Cri LJ 1282.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 31-1-2003]

Biswanath Ghosh v. State of W.B., (1987) 2 SCC 55: 1987 SCC (Cri) 259; State of U.P. v. Sahai, (1982) 1 SCC 352: 1982 SCC (Cri) 223, relied on

[5617] — Ss. 386 and 374 — Approach of High Court as a court of first appeal against conviction — *Held, should be to decide the appeal by applying the mind after appreciating the evidence on record and referring to the arguments raised before it — A citizen sentenced to life imprisonment has a right to be heard and have his case considered in its proper perspective by the court of first appeal — High Court merely recording that "we broadly agree with findings of trial court and find no substance in the appeals" — High Court had not dealt with the instant cases properly and had erred in dismissing the appeals before it by holding that it agreed with the findings of the trial court and found no substance in those appeals. Devi Singh* v. *State of M.P.*, (2002) 9 SCC 631: AIR 2002 SC 2389: 2002 Cri LJ 2977.

Bench Strength **3**. Coram: *Dr. A.S. Anand*, C.J. and *R.C. Lahoti* and *Brijesh Kumar*, JJ. [Date of decision: 3-4-2001]

[5618] — Ss. 386(b) — Scope of appellate power under — *Where more than one person charged with the aid of Ss. 34 or 149 or 120-B IPC but only one convicted and others acquitted by trial court, held, it is still open to appellate court, if it disagrees with trial court's conclusion of facts, to ascertain involvement of the acquitted persons for the limited purpose of finding criminality of other accused with the aid of Ss. 34/149/120-B*

In the matter of appreciation of the evidence the powers of the appellate court are as wide as that of the trial court. It has full power to review the whole evidence. It is entitled to go into the entire evidence and all relevant circumstances to arrive at its own conclusion about the guilt or innocence of the accused. The provisions of S. 386(*b*) do not create a bar against the appellate court considering indirectly and incidentally a case against the person who was acquitted, if that becomes necessary when dealing with the case in the appeal presented on behalf of the other accused who are convicted. In considering the evidence as a whole, the appellate court may come to the conclusion that the evidence against the person acquitted was also good and need not have been discarded. When several persons are alleged to have committed an offence in furtherance of the common intention and all except one are acquitted, it is open to the appellate court to find out on a reappraisal of the evidence that some of the accused persons have been wrongly acquitted, although it could not interfere with such acquittal in the absence of an appeal by the State Government. The effect of such a finding is not to reverse the order of acquittal into one of conviction or visit the acquitted person with criminal liability. The finding is relevant only in invoking against the convicted person his constructive criminality. (Para 8). *Brathi* v. *State of Punjab*, (1991) 1 SCC 519: 1991 SCC (Cri) 203: AIR 1991 SC 318: 1991 Cri LJ 402.

Bench Strength **2**. Coram: *Kuldip Singh* and **M. Fathima Beevi**, JJ. [Date of decision: 31-10-1990]

Sunder Singh v. State of Punjab, AIR 1962 SC 1211: 1962 Supp 2 SCR 654: (1962) 2 Cri LJ 290, relied on

[5619] — Ss. 386(b), 374(2) and 218 — Joint sessions trial — Misjoinder of charges pleaded in appeal by the sixteen convicted out of forty-two put on trial — *No appeal by State against the acquittals — Held, High Court could not in appeal under S. 374(2) order retrial de novo and reverse the acquittals in such situation*

The High Court failed to appreciate that in an appeal by the respondents under S. 374(2) of the Code, the order of acquittal passed by the learned Additional Sessions Judge as against the 26 other accused could not be interfered with. The retrial directed by the High Court must necessarily revise the prosecution and must result in a trial de novo against the 42 accused. The 26 other accused acquitted by the learned Additional Sessions Judge

(4) Appeal against conviction — S. 386(b) *(contd.)*

were not impleaded as parties to the appeals before the High Court. In the absence of an appeal preferred by the State Government against their acquittal, the High Court could not under S. 386(b) on an appeal by the respondents against their conviction, alter the acquittal nor can there be a splitting up of the trial. *State of W.B.* v. *Laisal Haque*, (1989) 3 SCC 166: 1989 SCC (Cri) 513: AIR 1989 SC 129: 1989 Cri LJ 865.

Bench Strength **2**. Coram: **A.P. Sen** and *L.M. Sharma*, JJ. [Date of decision: 12-9-1988]

State of Karnataka v. Narsa Reddy, (1987) 4 SCC 170: 1987 SCC (Cri) 744, followed

[5620] — S. 386(b)(i) — Powers of appellate court under S. 386(b)(i) — Restriction to appeals against convictions and sentence — *Held, S. 386(b)(i) is confined to cases of appeals against orders of conviction and sentence, and cannot be exercised for reversing an order of acquittal passed in respect of an offence charged, while dealing with an appeal preferred by him against the order of conviction in respect of another offence charged and found proved — Accused-appellant charged under Ss. 498-A, 306 & 304-B r/w S. 34 — However, they acquitted of charges under Ss. 498-A & 306 r/w S. 34 by the Sessions Judge, which order attained finality as no appeal was preferred thereagainst by the State — Appeal filed by the appellants challenging their conviction under S. 304-B r/w S. 34 — Supreme Court refraining from expressing any opinion as to whether the appellants could be held guilty of having committed the offence under S. 498-A or S. 306 IPC on the basis of evidence available on record as their acquittal under the aforesaid charges had attained finality and could not be reversed in the appeal filed by the appellants challenging their conviction under S. 304-B IPC — Penal Code, 1860, Ss. 498-A, 306 & 304-B r/w S. 34* (Para 12). *Appasaheb* v. *State of Maharashtra*, (2007) 9 SCC 721: (2007) 3 SCC (Cri) 468: AIR 2007 SC 763: (2007) 50 AIC 1 (SC): (2007) 4 KLT 463.

Bench Strength **2**. Coram: **G.P. Mathur** and *R.V. Raveendran*, JJ. [Date of decision: 5-1-2007]

State of A.P. v. Thadi Narayana, AIR 1962 SC 240: (1962) 1 Cri LJ 207, relied on

[5621] — Ss. 386(b)(ii) and 374 — Power of appellate court in appeal against conviction — Scope — *Held, extent of offence or the finding as to offence committed, can be changed — Offence under Prevention of Corruption Act — While affirming conviction and sentence, High Court holding that the value of unaccounted-for assets was Rs 4,13,802.16 and not Rs 3,05,985.39 as determined by trial court — Considering the alteration of the said finding, held, High Court did not exceed its jurisdiction in exercising power under S. 386 — Prevention of Corruption Act, 1947, S. 5(1)(e) r/w S. 5(2) — Prevention of Corruption Act, 1988, S. 13(1)(e) r/w S. 13(2)*

The Special Judge convicted and sentenced the appellant under Section 5(1)(*e*) read with Section 5(2) of the Prevention of Corruption Act, 1947. In an appeal by the accused against the said conviction and sentence, the High Court neither modified the finding of guilt under Section 5(1)(*e*) nor the sentence under Section 5(2). All that it has done is while affirming the finding of guilt recorded by the Special Judge in regard to the disproportionate wealth, to recalculate the exact amount of disproportionate wealth with reference to the evidence, which is permissible under Section 386(*b*)(*ii*) which provides that the appellate court may, in an appeal from a conviction, alter the finding, maintaining the sentence. If an appellate court may alter the finding of guilt of the accused from one section to another, while maintaining the sentence, there is no reason why the extent of the offence should not be changed in an appeal against conviction. Therefore, it could not be said that the High Court exceeded its jurisdiction in exercising the power of appeal under Section 386 CrPC. (Para 33). *R. Janakiraman* v. *State*, (2006) 1 SCC 697: (2006) 1 SCC (Cri) 442: AIR 2006 SC 1106: (2006) 39 AIC 479 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 4-1-2006]

State of A.P. v. Thadi Narayana, (1962) 2 SCR 904: AIR 1962 SC 240: (1962) 1 Cri LJ 207, considered and distinguished on facts

[5622] — S. 386(b)(iii) — Factors of age and poverty — *Appellant having undergone almost 4 years of imprisonment — Considering that appellant was middle-aged and from poor background sentence modified to sentence already undergone* (Para 8). *Ghasita Sahu* v. *State of M.P.*, (2008) 3 SCC 52: (2008) 1 SCC (Cri) 605: AIR 2008 SC 1425: (2008) 64 AIC 252 (SC): 2008 Cri LJ 2060.

Bench Strength **2**. Coram: *S.B. Sinha* and **V.S. Sirpurkar**, JJ. [Date of decision: 28-1-2008]

[5623] — Ss. 386(b)(iii), 222 and 224 — Applicability — Homicidal death of deceased in her matrimonial home — No defence put forth by appellant that death was suicidal/accidental — High Court in spite of fact that demand for dowry "soon before her death" not proved, convicting appellant under S. 304-B IPC — Prayer to invoke S. 386(b)(iii) CrPC and alter conviction to S. 302 IPC — *Held, in such circumstances it was possible for trial court as also High Court to pass a judg-*

ment of conviction against the appellant under S. 302 — In a case of this nature, even S. 106, Evidence Act could be brought to use — However, it was not done and appellant was convicted only under S. 304-B — Besides appellant, his two sisters and one cousin had also been charge-sheeted under S. 302, and in the alternative under S. 304-B — But it was appellant alone whose conviction under S. 304-B was maintained by High Court, while the other co-accused convicted under S. 304-B by trial acquitted by High Court — If deceased was forced to take poison, they must have had some hand in it — Since the three co-accused had been acquitted it is difficult to conclude that it was appellant and appellant alone who was responsible for her death — Hence appellant also acquitted under S. 304-B — Penal Code, 1860, S. 302 or S. 304-B (Paras 23 to 26). *Tarsem Singh* v. *State of Punjab*, (2008) 16 SCC 155: AIR 2009 SC 1454: (2009) 73 AIC 50 (SC): (2009) 2 ECrN 520 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 12-12-2008]

(5) Enhancement/Reduction of sentence — S. 386(c)

See also CRIMINAL TRIAL — 'Sentence' in Vol. 3

[5624] — S. 386 — Sentence — Appropriate punishment — Father raping his daughter — *Physical and emotional trauma of daughter — Shocking and heinous crime and betrayal of trust — When protector becomes violator the offence assumes greater degree of vulnerability, still worse when a father rapes his own daughter — Leniency and sympathy in such cases, held, unwarranted — Sentence of life imprisonment and fine, upheld — Penal Code, 1860 — Ss. 375 and 376*

No sympathy or leniency is called for. It is an unpardonable act. If the protector becomes the violator, the offence assumes a greater degree of vulnerability. Charged of raping his own daughter under his refuge and fortress is worse than the gamekeeper becoming a poacher and treasury guard becoming a robber. He not only delicts the law but, it is a betrayal of trust. The accused's lustful acts have indelible scar not only physically but also emotionally on the victim. There can never be more shocking, depraved and heinous crime than when the father is charged of having raped his own daughter. (Paras 14, 11 and 2). *Siriya* v. *State of M.P.*, (2008) 8 SCC 72: (2008) 3 SCC (Cri) 422: AIR 2008 SC 2314: (2008) 68 AIC 185 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 13-5-2008]

Shailesh Jasvantbhai v. State of Gujarat, (2006) 2 SCC 359: (2006) 1 SCC (Cri) 499; State of Karnataka v. Raju, (2007) 11 SCC 490: (2008) 1 SCC (Cri) 787, relied on

[5625] — S. 386 — Enhancement of sentence — Appellate court not justified in interfering with discretionary order of sentence unless the sentence is found to be grossly inadequate — *Appellant acquitted under Ss. 302/34 IPC by the trial Judge and convicted under S. 304 Pt. I IPC to suffer seven years' RI — Acquittal for offence under Ss. 302/34 confirmed by the High Court but sentence for offence under S. 304 Pt. I enhanced to life imprisonment — Held, decision of the High Court is not sustainable — Sentence of seven years' RI as imposed by the trial Judge restored*

Acquittal of the accused under Section 302 IPC read with Section 34 IPC has stood confirmed. The Sessions Judge had imposed on him for the offence under Section 304 Pt. I a sentence to suffer rigorous imprisonment for seven years. In his appeal, however, pursuant to the notice of enhancement, the High Court enhanced his sentence to life imprisonment. To that extent the decision of the High Court seems to be inconsistent. When the High Court held that accused had not committed offence of murder and, therefore, as a logical corollary he was not liable to be sentenced to life imprisonment, it is difficult to appreciate how the same sentence of life imprisonment could be imposed on him by enhancing his sentence under Section 304 Part I. It is now well settled that imposing of sentence is in the realm of discretion of the court and unless this sentence is found to be grossly inadequate the appellate court would not be justified in interfering with the discretionary order of sentence. On the facts of the present case, it may not be said that the sentence of seven years' rigorous imprisonment as imposed by the trial court was grossly inadequate. While maintaining his conviction for an offence under Section 304 Part I, his sentence of life imprisonment as enhanced by the High Court will stand set aside and instead the sentence of seven years' rigorous imprisonment as imposed by the learned trial Judge will stand restored. *Ram Sanjiwan Singh* v. *State of Bihar*, (1996) 8 SCC 552: 1996 SCC (Cri) 701: AIR 1996 SC 3265.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **S.B. Majmudar**, JJ. [Date of decision: 26-4-1996]

[5626] — Ss. 386, 401 and 399 — Appellate or revisional courts — Power to reduce sentence — Tendency of reducing sentence to period already undergone without any application of mind, taken note of and seriously deprecated — *Discretion in passing sentence, held, is not absolute or*

(5) Enhancement/Reduction of sentence — S. 386(c) *(contd.)*

whimsical — It is controlled by law and to some extent by judicial discretion, applicable to the facts of the case — Penal Code, 1860 — S. 304 Pt. I and Pt. II

It has been noticed by the Supreme Court that the appellate or revisional courts reduce the sentence while maintaining the conviction to sentence already undergone without even noticing what is the period already undergone. There is a need for the courts to apply its mind while imposing sentence. The courts should bear in mind that there is a requirement in law that every conviction should be followed by an appropriate sentence within the period stipulated in law. Discretion in this regard is not absolute or whimsical. It is controlled by law and to some extent by judicial discretion, applicable to the facts of the case. (Para 18)

In the instant case, the High Court while convicting the respondent for an offence punishable under Section 304 Part II IPC which has maximum sentence up to ten years thought it fit to impose the sentence already undergone without even applying its mind as to why it should be less than ten years or for that matter, what is the sentence already undergone. Such misplaced generosity on the part of the courts while imposing sentence is seriously deprecated. (Para 18). *State of Rajasthan* v. *Dhool Singh*, (2004) 12 SCC 546: AIR 2004 SC 1264: 2004 Cri LJ 931.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 18-12-2003]

[5627] — Ss. 386 and 374 — Appeal — Proper mode of disposal of — Speaking order — Need for — Application of mind — Consideration of evidence — *Reduction of sentence in rape case on appeal to period already undergone (nine-and-a-half months), while upholding conviction under S. 376(2)(g) by a short and cryptic order — Unsustainability of (per curiam)* (Paras 7 and 9). *State of M.P.* v. *Bala*, (2005) 8 SCC 1: 2005 SCC (Cri) 1947: AIR 2005 SC 3567: 2005 Cri LJ 4371.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.*[1] and **G.P. Mathur**[1] and **P.K. Balasubramanyan**[2], JJ. [Date of decision: 3-10-2005]

Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, relied on

[5628] — Ss. 386 and 374 — Appeal — Proper mode of disposal of — Speaking order — Need for — Application of mind — Consideration of evidence — *Reduction of sentence in rape cases on appeal by High Court to period already undergone (in each case a period less than five years and in some cases a few months only), while upholding the conviction under S. 376(1) or (2) by a short and cryptic order — Unsustainability — Matter remanded for decision afresh. State of M.P.* v. *Makhmal Khan*, (2005) 8 SCC 8: 2005 SCC (Cri) 1954: 2005 Cri LJ 4363.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-10-2005]

Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, relied on

[5629] — Ss. 386 and 374 — Appeal against conviction — Alteration of conviction and reduction of sentence without any discussion of evidence — Propriety of — *Held, was not proper — Matter remitted to appellate court for disposal afresh — Appeal to be placed before a Judge other than the one who passed the impugned judgment — Penal Code, 1860 — Ss. 376/109 and 354* (Paras 3 to 5). *State of U.P.* v. *Mulaim*, (2005) 13 SCC 453: (2006) 2 SCC (Cri) 260.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *G.P. Mathur*, JJ. [Date of decision: 11-7-2005]

[5630] — Ss. 386 and 374 — Reduction of sentence by High Court without application of mind — Impropriety — *High Court reducing sentence to period already undergone without any application of mind — Held, judgment of High Court not sustainable — Appeal remitted to High Court for decision afresh — Matter to be placed before a learned Judge other than the Judge who passed the impugned judgment — Penal Code, 1860, Ss. 304 Pt. II and 323 r/w S. 34* (Paras 4 and 3). *State of U.P.* v. *Nankau Prasad Misra*, (2005) 10 SCC 503: 2005 SCC (Cri) 1615.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 13-9-2004]

[5631] — Ss. 386 and 377 — Appeal — Enhancement of sentence — Imposition of death penalty, by enhancing sentence of life imprisonment — When justified — *Facts should be such that to award any punishment less than death sentence would shock the conscience of the court and would be a mockery of justice — Nature of the crime and the accused should be considered — Aggravating and mitigating circumstances should be weighed in the context of facts and circumstances of the case — That accused-appellants were compelled to join the gang by the gang leader cannot be considered as a mitigating circumstance in isolation — Accused members of Veerappan Gang causing death of 22 persons and injuries to several others by blasting of landmines — On facts held, award of death sentence by enhancing sentence of life imprisonment called for — Terrorist and Disruptive Activities (Prevention) Act, 1987, Ss. 3, 4 and 5 — Penal Code, 1860 — S. 302*

On the police receiving information about the place of hiding of notorious criminal Veerappan and his gang, a police party headed by the Superintendent of Police, proceeded to nab them. The party comprising of police personnel, forest watchers and informants went in two buses. As a result of blasting of landmines that had been laid, the bus which was in front exploded. The explosion resulted in injuries to many and death of twenty-two persons. After the explosion of the landmines, there was exchange of fire also. The Special Judge, TADA convicted the appellants for offences under Sections 3, 4, 5 of the TADA Act, Sections 143, 148, 307, 302, 332, 333, 324, 120-B and 149 of the Indian Penal Code, Section 3 of the Explosive Substances Act and Section 25 of the Indian Arms Act. In respect of the main offences, the appellants have been sentenced to undergo rigorous imprisonment for life besides fine and further imprisonment in default of payment of fine. The lesser punishment had been inflicted for offences under the Arms Act and the Explosive Substances Act. The trial court held that though it was a rarest of the rare case for imposing capital punishment but at the same time that punishment need not be imposed as it was not the case of the prosecution that the accused had started their career as criminals and developed such notoriety; and that it was Accused 1 Veerappan, who alone started his criminal activity which reached such notoriety that by creating terror in the mind of the people he took inhabitants from surrounding areas to his assistance and compelled them to fall into line.

Held:

The grant of life imprisonment is the rule and death penalty an exception in the rarest of rare cases by stating "special reasons" for awarding it, but at the same time the punishment awarded must be commensurate with the crime committed by the accused. Ordinarily the sentence is not enhanced by the appellate court unless it is such a gross case that nothing but maximum sentence stipulated in law deserves to be awarded. The power to enhance death sentence from life should be very rarely exercised and only for strongest-possible reasons and not only because the appellate court is of that view. The question of enhancement of sentence to award death penalty can, however, be considered where the facts are such that to award any punishment less than the maximum would shock the conscience of the court. (Paras 21 and 22)

The court has to consider the nature of the crime as well as the accused. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. In many cases the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. The circumstance of duress or domination of another person is required to be taken into consideration as a relevant circumstance but that has to be considered on the facts of a particular case while considering and balancing all other aggravating and mitigating circumstances. That alone is not the determining factor. (Paras 23, 29 and 32)

In the present case there was no administration in the area and it had totally collapsed and at that time no police officer could have proceeded beyond Hanur towards MM Hills without police escorts and as many as eight vehicles were required to escort one vehicle and further each escort party consisted of minimum three platoons; each platoon containing thirty-three persons; no summons could be served in many villages; no government official could move freely in that area, are all factors which, are aggravating circumstances against the appellants instead of being mitigating circumstances in their favour. The factors show the nature of crime and the criminals. There is nothing to show that the appellants joined Veerappan on account of these factors. It is evident that the aforesaid factors cannot be the handiwork of one person. In absence of any evidence, it cannot be said that persons/accused responsible for the aforesaid state of affairs in the area because of these criminal activities, joined and continued the said criminal activity on account of any duress, domination or compulsion. Further, it may be one of the mitigating factors but had to be considered in the light of all circumstances. The accused are responsible for such a situation. In a premeditated, planned manner landmines were laid en route the police party. There was firing also after the blast of landmines. The appellants are members of a notorious gang. Their prime target is police personnel of the State and the Special Task Force constituted to stop their activities with a view to terrorise the people. The appellants are members of the gang led by Veerappan (A-1). They do not deserve any sympathetic consideration. There is no evidence or foundation for the conclusion that the appellants were compelled to fall in line with the criminal activity of Accused 1 or that they joined his group on account of any duress or compulsion. The manner in which the crime was committed clearly shows that any person can contemplate the disastrous effect of blasting of landmines. It is evident that the crime was diabolically planned. The appellants are a threat and grave danger to society at large. They must have anticipated that their activity would result in elimination of a large number of lives. As a result of criminal activities, the normal life of those living in the area has been totally shattered. It would be a mockery of justice if extreme punishment is not imposed. Thus, having given anxious consideration to all the circumstances aggravating and mitigating, there can hardly be a more appropriate case than the present one to award maximum sentence. The Court has to perform this onerous duty for self-preservation i.e. preservation of persons who are living and working in the area where the appellants and their group operate. (Paras 36 and 37)

Therefore, while dismissing the appeals, confirming the conviction of the appellants, the sentence of each of them is enhanced from life imprisonment to death penalty. (Para 38). *Simon* v. *State of Karnataka*, (2004) 2 SCC 694: 2004 SCC (Cri) 646.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *B.N. Agrawal*, JJ. [Date of decision: 29-1-2004]

Major R.S. Budhwar v. Union of India, (1996) 9 SCC 502: 1996 SCC (Cri) 1072: 1996 Cri LJ 2862; State of Rajasthan v. Kartar Singh, (1970) 2 SCC 61: 1970 SCC (Cri) 297; Kannan v. State of T.N., (1982) 2 SCC 350: 1982 SCC (Cri) 430; Ronny v. State of Maharashtra, (1998) 3 SCC 625: 1998 SCC (Cri) 859, distinguished

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681; Krishna Mochi v. State of Bihar, (2002) 6 SCC 81: 2002 SCC (Cri) 1220; Devender Pal Singh v. State of NCT of Delhi, (2002) 5 SCC 234: 2002 SCC (Cri) 978; R. v. Howe, 1987 AC 417: (1987) 1 All ER 771: (1987) 2 WLR 568 (HL); R. v. Gotts, (1992) 2 AC 412: (1992) 1 All ER 832 (HL), relied on

Director of Public Prosecutions for Northern Ireland v. Lynch, 1975 AC 653: (1975) 1 All ER 913: (1975) 2 WLR 641 (HL), held overruled

(6) Appeal against reduction of sentence filed by complainant

[5632] — S. 386 — Criminal appeal — Enhancement of sentence by Supreme Court — *Allowed when found inadequate, in appeal by complainant though State not filing appeal against reduction of sentence — Constitution of India — Art. 136*

Though the Supreme Court under Art. 136 does not ordinarily reappraise the evidence for itself for determining whether or not the High Court has come to a correct conclusion on facts but where the High Court has completely missed the real point requiring determination and has also on erroneous grounds discredited the evidence and has further failed to consider the fact that on account of long standing enmity between the parties, there is a tendency to involve innocent persons and to exaggerate and lead pre-judged evidence in regard to the occurrence, the Supreme Court would be justified in going into the evidence for the purpose of satisfying itself that grave injustice has not resulted in the case. *Sham Sunder* v. *Puran*, (1990) 4 SCC 731: 1991 SCC (Cri) 38: AIR 1991 SC 8.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **M. Fathima Beevi**, JJ. [Date of decision: 21-9-1990]

[5633] — Ss. 386, 374 and 378 — Appeal against reduction of sentence filed by complainant — When maintainable — Inherent jurisdiction — Criminal appeal — Maintainability — Standing/Locus standi — Private individuals or public organisation — *Appeal is a creature of a statute, and cannot lie under any inherent power — Supreme Court does undoubtedly grant leave to appeal under discretionary power conferred under Art. 136 at behest of State or affected private individual — Appeal by a private individual can be entertained in a case where remedy has been shut out for victims due to mala fides on part of State functionaries or due to inability of victims to approach Court — To permit anybody or an organisation to file an appeal would cause utter confusion in criminal justice system — Strictest vigilance required to be maintained to prevent abuse of process of court — In present matter, neither State nor heirs of deceased victim had chosen to file a petition in High Court — As this responsibility taken up by National Commission for Women of its own volition, this is clearly not permissible — Held, special leave petition not maintainable — National Commission for Women Act, 1990, S. 10 — Constitution of India, Arts. 136 and 142* (Paras 11 to 15). *National Commission For Women* v. *State of Delhi*, (2010) 12 SCC 599.

Bench Strength **2**. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 23-7-2010]

Pritam Singh v. State, AIR 1950 SC 169: (1950) 51 Cri LJ 1270; P.S.R. Sadhanantham v. Arunachalam, (1980) 3 SCC 141: 1980 SCC (Cri) 649, followed

(7) Appeal from any other order — S. 386(d)

[5634] — Ss. 386 and 227, 228 — Appeal before High Court against order framing charges under Ss. 302 and 304 IPC — *At this stage it was not open to the High Court to weigh or assess the evidence and come to the conclusion that the evidence was absurd or inherently improbable —*

When prima facie at least 5 burn injuries were found on the dead body of a boy aged 7 years, held, it supported the case that the boy was not just electrocuted by a live wire falling into the river in which he was swimming but suggests direct contact with the live wire — Hence, High Court in revision erred in disbelieving evidence of two eyewitnesses to the effect that respondent had given electric shock on chest and other parts of the body of the deceased and thrown the body into the river along with the live wire — Accordingly, High Court's order quashing the order framing charges under Ss. 302 and 304 IPC and directing the prosecution to proceed only under S. 304-A IPC and S. 39 of Electricity Act has to be set aside — Trial court directed to proceed with the trial on the basis of the charges framed by it. Ram Kumar Laharia v. *State of M.P.*, (2001) 2 SCC 626: 2001 SCC (Cri) 375: AIR 2001 SC 556.

Bench Strength **2**. Coram: *M.B. Shah* and **S.N. Variava**, JJ. [Date of decision: 8-1-2001]

(8) Amendment, consequential or incidental orders — S. 386(e)

[5635] — **S. 386(e) — High Court can while considering the facts in the appeal against acquittal direct another charge to be framed and remand the case for retrial.** *Patel Jethabhai Chatur* v. *State of Gujarat*, (1976) 4 SCC 522: 1977 SCC (Cri) 1: AIR 1977 SC 294: 1977 Cri LJ 201: (1977) 1 SCR 872: (1977) 1 GLR 360.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 20-10-1976]

[5636] — **S. 386(e) — Powers of appellate court under — Scope — Held, limited to passing of orders which are permissible under law and without which the main order would be incomplete and ineffective** — *Does not extend to passing of orders interfering with the service career of the convict — However, keeping in view the trivial nature of the offence and the peculiar circumstances of the case, benefit of Ss. 3 and 12 of the Probation of Offenders Act granted — Probation of Offenders Act, 1958, Ss. 3 and 12 — Central Reserve Police Force Act, 1949, Ss. 16(2) and 10(n)*

The respondent was a Constable of Indo-Tibetan Border Police and was governed by the CRPF Act (for short "the Act"). Once, in overdrunk condition he entered the house of the Commandant of the Battalion and thus committed an offence punishable under Section 16(2) of the Act. He was convicted under Section 10(*n*) of the Act and sentenced to three months' imprisonment. The appellate court, while upholding the conviction, reduced the sentence to the extent of till the rising of the court and further directed that that order would not adversely affect the service career of the respondent. Relying on Section 386(*e*) CrPC, the High Court upheld the said further direction. Before the Supreme Court, the appellant challenged the jurisdiction of the appellate and revisional courts to give such a direction. The respondent solicited for applying Section 3 of the Probation of Offenders Act, 1958. Allowing the appeal but granting the respondent the benefit of the 1958 Act,

Held:

Orders contemplated under Section 386(*e*) CrPC for amendment of the impugned order or consequential or incidental orders are only such orders which are permissible under CrPC or any other law in force. Such a power does not confer a jurisdiction upon the appellate court to pass orders which tend to interfere with the service career of the convict or affect the rights of a party not before it. The consequential or incidental orders contemplated under Section 386(*e*) are orders which follow as a matter of course being necessary complements to the main orders without which the latter would be incomplete and ineffective. Therefore, after passing the order of conviction and sentence, the criminal court should not have issued any direction relating to the service career of the respondent which is governed by the Act, rules made thereunder and the service rules governing his conditions of service. (Para 5)

The Probation of Offenders Act, 1958 has been enacted in view of the increasing emphasis on the reformation and rehabilitation of the offenders as useful and self-reliant members of society without subjecting them to deleterious effects of jail life. (Para 7)

For an offence punishable under Section 10 of the Act, the sentence provided is one year with fine entitling the respondent to claim the benefit of Section 3 of the Probation of Offenders Act. Both the courts below have thought it expedient to take a lenient view and instead of sending him to jail opted to pass a sentence till the rising of the court and in this context directed that the order of conviction and sentence would not adversely affect the service career of the accused. It is true that nobody can claim the benefit of Sections 3 and 4 of the Probation of Offenders Act as a matter of right and the court has to pass appropriate orders in the facts and circumstances of each case having regard to the nature of the offence, its general effect on the society and the character of the offender, etc. A case of a trivial nature as the respondent is stated to have committed and keeping in view its peculiar circumstances, is a fit case where powers under Section 3 of the Probation of Offenders Act can be exercised. (Para 9)

Therefore, it is directed that despite the confirmation of conviction by the appellate court, the respondent be given the benefit of the Probation of Offenders Act. It is further held that the respondent is entitled to the benefit of Section 12 of the Probation of Offenders Act. (Para 10). *Commandant, 20th Battalion, ITB Police* v. *Sanjay Binjola*, (2001) 5 SCC 317: 2001 SCC (Cri) 897: AIR 2001 SC 2058: 2001 Cri LJ 2342.

Bench Strength **2**. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 2-5-2001]

(9) Proper mode of disposal of appeal

See also under Ss. 374 and 378

[5637] — Ss. 386 and 374 & 378 — Appellate court's approach — High Court as a first appellate court — *Held, is a final court of fact — Hence, must critically scrutinise the evidence in some detail — High Court without critically scrutinising the evidence holding that the prosecution had proved its case beyond reasonable doubt as the eyewitnesses consistently deposed against the accused — Held, High Court did not approach the evidence in the manner it should have done being the first court of appeal*

The High Court which is the first court of appeal did not even carefully appreciate the facts of the case. It mentions that the FIR was lodged by PWs 5 and 6 whereas the fact is that the FIR was lodged by PW 4, the Forest Officer. Without subjecting the evidence on record to a critical scrutiny, the High Court was content with saying that the three eyewitnesses having deposed against the appellant, the prosecution had proved its case beyond reasonable doubt. The High Court had not approached the evidence in the manner it should have done being the first court of appeal. The mere fact that the witnesses are consistent in what they say is not a sure guarantee of their truthfulness. The witnesses are subjected to cross-examination to bring out facts which may persuade a court to hold, that though consistent, their evidence is not acceptable for any other reason. If the court comes to the conclusion that the conduct of the witnesses is such that it renders the case of the prosecution doubtful or incredible or that their presence at the place of occurrence as eyewitnesses is suspect, the court may reject their evidence. That is why it is necessary for the High Court to critically scrutinize the evidence in some detail, it being the final court of fact. (Para 16). *Badam Singh* v. *State of M.P.*, (2003) 12 SCC 792: AIR 2004 SC 26: 2004 Cri LJ 22.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 4-11-2003]

[5638] — S. 386 — Power of appellate court — Scope — Held, appellate court must not only consider questions of law but also of fact and in doing so must subject evidence to critical scrutiny — *It must really apply its mind to facts of case particularly when offence alleged is of serious nature and may attract heavy punishment — In the instant case, High Court delivered a cryptic judgment without making any serious attempt to appreciate evidence on record — Hence, impugned order set aside and matter remitted to High Court for rehearing — Penal Code, 1860, S. 364-A/S. 363 r/w S. 34* (Paras 3 to 5). *Narendra Bhat* v. *State of Karnataka*, (2009) 17 SCC 785.

Bench Strength **2**. Coram: *B.P. Singh* and *H.S. Bedi*, JJ. [Date of decision: 14-5-2007]

[5639] — S. 386 — Acquittal of accused by High Court by a cryptic judgment without displacing some of the important reasons for conviction given by trial court and without properly appreciating intrinsic merits of the evidence, held, not justified. *Qamruddin* v. *Acqeel*, 1981 Supp SCC 58: 1982 SCC (Cri) 135: AIR 1982 SC 1229(1).

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *P.S. Kailasam*, JJ. [Date of decision: 25-2-1980]

[5640] — S. 386 — Improper exercise of power by High Court — Matter remanded — *High Court in appeal filed by respondent- accused against their conviction under S. 302 IPC, by impugned judgment directing their acquittal observing that because the dying declaration was not believable and discarded, evidence of eyewitnesses also should be discarded, without indicating any reason as to what deficiency was there in evidence of eyewitnesses — Matter remitted to High Court for reconsideration afresh* (Paras 1, 9 and 11). *State* v. *Rettaimandaiyan*, (2008) 15 SCC 732: (2009) 3 SCC (Cri) 1181: AIR 2009 SC 206: 2009 Cri LJ 380: (2009) 1 ECrN 669 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *H.S. Bedi*, JJ. [Date of decision: 18-9-2008]

[5641] — Ss. 386 and 366 — Appellate court's approach — Impropriety — Murder trial — *Trial court, relying on evidence of eyewitnesses, convicted and sentenced respondents with life imprisonment, etc. and one respondent with imposition of death sentence — High Court, by doubting prosecution version, discarded it and disposed of the appeals and the reference under S. 366 CrPC by trial court for confirmation of the death sentence, in* *an unsatisfactory nature — Impropriety of — Held, though High Court had in a number of pages of the judgment purportedly analysed the evidence, the conclusions, to say the least, were sketchy — Some of the conclusions were also contrary to the evidence on record — Almost all conclusions were essentially based on surmises and conjectures — Hence, in view of aforesaid unsatisfactory nature of disposal of appeal and the award of death sentence, impugned order set aside and matter remitted to High Court for consideration afresh — Nothing on merits of the case expressed — Arms Act, 1959, S. 27* (Paras 8 and 9). *Gobind Singh* v. *Krishna Singh*, (2008) 17 SCC 93: (2009) 74 AIC 267 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 3-12-2008]

[5642] — Ss. 386 and 374 — Reasoned order/Speaking order — Necessity of — *High Court by impugned judgment setting aside conviction of Respondents 1 and 2 under S. 304 Pt. I and S. 304 Pt. II IPC respectively, recorded by trial court by a practically unreasoned order without analysing the evidence or indicating as to how the conclusions were erroneous and/or contrary to evidence on record — Impugned order set aside and matter remitted to High Court for reconsideration afresh — Penal Code, 1860, S. 304 Pt. I and S. 304 Pt. II. State of Karnataka* v. *Ningappa*, (2009) 11 SCC 95: (2009) 3 SCC (Cri) 1252: AIR 2009 SC 1934: (2009) 80 AIC 265 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 11-2-2009]

[5643] — S. 386 — Appeal before High Court against judgment of trial court — *High Court as a first court of appeal on facts, held must apply its independent mind and record its own findings on the basis of its own assessment of evidence — High Court in its judgment only paraphrasing the judgment of trial court — Held, it amounted to non-application of mind*

There has been no application of mind by the High Court. The judgment of the High Court was nothing but paraphrasing of the judgment of the trial court without any application of mind whatsoever. So much so even factual errors committed by the trial court have been faithfully copied by the High Court. The High Court failed to notice its legal responsibility of discussing the evidence independently and recording its findings on the basis of such independent assessment of its own, because it is the first court of appeal on facts. The reasons for rejecting the findings of the trial court, therefore, should ipso facto apply to reject the finding of the High Court if the same could be called a finding at all. (Para 24). *Sakatar Singh* v. *State of Haryana*, (2004) 11 SCC 291: AIR 2004 SC 2570: 2004 Cri LJ 2076.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 13-4-2004]

[5644] — S. 386 — High Court hearing appeal against conviction, held, cannot proceed on the basis of conjectures and surmises — *Must proceed according to evidence on record — Sentence also cannot be reduced to that already undergone merely because counsel for the State did not put in any opposition — Duty of court to award proper sentence — Penal Code, 1860, Ss. 304 Part II/34 and 323/34. State of Punjab* v. *Mann Singh*, (1983) 1 SCC 207: 1983 SCC (Cri) 165: AIR 1983 SC 172: 1983 Cri LJ 229.

Bench Strength **2**. Coram: **A.P. Sen** and *V. Balakrishna Eradi*, JJ. [Date of decision: 4-1-1983]

[5645] — S. 386 — High Court without discussing the evidence as a court of appeal would do, summarising the contentions raised by the parties and jumping to the conclusion regarding guilt of the accused — *Held, it would be proper to remit the matter to the High Court for reconsideration of the evidence on record and after discussing truthfulness of the witnesses, come to the conclusion one way or the other — Since while appeal was pending accused was on bail, High Court may consider the question of releasing him on bail. Nanhak Singh* v. *State of Bihar*, (2002) 9 SCC 480.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *M.B. Shah*, JJ. [Date of decision: 14-12-1999]

[5646] — S. 386 — Reappreciation of evidence — Duty of appellate court (High Court in this case) — Elaborate analysis of evidence — *Held, not required while concurring with conclusions of court below — However, appellate court has to analyse evidence and indicate sufficient reasons for such concurrence — Detailed analysis and reasoned conclusions nevertheless, held, imperative where the appellate court reverses the findings and the conclusions of the trial court*

While concurring with the conclusions there need not be elaborate analysis which would be in essence a repetition of the conclusions and the reasoning. However, that does not do away with the requirement of the High Court in analysing the evidence and to indicate sufficient reasons even for the concurrence. There cannot be total absence of reasons. The position is different when the appellate court reverses the findings and the conclusions. In such a case there is an imperative requirement for

(9) Proper mode of disposal of appeal *(contd.)*

detailed analysis of the evidence and reasoned conclusions. In the case at hand the High Court has dealt with the evidence and it cannot be said that there was total absence of reasons. Though analysed in brief, yet the vital aspects have been touched. (Para 6). *Babulal* v. *State of M.P.*, (2003) 12 SCC 490: AIR 2004 SC 846.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 31-10-2003]

[5647] — Ss. 386, 374 and 378 — Reappraisal of evidence by appellate court — Approach of appellate court indicated

The appellate court should assess the evidence on record with a view to satisfy itself that the appreciation of evidence by the trial court is not vitiated on account of any erroneous approach or illegality and it is not palpably erroneous. However, the sustainability of the judgment depends on the soundness of the reasons given in support of the findings and the conclusion. (Para 11). *State of Rajasthan* v. *Hanuman*, (2001) 1 SCC 337: 2001 SCC (Cri) 143: AIR 2001 SC 282: 2001 Cri LJ 485.

Bench Strength **2**. Coram: *S.S.M. Quadri* and **D.P. Mohapatra**, JJ. [Date of decision: 4-12-2000]

[5648] — Ss. 386 and 374 — Appeal against conviction — Improper appreciation of evidence by High Court as a court of first appeal — Serious infirmities and contradictions in prosecution case — High Court failing to analyse and appreciate evidence objectively — *Appellant 2 was held guilty principally on the basis of evidence of PWs 10 and 12 who deposed that deceased D was assaulted by farsis and ballams — Medical evidence showing no cut or pointed injuries on the body of D — PW 1 denying lodging of FIR — Evidence of PWs 1, 6 and 7 regarding the assault on D disbelieved by High Court — According to prosecution, several accused assaulted D but there was only one injury on his head — Considering the serious infirmities and contradictions in the prosecution case which were not duly considered by the High Court, held, in the absence of any corroboration, the prosecution case against Appellant 2 could not be believed and therefore his conviction and sentence under S. 302 was liable to be set aside — Penal Code, 1860 — S. 302*

Appellant 2 was held guilty principally on the basis of the evidence of PWs 10 and 12 who deposed that deceased *D* was assaulted by *farsis* and *ballams*. However, medical evidence showed no cut or pointed injuries. PW 1 denied even lodging of FIR. As per the prosecution witnesses, several accused assaulted *D* but there was only one injury on his head. In the absence of any corroboration, the prosecution case could not be believed to hold that Appellant 2 was guilty for an offence under Section 302 IPC. Further, the High Court had stated that there was an attempt on the part of PWs 10 and 12 to implicate majority of the accused; that evidence of PWs 1, 6 and 7 did not inspire confidence; that there appeared to be a free fight between the parties and it was not shown that a particular accused caused the injuries to have recourse to Section 149 IPC. In these circumstances, the impugned order convicting and sentencing Appellant 2 cannot be sustained as the High Court did not analyse and appreciate the evidence objectively as it ought to be by the court of first appeal. The serious infirmities and contradictions found in the prosecution case were not duly considered. (Para 8). *Kanwarlal* v. *State of M.P.*, (2002) 7 SCC 152: 2002 SCC (Cri) 1633: AIR 2002 SC 3690.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Shivaraj V. Patil**, JJ. [Date of decision: 10-9-2002]

[5649] — Ss. 386 and 374 — Appeal against conviction — Manner of reappraisal of evidence by High Court in — *Held, the High Court in an appeal against the order of conviction is required to arrive at an independent conclusion after reappraising the entire evidence* (Para 10). *Ramji Singh* v. *State of Bihar*, (2001) 9 SCC 528: AIR 2001 SC 3853.

Bench Strength **2**. Coram: *R.C. Lahoti* and **Ashok Bhan**, JJ. [Date of decision: 12-10-2001]

[5650] — Ss. 386 and 374 — Criminal appeal — Jurisdiction and approach of High Court — *Held, High Court is a court of appeal on facts as well — Hence, while considering the appeal against conviction, High Court should have dealt with the matter a bit more elaborately — But, since High Court had taken note of the material points of the case, further held, no reason to remand the case to High Court, more so when the Supreme Court had also considered the points raised on merits*

The High Court is a court of appeal on facts as well while dealing with criminal appeals. It would have been certainly better if the High Court had dealt with the matter a bit more elaborately but it is not a fit case to be remanded to the High Court, as prayed. It is not a case where the Court had not noticed the material points of the case. It was aware of the merits of the matter while passing the order. Hence, there is no good reason to accede to the request made for remand of the case to the High

Court, more so when the Supreme Court in the instant appeal has also considered the points raised on behalf of the appellant on merits. (Para 8). *Lal Singh* v. *State of M.P.*, (2003) 9 SCC 464.

Bench Strength **2**. Coram: **Brijesh Kumar** and *Arun Kumar*, JJ. [Date of decision: 11-8-2003]

Rama v. State of Rajasthan, (2002) 4 SCC 571: 2002 SCC (Cri) 829, considered and distinguished

[5651] — Ss. 386 and 374(2) — Acquittal by High Court on an extraneous ground which was based on no evidence and was raised before the High Court for the first time — Impropriety — *Brutal murder by a gang of seven persons — Disbelieving the evidence of eyewitnesses relied on by trial court, High Court acquitting the four accused persons only on an extraneous ground which was not based on any evidence and was raised before the High Court for the first time — The said ground on which the presence of the two eyewitnesses at the time of occurrence considered doubtful by High Court was that there was fog at the time of occurrence due to which the eyewitnesses, who were said to be at a distance from the deceased, could not have seen what was actually happening — Held, the basic fact about the presence of fog leading to blurring of the vision of the eyewitnesses without being put to the witnesses during their cross-examination could not have been taken into consideration by the High Court — Further, the instantaneous recovery of the dead body of the deceased from the river by the eyewitnesses, held, showed that they had seen the spot where the dead body had been thrown into the river — Considering the said facts coupled with the trustworthy testimony of the eyewitnesses and medical evidence, the judgment of the trial court convicting the accused persons upheld — Penal Code, 1860 — Ss. 302/149, 201 and 148* (Paras 10, 11 and 12)

The deceased along with PW 1, PW 2 and one *D* left his house for his fields to start the diesel engine of his pumping set in order to irrigate his field. The said three persons were following the deceased and were about 15-20 paces behind him. While the deceased was proceeding towards his field, seven accused persons suddenly emerged from behind the *noonars* (*tilas* i.e. big mounds of earth). They were all armed with weapons. The accused fired gunshots at the deceased who on receiving the injuries fell down. The accused severed the head of the deceased and threw his dead body into a river. PW 1, PW 2 and *D*, on the basis of the trail of blood, reached the place wherefrom the dead body of the deceased was thrown into the river. PWs 1 and 2 were examined as eyewitnesses to the incident. The trial court convicted all the accused persons under Ss. 148, 302/149 and 201 IPC. In appeal, the High Court disbelieved the presence of the eyewitnesses to the incident at the scene, rejected their evidence and acquitted all the accused on an extraneous ground, which was based on no evidence and was raised before the High Court for the first time.

Allowing the appeals, the Supreme Court decided as above. *State of U.P.* v. *Man Singh*, (2002) 8 SCC 435: 2003 SCC (Cri) 82: AIR 2003 SC 62.

Bench Strength **2**. Coram: *Shivaraj V. Patil* and **Arun Kumar**, JJ. [Date of decision: 24-10-2002]

[5652] — Ss. 386 and 374(2) — Appeal against conviction — Acquittal by High Court on the basis of assumption — *Held, High Court erred in rejecting the medical evidence without any reason and acquitting the accused persons of the charge under S. 302 IPC mainly on the assumption that the external injuries found on the parietal region of deceased B could not have been caused by blunt weapons like iron rod and tyre lever — Evidence Act, 1872, S. 45* (Para 9). *State of Rajasthan* v. *Laxman Singh*, (2002) 10 SCC 65: 2003 SCC (Cri) 1564.

Bench Strength **2**. Coram: *D.P. Mohapatra* and *Y.K. Sabharwal*, JJ. [Date of decision: 1-8-2002]

Modi's Medical Jurisprudence, referred to

Suresh v. State of U.P., (1981) 2 SCC 569: 1981 SCC (Cri) 559, relied on

[5653] — Ss. 386 and 374(2) — Appellate court's approach — High Court as a court of first appeal — Duty of — High Court not analysing the evidence — *Arriving at conclusions on surmises and conjectures — Present one not a case where two reasonable views possible — No cogent or sufficient reasons assigned for disagreeing with findings of trial court — Findings of High Court contrary to materials on record — Great miscarriage of justice — Reviewing the evidence, held, acquittal liable to be set aside — Conviction by trial court restored — Penal Code, 1860 — Ss. 302/34 — Constitution of India — Art. 136*

The High Court being a court of first appeal was required to consider and reappreciate the evidence but it failed to do so and proceeded to dispose of the appeal on general observations which is impermissible. The High Court acquitted the accused persons without analysing the evidence on record and in that view of the matter, the impugned judgment cannot be sustained. (Paras 32 and 27)

The High Court has not assigned any cogent or sufficient reasons for disagreeing with the findings of the learned Sessions Judge. The judgment of the High Court is based on surmises and conjectures. (Para 26)

(9) Proper mode of disposal of appeal *(contd.)*

Further, it is not a case where two reasonable views are possible. It is also not a case where findings recorded by the High Court are fully supported by the evidences on record. The High Court proceeded absolutely on a wrong premise that there had been only one injury during the firing which is contrary to records. (Para 31)

Thus, by reason of the judgment of the High Court, a great miscarriage of justice has taken place. It is well settled that when reasoning of the High Court is perverse, the Supreme Court may set aside the judgment of acquittal and restore the judgment of conviction and sentence upon the accused. (Paras 29 and 33)

It is also well settled that there is no embargo on the appellate court to review evidence upon which an order of acquittal is based. (Para 33)

Hence, the judgment of acquittal passed by the High Court is set aside and that of the learned Sessions Judge is restored. (Para 35). *State of U.P.* v. *Nawab Singh*, (2005) 9 SCC 84: 2005 SCC (Cri) 33: AIR 2004 SC 1511: 2004 Cri LJ 1367.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **S.B. Sinha**, JJ. [Date of decision: 3-2-2004]

Narendra Nath Khaware v. Parasnath Khaware, (2003) 5 SCC 488: 2003 SCC (Cri) 1144; Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641; State of U.P. v. Premi, (2003) 9 SCC 12: 2003 SCC (Cri) 1731; Ramanand Yadav v. Prabhu Nath Jha, (2003) 12 SCC 606; Chanakya Dhibar v. State of W.B., (2004) 12 SCC 398; Surinder Singh v. State of U.P., (2003) 10 SCC 26; Gorle S. Naidu v. State of A.P., (2003) 12 SCC 449; Suchand Pal v. Phani Pal, (2003) 11 SCC 527: 2004 SCC (Cri) 220, relied on

[5654] — Ss. 386 and 374(2) — High Court erred in reversing the order of conviction without adverting to the material facts of the case — *Respondent committing murder of M and R when they were returning to their houses at night at about 1.30 a.m. after attending the last rites ceremony of one K of their village — PWs 3 and 4, brothers of M and R respectively who were accompanying the deceased, witnessing the incident — Sessions Court relying on their testimony convicting respondent — High Court doubting whether the last rites ceremony of K could last till 11 p.m. and thereafter the deceased and others could have spent 2 to 21/2 hrs to leave for their houses at about 1.30 a.m. — High Court acquitting the respondent after holding (i) that there was more than nine hours' delay in lodging the FIR, (ii) that after the incident if PWs 3 and 4 were really afraid of the respondent, they should have taken shelter during the night in their respective houses instead of moving about freely in the village, (iii) that had PWs 3 and 4 seen the occurrence, they would have shouted that their brothers had been murdered, (iv) that till the FIR was recorded at about 10.50 a.m., it was not disclosed that the respondent was the culprit, and (v) that it was doubtful that after receiving bullet injuries R fell down on a cot and thereafter stood up and walked a few yards — Where the High Court did not advert to the material facts of the case, its conclusion based on the above grounds held perverse — Order of the trial court restored — Penal Code, 1860 — S. 302*

The fact that the gun from which shots had been fired at the deceased did belong to the accused was not adverted to by the High Court at all. A different theory which was sought to be set up by the defence, by stating that the death of the victims had occurred due to shots fired by *S* with the gun belonging to one *P*, was disbelieved by the Sessions Judge for good reasons. However, that aspect was totally ignored by the High Court. If the gunshot injuries had been sustained by the two deceased from the licensed gun belonging to the accused, the circumstances in which the injuries were sustained by them ought to have been explained satisfactorily by the defence. It is not unnatural or improbable that in villages particularly in the month of July when there is hardly any agricultural operation going on, to leisurely spend time even after last rites ceremony of *K*. (Paras 12, 10 and 11)

There was no justification for the High Court to hold that there was delay in lodging the FIR because the incident took place at the end of the night intervening 19-7-1984 and 20-7-1984 and the eyewitnesses who lodged the FIR had to go to the police station by at least covering a distance of 25 km partly by foot and partly by travelling in a bus. Further, waiting for a bus and reaching the appropriate police station to lodge the complaint does take time. More so, delay in lodging the complaint would assume significance in cases where the accused persons are being unnecessarily implicated while some others may have been responsible for the crime or to lug in those who were not present at the time of occurrence of the incident. On 20-7-1984, fairly early in the morning at about 7.15 a.m., PW 3 left for the police station to lodge the complaint about the incident which is neither unnatural or improbable. (Para 11)

Much significance could not have been attached by the High Court to the fact that one of the deceased having walked a few yards from the cot had not been mentioned in the FIR. Broad features of the case had been mentioned as to the manner in which the incident took place and who shot dead the two deceased. In fact, if there is some omission in a matter of detail that, by itself, may not be sufficient to rebut the prosecution case. There is criticism that the eyewitnesses instead of staying in their houses had been moving about in the streets but as they were mentally disturbed if they did not stay inside their houses they did not act in any abnormal manner. There is nothing unusual in their not alarming everyone in the village at that odd hour. Thus, the reasoning of the High Court cannot be accepted, particularly when the abovestated material facts of the case had been totally ignored by it. (Paras 11 and 12). *State of Haryana* v. *Ram Sarup*, (2002) 7 SCC 250: 2002 SCC (Cri) 1691: AIR 2002 SC 3114.

Bench Strength 2. Coram: **S. Rajendra Babu** and *P. Venkatarama Reddi*, JJ. [Date of decision: 4-9-2002]

[5655] — Ss. 386 and 374(2) — High Court setting aside conviction — High Court's approach, on facts held, perverse and liable to be set aside *— Murder — Trial court on the basis of clinching evidence finding that the circumstances formed a complete chain so as to conclusively point to the guilt of the accused — High Court on some untenable and irrelevant grounds setting aside conviction recorded by trial court — Conviction confirmed*

As per the deceased's wife (PW 1), on the day of occurrence the deceased accompanied by the accused left her house in the village. According to PW 2, who was a friend of the proprietor of a lodge, while he was at the counter of the lodge, the accused and the deceased came there at about 1.30 p.m. and hired a room (Room No. 7) in the lodge. Cash receipt was filled up by the deceased and it was issued by PW 2 who last saw the deceased along with the accused going to Room No. 7. According to PW 2, at about 4.15 p.m. when he was sitting at the counter along with the room boy, the accused came and told him that he had killed the deceased and he should telephone the police. At that time he was wearing only a pant and his body was stained with blood. Then, PW 2 sent the room boy along with the accused to the room to see what had happened. The room boy came back leaving the accused in the room and closing it from outside. He reported to PW 2 about the murder of the deceased. PW 2 then contacted the proprietor's father PW 3 over telephone and informed him that some *galata* (untoward incident) had taken place in the lodge and requested him to come down to the lodge. PW 3 came to the lodge immediately and got a feedback of the event from PW 2. PW 3 then contacted the police and informed them that a murder had taken place in Room No. 7 without naming the victim or the assailant. Then, the Police Sub-Inspector, PW 12 accompanied by other police personnel reached the lodge. He entered Room No. 7 on the second floor by opening the bolt. He found the accused sitting on the cot. A dead body was lying by the side of the cot in a pool of blood. There were injuries on the neck and the face and a bloodstained chopper was found on the table. He arrested the accused. The trial court relied upon the following circumstances for coming to the conclusion that the accused committed the murder: (*1*) Deceased's leaving the village home along with the accused (as per evidence of the deceased's wife) and the deceased having been last seen by PW 2 with the accused going to Room No. 7 of the lodge. (*2*) The deceased was found murdered in the room by 4.15 p.m. (*3*) When the door of Room No. 7 was opened by the police, the accused was sitting on the cot by the side of the dead body, as seen from the evidence of PWs 2 and 10. (*4*) In the room the bloodstained chopper by which the injuries could have been inflicted (as per the medical evidence) was found. The bloodstained clothes of the accused were seized. The chemical analysis report revealed that they contained human blood. (*5*) The trial court referred to the fact that the room boy whose statement was treated as FIR could not be examined as his whereabouts were not known, as disclosed in the evidence of PW 10. The deceased's wife stated in somewhat vague terms that "due to land dispute, there was ill will between my husband and the accused". The trial court concluded that the circumstances form a complete chain and rule out reasonable likelihood of innocence of the accused. But the High Court set aside the judgment of the trial court and acquitted the accused-respondent of the charge under Section 302 IPC on the following reasons: *1*. There is no clinching material where exactly the incident took place — whether on the first floor or the second floor. *2*. The extra-judicial confession was not communicated to the police or to the proprietor of the lodge at the earliest point of time. The telephonic message was only to the effect that an untoward incident had happened. *3*. Having regard to the variation in the evidence of PWs 2 and 3 the confession becomes doubtful. *4*. The hotel register was not produced in court to establish that the accused and deceased stayed together in the room. Hence, the last-seen evidence cannot be given any weight. *5*. Though the accused was injured and sent to the hospital, the injuries were not explained nor the doctor examined. *6*. The chopper found on the table was not sent to the fingerprint expert. *7*. None spoke about the wearing of the seized shirt and *baniyan* by the accused. *8*. No motive is established.

(9) Proper mode of disposal of appeal *(contd.)*

Allowing the appeal,

Held :

None of the reasons given by the High Court in upsetting the findings of the trial court are tenable. On the basis of the evidence on record it was not reasonably possible to take the view which the High Court did. (Para 10)

As regards the place of incident prosecution evidence is consistent that the murder took place in Room No. 7 of the lodge. Whether it be on the first floor or the second floor is not really material. The alleged discrepancy as to the location of the room does not throw an iota of doubt on the prosecution case. PW 2 who was giving evidence after more than two years may not have recollected whether Room No. 7 was on the first floor or the second floor, especially when he is not the proprietor or manager of the lodge. (Para 11)

The non-mention of the confessional statement by PW 2 when he telephoned PW 3 or PW 3 when he contacted the police over the phone is not at all a factor which casts a reasonable doubt on the version of PW 2. Having regard to the fact that they were expected to reach the lodge within a few minutes, such details could be more appropriately narrated in person rather than wasting time on the phone. Such conduct is quite consistent with ordinary human conduct. The time-lag between the telephonic contact and the arrival of PW 3 and the police is less than half an hour, as the evidence on record reveals. It is too much to think that PW 2 entertained the idea of concocting an extra-judicial confession within those few minutes. (Para 12)

The testimony of PW 2 as regards the confession made by the accused at the earliest point of time is such as to inspire confidence in the mind of the Court. PW 2 may be a stranger to the accused but it should also be noted that there is absolutely no reason why he should unnecessarily implicate the accused. Without any loss of time he brought to the notice of PW 3 and the police the factum of confession made by the accused soon after the crime. His version in this regard is supported by PW 3 who, being the father of the proprietor of the lodge, came to the lodge immediately after receiving the phone call from PW 2. The conduct of the accused in committing the murder and immediately revealing this fact to a stranger like PW 2 may not be consistent with ordinary human conduct. It may be difficult to speculate as to what prompted the accused to confess the commission of the crime before PW 2 and to remain in the lodge after the incident. But, on that account, there need not be astute reluctance on the part of the Court to accept the extra-judicial confession. The unnatural conduct on the part of the accused will not necessarily shake the veracity of PW 2's testimony but it will put the Court on guard to get the assurance of truth in the prosecution case by corroborative evidence including circumstantial factors. That apart, the circumstances referred to by the trial court are almost clinching and lend assurance to the correctness of the version of PW 2. (Para 8)

The last-seen evidence cannot be discredited on the basis that the hotel register was not produced in order to establish that the accused and the deceased hired a room in the hotel. In the face of the undeniable fact that the name entered in the cash receipt and the hotel register was a fictitious name, the production of hotel register could not have made any difference. The fact remains that PW 2 identified the accused and the deceased as the persons who took the room a few hours before the incident and to whom the receipt was passed on. The handwriting of the deceased on the receipt was identified by his wife PW 1 — an educated lady. Then there is the clear evidence to the effect that the accused was found in the room by the side of the dead body. All these relevant facts were overlooked by the High Court. (Para 13)

It is doubtful whether blood-soaked chopper, if analysed by the fingerprint expert, could have given any clues as to fingerprints. Be that as it may, even if it is considered a lapse in the investigation, that will not cast a cloud of doubt on the prosecution case. (Para 15)

The panch witness, PW 7 spoke to the seizure of the bloodstained clothes which the accused was wearing at the police station. The bloodstained clothes were sent for chemical analysis. (Para 16)

As regards the motive, it is true, as contended that the prosecution evidence is not quite satisfactory. A bald statement that there was a land dispute between the deceased and the accused was made by PW 1, the wife of the deceased. The fact that the prosecution did not adduce satisfactory evidence on the motive aspect, is not sufficient to throw out the prosecution case as unreliable. When there is abundant evidence to show that the accused and the accused alone would have committed the murder, the absence of proof of motive does not vitiate the prosecution case. (Para 17)

Thus the approach of the High Court is perverse as it has set aside the conviction recorded by the trial court on untenable and irrelevant grounds. It is not reasonably possible to give benefit of doubt to the accused, as the evidence is so clinching. (Para 18). *State of Karnataka* v. *M.N. Ramdas*, (2002) 7 SCC 639: 2003 SCC (Cri) 134: AIR 2002 SC 3109.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **P. Venkatarama Reddi**, JJ. [Date of decision: 5-9-2002]

Gura Singh v. State of Rajasthan, (2001) 2 SCC 205: 2001 SCC (Cri) 323, relied on

[5656] — Ss. 386 and 374(2) — Plea of improper disposal of a serious matter involving offences under Ss. 147, 148 and 307 r/w S. 149 IPC — *Conviction by courts below — Contention that such a serious matter concerning the liability of so many persons was dealt with in a slipshod manner — Held, no doubt the impugned judgment could have been slightly more elaborate but that does not itself vitiate the order of concurrence — Further, there was no prejudice to the accused persons warranting an order of acquittal* (Para 11). *Shrawan Bhadaji Bhirad* v. *State of Maharashtra*, (2002) 10 SCC 56: 2003 SCC (Cri) 1510: AIR 2003 SC 199.

Bench Strength **2**. Coram: **U.C. Banerjee** and *Y.K. Sabharwal*, JJ. [Date of decision: 13-11-2002]

[5657] — Ss. 386 and 374(2) — Reversal of conviction by High Court based on probabilities of the case rather than the evidence of the eyewitnesses — Propriety of — *Conviction — Seventeen accused charged for having committed the murder of one N, his wife and his two-year-old son and causing injuries to PWs 2, 3, 11 and one R — No dispute about the motive and the place of incident — Doubt raised about the time of incident — Trial court relying on the evidence of the eyewitnesses, which was corroborated by medical evidence and other circumstantial evidence, and holding that the incident occurred at about 9.30 a.m. — Conviction of fifteen accused by trial court — High Court rejecting the acceptable evidence of eyewitnesses and entering into the exercise of calculations based on probabilities, which had no foundation in evidence, and holding that the incident could not have occurred at about 9.30 a.m. — On reappraisal of evidence, held, no reason to disbelieve the prosecution evidence relating to the time of incident, particularly in view of the evidence of the independent and injured witnesses in that regard — On facts, held, prosecution case proved against accused A-1 to A-5 and A-8 — Penal Code, 1860 — Ss. 302/149, 452, 307/149*

The trial court in regard to the time of the incident relying on the oral evidence of PWs 2, 3, 4, 11 and 12 held that it was possible to conclude that the incident in question had occurred at about 9.30 a.m. It also found corroboration from the medical evidence as also from certain circumstantial evidence adduced by the prosecution. But the High Court did not accept this evidence as to the time of occurrence and accepted the defence suggestion that the incident in question must have occurred sometime prior to daybreak. The High Court primarily relied upon its own assessment of the time that might have been taken by PW 2 in covering a distance of 31/2 miles to reach the police station, having to stop for some time at Hargaon for getting the complaint written down by one *L* as also the time that the constable at the police station would have taken to register the complaint. The High Court in this process also placed reliance on that piece of medical evidence which showed that the stomach of the deceased husband and wife contained semi-digested food which also, according to it, probabilises the fact that the incident in question must have occurred very early in the morning. (Paras 15 and 11)

Thus, the High Court proceeded on the basis of probabilities of the case rather than the evidence of eyewitnesses to come to the conclusion that the incident in question could not have taken place at 9.30 a.m. But when there is acceptable oral evidence of eyewitnesses regarding the time of incident, the High Court erred in entering into the exercise of calculation based on probabilities which has no foundation in evidence. However exact a calculation of this nature could be, the same cannot be a substitute for the evidence of acceptable eyewitnesses. Such exercise of calculating the time of incident based on probabilities can only be resorted to in the absence of acceptable oral evidence. (Para 16)

On reappraisal of the evidence on record, it is held that the prosecution in this case has established by oral evidence that the incident had actually occurred at about 9.30 a.m. and there is no reason to disbelieve the oral evidence in this regard, especially because of the evidence of the independent injured witnesses like PW 11 and other two independent witnesses PWs 4 and 12 in regard to the timing of the incident. (Para 16)

Out of the seventeen accused persons, nine of them remained outside the house of PW 2 while A-1 to A-8 entered the house carrying various weapons. So far as the identity of the nine accused persons who stayed outside is concerned, there is considerable discrepancy in the prosecution evidence. As a matter of fact, it has come in evidence that those witnesses who were inside the house could not even have seen these accused who were outside the house, therefore, it is not safe to accept this evidence to base a conviction of those accused who were standing outside the house. The only person

(9) Proper mode of disposal of appeal *(contd.)*

who could have possibly noticed all these accused who were outside the house is PW 12, but from his evidence alone it is not safe to hold these accused persons guilty of the offence alleged against them. So far as accused A-6 and A-7 are concerned, the learned Sessions Judge himself found some difficulty in accepting the evidence of PW 2 because of some confusion in his evidence. (Para 17)

But the PWs have very clearly and consistently spoken about the overt acts of A-4, A-5 and A-8 along with A-1, A-2 and A-3 which is supported by medical evidence also. Hence, the prosecution case is accepted in respect of the said accused persons. (Para 26). *State of U.P.* v. *Rasid*, (2003) 9 SCC 449: AIR 2003 SC 1243: 2003 All LJ 1152: 2003 Cri LJ 2011.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 5-3-2003]

[5658] — Ss. 386 and 378 — Appeal against acquittal — Reversal of acquittal by High Court — Evidence discussed in a very casual manner — Interference by High Court, held on facts, not justified — *High Court not taking into consideration the various omissions and contradictions found in the evidence of PW 1 (injured witness) — High Court erred in concluding that the medical evidence supported the evidence of PW 1 — PW 1, who had paralysed legs, did not state in evidence who actually helped him to go to the place of incident — He stated before the police that due to old age he could not identify all the culprits — But in court he made improvement in his evidence, while identifying all the accused persons as also while stating that the appellant also attacked him — Dying declaration indicating only PW 12 as an eyewitness who did not speak anything about the attack by the appellant either on the deceased or on PW 1 — Further, PW 1 was attacked in front of the house of one Y which was at a considerable distance from the place where deceased was attacked — Held, evidence of PW 1 not reliable — Evidence of PWs 3 and 7 also not acceptable — Other witnesses not supporting the prosecution case — Held, High Court erred in reversing the judgment of the trial court — Penal Code, 1860 — S. 302* (Paras 6 to 10). *Devatha Venkataswamy* v. *Public Prosecutor, High Court of A.P.*, (2003) 10 SCC 700: AIR 2003 SC 3217: 2003 Cri LJ 4332.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 9-9-2003]

Rajendra Prasad v. State of Bihar, (1977) 2 SCC 205; Harisingh M. Vasava v. State of Gujarat, (2002) 3 SCC 475: 2002 SCC (Cri) 654; Joseph v. State of Kerala, (2003) 1 SCC 465: 2003 SCC (Cri) 356, relied on

[5659] — Ss. 386 and 378 — Reversal of acquittal by appellate court (High Court) dealing with a detailed judgment of acquittal in a slipshod manner — Propriety of — *Held, was not proper — Hence, set aside* (Paras 28 and 31). *V. Venkata Subbarao* v. *State*, (2006) 13 SCC 305: (2007) 3 SCC (Cri) 175: AIR 2007 SC 489: 2007 Cri LJ 754: (2007) 50 AIC 369 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 12-12-2006]

State v. K. Narasimhachary, (2005) 8 SCC 364: (2006) 1 SCC (Cri) 41; Kalyan Singh v. State of M.P., (2006) 13 SCC 303; Samghaji Hariba Patil v. State of Karnataka, (2006) 10 SCC 494: (2007) 1 SCC (Cri) 113; Umrao v. State of Haryana, (2006) 10 SCC 136: (2006) 3 SCC (Cri) 482, relied on

[5660] — S. 386 — Recording of reasons by the appellate court for disagreeing with the trial court — *Held, has to be given only in respect of relevant aspects and not necessarily on every aspect*

In a criminal trial as also in civil suits, the trial court and the appellate court should marshal the facts and reach conclusion, on facts. In a criminal case, the prosecution has to prove the guilt beyond doubt. The concept of benefit of doubt is not a charter for acquittal. Doubt of a doubting Thomas or of a weak mind is not the road to reach the result. If a Judge on objective evaluation of evidence and after applying relevant tests reaches a finding that the prosecution has not proved its case beyond reasonable doubt, then the accused is entitled to the benefit of doubt for acquittal. On scanning the evidence and going through the reasoning of the Single Judge it has to be held that the Single Judge was right in accepting the confessional statement of the appellant to be a voluntary one and that it could form the basis for conviction. The Magistrate had dwelt upon the controversy, no doubt on appreciation of the evidence but not in proper or right perspective. Therefore, it was not necessary for the Single Judge to wade through every reasoning and give his reasons for his disagreement with the conclusion reached by the Magistrate. On relevant aspects, the Single Judge dwelt upon in detail and recorded the disagreement with the Magistrate and reached his conclusions. Therefore, there is no illegality in the approach adopted by the Single Judge. Therefore, the Single Judge was right in his findings that the prosecution has proved the case. *K.I. Pavunny* v. *Asstt. Collector (HQ), Central Excise Collectorate*, (1997) 3 SCC 721: 1997 SCC (Cri) 444: (1997) 1 KLT 489.

Bench Strength **3**. Coram: **K. Ramaswamy**, *S. Saghir Ahmad* and *G.B. Pattanaik*, JJ. [Date of decision: 3-2-1997]

[5661] — S. 386 — Where appellate Court conforms with the view of trial Court, it is only required to express its general agreement together with reasons therefor. *State of Karnataka* v. *Hemareddy*, (1981) 2 SCC 185: 1981 SCC (Cri) 395: AIR 1981 SC 1417: (1981) 2 SCR 695: 1981 Cri LJ 1019.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and **A. Varadarajan**, JJ. [Date of decision: 27-1-1981]

[5662] — S. 386 — Criminal appeal — Need for giving reasoned order reiterated — *Since order of High Court not disclosing reasons for disposing of the appeal case remanded for fresh hearing — Respondent released on bail*. *State of U.P.* v. *Jagdish Singh*, 1990 Supp SCC 150: 1990 SCC (Cri) 636.

Bench Strength **3**. Coram: *R.S. Pathak, C.J.* and *S. Natarajan* and *M.N. Venkatachaliah*, JJ. [Date of decision: 26-4-1988]

[5663] — S. 386 — Non-reasoned conclusions by appellate courts — *Held, not proper — More so, when views of the lower court are differed from — In case of concurrence, the need to again repeat reasons may not be there — But that is not so in case of reversal — Reason is the heartbeat of every conclusion — Without the same, it becomes lifeless* (Para 19). *Raj Kishore Jha* v. *State of Bihar*, (2003) 11 SCC 519: 2004 SCC (Cri) 212: AIR 2003 SC 4664.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 7-10-2003]

Followed in State of Uttaranchal v. Sunil Kumar Singh Negi, (2008) 11 SCC 205

[5664] — S. 386 — Order disposing of appeal without giving any reason deprecated — *Matter remitted to High Court with a direction to dispose of the same within a period of 4 months*. *State of U.P.* v. *Haripal Singh*, (1998) 8 SCC 747.

Bench Strength **2**. Coram: *G.N. Ray* and *K. Venkataswami*, JJ. [Date of decision: 15-1-1996]

[5665] — Ss. 386, 378 and 374 — Need to record reasons when reversing acquittal — Appellate court's interference is called for where lower court's judgment is vitiated by gross errors — *Powers of appellate court in case of appeal from acquittal and in case of appeal from conviction compared — Constitution of India — Arts. 136 and 134*

Though as a self-made rule of practice the Supreme Court does not interfere with the findings of fact reached by the High Court, but such findings of fact must not be vitiated by serious errors of assumption and inference. The powers of the appellate court, in an appeal against the acquittal, are not different from or inconsistent with, those that the appellate court has in an appeal against a conviction; the difference is more in the manner of approach and the perspective rather than in the content of the power. The plenitude of the power of the appellate court to review and reappreciate the evidence cannot be limited under the supposed rule that unless there are "substantial" or "compelling" reasons or "very substantial reasons" or "strong reasons", the findings in a judgment of acquittal should not be interfered with. There is thus no immunity to an erroneous order from a strict appellate scrutiny. But the appellate court wherever it finds justification to reverse an acquittal must record reasons why it finds the lower court wrong. *State of U.P.* v. *Krishna Gopal*, (1988) 4 SCC 302: 1988 SCC (Cri) 928: AIR 1988 SC 2154.

Bench Strength **2**. Coram: *A.P. Sen* and **M.N. Venkatachaliah**, JJ. [Date of decision: 12-8-1988]

Sheo Swarup v. King Emperor, 61 IA 398: AIR 1934 PC 227(2): 67 MLJ 664 and Nur Mohammad v. Emperor, AIR 1945 PC 151: 47 Cri LJ 1: (1945) 2 MLJ 362, approved

[5666] — Ss. 386, 384 and 385 — Disposal of appeal in a cryptic manner — Unsustainability — *Alternation of sentence from seven years to one year by High Court without considering the evidence and assigning any satisfactory reasons — Held, was not justified — Matter remitted to High Court for fresh disposal in accordance with law — Penal Code, 1860, S. 304 Pt. I* (Paras 5 to 8). *State of M.P.* v. *Ballare*, (2005) 8 SCC 249.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 20-10-2005]

Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, relied on

[**Ed.**: *See also* (2005) 8 SCC 1]

[5667] — Ss. 386 and 374 — Appeal — Proper mode of disposal of — Speaking order — Need for — Application of mind — Consideration of evidence — *Reduction of sentence in rape case on appeal to period already undergone (nine-and-a-half months), while upholding conviction under S. 376(2)(g) by a short and cryptic order — Unsustainability of (per curiam)* (Paras 7 and 9). *State of M.P.* v. *Bala*, (2005) 8 SCC 1: 2005 SCC (Cri) 1947: AIR 2005 SC 3567: 2005 Cri LJ 4371.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.*[1] and **G.P. Mathur**[1] and **P.K. Balasubramanyan**[2], JJ. [Date of decision: 3-10-2005]

Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, relied on

[5668] — Ss. 386 and 374 — Appeal — Proper mode of disposal of — Speaking order — Need for — Application of mind — Consideration of evidence — *Reduction of sentence in rape cases on*

(9) Proper mode of disposal of appeal *(contd.)*

appeal by High Court to period already undergone (in each case a period less than five years and in some cases a few months only), while upholding the conviction under S. 376(1) or (2) by a short and cryptic order — Unsustainability — Matter remanded for decision afresh. State of M.P. v. *Makhmal Khan*, (2005) 8 SCC 8: 2005 SCC (Cri) 1954: 2005 Cri LJ 4363.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 5-10-2005]

Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, relied on

[5669] — Ss. 386 and 374 — Appeal — Proper mode of disposal of — Speaking order — Need for — Application of mind — Consideration of evidence — *Reduction of sentence and fine in NDPS offence on appeal to period already undergone (about four years), while upholding conviction under S. 8 r/w S. 20(b), NDPS, 1985 by a short and cryptic order — Unsustainability. State of M.P.* v. *Bhura Kunjda*, (2009) 17 SCC 346: AIR 2006 SC 569.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 24-10-2005]

Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, referred to

Biswanath Ghosh v. State of W.B., (1987) 2 SCC 55: 1987 SCC (Cri) 259; State of U.P. v. Sahai, (1982) 1 SCC 352: 1982 SCC (Cri) 223, cited

[5670] — Ss. 386 and 374 — Appeal — Proper mode of disposal of — Speaking order — Need for — Application of mind — Consideration of evidence — *Reduction of sentence in attempted murder case on appeal to period already undergone (about five months), while upholding conviction under S. 307 IPC by a short and cryptic order — Unsustainability. State of M.P.* v. *Badri*, (2009) 17 SCC 367: AIR 2006 SC 571: (2005) 36 AIC 357 .

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 24-10-2005]

Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, referred to

Biswanath Ghosh v. State of W.B., (1987) 2 SCC 55: 1987 SCC (Cri) 259; State of U.P. v. Sahai, (1982) 1 SCC 352: 1982 SCC (Cri) 223 cited

[5671] — Ss. 386 and 374 — Appeal — Proper mode of disposal of — Speaking order — Need for — Application of mind — Consideration of evidence — *Reduction of sentence in attempted murder case on appeal to period already undergone (about two-and-half months), while upholding conviction under S. 307 IPC by a short and cryptic order — Unsustainability. State of M.P.* v. *Ram Kumar*, (2009) 17 SCC 372: AIR 2006 SC 643: (2005) 35 AIC 61 .

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 24-10-2005]

Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, referred to

Biswanath Ghosh v. State of W.B., (1987) 2 SCC 55: 1987 SCC (Cri) 259; State of U.P. v. Sahai, (1982) 1 SCC 352: 1982 SCC (Cri) 223, cited

[5672] — Ss. 386 and 374 — Appeal — Proper mode of disposal of — Speaking order — Need for — Application of mind — Consideration of evidence — *Reduction of sentence in attempted murder case on appeal to period already undergone (ten months and five days), while upholding conviction under S. 307 r/w S. 34 by a short and cryptic order — Unsustainability. State of M.P.* v. *Sangram*, (2009) 17 SCC 370: AIR 2006 SC 48: 2005 Cri LJ 4642: (2005) 36 AIC 443 .

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 20-10-2005]

Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, referred to

Biswanath Ghosh v. State of W.B., (1987) 2 SCC 55: 1987 SCC (Cri) 259; State of U.P. v. Sahai, (1982) 1 SCC 352: 1982 SCC (Cri) 223, cited

[5673] — Ss. 386 and 374 — Appeal — Proper mode of disposal of — Speaking order — Need for — Application of mind — Consideration of evidence — *Reduction of sentence in culpable homicide case on appeal to period already undergone (about one year in case of all accused), while upholding conviction under S. 304 Pt. I r/w S. 34 IPC by a short and cryptic order — Unsustain-ability. State of M.P.* v. *Ramdeen*, (2009) 17 SCC 354: AIR 2006 SC 752: (2005) 36 AIC 951 .

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 24-10-2005]

Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, referred to

Biswanath Ghosh v. State of W.B., (1987) 2 SCC 55: 1987 SCC (Cri) 259; State of U.P. v. Sahai, (1982) 1 SCC 352: 1982 SCC (Cri) 223, cited

[5674] — Ss. 386 and 374 — Appeal — Proper mode of disposal of — Speaking order — Need for — Application of mind — Consideration of evidence — *Reduction of sentence in S. 394 IPC case on appeal to period already undergone (358* *days), while upholding conviction thereunder by a short and cryptic order — Unsustainability. State of M.P.* v. *Anil*, (2009) 17 SCC 350: AIR 2006 SC 622: (2005) 36 AIC 359 .

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 20-10-2005]

Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, referred to

Biswanath Ghosh v. State of W.B., (1987) 2 SCC 55: 1987 SCC (Cri) 259; State of U.P. v. Sahai, (1982) 1 SCC 352: 1982 SCC (Cri) 223, cited

[5675] — Ss. 386 and 374 — Appeal allowed by non-speaking order — Sustainability — Non-consideration of relevant factors by High Court — Propriety — *High Court while quashing trial court's order that Respondent 2-accused was not juvenile and, therefore, there was no need to refer his case to the Juvenile Justice Board for ascertaining of his age and, then for trial, observed in a cryptic manner that application of accused deserved to be allowed and directed the court below to consider accused as a juvenile and to proceed accordingly — Held, High Court failed to notice several relevant factors — Firstly, at the time of framing charges, age of accused was recorded as major — Again, difference in names in the documents was not explained by accused — Further, no discussion was made as to how conclusions of trial court suffered from any infirmity — Finally, no notice was issued to the appellant before the matter was disposed of — Therefore, impugned order of High Court set aside and matter remitted to it for consideration afresh — Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 4, 6 and 7-A* (Paras 2 and 5 to 8). *Arun Kumar* v. *State of Bihar*, (2008) 3 SCC 203: (2008) 1 SCC (Cri) 716: AIR 2008 SC 1516: (2008) 64 AIC 269 (SC): 2008 Cri LJ 1924.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 19-2-2008]

[5676] — Ss. 386 and 374 — Improper disposal of appeal — *Held, High Court cannot dispose of the appeal by a cryptic order without examining the evidence on record — Disposal of appeal in such a way would be against the law — Penal Code, 1860 — S. 302. Bhaylubhai Chimanbhai Kukana* v. *State of Gujarat*, (2003) 10 SCC 255.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *B.N. Agrawal*, JJ. [Date of decision: 4-12-2000]

[5677] — Ss. 386 and 374(2) — Appellate court must indicate reasons for taking a view contrary to that of the trial court — *Appeal against conviction filed before High Court — In view of the unsatisfactory nature of disposal of the appeal and the inherent improbabilities and incongruities in the conclusions, held, the unreasoned judgment of the High Court acquitting the accused persons was liable to be reversed*

When the appellate court concurs with the views of the trial court the necessity for elaborately dealing with various aspects may not always be necessary. But when a view contrary to that of the lower court is expressed, it is imperative that reasons therefor should be clearly indicated. There is no scope for any departure from this basic requirement. Therefore, the plea of the accused-respondents that even though the judgment of the High Court is not very elaborately reasoned, yet it can be supplemented by arguments, is a fallacious one. (Para 17). *Ramakant Rai* v. *Madan Rai*, (2003) 12 SCC 395: AIR 2004 SC 77: 2004 Cri LJ 36.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 26-9-2003]

[5678] — Ss. 386 and 374(2) — Reversal of conviction by High Court by a non-reasoned judgment — *Considering the long passage of time, matter not remanded to High Court and Supreme Court deciding the case by analysing the evidence on record* (Para 15). *Raj Kishore Jha* v. *State of Bihar*, (2003) 11 SCC 519: 2004 SCC (Cri) 212: AIR 2003 SC 4664.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 7-10-2003]

(10) Procedure re filing of appeal/ Delay/laches

See also under Ss. 374 and 378

[5679] — Ss. 386, 378 and 374(2) — Appellate jurisdiction of High Court — Filing of appeal by State Government beyond the period of limitation — Effect — *When appeal is barred by limitation, it results in extinguishment of right to appeal and conferment of a benefit on the accused which High Court has no jurisdiction to take away*

The State Government has been directed to file an appeal much beyond the period of limitation: what about the rights of an accused for presentation of appeal beyond the period of limitation. While it is true an appeal barred by limitation does not confer a right but it amounts to extinguishment of a right. In criminal jurisprudence, however, extinguishment of right confers a benefit to an accused and it is in this perspective, it can be said that the High Court would not be within its jurisdiction to take away such a benefit as conferred by reason of extinguishment of right. (Para 13). *Dwarka Dass* v. *State of Haryana*, (2003) 1 SCC 204: 2003 SCC (Cri) 264: AIR 2003 SC 185.

Bench Strength **2**. Coram: **U.C. Banerjee** and *Y.K. Sabharwal*, JJ. [Date of decision: 13-11-2002]

(11) Practice and procedure re disposal of appeal

[5680] — Ss. 386, 385 and 384 — Dismissal of appeal for default or non-prosecution without going into merits of the case is illegal — Appellate court must dispose of the appeal on merits after perusal and scrutiny of the record — *Appellate court must give a hearing to the parties, if present, before disposal of the appeal on merits — Notice of appeal under S. 385 and hearing under S. 386 must be given either to the appellant or his pleader and not to both — Appellate court not obliged to adjourn the matter if the appellant and his counsel are absent — It can dispose of the appeal after perusal of the record and judgment of the trial court — But if the appellant is in jail and his counsel is not present the court should adjourn the case to facilitate the appearance of the appellant — In an appropriate case the court can appoint a lawyer at State expense to assist it — This would apply equally if the accused is the respondent*

The plain language of Section 385 makes it clear that if the appellate court does not consider the appeal fit for summary dismissal, it 'must' call for the record and Section 386 mandates that after the record is received, the appellate court may dispose of the appeal after hearing the accused or his counsel. Therefore, the plain language of Sections 385-386 does not contemplate dismissal of the appeal for non-prosecution *simpliciter*. On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record. The law clearly expects the appellate court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and findings recorded by the trial court are consistent with the material on record. The law, therefore, does not envisage the dismissal of the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record.

The law expects the appellate court to give a hearing to the appellant or his counsel, if he is present, and to the public prosecutor, if he is present, before disposal of the appeal on merits. Section 385 posits that if the appeal is not dismissed summarily, the appellate court shall cause notice of the time and place at which the appeal will be heard to be given to the appellant or his pleader. Section 386 then provides that the appellate court shall, after perusing the record, hear the appellant or his pleader, if he appears. It will be noticed that Section 385 provides for a notice of the time and place of hearing of the appeal to be given to either the appellant or his pleader and not to both presumably because notice to the pleader was also considered sufficient since he was representing the appellant. So also Section 386 provides for a hearing to be given to the appellant or his lawyer, if he is present, and both need not be heard. It is the duty of the appellant and his lawyer to remain present on the appointed day, time and place when the appeal is posted for hearing. This is the requirement of the Code on a plain reading of Sections 385-386 of the Code. The law does not enjoin that the court shall adjourn the case if both the appellant and his lawyer are absent. If the court does so as a matter of prudence or indulgence, it is a different matter, but it is not bound to adjourn the matter. It can dispose of the appeal after perusing the record and the judgment of the trial court. If the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the accused/appellant if his lawyer is not present. If the lawyer is absent, and the court deems it appropriate to appoint a lawyer at State expense to assist it, there is nothing in the law to preclude it from doing so.

Even if a case is decided on merits in the absence of the appellant, the higher court can remedy the situation if there has been a failure of justice. This would apply equally if the accused is the respondent for the obvious reason that if the appeal cannot be disposed of without hearing the respondent or his lawyer, the progress of the appeal would be halted. *Bani Singh* v. *State of U.P.*, (1996) 4 SCC 720: 1996 SCC (Cri) 848: AIR 1996 SC 2439.

Bench Strength 3. Coram: **A.M. Ahmadi, C.J.** and *N.P. Singh* and *Sujata V. Manohar*, JJ. [Date of decision: 9-7-1996]

*Ram Naresh Yadav v. State of Bihar, AIR 1987 SC 1500: 1987 Cri LJ 1856, **overruled***

Shyam Deo Pandey v. State of Bihar, (1971) 1 SCC 855: 1971 SCC (Cri) 353: AIR 1971 SC 1606, affirmed

Applied *in Madan Lal Kapoor v. Rajiv Thapar, (2007) 7 SCC 623*

[5681] — S. 386 — Delayed delivery of judgment long after hearing was closed by High Court — Challenge to — *On facts, rejected*

In the instant case, several pleas raised before the Supreme Court were not pressed into service before the High Court. It was contended before the Supreme Court that the judgment of the High Court was delivered long after the hearing was closed and, therefore, the arguments made before the High Court had not been properly considered. Reference was made to the decision in *Anil Rai* v. *State of Bihar*, (2001) 7 SCC 318 to contend that the judgment should be set aside and the matter be remitted to the High Court for fresh consideration.

Rejecting the said contention,

Held :

The plea of delayed delivery of judgment and the same rendering it vulnerable is without any substance. This Court is unable to appreciate that any detriment as such was caused to the appellant on that account alone, on the peculiar facts of the case, as well. (Para 18). *Ram Bali* v. *State of U.P.*, (2004) 10 SCC 598: 2004 SCC (Cri) 2045: AIR 2004 SC 2329: 2004 Cri LJ 2490.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-4-2004]

Anil Rai v. State of Bihar, (2001) 7 SCC 318: 2001 SCC (Cri) 1009, explained and distinguished

[5682] — S. 386 — Appeal against conviction — Non-appearance of counsel for the appellant due to strike by lawyers — *Dismissal of appeal by High Court on such extraneous ground, held, improper — Appeal directed to be restored and heard on merits — Appeal — Dismissal on extraneous ground — Propriety — CPC, 1908, S. 100*

In the present case the High Court has shown a lack of judicial restraint and decreed in adverting to and influenced by matters which were extraneous. The fact is that the advocates were on strike justifiably or otherwise. Why should the Court embark on the reason for the strike which was not the issue before it? A judge must be of sterner stuff. His mental equipoise must always remain firm and undeflected. It is essential that a judge should not allow his personal prejudice to go into the decision-making.

A closed mind is antithetical to fair hearing. Prejudice tends to corrupt the ability to exercise independent judgment. It has a tendency to intrude upon a free mind and may influence the outcome.

Should the judge take cognizance of the newspaper report and the reasons which prompted the advocates to seek transfer of the then Chief Justice? The learned Judge should not have let out his bile against the advocates who are free to hold any opinion as to the lapses committed by the then Chief Justice. Holding of such opinions can hardly be characterised as an unruly attitude on the part of the advocates. Such holding of opinions, nor again, would either obstruct or disturb the judiciary. If the learned Judge had the slightest compunction he should have recused himself. *Mangilal* v. *State of M.P.*, (1994) 4 SCC 564: 1994 SCC (Cri) 1308.

Bench Strength 2. Coram: *M.N. Venkatachaliah, C.J.* and **S. Mohan**, J. [Date of decision: 27-4-1994]

[5683] — S. 386 — Criminal appeal — Dismissal of — Absence of counsel — *Even if advocate refuses to argue for the accused-appellant, court must, instead of summarily dismissing the appeal, appoint an advocate amicus curiae and then proceed to dispose of the appeal on merits. Khaili* v. *State of U.P.*, 1981 Supp SCC 75: 1982 SCC (Cri) 143.

Bench Strength 2. Coram: **P.N. Bhagwati** and *E.S. Venkataramiah*, JJ. [Date of decision: 18-2-1980]

[5684] — S. 386 — Criminal appeal cannot be dismissed for default in appearance — Court must decide the matter on merit even in the absence of the appellant(s) or his/their counsel. *Parasuram Patel* v. *State of Orissa*, (1994) 4 SCC 664: 1994 SCC (Cri) 1320.

Bench Strength 2. Coram: *P.B. Sawant* and *N.P. Singh*, JJ. [Date of decision: 14-1-1994]

Applied in Madan Lal Kapoor v. Rajiv Thapar, (2007) 7 SCC 623

[5685] — Ss. 386 and 388 — Dismissal of appeal — Non-appearance of accused's counsel — Court should not dismiss appeal merely on such non-appearance and instead, should appoint an advocate amicus curiae and then proceed to dispose of it on merits — *Appeal dismissed in limine for non-appearance of anyone on behalf of the accused-appellant without proposing to give reasons later — Subsequently, copy of a reasoned judgment of the same date without having any reference of the dismissal in limine, given to the appellant though no such copy sent to trial court — Held, appeal not disposed of properly and therefore, the order of dismissal of the appeal and the reasoned judgment must be set aside — CPC, 1908, Or. 9, R. 10. Kabira* v. *State of U.P.*, 1981 Supp SCC 76: 1982 SCC (Cri) 144.

Bench Strength 2. Coram: *P.N. Bhagwati* and *D.A. Desai*, JJ. [Date of decision: 19-2-1980]

[**Ed.**: See also *Khaili* v. *State of U.P.*, 1981 SCC Supp 75 on this point.]

[5686] — S. 386 — Powers of appellate court — Where vires of any subordinate legislation challenged, notice to Government or State essential — *Hence, declaration of para 4 of Vigilance Manual as ultra vires the Prevention of Corruption Act effected without notice to the Advocate General of the State, held, not sustainable*

Be it noted that the judgment under appeal was delivered by the Appellate Bench of the High Court on the basis of the letter written by the then in-charge Anti-Corruption Bureau and the resultant effect of which is the declaration of para 4 of the Vigilance Manual as ultra vires by reason of the same being said to be in direct conflict with the statutory provisions

(11) Practice and procedure re disposal of appeal *(contd.)*

of Sections 7, 13, 17 and 19 of the Prevention of Corruption Act. No notice, however was sent to the Advocate General of the State before such a declaration was effected and the same thus cannot but be termed to be not sustainable. (Para 9). *State of Gujarat* v. *K.V. Joseph*, (2001) 2 SCC 156: 2001 SCC (Cri) 300: (2001) 2 Guj LR 1675.

Bench Strength **2**. Coram: *U.C. Banerjee* and *K.G. Balakrishnan*, JJ. [Date of decision: 9-11-2000]

[5687] — Ss. 386 and 374 — Disposal of appeal by High Court without hearing appellant's counsel — *Held, one appeal against conviction and sentence of imprisonment is the sine qua non for deprivation of the liberty of a citizen — Since counsel of appellant not appearing before court due to their failure to notice the date of hearing, one more chance to argue the appeal afforded to appellant — Matter remitted for disposal afresh — Penal Code, 1860, Ss. 399 and 402. Ajay* v. *State of Haryana*, (2001) 10 SCC 182.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 15-1-2001]

[5688] — Ss. 386, 374, 303, 304 and 162 — Disposal of appeal by High Court on merits in absence of accused appellant's counsel and upholding conviction under S. 395 and sentence of 10 years of rigorous imprisonment — Propriety — *In view of the large number of convicts (12 in this case) and the severity of the sentence, held, it was advisable for the High Court to appoint an amicus curiae in such a case — Omission to do so, held, ended in miscarriage of justice as the High Court had taken into account a set of legally forbidden material such as the statements made by witnesses to the investigating officer particularly when the investigating officer had not been examined — Such flaws might have been averted if a counsel was appointed to argue for the appellants — Hence, matter remitted to High Court for disposal of the appeal afresh in accordance with law — Moreover, in the peculiar facts of the case, direction given to the High Court that if the counsel for the accused appellants did not appear, it should appoint an advocate at State's cost to argue for the accused — Penal Code, 1860, S. 395*

All the twelve appellants were convicted by the Sessions Court under Section 395 of the Penal Code and sentenced to rigorous imprisonment for 10 years each. They filed an appeal before the High Court. On the date of hearing their counsel did not turn up and, therefore, the High Court heard the counsel for the State alone and dismissed the appeal on merits.

Allowing the instant appeal, the Supreme Court,

Held :

When the counsel engaged by the appellants in a criminal appeal does not turn up there is no obligation on the court of appeal to wait for him or even to adjourn the case awaiting his presence. However, if the counsel is absent there is nothing in law which precludes the court of appeal from appointing another counsel at the State's expense to assist the court. It is a matter of prudence that the court may, in an appropriate case, appoint a counsel at the State's expense to argue for the cause of the accused. Of course it is for the court to determine, on a consideration of the conspectus of the case, whether it does or does not require such legal assistance. There can be appeals which could be disposed of unassisted by counsel to put forth the favourable features for the accused. But if the sentence imposed by the judgment impugned in the appeal is of a substantial range it is advisable to seek the assistance of a legal talent. (Paras 4, 5 and 9)

On the fact situation of the instant case it has to be held that there was miscarriage of justice as the High Court proceeded to decide the appeal unaided by the arguments of an advocate or an amicus curiae. The stake involved in the appeal for the large number of convicted persons is obviously very high, particularly in view of the sentence of rigorous imprisonment for 10 years imposed on each of them. Hence any supercilious dealing of their case will be at the risk of a serious miscarriage of justice. (Paras 6 and 8)

The High Court has taken into account a set of legally forbidden materials in reaching the conclusion. It is trite that whatever a witness had stated to the investigating officer cannot be used as evidence. Section 162 CrPC, which incorporated the aforesaid prohibition, permits such statements to be used only for the limited purpose of contradicting the witness in certain circumstances. Moreover, in the instant case the investigating officer has not been examined. If a counsel was appointed to argue for the accused (when the counsel engaged by the accused did not turn up) the High Court might have averted such a legal infirmity. (Paras 11 and 12). *Rishi Nandan Pandit* v. *State of Bihar*, (1999) 8 SCC 644: AIR 1999 SC 3850.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.S.M. Quadri*, JJ. [Date of decision: 15-10-1999]

Bani Singh v. State of U.P., (1996) 4 SCC 720: 1996 SCC (Cri) 848, relied on

Ram Naresh Yadav v. State of Bihar, AIR 1987 SC 1500: 1987 Cri LJ 1856, held overruled

[**Ed.**: The Supreme Court remitted the case to the High Court for disposal of the appeal afresh. On the peculiar facts of the case the Supreme Court directed the High Court that in case no counsel for the accused turned up, it should appoint an advocate at State cost to argue for the accused appellants. (Para 13)]

[5689] — Ss. 386 and 353 — Cross-firing between two groups — Two appeals, which arose out of the same incident and in fact resulted in cross-sessions cases, not heard together by High Court — *High Court not at all considering the evidence led in the case, not applying its mind to the facts of the case to find out who was the aggressor, whether there was right of private defence and if so, was it exceeded in the circumstances of the case — High Court merely adopting the appreciation of the evidence and the reasoning recorded by the trial court — Thus it lost sight of the relevant considerations which weigh with an appellate court while hearing a criminal appeal against conviction and sentence — Held, High Court's judgment was not a legal judgment in the eye of the law — It led to a miscarriage of justice. Kulwant Singh* v. *Amarjit Singh*, (2000) 3 SCC 290: 2000 SCC (Cri) 627: AIR 2000 SC 1212: 2000 Cri LJ 1722.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **D.P. Wadhwa**, JJ. [Date of decision: 7-3-2000]

[5690] — Ss. 386 and 374 — Appeal before High Court against conviction under S. 302 IPC — Absence of counsel of accused at the time of hearing — Disposal of appeal without appointing another advocate as amicus curiae — Propriety of — *Held, was not proper especially for the reason that there were arguable points in the appeal — Matter remitted to High Court for fresh disposal after nominating an amicus curiae to assist the Court* (Para 2). *Bapu Limbaji Kamble* v. *State of Maharashtra*, (2005) 11 SCC 413.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *P.P. Naolekar*, JJ. [Date of decision: 5-5-2005]

[5691] — Ss. 386 and 378 — Appeal against acquittal — Non-appearance of accused's counsel — Reversal of acquittal without hearing any counsel on behalf of accused — Legality of — *Held, was not justified — In the facts and circumstances of the case, the High Court should have provided a counsel to the accused persons by way of legal aid — But the same having not been done, the impugned order of the High Court was liable to be set aside, especially, in view of the fact that the accused had been found guilty in relation to an offence for which minimum sentence provided under law was ten years — Matter remitted to High Court to dispose of the appeal in accordance with law after giving opportunity of hearing to the parties* (Paras 3 and 4). *Ashok Manikchand Chankeshwara* v. *H.R. Barge*, (2007) 2 SCC 776: (2007) 1 SCC (Cri) 652: (2007) 3 Mah LJ 781: (2007) 2 MPLJ 410.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 23-3-2006]

(12) Acquittal/Reversal of conviction justified

See also under Ss. 374 and 378

[5692] — S. 386 — Acquittal justified — Acquittal based upon reappreciation of evidence by High Court was justified due to improvements made in testimony by star prosecution witnesses at several stages — Improvements made in testimony by two star prosecution witnesses from time to time — Reliability of — *Appeal against acquittal of accused — Copy of evidence of said witnesses having not been produced for appreciation before SC, held, High Court was justified in acquitting the accused persons by reappreciating the evidence — Penal Code, 1860, Ss. 306 and 498-A. State of Haryana* v. *Jai Parkash*, (2002) 9 SCC 663: 2003 SCC (Cri) 1523: AIR 2000 SC 3569 (2).

Bench Strength **2**. Coram: *G.B. Pattanaik* and *R.P. Sethi*, JJ. [Date of decision: 14-3-2000]

[5693] — Ss. 386 and 313 — Insufficient and irrelevant evidence — Acquittal by High Court by reversing conviction by trial court, therefore, justified — *Irrelevant circumstances highlighted and evidence on record insufficient — Respondent-accused and **B**, the deceased, were probably engaged to each other and staying in a hotel room where **B** was murdered — Neither statements under S. 313 CrPC nor evidence of prosecution witnesses brought any incriminating material against the accused — On facts, held, guilt not established — Therefore, acquittal by High Court, by reversing the order of trial court not interfered with* (Paras 5 to 8). *State of Goa* v. *Subhash Ghogle*, (2008) 15 SCC 144: (2009) 3 SCC (Cri) 761.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 21-10-2008]

[5694] — Ss. 386 and 374(2) — Appellate court's approach — High Court as a court of first appeal — Duty of — High Court not analysing the evidence — *Arriving at conclusions on surmises and conjectures — Present one not a case where two reasonable views possible — No cogent or sufficient reasons assigned for disagreeing with findings of trial court — Findings of High Court contrary to materials on record — Great miscarriage of justice — Reviewing the evidence, held, acquittal liable to be set aside — Conviction by trial court restored — Penal Code, 1860 — Ss. 302/34 — Constitution of India — Art. 136*

The High Court being a court of first appeal was required to consider and reappreciate the evidence but it failed to do so and proceeded to dispose of the

(12) Acquittal/Reversal of conviction justified *(contd.)*

appeal on general observations which is impermissible. The High Court acquitted the accused persons without analysing the evidence on record and in that view of the matter, the impugned judgment cannot be sustained. (Paras 32 and 27)

The High Court has not assigned any cogent or sufficient reasons for disagreeing with the findings of the learned Sessions Judge. The judgment of the High Court is based on surmises and conjectures. (Para 26)

Further, it is not a case where two reasonable views are possible. It is also not a case where findings recorded by the High Court are fully supported by the evidences on record. The High Court proceeded absolutely on a wrong premise that there had been only one injury during the firing which is contrary to records. (Para 31)

Thus, by reason of the judgment of the High Court, a great miscarriage of justice has taken place. It is well settled that when reasoning of the High Court is perverse, the Supreme Court may set aside the judgment of acquittal and restore the judgment of conviction and sentence upon the accused. (Paras 29 and 33)

It is also well settled that there is no embargo on the appellate court to review evidence upon which an order of acquittal is based. (Para 33)

Hence, the judgment of acquittal passed by the High Court is set aside and that of the learned Sessions Judge is restored. (Para 35). *State of U.P.* v. *Nawab Singh*, (2005) 9 SCC 84: 2005 SCC (Cri) 33: AIR 2004 SC 1511: 2004 Cri LJ 1367.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **S.B. Sinha**, JJ. [Date of decision: 3-2-2004]

Narendra Nath Khaware v. Parasnath Khaware, (2003) 5 SCC 488: 2003 SCC (Cri) 1144; Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641; State of U.P. v. Premi, (2003) 9 SCC 12: 2003 SCC (Cri) 1731; Ramanand Yadav v. Prabhu Nath Jha, (2003) 12 SCC 606; Chanakya Dhibar v. State of W.B., (2004) 12 SCC 398; Surinder Singh v. State of U.P., (2003) 10 SCC 26; Gorle S. Naidu v. State of A.P., (2003) 12 SCC 449; Suchand Pal v. Phani Pal, (2003) 11 SCC 527: 2004 SCC (Cri) 220, relied on

[5695] — S. 386 — Benefit to co-accused — Same case different accused — *Where the co-accused in earlier appeal arising out of the same case had been acquitted, held, the appellant whose position was no different is also entitled to be acquitted. Bansi Lal* v. *State of M.P.*, (1982) 3 SCC 370 (2): 1983 SCC (Cri) 51(2).

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *O. Chinnappa Reddy*, JJ. [Date of decision: 10-2-1981]

[5696] — Ss. 386, 374(2) and 366 — Appeal against conviction — Death sentence — Acquittal by High Court, held on facts, proper — *Murder — Extra-judicial confession — Recovery of bloodstained clothes of accused — Alleged extra-judicial confession made before PWs 3 and 4 — PW 4 was an inimical witness — PW 3 was a close relative of PW 4 and a person of doubtful antecedents — Said confession, held on facts, unreliable — Presence of PW 4 at the time of recovery of clothes, on facts, doubtful — Blood group of blood found on clothes of accused could not be determined — Hence, possibility of blood being that of accused himself could not be ruled out — Acquittal upheld* (Paras 20 and 21). *State of Rajasthan* v. *Raja Ram*, (2003) 8 SCC 180: 2003 SCC (Cri) 1965: AIR 2003 SC 3601.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 13-8-2003]

Hukam Singh v. State of Rajasthan, (1977) 2 SCC 99: 1977 SCC (Cri) 250; Eradu v. State of Hyderabad, AIR 1956 SC 316: 1956 Cri LJ 559; Earabhadrappa v. State of Karnataka, (1983) 2 SCC 330: 1983 SCC (Cri) 447; State of U.P. v. Sukhbasi, 1985 Supp SCC 79: 1985 SCC (Cri) 387; Balwinder Singh v. State of Punjab, (1987) 1 SCC 1: 1987 SCC (Cri) 27; Ashok Kumar Chatterjee v. State of M.P., 1989 Supp (1) SCC 560: 1989 SCC (Cri) 566; Bhagat Ram v. State of Punjab, AIR 1954 SC 621: 1954 Cri LJ 1645; C. Chenga Reddy v. State of A.P., (1996) 10 SCC 193: 1996 SCC (Cri) 1205; Padala Veera Reddy v. State of A.P., 1989 Supp (2) SCC 706: 1991 SCC (Cri) 407; State of U.P. v. Ashok Kumar Srivastava, (1992) 2 SCC 86: 1992 SCC (Cri) 241; Hanumant Govind Nargundkar v. State of M.P., AIR 1952 SC 343: 1953 Cri LJ 129; Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116: 1984 SCC (Cri) 487; R. v. Warickshall, (1783) 1 Leach 263: 168 ER 234, relied on

Wills' Circumstantial Evidence (Chapter VI); Woodroffe's Evidence, 9th Edn., p. 284, relied on

[5697] — Ss. 386 and 374 — Conviction under Ss. 302/149, 307/149 set aside by Sessions Judge and High Court on the finding that appellants were not armed with any weapons — *No finding that appellants committed any overt or covert act in commission of the offences — Appellants merely present in the crowd of 50 to 60 persons when fight took place — On that basis appellants convicted with the aid of Ss. 149 and 147 IPC — On appreciation of evidence held, no case made out against appellants beyond reasonable doubt — Appellants' presence and participation in the commission of the offences highly doubtful — Hence appeal against conviction allowed — Penal Code, 1860 — Ss. 302/149, 307/149 and 147. Yadav Lohar* v. *State of Bihar*, 1991 Supp (1) SCC 214: 1991 SCC (Cri) 578: AIR 1990 SC 2255.

Bench Strength **3**. Coram: *Sabyasachi Mukharji, C.J.* and *K.N. Singh* and *N.D. Ojha*, JJ. [Date of decision: 30-8-1990]

[5698] — Ss. 386 and 374 — Appeal against conviction — Rape case — Conviction based on suspicion rather than on proved facts — Held, rightly set aside by High Court — *Rape of a child — Circumstantial evidence — Conviction on the basis of — Propriety — Victim, a 31/2 years' child at the time of offence (i.e. on 21-1-1989), left in the custody of PW 1 by her parents (i.e. PWs 3 and 9) — Rape alleged to have been committed by respondent when PW 1 left the child in her own house and went to the house of PW 9 to watch a TV programme — Prosecution stating that after the incident, victim narrated the incident to PWs 1, 4 and 9 — But in court, victim unable to recollect what actually transpired at the time of the incident — Evidence indicating that PW 1 trying to protect her brother who could also have been a suspect — Plea of alibi supported by evidence of defence witnesses, not taken into consideration by trial court — Enmity between victim's father and respondent, also not taken into account — On facts, held, High Court rightly concluded that the prosecution failed to establish beyond all reasonable doubt that it was respondent who committed the rape — Penal Code, 1860, Ss. 376(2)(b) and 363* (Paras 6, 3 and 2). *State (Andaman & Nicobar Admn.)* v. *Shyam Raj*, (2003) 11 SCC 207: 2004 SCC (Cri) 79.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 4-11-2003]

[5699] — Ss. 386 and 374 — Reversal of conviction by High Court, held on facts, was proper — *Conspiracy to murder — Deceased* ***D*** *was a popular and powerful trade union leader in industrial region concerned — Evidence given by prosecution that* ***D*** *created a lot of problems in running business and caused loss to industries owned by the accused persons — Said motive to do away with* ***D*** *by itself was not sufficient to prove the guilt of the accused — Overall prosecution evidence indicated only that some agitation had been going on against the management of the said industries and* ***D*** *was spearheading many of these agitations — Entries in diary maintained by* ***D*** *and statements of* ***D*** *recorded on a microcassette mentioning the names of the accused, not admissible in evidence as they did not refer to any event which ultimately was the cause of death of* ***D*** *— Representation made by* ***D*** *to President of India stating the grievances of workers and appealing to him to bring a check on acts of violence by industrialists, was in general terms — Evidence adduced to prove that some of the accused visited Nepal to procure some illegal weapons to carry out the common object of the conspiracy, not supporting the prosecution case — Other documents recovered from accused, which included a letter written by A-2 to A-6 indicating that A-2 had received Rs 20,000 for the work he had done, not proving the involvement of the accused persons in conspiracy — Abscondence of the accused from the place of their business at the relevant time, was not a factor to prove their guilt — Acquittal upheld* (Paras 9 to 18). *State of M.P.* v. *Paltan Mallah*, (2005) 3 SCC 169: 2005 SCC (Cri) 674: AIR 2005 SC 733: 2005 Cri LJ 918.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 20-1-2005]

[5700] — Ss. 386 and 374(2) Acquittal by High Court, held on facts, justified — *Murder of E and H — Accused-respondents found guilty of causing the murder of E — Five eyewitnesses (PWs 2 to 6) — PW 6 turned hostile — PWs 3 and 4 inimical witnesses — PW 2 stated that he did not witness the assault — PW 1 who reached the spot after the incident did not see any of the eyewitnesses — FIR silent as to who gave the information to complainant PW 1 that the murder was committed by respondents — Delay in lodging FIR — On said facts, High Court acquitting the respondents — View taken by the High Court, held, reasonable — No reason to interfere with order of acquittal exercising powers under Art. 136 of the Constitution — Hence, acquittal upheld — Penal Code, 1860 — S. 302 r/w S. 34*

It is well settled that in an appeal under Article 136 of the Constitution, the Supreme Court will not interfere with the judgment of the High Court unless the same is clearly unreasonable or perverse or manifestly illegal or grossly unjust. The mere fact that the Supreme Court would have taken a different view of evidence is not a ground for reversing an order of acquittal. If the view taken by the High Court is reasonable or possible, the Supreme Court would be loath to interfere with an order of acquittal while exercising powers under Article 136 of the Constitution. (Para 7)

There is no legal infirmity in the judgment of the High Court. It is not a case where some material evidence may have been either ignored or misread. It is also not a case where legally admissibleevidence may have been discarded as inadmissible. The judgment of the High Court is based upon appreciation of evidence with which there is no infirmity. Hence, it is not a proper case where the Supreme Court in exercise of the jurisdiction under Article 136 of the Constitution would be justified in interfering with the order of acquittal passed by the High Court. (Para 7). *State of Karnataka* v. *Amajappa*, (2003) 9 SCC 468: 2003 SCC (Cri) 1911.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 31-7-2003]

(12) Acquittal/Reversal of conviction justified *(contd.)*

[5701] — Ss. 386 and 374(2) — Acquittal recorded by High Court, held on facts, was proper — Appreciation of evidence — *Several infirmities in prosecution case — Interpolations made in hospital records — Delay in recording FIR sought to be explained on lame excuses — Presence of eyewitnesses at the alleged date and time of incident highly doubtful — Appellant A-2 not having any motive to commit the murder of the deceased — He alleged to have caused one simple injury — Defence plea taken by A-2 appearing to be plausible — Further, defence set up by Appellant A-1, held, could not be discarded as wholly improbable — Version of alleged eyewitnesses, evidence of extra-judicial confession and recoveries of weapons, held, untrustworthy — Thus, prosecution failed to prove its case — Weighing the total evidence on record, held, acquittal of A-1 and A-2 by High Court was justified — Penal Code, 1860 — Ss. 302/34 and 324*

At some places, in the impugned judgment of acquittal the reasoning of the High Court may not be sound but on weighing the total evidence on record, the High Court committed no error in acquitting both the accused. (Para 23)

There are several infirmities in the prosecution case. The version of the alleged eyewitnesses is that at about 8 o'clock in the night, they were following the deceased on the way to the village. Their subsequent conduct in not intervening in the attack or rushing to the village for help is unnatural. The entry in the register of the Outdoor Patients Department of the hospital has been found to have been tampered which supports the defence case that only in order to prove the presence of the two eyewitnesses, interpolations were made in the hospital records. The prosecution is guilty of fabricating false evidence of extra-judicial confession and recovery of the weapons used by the accused. Further, the delay in recording of FIR has been explained on lame excuses such as the Head Constable carrying the report to the Magistrate was held up because of the breakdown of his motorcycle and the Magistrate was asleep when he contacted him at his residence. These circumstances clearly indicate that there was no prompt lodging of the report of the incident by the two witnesses PW 6 and PW 7. Hence their presence at the alleged date and time of incident is highly doubtful. (Paras 23 and 24)

Appellant A-2 had no motive of committing murder of the deceased. He is alleged to have caused one simple injury to the deceased. The defence plea taken by him that he was falsely implicated because of some pending civil dispute with PW 7 concerning use of a path, appears to be plausible. (Para 24)

The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 CrPC cannot be made the sole basis of his conviction. The law on the subject is almost settled that statement under Section 313 CrPC of the accused can either be relied on in whole or in part. It may also be possible to rely on the inculpatory part of the statement of the accused if the exculpatory part is found to be false on the basis of the evidence led by the prosecution. The statement of the accused under Section 313 CrPC is not a substantive piece of evidence. It can be used for appreciating evidence led by the prosecution to accept or reject it. It is, however, not a substitute for the evidence of the prosecution. If the exculpatory part of the statement of the accused is found to be false and the evidence led by the prosecution is reliable, the inculpatory part of his statement can be taken aid of to lend assurance to the evidence of the prosecution. If the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of his statement under Section 313 CrPC cannot be made the sole basis of his conviction. In the present case, the exculpatory part of the statement of the accused A-1 under Section 313 CrPC in which he stated that he was attacked by the deceased and his associate, whereupon the villagers rushed for his help and inflicted injuries on the deceased, cannot be outright rejected as false. The inculpatory part of his statement under Section 313 CrPC, therefore, to the extent of admission of his presence in the compound of *A* when the deceased was attacked, cannot form the sole basis of his conviction. (Paras 27, 30 and 31)

The alternative submission of the complainant that on the basis of the statement of the accused A-1 under Section 313 CrPC, he is liable to be convicted for exceeding his right of private defence under Section 304 IPC, cannot be accepted for the reasons mentioned above. (Para 32)

So far as case against the co-accused A-2 is concerned, since the evidence of the prosecution that the two co-accused had made a joint assault on the deceased, is not reliable, he cannot be convicted under Section 302 with the aid of Section 34 IPC for his alleged common intention with A-1. (Para 33). *Mohan Singh* v. *Prem Singh*, (2002) 10 SCC 236: 2003 SCC (Cri) 1514: AIR 2002 SC 3582: 2003 Cri LJ 11: (2003) 1 CHN 1.

Bench Strength **2**. Coram: *U.C. Banerjee* and **D.M. Dharmadhikari**, JJ. [Date of decision: 1-10-2002]

Nishi Kant Jha v. State of Bihar, (1969) 1 SCC 347, followed

[5702] — Ss. 386 and 374(2) — Appeal against conviction — Acquittal by High Court — Propriety of — *Though the High Court failed to address itself to certain crucial aspects of evidence and gave undue importance to certain inconsequential matters, held on facts, conclusion of High Court regarding the acquittal was justified*

There can be no doubt that some of the reasons given by the High Court are not such as to discredit the evidence of PW 1 who is the only eyewitness in the case. But, on carefully scanning her evidence, the ultimate view of the High Court that it is not safe to convict the accused on the basis of testimony of PW 1, cannot be said to be ill founded. There are certain additional factors and reasons which lead to the conclusion that on the question of reliability of the evidence of PW 1, two views are not ruled out and, therefore, there is no perversity in the ultimate conclusion reached by the High Court. (Para 11)

The facts and circumstances would give rise to a reasonable doubt whether the incident had taken place in the manner as narrated by PW 1. Added to this, the conduct of PW 1 in implicating all the family members, imputing them with certain overt acts which were found to be unbelievable by the trial court would cast a serious doubt on the reliability of PW 1's evidence. She went to the police station leaving the victim who was unconscious but still alive and reported against all the family members en bloc excepting the mother of the deceased who is said to be mentally unsound. Her vindictiveness and tendency to implicate innocent persons as well is apparent from this conduct. (Para 17)

It is true that the conduct of the accused persons after the incident had taken place is very unnatural and creates a strong suspicion against them, but, that by itself is not sufficient to convict the accused, especially when no strong motive to put an end to the life of a son/brother is made out. (Para 17). *State of Orissa* v. *Babaji Charan Mohanty*, (2003) 10 SCC 57: AIR 2003 SC 3926: 2003 Cri LJ 3744.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **P. Venkatarama Reddi**, JJ. [Date of decision: 31-7-2003]

[5703] — Ss. 386 and 374(2) — Appeal against conviction — Interference by High Court, held on facts, was justified — Murder — High Court reversing conviction recorded by trial court — Propriety of — *On the fateful day, PW 4 (father of deceased S) was present in his fields and was engaged in a discussion with PW 5 whose land was stated to be at a distance of about 2 killas from the land of PW 4 — At that time, S came there on a scooter and on being asked by PW 4 as to where he was going, S told that he was going to bring medicines for his mother — Thereafter when S covered about 15/20 karams on his scooter, he was attacked by accused persons as a result of which he sustained as many as 24 injuries — Presence of PWs 4 and 5 at the place of occurrence doubtful — Discrepancy between ocular testimony and medical evidence with regard to the injuries sustained by S — No attempt by PW 4 to intervene or to save S — Conduct of PW 5 quite unnatural — Presence of motive, held on facts, was of no help to the prosecution case — Acquittal recorded by High Court, held on facts, not liable to be interfered with — Penal Code, 1860 — Ss. 302/34*

PW 5 claimed that he was present at the place of occurrence and had seen the occurrence. He stated that at the time of occurrence he was present in his fields. He, however, stated in his cross-examination that he did not own any land in village *L* where the occurrence had taken place. This shift in stand of PW 5 would clearly show that he is an unreliable witness and not creditworthy. No reliance can be placed on such testimony to establish the presence of PW 5 at the place of occurrence. (Para 5)

Further, PW 4 has stated that the distance between his land and the land of PW 5 is about two killas. Even if this statement is accepted, in normal circumstances, no one would travel from a distance of two killas, that too, at 6.45 a.m. to meet a friend without a purpose. The prosecution has not been able to establish the circumstances leading to PW 5 going to the field of PW 4 at that time. (Para 7)

The evidence shows that the deceased *S* travelled on a scooter to village *C* for purchase of medicines for his mother all of a sudden. Even PW 4, father of the deceased did not know about the illness of his wife, which led him to inquire from his son as to where he was going. If the father of the deceased himself did not know the programme of the deceased going to village *C* in advance, it is inherently improbable that the accused would know his programme, waylay and attack him armed with *kirpan, gandasi, datar* etc. (Para 7)

That apart, the house of the accused is 6/7 killas towards the west of Village Abadi and the place of occurrence was at a distance of half a kilometre on the eastern side of Village Abadi. In ordinary circumstances, it is difficult to accept that the accused would be loitering around the place of occurrence covering a distance of 6/7 killas armed with *kirpan, gandasi, datar* etc. (Para 7)

PW 5 did not accompany the injured to the hospital. There is no explanation by the prosecution as to why he could not accompany the injured to the hospital. The conduct of PW 5 is quite unnatural. (Para 7)

(12) Acquittal/Reversal of conviction justified *(contd.)*

Apart from discrepancy between ocular and medical evidence with regard to the injuries sustained by the deceased on his body, the fact that the deceased suffered as many as twenty-four bodily injuries makes all the more doubtful the presence of PWs 4 and 5 at the place of occurrence. Inflicting twenty-four injuries on the body of the deceased by the three accused persons would require a considerable amount of time. This itself suggests that the accused had sufficient time at their disposal to commit the crime. Any father, worth the name, would not remain a mute spectator when his son is being inflicted as many as twenty-four injuries under his very nose. (Para 10)

The evidence on record shows that in a murder case of one *K* (nephew of accused *H*) the complainant party including PW 4, who were accused in that case, were acquitted by the High Court. If that could be the motive to nurse a grudge against the complainant party, the accused would not have spared PW 4. That apart, when the basic foundation of the prosecution case crumbled down, motive becomes inconsequential. At the same time, animosity is a double-edged sword. It could be a ground for false implication, it could also be a ground for assault. In view of the facts and circumstances, the motive, however strong, merely creates a suspicion. Suspicion cannot take the place of proof of guilt. (Paras 7 and 11). *State of Punjab* v. *Sucha Singh*, (2003) 3 SCC 153: 2003 SCC (Cri) 856: AIR 2003 SC 1471: 2003 Cri LJ 1210.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **H.K. Sema**, JJ. [Date of decision: 11-2-2003]

[5704] — Ss. 386 and 374(2) — Murder — Circumstantial evidence — Appeal against conviction — Interference by High Court — On facts, held, was proper — Acquittal justified — Dowry death — Circumstantial evidence — Homicidal death by throttling — *Prosecution proving the circumstances that (i) there was some demand for dowry because of which there used to be quarrels, (ii) on the date of the incident A-3, the brother-in-law of the deceased, along with some other persons was seen carrying the body of the deceased which he claimed was being taken to the hospital for treatment, and (iii) that the deceased died of strangulation — No material to show who actually committed the murder — Thus, necessary link in the chain of circumstances missing — Further, no reason why others including the husband, who were staying along with the accused persons, were not made party to the crime — Role of A-3 as stated in the statement made under S. 313 CrPC by A-3, also not implicating A-3 of having been a party to any crime — On facts, trial court erred in awarding capital punishment to A-3 and life imprisonment to others — High Court was justified in reversing the finding of the trial court — Penal Code, 1860 — Ss. 302/34*

It is true that the prosecution has been able to establish motive but then that by itself is not sufficient to base a conviction. The other circumstantial evidence that is established beyond reasonable doubt is the fact that the deceased died of strangulation. There is no material produced by the prosecution to show who actually committed this crime, but there being no eyewitnesses to the incident the prosecution will have to establish all the links in the chain of circumstances which would have to show that in all probability it is only the accused persons who could have committed this crime. This the prosecution has failed to establish. It is an admitted fact that apart from the accused persons there were others also staying in the house of A-1 which included the husband of the deceased. No case is made out by the prosecution why others including the husband could not have been a party to this crime. In the absence of any such material, the trial court relied on a statement made in Section 313 CrPC by A-3 which the trial court construed as a confession. It is evident from that statement that when A-3 came to know that the deceased had swallowed poison he went to the room where the deceased was and found her husband pressing her neck. With a view to prevent the poison from going down the throat at this stage, A-3 put his fingers in the throat of the deceased to make her vomit the poison. In the said process, he injured his fingers. This statement, if it is to be accepted in its entirety, shows it was the husband of the deceased who pressed the throat which could have caused the suffocation. The role of A-3 as stated in the statement does not implicate A-3 of having been a party to any crime but the trial court thought otherwise. In these facts and circumstances, the High Court was justified in reversing the finding of the trial court. (Paras 10 and 11). *Subimal Sarkar* v. *Sachindra Nath Mandal*, (2003) 2 SCC 566: 2003 SCC (Cri) 655: AIR 2003 SC 1108: 2003 Cri LJ 1274.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 8-1-2003]

[5705] — Ss. 386 and 377 — Causing death by gunshot firing and decapacitating head of the deceased with gandasa — Conviction of accused persons recorded by trial court set aside by High Court in appeal under S. 377 — *On facts, held, High Court was justified in not accepting the prose-*

cution case — Since judgment of High Court not suffering from any illegality or irregularity, interference of Supreme Court not called for. State of U.P. v. Jamal Ahmad, 1993 SCC (Cri) 837.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and *M. Fathima Beevi*, JJ. [Date of decision: 11-3-1992]

[5706] — Ss. 386 and 378 — Appeal against acquittal — Interference by High Court — On facts, was not called for — Murder — Appreciation of evidence — Reversal of acquittal by High Court — Propriety of — Ongoing clash between two political parties — *Deceased I, a non-Hindu belonging to one political party, entering into a temple and beating the workers of the opposite party — Said incident stated to be the motive behind the murder of I — Delay of 12 hours in lodging FIR — Delayed dispatch of FIR to Magistrate — On facts, genuineness of the FIR doubtful — Inconsistencies between the observations noted in the scene mahazar and the version given by the eyewitnesses — Doubt also about the fact that the weapons used in crime were sword and knife — Possibility that the incident might have happened in some other manner could not be ruled out — There was also possibility of subsequent implication of appellants as a result of an afterthought — Prosecution case not proved beyond reasonable doubt — Held on facts, High Court erred in reversing the acquittal of the two appellants — Penal Code, 1860 — Ss. 302/34*

All the witnesses deposed in unequivocal terms regarding the incident. It is in concurrence with the prosecution case that while the deceased was talking with PWs 2 and 3, the assailants suddenly came and attacked them. All of them also deposed that the assailants immediately escaped in a jeep. This version is not at all tallying with the scene *mahazar* prepared by PW 29. Scene *mahazar* accounts for some material objects that are not explained by the prosecution. The non-explanation of several objects that found place in the scene *mahazar* will go on to dilute the prosecution case. Such unexplained objects point towards the possibility of a preceding clash and some happenings other than those portrayed by the prosecution and accounted for by the witnesses. According to all the witnesses the attack was with sword and knife. But the deceased had injuries other than those which could have been inflicted by the said weapons. Moreover, the prosecution could not explain MO 11 *danda* (stick) recovered from the scene of incident. This also casts a certain amount of doubt upon the prosecution case. (Para 11)

The delayed filing of FIR and its consequences were discussed in *Thulia Kali* v. *State of T.N.*, (1972) 3 SCC 393 wherein the Supreme Court observed that the delay in lodging the FIR quite often results in embellishment which is a creature of afterthought. It was further stated that on account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. The delay of 12 hours in filing the FIR in the instant case irrespective of the fact that the police station is situated only at a distance of 100 metres from the spot of incident is another factor sufficient to doubt the genuineness of the FIR. (Paras 12 and 14)

Further, the Supreme Court in *Marudanal Augusti case*, (1980) 4 SCC 425 observed that the delay in forwarding the FIR to the Magistrate would throw serious doubt on the prosecution case, whereas in *Arjun Marik* v. *State of Bihar*, 1994 Supp (2) SCC 372 it was reminded that the forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest dispatch. But, in the instant case, the prosecution did not satisfactorily explain the delayed lodging of the FIR with the Magistrate. (Paras 15 and 14)

The trial court took note of the fact that it is unnatural not to mention the names of the assailants to the doctor who examined the deceased and the injured witnesses (PWs 2 and 3). The trial court also noticed that immediately after the incident PWs 1 and 4 took the injured *I* (deceased) along with PWs 2 and 3 to Medical College Hospital which is 48 kilometres away from the place of incident but found that it is improbable that none in the jeep had talked about the incident or the accused during the long journey. That apart, though PW 28 (SI of Police) proceeded to the spot on getting information of the clash within half an hour and although he had definite information and details of the incident which he noted in the general diary, FIR was not registered on the ostensible ground that the names of the assailants were not known. There is no satisfactory explanation by the police officer regarding the blank sheets in the counterfoil of the FIR. The trial court observed that the first information statement given by PW 1 also seemed to have been subsequently written on a blank signed paper. Thus, the possibility of subsequent implication of the appellants as a result of an afterthought, maybe due to political bitterness, cannot be ruled out. (Paras 8, 16, 6 and 14)

(12) Acquittal/Reversal of conviction justified *(contd.)*

Hence, when the trial court had given good and weighty reasons for its conclusion, the High Court need not have substituted its view for that of the trial court. (Para 17). *Rajeevan* v. *State of Kerala*, (2003) 3 SCC 355: 2003 SCC (Cri) 751: AIR 2003 SC 1813.

Bench Strength **2**. Coram: **S. Rajendra Babu** and *P. Venkatarama Reddi*, JJ. [Date of decision: 17-2-2003]

Thulia Kali v. State of T.N., (1972) 3 SCC 393: 1972 SCC (Cri) 543; Maharaj Singh v. State of U.P., (1994) 5 SCC 188: 1994 SCC (Cri) 1391; Thanedar Singh v. State of M.P., (2002) 1 SCC 487: 2002 SCC (Cri) 153, followed

Marudanal Augusti v. State of Kerala, (1980) 4 SCC 425: 1980 SCC (Cri) 985; Arjun Marik v. State of Bihar, 1994 Supp (2) SCC 372: 1994 SCC (Cri) 1551, relied on

But see Radha Mohan Singh v. State of U.P., (2006) 2 SCC 450

[5707] — Ss. 386 and 378 — Appeal against acquittal — Reversal of acquittal by High Court — Propriety — *Finding of Sessions Court neither perverse nor such that it could not be arrived at by a reasonable person — That apart, the view taken by the trial court was the only possible view — Hence held, High Court ought not to have interfered with the order of acquittal* (Paras 19 and 20). *Kunju Mohd.* v. *State of Kerala*, (2004) 9 SCC 193: 2004 SCC (Cri) 1425.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 11-8-2003]

Dhanna v. State of M.P., (1996) 10 SCC 79: 1996 SCC (Cri) 1192; Shailendra Pratap v. State of U.P., (2003) 1 SCC 761: 2003 SCC (Cri) 432, applied

[5708] — Ss. 386 and 378 — Interference by High Court with acquittal — Impropriety — Acquittal justified — *Illegal gratification — Where accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established — The accused can establish his defence by preponderance of probability — If the explanation offered by him under S. 313 CrPC is found to be reasonable, then it cannot be thrown away merely on the ground that he did not offer the said explanation at the time when the amount was seized — On facts, explanation offered by accused found to be probable, reasonable and acceptable by trial court — High Court erred in disbelieving the same without examining the reasons advanced by the trial court — High Court's conclusion based on misreading of relevant evidence — Reversal of acquittal by High Court set aside — Penal Code, 1860, S. 161 — Prevention of Corruption Act, 1947, S. 5(1)(d) r/w S. 5(2)* (Para 3). *Punjabrao* v. *State of Maharashtra*, (2002) 10 SCC 371: AIR 2002 SC 486.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 14-2-2001]

[5709] — Ss. 386 and 378 — Multiple murder case — Reversal of acquittal of one of the accused by High Court — Propriety — Acquittal justified — *High Court convicting S on the ground that he was also armed with weapon and came on motorcycle along with convicted accused — Recovery of country-made pistol and motorcycle pursuant to alleged confession of S, not proved — Held, acquittal of S by trial court was based on a reasonable view of the matter — High Court erred in interfering with the same — Penal Code, 1860 — Ss. 302/149, 148 and 452* (Paras 10 and 11). *Sahdeo* v. *State of U.P.*, (2004) 10 SCC 682: 2004 SCC (Cri) 1873: AIR 2004 SC 3508: 2004 Cri LJ 2876.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 30-4-2004]

[5710] — Ss. 386 and 378 — Reversal of acquittal by High Court, held on facts, not justified — *Prosecution case against appellants, A-1 and A-3, not proved beyond reasonable doubt — No evidence to show any preplan or common intention on their part to commit murder of G — All accused neither went together nor waiting together at a common place for arrival of deceased G — Further, it was A-2 who assaulted G — On facts, High Court committed serious error in reversing the order of acquittal merely because it could take a different view — Penal Code, 1860 — Ss. 302/34*

According to prosecution, A-1, A-3 and A-4 barged into the house of deceased *G* and started beating his mother *M* with sticks and dragged her outside the house. When *G* was rushing towards *M* to rescue her, A-2 emerged from the lane and inflicted knife-blows on the chest and abdomen of the deceased. A-1, A-2, A-3 and A-4 were tried for offences under Sections 452, 302 and 323 read with Section 34 IPC and also under Section 135 of the Bombay Police Act. The Sessions Court acquitted A-1, A-3 and A-4 giving benefit of doubt and convicted A-2 alone for offence under Section 302 IPC. Before the High Court, the State challenged the order of acquittal in respect of A-1 and A-3 whereas A-2 challenged the order of his conviction. The High Court confirmed the conviction of A-2, but reversed the order of acquittal of A-1 and A-3. Appellants A-1 and A-3 challenged their conviction before the Supreme Court on the grounds: (*i*) that the trial court on a careful and objective consideration of the entire evidence found that the prosecution failed to prove the incident alleged to have taken place at the house of *M* and that the incident of beating *M* by the appellants A-1 and A-3 was not established; (*ii*) that in the light of evidence recorded during trial and in view of the contradictions and omissions brought about, the High Court was not at all right and justified in looking to the statements of witnesses made to the police, (*iii*) that regarding the use of sticks by the appellants and their assaulting the deceased by sticks, there were serious omissions as pointed by the trial court which the High Court did not properly appreciate; (*iv*) that it could not be said that the reasons recorded by the trial court were either perverse or not based on proper appreciation of evidence and so the High Court erred in reversing the order of acquittal and convicting them applying Section 34 IPC. On the other hand, appellant A-2 submitted that in view of the concurrent findings of conviction recorded against him, he was not in a position to challenge the same. However, he argued that he could be held guilty only for an offence under Section 304 Part II IPC.

Allowing the appeal preferred by A-1 and A-3, but dismissing the appeal filed by A-2,

Held :

It is not possible to say having regard to the evidence on record that the reasons recorded and findings arrived at by the trial court to acquit A-1 and A-3 were unjustified or untenable. The High Court also failed to dislodge all the reasons given by the trial court for acquitting them. It was not proved beyond reasonable doubt that A-1 and A-3 assaulted the deceased with sticks. Even otherwise there is no evidence to show any preplan or common intention on the part of A-1 and A-3 to commit the murder of the deceased. It is not the case that all the accused went together or were waiting together in a common place for the arrival of the deceased. Further, it is also in the evidence that A-2 emerged suddenly from a lane and assaulted the deceased with a knife. Under the circumstances, it is difficult to accept that A-1 and A-3 could be held guilty for offence under Section 302 read with Section 34 IPC. (Para 8). *Ajitsinh Andubha Parmal* v. *State of Gujarat*, (2002) 7 SCC 625: 2003 SCC (Cri) 129: AIR 2002 SC 3469.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Shivaraj V. Patil**, JJ. [Date of decision: 26-9-2002]

[5711] — Ss. 386 and 465 — Want of valid sanction for prosecution — Condition precedent for reversal of conviction, in appeal on the ground of — *After recording the finding of error or irregularity in the sanction, the appellate court (High Court in this case), held, should have decided: (i) whether the same had occasioned a failure of justice; and (ii) whether the objection regarding the validity of sanction had been taken before the trial court — Having not done so, acquittal of the convict by the appellate court on the ground of want of a valid sanction for prosecution, held, wholly unjustified — Penal Code, 1860, S. 161 — Prevention of Corruption Act, 1947, Ss. 5(2) & 5(1)(d). State of Orissa* v. *Mrutunjaya Panda*, (1998) 2 SCC 414: 1998 SCC (Cri) 644: AIR 1998 SC 715: 1998 Cri LJ 782.

Bench Strength **3**. Coram: **M.K. Mukherjee**, *S.P. Kurdukar* and *K.T. Thomas*, JJ. [Date of decision: 13-1-1998]

[5712] — Ss. 386(a) and 378 — Acquittal justified — *High Court reversing order of acquittal and convicting appellant-accused under S. 377 IPC — High Court relying on irrelevant facts — On facts, held, the mind of the Judges of High Court stood prejudiced*

On 18-7-1986 at about 8.30 a.m., the appellant Swamiji in a position of authority in the Mutt school allegedly through PW 2, *P* and *G* called the complainant, PW 1 a student of the IXth standard to his office. The office had been partitioned and one part of it had been converted into a bedroom. PW 1 alleged that he was then subjected to unnatural offence by the appellant. His clothes, anus and panche (lungi) got soiled. He allegedly came back to his house with his brother on 28-7-1986. He gave the dirty clothes for washing to his mother. His mother, PW 4 found sticky substances in the lungi. When accosted, he allegedly told her about the indecent behaviour of the appellant. PW 8, *B*, the maternal uncle of Respondent 2 at that time was also present. The victim was allegedly persuaded to go back to the school. He came back to the school on 3-8-1986. PW 9, *S* and *N* were said to have been asked by the appellant to bring him again to the appellant's office. He declined to come. He allegedly made a complaint to the senior Swamiji as regards the incident who assured him of looking thereinto and asked him not to make any complaint, the prestige of the Mutt being involved. However, no action was allegedly taken. PW 1 thereafter lodged a first information report on 29-8-1986 at about 6.30 p.m. The appeal against acquittal and the criminal revision application were taken up together for hearing by the High Court. The High Court by the impugned order convicted the appellant-accused.

Allowing the appeal,

Held :

The High Court completely lost sight of the parameters of its jurisdiction to reverse a judgment of acquittal. The High Court could have made an endeavour to arrive at its independent findings. But the mind of the Judges of the High Court stood influenced. If the High Court was clear in its mind that it was dealing with a criminal case and that too with the offence under Section 377 IPC, which is a serious one, there was no reason why it had made endeavours to mediate in the internal disputes of the Mutt and for that purpose held sittings in chamber. There was also no reason why the presence of the appellant on each day of hearing was insisted upon and his absence had been adversely commented upon. A large number of irrelevant factors including the rate of conviction, legalisation of sodomy in other countries had been taken into consideration by the High Court. The appellant for no reason was condemned in the clearest possible terms. He was accused of coming to the High Court in an air-conditioned car and holding press conferences which was denied and disputed by the Public Prosecutor. He was also branded as a habitual offender. Again, although the allegation against the appellant was commission of a heinous offence, an attempt was made by the Court to get certain civil disputes between the appellant and the senior Swamiji of the Mutt settled. (Paras 38, 32 and 12)

It is one of the rarest of rare cases where a deeper scrutiny was necessary particularly when the trial court had recorded a judgment of acquittal upon assigning sufficient and cogent reasons. While deciding an appeal against acquittal, the power of the appellate court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further, if the appellate court decides to interfere, it should assign reasons for differing with the decision of the trial court. (Paras 36 and 40). *Gowrishankara Swamigalu* v. *State of Karnataka*, (2008) 14 SCC 411.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 5-3-2008]

Jagdish v. State of M.P., (2007) 13 SCC 12; Rattanlal v. State of J&K, (2007) 13 SCC 18; Kallu v. State of M.P., (2006) 10 SCC 313: (2006) 3 SCC (Cri) 546; Ramappa Halappa Pujar v. State of Karnataka, (2007) 13 SCC 31; Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325; Haji Khan v. State of U.P., (2005) 13 SCC 353: (2006) 2 SCC (Cri) 336; Abdul Gafur v. State of Assam, (2007) 12 SCC 627: (2008) 3 SCC (Cri) 316, relied on

(13) Conviction/Reversal of acquittal justified

See also under Ss. 374 and 378

[5713] — S. 386 — Conviction justified — *Because of a grudge attack by all the three accused in concert on unarmed deceased with hunting sickles virtually killing him on the spot — Conviction under S. 302/34 and sentence of imprisonment for life for all the three accused passed by both courts below unassailable — Penal Code, 1860, Ss. 34, 302/34. Harijana Sunkunha* v. *State of A.P.*, 1991 Supp (2) SCC 287: 1991 SCC (Cri) 1036.

Bench Strength **3**. Coram: *A.M. Ahmadi, V. Ramaswami* and *K. Ramaswamy*, JJ. [Date of decision: 19-3-1991]

[5714] — S. 386 — No reason to interfere with the order of conviction — *But sentence reduced to the period already undergone in the circumstances of the case. Bansropan Singh* v. *State of Bihar*, (1983) 1 SCC 225: 1983 SCC (Cri) 183: AIR 1983 SC 166: 1983 Cri LJ 223.

Bench Strength **2**. Coram: **E.S. Venkataramiah** and *R.B. Misra*, JJ. [Date of decision: 6-1-1983]

[5715] — Ss. 386 and 374 — Conviction — Acquittal by High Court — Propriety — Circumstantial evidence — Accused *K* suspecting chastity and fidelity of his wife *M* — Also doubting that she did not beget the children through him — *K* causing death of his two innocent children, wife *M* and brother-in-law — *Relations between K and M, not cordial — On the night of occurrence, K and victims sleeping in same house — PWs 5 and 6 heard K and M quarrelling on previous night — Story stated by K to PWs that some other person did the murder, held, unbelievable — No material to show that K tried to protect victims and sustained injuries in that process — His conduct and behaviour unusual and not normal in relation to course of events alleged by K — K medically examined after about 12 days of the incident — Injuries on him were of superficial nature and possibly self-inflicted — Stand taken by K in statement under S. 313 CrPC that his brother was the assailant, held, was contrary to the one taken during investigation — Other circumstances were: (i) K calmly smoking chilam when others called by him came at the scene of occurrence, (ii) extra-judicial confession made by K to PW 12, and (iii) recovery of bloodstained dhoti of K, kulhari and jooti of brother-in-law at the instance of K — Held, all the circumstances unerringly and inevitably pointed to the guilt of K — Conviction restored*

Undisputedly, the accused was last seen in the company of the deceased persons in his house and also slept in that house. He went to the house of PW

9 and told him about the assaults on his children. Strangely, he did not say anything at first to PW 9 about the assaults on his wife and brother-in-law who undisputedly were also assaulted and suffered death. The claim that he sustained injury at the hands of somebody was not stated to PW 9. On the contrary, for the first time he was medically examined after about 12 days of the alleged date of occurrence. (Para 17)

The High Court was greatly impressed by the alleged injuries suffered by the accused. There is no material to show that he had sustained injuries during the course of assaults on his wife, children and brother-in-law. The injuries were of a very superficial nature and self-infliction could not be ruled out. The story the accused concocted that someone (and not some others) did the killings is hard to swallow. The killings were possible by one who was known to the victims and who could have gained access without creating any stir or attracting anybody's attention, keeping in view the time and place of incident. The plea that he had raised an alarm is hardly credible. It is not his case that more than one person was involved, and/or that he tried to resist the assaults. Had he tried it, some serious injuries and not superficial injuries would have resulted. If the accused sustained injuries during the assaults at least he could have described the assailant as well as the nature and manner of defence by which he tried to protect all or any of them. There is no material that the accused tried to protect his wife, brother-in-law and children and sustained any injury in that process. This conduct, to say the least, is unnatural. The explanation offered about the sustaining of injuries is also hard to believe to warrant acceptance. Further, four people were attacked brutally and in a gruesome manner. The nature of injuries inflicted and the manner and position in which the bodies were found dead on the cots would also go to show that a person who was already inside the house, with a perfect plan and design could have so smartly and swiftly killed all of them without causing any flutter to disturb any one of them, so as to either awaken them or even let them attempt escape. (Para 17)

Further, in the examination under Section 313 CrPC, the accused took the stand that it was his brother *S* who was responsible for the crime. This is contrary to what his stand was during investigation. If in reality *S* was the assailant, there is no reason as to why the accused who claimed to have seen the assailant but not recognized him could not have spoken about him. This is certainly a very vital factor. The conduct of the accused in going to the house of PW 9 and giving false news further aggravates the guilt pointing finger at the accused. (Para 19)

The murders were not for any monetary gain and nothing was found or stated to have been stolen. (Para 20)

The evidence on record also fully establishes the fact that the accused suspected the chastity and fidelity of his wife and also doubted that she did not beget the children through him. The High Court has held that it was not possible for PWs 5 and 6 to have heard the quarrel from a distance of about 1000 to 1500 ft. On a reading of the evidence of the two witnesses it is clear that they have not stated to have heard the quarrel from that distance. Further, there is another surmise made by the High Court that when quarrelling, it was not expected that the accused would talk in such a loud voice that the witnesses would hear it from a distance. The quarrel was taking place late at night when obstruction to sounds would be less. At night, voice would normally carry to a greater distance than during daytime, particularly in a village in the absence of bustling activities of a busy town. (Paras 20 to 22)

Thus, the circumstances highlighted by the prosecution present the complete picture which completely rules out the role of any other person and unerringly as well as inevitably points the finger at the accused. The High Court erred in reversing the conviction. (Para 24). *State of Rajasthan* v. *Kheraj Ram*, (2003) 8 SCC 224: 2003 SCC (Cri) 1979.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 22-8-2003]

[5716] — Ss. 386 and 374 — Reversal of conviction by High Court brushing aside prosecution evidence against accused on flimsy reasons — Impropriety — *Murder case — A-9 was at the place where murder took place during the relevant period — He had accessibility to weapons — He had been involved in other offences relating to illegal use of arms — Recovery of country-made pistol, etc. at the instance of A-9 who clearly stated in his disclosure statement that he himself had concealed the said pistol — Pistol proved to have been used for causing death of deceased — Extra-judicial confession made by A-9 to two PWs, found reliable and trustworthy — Held, case against A-9 proved beyond reasonable doubt — High Court erred in acquitting him — Evidence Act, 1872, S. 27* (Paras 38, 19 to 26, 34 and 35). *State of M.P.* v. *Paltan Mallah*, (2005) 3 SCC 169: 2005 SCC (Cri) 674: AIR 2005 SC 733: 2005 Cri LJ 918.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 20-1-2005]

(13) Conviction/Reversal of acquittal justified *(contd.)*

Mohd. Inayatullah v. State of Maharashtra, (1976) 1 SCC 828: 1976 SCC (Cri) 199; Pohalya Motya Valvi v. State of Maharashtra, (1980) 1 SCC 530: 1980 SCC (Cri) 261, distinguished on facts

[5717] — Ss. 386 and 374(2) — Appeal against conviction — Acquittal by High Court, held on facts, not proper — *Case based on evidence of eyewitnesses PW 1 and PW 2 (brothers of deceased) — Their evidence clearly cogent — Conclusions of High Court contrary to the evidence on record — That apart, vital factors not given importance — High Court doubted the presence of PWs 1 and 2 without properly analysing their evidence — Held, High Court was not justified in acquitting the accused persons — Conviction by trial court restored — Penal Code, 1860 — Ss. 302, 307 and 307/34*

Allowing the appeal, setting aside the acquittal by the High Court and restoring conviction by the trial court

Held :

The High Court was not justified in directing acquittal of the accused persons. It proceeded on an erroneous impression that the FIR was lodged at 2.00 p.m. after deliberations and discussions. No material has been indicated for coming to this conclusion. On the contrary, the evidence on record clearly shows that the information was lodged at 8.00 a.m. at the police chowk, and the FIR was registered at the police station at 9.35 a.m. and it reached the Magistrate at 3.00 p.m. It is baffling as to how and on what material the High Court came to the conclusion that the FIR came into existence at 2.00 p.m. Considering the facts, it cannot be said that there was any unexplained delay so far as registration of the FIR and dispatch to the Magistrate are concerned. Further, the area was a terrorist-infected area where terrorism was at its peak during the period concerned. The High Court did not attach any importance to this vital factor, and came to presumptuous conclusions. (Para 7)

Further, there was no dispute by the accused regarding the presence of the dead body and the severed head in the field and near the tubewell of accused K. Though the prosecution has to lead evidence to substantiate its accusations, if facts within the special knowledge of the accused are not satisfactorily explained it is a factor against the accused. No explanation was given by the accused during examination under Section 313 CrPC except making bold denial. Though this factor by itself cannot be sufficient to fasten the guilt of the accused, while considering the totality of the circumstances this is certainly a relevant factor. (Para 7)

The evidence of PWs 1 and 2 is clearly cogent and without even properly analysing their evidence the High Court came to the conclusion that their presence was doubtful. (Para 7). *State of Punjab* v. *Karnail Singh*, (2003) 11 SCC 271: 2004 SCC (Cri) 135: AIR 2003 SC 3609.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 14-8-2003]

[5718] — Ss. 386 and 374(2) — Appeal against conviction — Interference by High Court reversing conviction — Held on facts, was not proper — *Respondents and their father entering into the house of PW 3 at the dead of night and causing head injuries to PW 3 and his wife B with the butt of a pistol as a result of which B died — High Court reversing the conviction by trial court on the grounds of (i) absence of proof of light, (ii) improvements and contradictions in the testimony of PWs, and (iii) difference between the ocular and medical evidence regarding injuries — Site plan showing existence of electric bulbs — On facts, High Court erred in coming to the conclusion that in absence of light, the assailants could not be recognized — Improvements and contradictions were minor and natural and rather showing the truthfulness of the evidence — Testimony of PW 3 corroborated by evidence of PW 4, a natural witness — On facts, medical evidence and ocular evidence found wholly consistent — High Court's judgment based on entirely faulty and erroneous appreciation of evidence, held, liable to be set aside — Penal Code, 1860 — Ss. 302/34, 307/34 and 452* (Paras 6, 7 and 12 to 15). *State of U.P.* v. *Premi*, (2003) 9 SCC 12: AIR 2003 SC 1750: 2003 Cri LJ 1554.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *H.K. Sema, JJ.* [Date of decision: 20-2-2003]

Modi's Medical Jurisprudence and Toxicology (22nd Edn.), referred to

[5719] — Ss. 386 and 374(2) — Appeal against conviction — Order of acquittal by High Court, held, perverse — Hence set aside — *Explosive Substances Act, 1908 — S. 3 — Murder — Accused persons and prosecution party belonging to two opposite groups — On the fateful day at 6.30 a.m., deceased O along with PWs 1 to 4 and three others going in a bus to Court (25 km away) to depose against some of the accused persons in earlier two cases — Accused persons stopping the bus and getting into it — Apprehending that accused might attack, prosecution party getting down from the bus — Accused chasing them — Respondents 1, 2 and 4 throwing bombs at O — Respondents 3 and 5 assaulting O with hunting sickles — Medical evidence and objective finding of IO supporting prosecution case — Evidence of eyewitnesses (PWs*

1 to 4) and co-passenger PW 5, held, reliable — Hence High Court erred in doubting the veracity of prosecution case — Conviction of Respondents 1 to 5 restored — Penal Code, 1860 — Ss. 302/149 and 148 (Paras 9 to 12). *Kamma Otukunta Ram Naidu* v. *Chereddy Pedda Subba Reddy*, (2003) 11 SCC 293: 2004 SCC (Cri) 155: AIR 2003 SC 3342.

Bench Strength **2**. Coram: **B.N. Agrawal** and *B.N. Srikrishna*, JJ. [Date of decision: 19-9-2003]

[5720] — Ss. 386 and 374(2) — Murder — Appeal against conviction — Interference by High Court — Held on facts, not proper — Conviction justified — *Conviction of respondent (nephew of deceased) based on evidence of PW 3, set aside by High Court disbelieving the evidence of said witness — Propriety — High Court disbelieving the prosecution case on the grounds that (i) prosecution failed to explain the existence of bloodmarks on the walls in close proximity to the scene of offence, (ii) there was existence of two complaints, and (iii) the recovery of sickle (crime article) on the basis of the statement said to have been made by the accused under S. 27 of the Evidence Act was not liable to be relied upon — No material contradictions or inherent improbabilities in the evidence of PW 3 — PW 3, who was an independent witness, held, would not like to involve the nephew of deceased wantonly — Further, the doubtful features pointed out by the High Court, held on facts, did not obliterate the clear account of the eyewitness PW 3 — Hence, High Court's order set aside — Penal Code, 1860 — S. 302* (Paras 3 and 4). *State of Karnataka* v. *Panchakshari Gurupadayya Hiramath*, (2002) 10 SCC 229: AIR 2003 SC 825.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **P. Venkatarama Reddi**, JJ. [Date of decision: 20-12-2002]

[5721] — Ss. 386 and 374(2) — Murder case — Appeal against conviction — *Conviction justified — High Court reversing the finding of trial court without considering and taking into account the testimony of eyewitnesses — Held, clear infraction of S. 386 CrPC — Hence, acquittal by High Court, held, liable to be set aside*

Since in the present case, the High Court has reversed the finding recorded by the trial court without considering and taking into account the testimony of the eyewitnesses, there is a clear infraction of Section 386 CrPC and the order of acquittal passed by it is likely to be set aside on account of this serious error. (Para 8)

In a murder case based upon direct eyewitness account it is absolutely necessary to thoroughly examine the testimony of the eyewitness in order to ascertain whether they had really seen the occurrence and whether the statement given by them appears to be natural and truthful and finds corroboration from the medical evidence on record. (Para 6)

In the present case eleven eyewitnesses have fully supported the prosecution case. Out of these eleven witnesses, five were injured witnesses who had received serious gunshot injuries. Their presence on the spot, therefore, cannot be doubted in any manner. In fact, the testimony of five injured witnesses is more than sufficient to establish the charge against the accused-respondents. However, the High Court did not at all advert to this important piece of evidence and has chosen to rely upon some trifling and insignificant circumstances to discard the prosecution case. (Para 6)

The prosecution had succeeded in establishing its case against the accused-respondents beyond any shadow of doubt. The judgment of the High Court is wholly illegal and perverse. It is not a case where two views are possible. (Para 14). *State of Rajasthan* v. *Bhawani*, (2003) 7 SCC 291: 2003 SCC (Cri) 1628: AIR 2003 SC 4230.

Bench Strength **3**. Coram: *S. Rajendra Babu*, *K.G. Balakrishnan* and **G.P. Mathur**, JJ. [Date of decision: 31-7-2003]

Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, relied on

Ashok Kumar v. State of Rajasthan, (1991) 1 SCC 166: 1991 SCC (Cri) 126; Arun Kumar v. State of U.P., 1989 Supp (2) SCC 322: 1990 SCC (Cri) 173; Bharwad Jakshibhai Nagjibhai v. State of Gujarat, (1995) 5 SCC 602: 1995 SCC (Cri) 993, distinguished

[5722] — Ss. 386 and 374(2) — Rape — Conviction — Unmerited acquittal by High Court — Held, not proper — *Duty of Courts while dealing with charges of sexual assault on women, particularly of tender age and children, stated — Courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women, particularly of tender age and children — Penal Code, 1860 — Ss. 375 and 376*

The High Court was not justified in reversing the conviction of the respondent and recording the order of acquittal. An unmerited acquittal does no good to the society. If the prosecution has succeeded in making out a convincing case for recording a finding as to the accused being guilty, the court should not lean in favour of acquittal by giving weight to irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefit thereof where none reasonably exists. A doubt, as understood in criminal jurisprudence, has to be a reasonable

(13) Conviction/Reversal of acquittal justified *(contd.)*

doubt and not an excuse for a finding in favour of acquittal. An unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females or minor children. The courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women, particularly of tender age and children. (Para 16). *State of Punjab* v. *Ramdev Singh*, (2004) 1 SCC 421: 2004 SCC (Cri) 307: AIR 2004 SC 1290.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 17-12-2003]

[5723] — Ss. 386 and 374(2) — Reversal of conviction by High Court — *Based on flimsy, untenable and unjustifiable reasons — Held, not proper — Interference by Supreme Court called for* (Paras 7, 10 and 11). *Hem Raj* v. *Raja Ram*, (2004) 9 SCC 18: 2004 SCC (Cri) 1412: AIR 2004 SC 1489: 2004 Cri LJ 901.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 22-1-2004]

[5724] — Ss. 386 and 374(2) — Reversal of conviction by High Court — Propriety of — Four eyewitnesses — *Two related and inimical whereas two independent — Their testimony found reliable — Case against accused, established — Contention that after the reconstruction of the case record the statements made by the accused under S. 313 CrPC had not been properly considered by the trial court, not sustainable — Held, High Court erred in acquitting the accused resulting in grave miscarriage of justice — Penal Code, 1860, Ss. 302, 302/149, 302/34, 307/149, 323, 323/34 and 148* (Para 15). *State of U.P.* v. *Kishan Chand*, (2004) 7 SCC 629: 2004 SCC (Cri) 2021.

Bench Strength **2**. Coram: *B.N. Agrawal* and **H.K. Sema**, JJ. [Date of decision: 20-8-2004]

[5725] — Ss. 386 and 374(2) — Reversal of conviction by High Court based on patently perverse conclusions, held, indefensible and liable to be set aside — *Rape and murder — Victim, a girl aged about 10 years — Eyewitness claiming having seen the accused throttling the victim — Evidence as to last seen together — Acquittal by the High Court — Propriety — Victim seen chewing sugarcane at "kolhu" of accused* **D** *— Later on seen going with* **D** *towards his sugarcane field — Not returning to her home — Complainant* **B** *(father of victim) going to the sugarcane field of* **D** *for searching the victim there —* **D** *not permitting him to do so — Thereafter,* **B** *taking "Pardhan" of the village and other persons with him making search there — Dead body of victim found buried in the said field — On such facts, held, conviction by trial court was proper — High Court erred in setting aside the same — Penal Code, 1860 — Ss. 376, 302 and 201* (Paras 7 to 9). *State of U.P.* v. *Devendra Singh*, (2004) 10 SCC 616: AIR 2004 SC 3690: 2004 Cri LJ 3118.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 13-4-2004]

[5726] — Ss. 386 and 378 — Conviction for murder — Having regard to testimony of reliable eyewitnesses as also circumstantial evidence regarding motive, last seen together, prompt lodging of FIR naming the accused and post-crime conduct of abscondence of the accused, held, charge of murder proved — *Minor discrepancies in prosecution case, such as failure on the part of deceased's brother to disclose the name of the person who first informed him about the murderous attack on the deceased or his failure to mention the accused's name to SDM and Tehsildar who were along with him at the time of occurrence, are immaterial — High Court erred in reversing conviction recorded by trial court. State of U.P.* v. *Anil Singh*, 1988 Supp SCC 686: 1989 SCC (Cri) 48: AIR 1988 SC 1998.

Bench Strength **2**. Coram: *G.L. Oza* and **K. Jagannatha Shetty**, JJ. [Date of decision: 26-8-1988]

[5727] — Ss. 386 and 378 — Acquittal not justified — Dying declaration recorded by competent magistrate after obtaining doctor's opinion that deceased was in a fit condition to make statement preferable to declaration based on oral testimony and circumstantial evidence — *Death of housewife by burning — Deceased stating that she caught fire while preparing tea and that she was making the statement with full senses and without any outside pressure — Trial court excluding the dying declaration under impression that it was made in a sense of fear and convicting the husband, father-in-law and mother-in-law of the deceased on the basis of circumstantial evidence — High Court relying on the dying declaration acquitting the accused under Ss. 302/34, 120-B, 506, IPC — Having regard to the contents of the dying declaration, held, there was no basis for excluding the same and interfering with the finding of the High Court particularly when the appeal is against acquittal — Penal Code, 1860 — Ss. 302/34, 120-B and 506 — Constitution of India — Art. 136 — Evidence Act, 1872, S. 32(1). Kishan Lal Sethi* v. *Jagan Nath*, (1990) 3 SCC 45: 1990 SCC (Cri) 460: AIR 1990 SC 1357: 1990 Cri LJ 1500.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 17-4-1990]

[5728] — Ss. 386 and 378 — Acquittal not justified — Number of witnesses — *If prosecution case is otherwise truthful and acceptable, it cannot be rejected merely because all witnesses had not been examined or independent witnesses not produced to corroborate — Evidence Act, 1872, S. 134*

The public are generally reluctant to come forward to depose before the court. It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. Nor is it proper to reject the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable. *State of U.P.* v. *Anil Singh*, 1988 Supp SCC 686: 1989 SCC (Cri) 48: AIR 1988 SC 1998.

Bench Strength **2**. Coram: *G.L. Oza* and **K. Jagannatha Shetty**, JJ. [Date of decision: 26-8-1988]

[5729] — Ss. 386 and 378 — Acquittal not justified — *Acquittal reversed by High Court relying on dying declaration which was disbelieved by trial court on flimsy grounds — Dying declaration — Despite having been corroborated in respect of material particulars, disbelieved by trial court taking into account irrelevant considerations — Reversal of acquittal by High Court, if on facts was justified — Dying declaration recorded in hospital by PW 9, the Executive Magistrate, in presence of the doctor who certified prior to the declaration that the deceased was in a fit state to make the statement — Therefore, where the dying declaration was acceptable in view of corroboration of material particulars existing therein, held on facts that the trial court erred in disbelieving the same relying on flimsy grounds based on irrelevant considerations — Hence, the reversal of acquittal by High Court, was justified — Penal Code, 1860, S. 302 r/w Ss. 34 and 376 — Evidence Act, 1872, S. 32*

There is convincing and satisfactory evidence to prove that the appellant was responsible for the murder of the deceased. The evidence of PW 9, the Executive Magistrate, shows that when he recorded the dying declaration the doctor was present and he had certified that the deceased was in a fit state to make the statement. The Sessions Judge disbelieved the dying declaration on flimsy grounds based on irrelevant considerations. Whether the Executive Magistrate reached the hospital on a scooter or any other conveyance or whether the Magistrate had noted the percentage of burn injuries on the body of the deceased are irrelevant matters which should not have weighed with the Sessions Judge in disbelieving the dying declaration. (Paras 9 and 11)

In the instant case, there has been material corroboration as the deceased was found with burn injuries near the house of the appellant. PW 2 also saw the deceased near the house of the appellant and it was from that place that the deceased was removed to the hospital. Further, PW 1, the husband of the deceased, also deposed that on hearing about the incident, he rushed to the place of occurrence and saw the deceased with burn injuries. The High Court considered all this evidence and rightly reversed the judgment of the Sessions Court. (Paras 14 and 15). *Shambhu* v. *State of M.P.*, (2002) 3 SCC 561: 2002 SCC (Cri) 684: AIR 2002 SC 1307: 2002 Cri LJ 1778.

Bench Strength **2**. Coram: *R.P. Sethi* and **K.G. Balakrishnan**, JJ. [Date of decision: 6-3-2002]

State of Assam v. Mafizuddin Ahmed, (1983) 2 SCC 14: 1983 SCC (Cri) 325, relied on

[5730] — Ss. 386 and 378 — Appeal against acquittal — Murder — Acquittal not justified — Appreciation of evidence — Homicidal death of wife owing to knife injury inflicted on her neck — *Death taking place in course of quarrel between the deceased-wife and respondent-husband in their house — Only respondent, deceased and their minor children present in the house at the material time — Respondent running away from the house immediately after the death of his wife — Eyewitness account of the next door neighbour, an independent and disinterested witness, was reliable — Minor inconsistencies in his version, considered in the context of his entire testimony, not rendering his testimony untrustworthy — His testimony amply corroborated by another neighbour — Dying declaration pointing to respondent as perpetrator of the crime — Knife recovered from possession of respondent — Held, circumstances when considered in the light of the unimpeachable evidence on record lead to the only legitimate inference that nobody else other than the respondent could have committed the murder — High Court reversed the findings of the trial court and acquitted the accused without properly displacing the cogent reasons given by the latter and without considering the vital points in the case — Hence judgment and order of the High Court set aside — Penal Code, 1860 — S. 302. State of Karnataka* v. *Gangadharaiah*, 1998 SCC (Cri) 372: AIR 1997 SC 3787.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *D.P. Wadhwa*, JJ. [Date of decision: 27-8-1997]

[5731] — Ss. 386 and 378 — Reappreciation of evidence and reversal of acquittal by High Court — Held on facts, was justified — *Misunderstandings and enmity between the families of deceased and accused — Defence plea that due to the darkness of*

(13) Conviction/Reversal of acquittal justified *(contd.)*

night the ocular witnesses could not have witnessed the occurrence, on facts, rejected — More than sufficient material on record to constitute the motive — No material discrepancy in prosecution evidence — Sufficient explanation given in respect of belated FIR — Trial court not only rejecting valuable material without giving due weight or importance to the same but also entertaining doubts and surmising much under the pretext of analysing the probabilities of the case — Cogent and convincing evidence available on record — Hence, held, High Court rightly reconsidered the evidence and reversed the acquittal — Penal Code, 1860 — Ss. 302/34 and 324

The High Court, having regard to the superficial manner in which the evidence has been discussed, analysed and considered in a perfunctory manner by the learned Sessions Judge, was very well justified in undertaking the reconsideration of the evidence in its proper perspective in order to ensure that no miscarriage of justice resulted in the matter. The trial court erred not only in rejecting valuable material without giving due weight or importance to the same but also in entertaining doubts and surmising much under the pretext of analysing the probabilities of the case. Despite the cogent and convincing evidence on record, a finding in favour of the accused seems to have been arrived at by the learned trial Judge on an incomplete evaluation of the evidence resulting in total miscarriage of justice. Hence, there is no reason to interfere with the well-merited conclusions and judgment of the High Court. (Paras 6 to 9). *Shivraj Bapuray Jadhav* v. *State of Karnataka*, (2003) 6 SCC 392: 2003 SCC (Cri) 1372: AIR 2003 SC 3578: 2003 Cri LJ 3542.

Bench Strength **2**. Coram: *Doraiswamy Raju* and *Arijit Pasayat*, JJ. [Date of decision: 15-7-2003]

[5732] — Ss. 386 and 378 — Reversal of acquittal by High Court — On facts, held proper — Improper ground — *Prosecution proving the presence and participation of accused persons in crime beyond reasonable doubt — Trial court erred in acquitting them by giving the benefit of doubt on tenuous ground — Evidence Act, 1872, S. 3 — Penal Code, 1860, Ss. 302, 323 r/w S. 34*

The benefit of doubt rendered by the trial court in respect of accused *M*, *K* and *T* runs straight to the teeth of ocular evidence. The High Court on appreciation of ocular evidence of PWs 1, 2, 3 and 4 and materials on record has rightly come to the conclusion that the prosecution has been able to prove the presence and participation of the accused *M*, *K* and *T* beyond reasonable doubt. The trial court acquitted them on the benefit of doubt on tenuous ground. (Para 18). *Mohar* v. *State of U.P.*, (2002) 7 SCC 606: 2003 SCC (Cri) 121: AIR 2002 SC 3279.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **H.K. Sema**, JJ. [Date of decision: 17-9-2002]

[5733] — Ss. 386 and 378 — Reversal of acquittal by High Court — Held, proper — *Assault on PW 3 by appellant — Evidence of eyewitnesses (friends of PW 3) rejected by trial court without any plausible reason — No reason given as to why the evidence of PW 3 was not worthy of credence — Since trial court itself observed that there was exchange of hot words between the accused and PW 3, plea that genesis of occurrence not established, held, rightly discarded by High Court — Reliance placed by High Court on evidence of PW 3 and other eyewitnesses, held, proper — High Court was justified in reversing the acquittal — Penal Code, 1860, S. 307* (Paras 6 and 7). *R. Prakash* v. *State of Karnataka*, (2004) 9 SCC 27: 2004 SCC (Cri) 1408: AIR 2004 SC 1812: 2004 Cri LJ 1391.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 11-2-2004]

[5734] — Ss. 386 and 378 — Reappraisal of evidence and reversal of acquittal by High Court — Propriety — *Reasons assigned by trial court for total rejection of prosecution evidence were against well-settled norms and principles of appraisal of evidence — Held, High Court rightly observed that conclusions by trial court were vitiated on account of perversity of approach — Thus, High Court was entitled to independently appraise and assess the evidence — On facts, conviction of A-2 under S. 302 IPC etc. was proper but that of other accused persons was improper except conviction of A-4 under S. 324 IPC for causing injury to PW 1* (Paras 5 to 10). *K.M. Ravi* v. *State of Karnataka*, (2009) 16 SCC 337.

Bench Strength **2**. Coram: *Doraiswamy Raju* and *Shivaraj V. Patil*, JJ. [Date of decision: 18-9-2002]

[5735] — Ss. 386 and 378 — Reversal of acquittal by High Court — Sustainability — *Five accused alleged to have assaulted the deceased and other PWs with lathi and axe — Deceased succumbing to the injuries in hospital — Whereas trial court doubted the credibility of so-called eyewitnesses, PWs 3, 4, 6, 7, 8 and 10 who were relatives of the deceased High Court concluded that the evidence of PWs regarding the presence and participation of the accused in the occurrence was reliable and truthful — Victims of assault would not normally spare the real culprits and falsely implicate innocent accused persons — Evidence of PWs* *clearly showing that the deceased was lying injured at the spot where the accused persons were present and they assaulted PWs 3, 7 and 8 when they went to rescue him — Further, their houses were at a very short distance and it was quite natural that on hearing the alarm they had rushed to the place of occurrence — Moreover, though some exaggeration in evidence of PW 10 (informant) was discernible but reading the same carefully along with the evidence of PWs 3, 7 and 8 lends support to the prosecution case — Non-examination of doctor who examined the injured PWs and deceased initially not fatal since homicidal death was not disputed — Reason for absence of incised wound when weapon of assault was alleged to be axe rightly noted by High Court that axes which are generally used in villages for cutting trees and branches are not so sharp like swords or knives, and when used on the head, can also cause lacerated injuries — Besides the accused were also armed with lathis — High Court found the appellants guilty, but considering the manner of assault and the surrounding factors, convicted them for offence punishable under S. 326 r/w S. 34 IPC — Impugned judgment does not suffer from any infirmity to warrant interference — Penal Code, 1860, S. 326 r/w S. 34. Mukul Mahto* v. *State of Jharkhand*, (2008) 15 SCC 648: (2009) 3 SCC (Cri) 1146: AIR 2009 SC 335.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 15-10-2008]

Ch. Madusudhana Reddy v. State of A.P., 1994 SCC (Cri) 275, followed

[5736] — Ss. 386 and 378 — Reversal of acquittal by High Court, held on facts, was justified — Death by burning — *Deceased committing suicide within 11 months after her marriage with Appellant 1 — No direct evidence — Appellants not attempting to save the deceased — Trial court acquitting Appellant 1 and his mother, Appellant 2, of all the charges on the grounds that the dying declaration was not recorded in the language in which it was made, there were some minor contradictions in the dying declaration and the report made to the Head Constable, and that there was doubt whether the deceased was in a fit condition to make the dying declaration — Further, the trial court held that the scolding and taunting of the deceased for not preparing proper food or that she was not good-looking was not such a cruelty so as to push her to commit suicide — Where the dying declaration was recorded and signed by the Magistrate, endorsement was made thereon by the doctor that the deceased made the statement in a fit state of mind, and the deceased put a thumb impression on her declaration which was made in Urdu and recorded in English and thereafter explained in Hindi to the deceased, held on facts, the appellants were rightly convicted under Ss. 306 and 498-A by the High Court — Further, High Court rightly held that the continuous taunting or teasing of the deceased by the appellants on one ground or the other amounted to mental cruelty drawing her to end her life — Penal Code, 1860, Ss. 304-B, 306 and 498-A*

PW 1, the Magistrate has certified that he had signed the dying declaration and had taken the endorsement of the doctor on duty that the deceased was in a fit state of mind to make a statement; the deceased had made the dying declaration in question-answer form in Urdu and he had translated the version and recorded the declaration in English. After recording her statement, he explained the statement in Hindi to the deceased who admitted its correctness. Thereafter, he took the thumb impression of the deceased on her declaration. In cross-examination, he has stated that he could read and speak in Hindi; the deceased had made statement in Urdu which he could understand as Urdu and Hindi languages are almost similar and in Hyderabad, Urdu and Hindi languages are spoken in the same way, there being not much difference. PW 11, the doctor, corroborated the statement of PW 1 to the effect that the deceased was in a fit mental condition to make statement and that he was present when the statement was recorded by the Magistrate. (Para 5)

Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. Each case has to be decided on its own facts to decide whether the mental cruelty was established or not. In the facts and circumstances of the case, the High Court rightly concluded that the continuous taunting or teasing of the deceased by the appellants on one ground or the other amounted to mental cruelty drawing her to end her life. Out of 11 months of married life, the deceased was forced to live in her parents' house and could live with her husband for a period of two months in different spells. The High Court also took note of the fact that the appellants did not try to save the deceased although they were present when the burn injuries were caused to her. (Para 6)

(13) Conviction/Reversal of acquittal justified *(contd.)*

Having regard to the evidence brought on record and looking to the reasons recorded by the High Court, the trial court committed manifest error in disbelieving the dying declaration and the evidence of PWs 3 to 7. The High Court was right and justified in reversing the order of acquittal and convicting and sentencing the appellants for the offences under Sections 306 and 498-A IPC. However, having regard to the fact that both the appellants were in imprisonment for about two months, the incident took place on 9-3-1988, Appellant 2 is the mother of Appellant 1 and she is aged 60 years, it would be just and appropriate to modify the sentence of imprisonment to the period already undergone. (Para 8). *Mohd. Hoshan* v. *State of A.P.*, (2002) 7 SCC 414: 2002 SCC (Cri) 1765: AIR 2002 SC 3270.

Bench Strength **2**. Coram: *U.C. Banerjee* and **Shivaraj V. Patil**, JJ. [Date of decision: 16-9-2002]

[5737] — Ss. 386 and 378 — Reversal of acquittal by High Court, held on facts, was proper — Murder — Reversal of acquittal by High Court — Propriety — *Death by strangulation — Murder by pressing the neck of B using a piece of cloth (11/2 m x 1 m) rolled into the shape of a rope — Prosecution case that PWs 4 and 5 (police personnel on patrol duty) on hearing the shrieks of B entered the house and saw the accused persons strangulating B in a garage, who by that time had died — Defence version that on finding a dead body lying in the garage the accused A-1 informed the police about it, but the police came and arrested all the three accused — Medical evidence and entry made in daily diary report corroborating the testimony of PWs 4 and 5 — Defence plea highly improbable and unnatural — No reason to implicate the accused-appellants falsely — Considering the defence contention that the ligature mark was not tallying with the diameter of the rope, held on facts, there was no inconsistency between the testimony of the eyewitnesses and the medical evidence — Absence of evidence on the point of motive, on facts, not fatal — Prosecution case against appellants proved beyond any shadow of doubt — Conviction upheld — Penal Code, 1860 — S. 302 r/w S. 34*

The entry made at 9.30 p.m. on 23-12-1989 in DDR of Police Post Sector 36 indicates that PWs 4 and 5 (constables) had been deputed for night patrol duty in Sector 35. Further, the entry made at 1.05 a.m. on 24-12-1989 records that PW 4 had given information about the incident to the police post in Sector 36 by telephone. The two constables could not have cooked up a false story regarding three persons assaulting a man in the short period which elapsed between their reaching there and in giving telephonic information at about 1.05 a.m. (Para 11)

The documentary evidence and also the promptness with which the FIR was lodged, its copy was sent to the Ilaqa Magistrate and the body was sent to the mortuary lends great assurance to the truthfulness of the prosecution case. The medical evidence on record also corroborates the testimony of eyewitnesses. (Para 11)

The accused-appellants have led no evidence in support of their defence. Even otherwise, the plea taken by them in their statement under Section 313 CrPC appears to be highly improbable and unnatural. The defence case that someone else placed the dead body in the garage of the *kothi* is not at all worthy of belief. The appellants have not even given any suggestion in the cross-examination of the eyewitnesses (PW 4 and PW 5) as to why they had given false statement to implicate them in a serious case like murder. There is not even an iota of evidence on the record which may even remotely suggest that PW 4 or PW 5 had any grouse against the appellants or any cause to implicate them falsely. (Para 12)

The width of the ligature mark would very much depend upon the type of the cloth, how tightly and strongly it was rolled over and was converted into a rope and how soon it was removed. In the present case, the cotton cloth used for strangulating was removed immediately as the witnesses reached the spot and caught hold of the assailants. In such circumstances, the width of the ligature mark could be much smaller and need not tally with the diameter of the rope. Thus, there is no inconsistency between the testimony of the eyewitnesses and the medical evidence and the case of the prosecution does not suffer from any infirmity on that account. (Paras 17 and 15)

The prosecution has succeeded in establishing its case against the appellants beyond any shadow of doubt. (Para 21). *Thaman Kumar* v. *State of Union Territory of Chandigarh*, (2003) 6 SCC 380: 2003 SCC (Cri) 1362: AIR 2003 SC 3975: 2003 Cri LJ 3070.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 6-5-2003]

Punjab Singh v. State of Haryana, 1984 Supp SCC 233: 1984 SCC (Cri) 484; Anil Rai v. State of Bihar, (2001) 7 SCC 318: 2001 SCC (Cri) 1009, followed

Modi's Medical Jurisprudence (22nd Edn.), referred to

[5738] — Ss. 386 and 378 — Reversal of acquittal by High Court, held on facts, was proper — Appreciation of evidence — *Accused persons assaulting PWs 1 to 3 and **G** — Death of **G** and inju-*

ries sustained by PWs 1 to 3 in said incident — High Court confirming conviction of A-1 under S. 307 IPC and that of A-5 and A-6 under S. 324 IPC, but reversing the acquittal of A-2, A-7, A-8 & A-11 and convicting A-2 under S. 324 and A-7, A-8 & A-11 under Ss. 302/34 — Evidence of PWs 1 to 3 corroborated by PWs 8, 14 and 17 — No inherent improbability in the prosecution evidence — Having perused the medical evidence, held, it was clear that a group of persons attacked the deceased — Incident happened all of a sudden — Reversal of acquittal by High Court justified — But having regard to the peculiar nature of the circumstances which led to the death of G, *conviction of A-7, A-8 and A-11 altered from Ss. 302/34 to Ss. 304 Pt. I/34 — Conviction and sentence passed against A-1, A-2, A-5 and A-6, held, was not liable to be interfered with — Penal Code, 1860 — S. 302 or S. 304, Ss. 302/34 or Ss. 304 Pt. I/34 and Ss. 307, 324*

There is no inherent improbability in the evidence adduced by the prosecution. It is true that PW 1 to PW 3 did not give a very consistent version of the nature of attack mounted by the group of people, but on a perusal of the evidence of these three witnesses, along with the evidence of PW 8, PW 14 and PW 17, it is clear that the accused who have been found guilty were instrumental in causing fatal injuries to the deceased. Thus, there is no reason to disagree with the views expressed by the High Court especially when the rejection of the evidence of PW 8, PW 14 and PW 17 by the Sessions Court was mostly on flimsy reasons. But, having regard to the peculiar nature of the circumstances which led to the death of the deceased it is held that the offence committed by A-7, A-8 and A-11 would only come within the ambit of the offence punishable under Section 304 Part I IPC. (Paras 6 to 9). *Kunhimodeenkutty* v. *State of Kerala*, (2002) 10 SCC 352: 2003 SCC (Cri) 1452: AIR 2003 SC 836.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **K.G. Balakrishnan**, JJ. [Date of decision: 18-12-2002]

[5739] — **Ss. 386 and 378 — Reversal of acquittal by High Court, on facts, justified**. *Badri* v. *State of U.P.*, (1975) 4 SCC 609: 1975 SCC (Cri) 644: AIR 1975 SC 1985: 1975 Cri LJ 1739: 1976 MLJ (Cri) 317.

Bench Strength **3**. Coram: *Y.V. Chandrachud*, **P.N. Bhagwati** and *R.S. Sarkaria*, JJ. [Date of decision: 29-7-1975]

[5740] — **Ss. 386 and 378 — Acquittal not justified — Acquittal by trial court relying on certain rulings of the Supreme Court, despite its observation that evidence against acquitted accused was as nearly cogent as the one against convicted accused** — *Held, acquittal was not proper — Hence, rightly interfered with by the High Court — Penal Code, 1860, Ss. 302/34* (Paras 29 to 34). *Parasa Raja Manikyala Rao* v. *State of A.P.*, (2003) 12 SCC 306: AIR 2004 SC 132: 2004 Cri LJ 390.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 15-10-2003]

(14) Conviction altered

[5741] — S. 386 — Alteration of conviction by High Court under S. 302 IPC, from S. 396 IPC — *Appellant along with other accused tried under S. 396 IPC, alternatively under S. 302 IPC for causing death of the deceased while attempting to commit dacoity — Trial court convicted all the accused under S. 396 IPC and sentenced them to life imprisonment — High Court considering the facts that there was no actual commission of dacoity and that there was a specific allegation in the charge against the appellant of commission of murder of the deceased and also finding that the evidence proved that appellant alone caused the death of the deceased, altered the conviction of the appellant to that under S. 302 IPC while maintaining the sentence of life imprisonment — Held, appellant had not been prejudiced by the alteration of the conviction in view of the specific alternative charge — There was no acquittal of the appellant under S. 302 IPC either expressly or impliedly — Hence alteration sustainable — Penal Code, 1860 — Ss. 302 and 396. Ramdeo Rai Yadav* v. *State of Bihar*, (1990) 2 SCC 675: 1990 SCC (Cri) 413: AIR 1990 SC 1180: 1990 Cri LJ 1183: (1990) 2 Crimes 47.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 1-3-1990]

Lakhan Mahto v. State of Bihar, AIR 1966 SC 1742: 1966 Cri LJ 1349, distinguished

Distinguished in Raj Kumar v. State of Uttaranchal, (2008) 11 SCC 709

[5742] — S. 386 — Appeal to Supreme Court against acquittal by High Court allowed — *But conviction altered from Ss. 302/34 to S. 326, Penal Code, 1860. State (Delhi Admn.)* v. *Vishwa Bandhu*, (1978) 4 SCC 420: 1978 SCC (Cri) 556.

Bench Strength **2**. Coram: *R.S. Sarkaria* and **P.S. Kailasam**, JJ. [Date of decision: 27-7-1978]

(15) Remand/Final disposal by High Court

[5743] — S. 386 — Appeal before High Court against acquittal — Remand to trial court — If proper, on facts — *Charge against appellant under Ss. 420, 477-A IPC and S. 5(2) r/w S. 5(1)(d) of Prevention of Corruption Act for cheating the Bank by falsifying bank account while working as Branch Manager during 1984-86 — While audit reports of 1984 and 1985 showing no lapses, audit report of*

(15) Remand/Final disposal by High Court *(contd.)*

1986 referring to the irregularities on the basis of which complaint lodged against appellant — Trial court after considering oral and documentary evidence acquitting the appellant taking the view that prosecution ought to have taken into account the earlier audit reports of 1984 and 1985 before filing charge-sheet against appellant — Evidence of material witnesses considered in a perfunctory manner and various other circumstances relied upon by prosecution overlooked by trial court — High Court observing that trial court should have considered the evidence adduced during the trial to find out the guilt or otherwise of appellant and accordingly remanding the matter back to trial court for disposal in accordance with law as some of the documents should also have been brought on record for effective disposal of the controversy raised in the case and to do justice between the parties — Held on facts, High Court was justified in doing so — Thereby it cannot be said that High Court had afforded opportunity to the prosecution to cure the lacunae in its evidence — High Court had also not faulted in preferring to remand the matter instead of recording additional evidence in terms of S. 391 — Trial court will strictly adhere to the observations and directions given by the High Court in its judgment — Penal Code, 1860, Ss. 420, 477-A — Prevention of Corruption Act, 1947, Ss. 5(2) & 5(1)(d). V. Srinivasa Reddy v. *State of A.P.*, (1998) 9 SCC 331: 1998 SCC (Cri) 1023: AIR 1998 SC 2079.

Bench Strength **2**. Coram: **S.P. Kurdukar** and *K.T. Thomas*, JJ. [Date of decision: 5-2-1998]

Ukha Kolhe v. State of Maharashtra, AIR 1963 SC 1531: (1964) 1 SCR 926; Mohd. Iqbal Ahmed v. State of A.P., (1979) 4 SCC 172: 1979 SCC (Cri) 926, distinguished

[5744] — Ss. 386, 378 and 360 — Remand — Matter remitted again by High Court with same direction, if proper — *High Court convicting the accused remanding the matter to trial Magistrate to pass appropriate sentence exercising liberty in respect of the applicability of benevolent provisions of the Probation of Offenders Act and consideration of report of District Probation Officer — Magistrate, exercising discretion granted by High Court, sentencing the accused with three years' rigorous imprisonment — Sentence having been affirmed by the Sessions Court, matter remanded again by High Court with same direction — Having regard to the liberty granted by High Court to Magistrate while passing appropriate sentence, held that the Magistrate passed the sentence in accordance with the earlier direction of High Court — Order of High Court remitting the matter again, for considering the same issue, merely on ground of absence of District Probation Officer's report, held, was not justified — Penal Code, 1860, S. 498-A* (Para 3). *C. Gopinathan* v. *Krishnan Ayyappan*, (2000) 9 SCC 430: 2001 SCC (Cri) 413.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *Shivaraj V. Patil*, JJ. [Date of decision: 28-3-2000]

[5745] — S. 386(a) — Punishment for dishonour of cheque due to insufficiency of funds — Imposition of sentence by appellate court — Remission of case to trial court for imposition of sentence, if not proper — *Held, appellate court itself is empowered under S. 386(a) CrPC to impose sentence once it concludes that offence under S. 138 has been committed — Appellate court is not supposed to remit the case to trial court for imposing sentence — Negotiable Instruments Act, 1881 — S. 138*

The powers of the appellate court, in an appeal from an order of acquittal, are enumerated in Section 386(*a*) CrPC. Those powers do not contemplate that an appellate court, after recording conviction, can remit the matter to the trial court for passing appropriate order of sentence. The judicial function of imposing appropriate sentence can be performed only by the appellate court when it reverses the order of acquittal and not by any other court. Having regard to the scheme of the Code of Criminal Procedure, 1973 after finding the appellant guilty under Section 138 of the Negotiable Instruments Act, the judicial discretion of imposing appropriate sentence could not have been abdicated by the Single Judge of the High Court, in favour of the Magistrate. Having found the appellant guilty under Section 138 of the Act it was the bounden duty of the High Court to impose appropriate sentence commensurate with the facts of the case. (Para 26). *Kumar Exports* v. *Sharma Carpets*, (2009) 2 SCC 513.

Bench Strength **2**. Coram: *R.V. Raveendran* and **J.M. Panchal**, JJ. [Date of decision: 16-12-2008]

[**Ed.**: The Supreme Court however reversed the High Court's finding that the appellant was guilty under Section 138.]

(16) Rehearing/retrial

[5746] — S. 386 — Rehearing of appeal by High Court — When warranted — *Appeals before High Court disposed of in absence of counsel for accused-appellants — It was specifically stated before Supreme Court that after the case was entrusted to a particular lawyer, he had suffered from some mental ailment and was not attending court, and that is how appeals came to be disposed of in absence of counsel for accused-appellants —*

In view of these peculiar circumstances, held, it would be appropriate for High Court to rehear the appeals. Lallu Yadav v. *State of Bihar*, (2005) 10 SCC 242: 2005 SCC (Cri) 1511.

Bench Strength **2**. Coram: *Arijit Pasayat* and *C.K. Thakker*, JJ. [Date of decision: 5-10-2004]

[5747] — S. 386 — Retrial cannot be ordered without setting aside judgment passed by the trial court. *Avtar Singh* v. *Bhajan Singh*, (1998) 2 SCC 750: 1998 SCC (Cri) 680: AIR 1998 SC 2910.

Bench Strength **2**. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 27-11-1997]

[5748] — Ss. 386, 311 and 391 — Retrial — Approach to be taken by trial court — Material to be considered — Moulding of relief — Retrial ordered by High Court — *Though a retrial not found to be warranted on facts, since retrial as directed by High Court had already commenced and much further evidence had already been recorded, Supreme Court declining to set aside retrial and whole judgment of High Court — In light of certain observations of High Court likely to prejudice the accused, Supreme Court, however, cautioning trial court to make its decision in said retrial uninfluenced by such observations and on basis of all the evidence on record (recorded both at the initial trial and retrial) — Constitution of India — Art. 136*

The Supreme Court was informed that before it had stayed operation of the impugned judgment, the retrial as directed by the High Court had already commenced. The trial Judge had recorded the statement of the father of the deceased and only the remaining part of the evidence was to be recorded.

Held:

In exercise of the discretionary jurisdiction under Article 136 of the Constitution and keeping in view the stage of retrial the whole judgment of the High Court is not being set aside. However, the trial Judge, after retrial, shall take a decision on the basis of the entire evidence on record and strictly in accordance with law, without in any manner, being influenced or inhibited by anything said on the evidence in the judgment of the High Court or the Supreme Court. (Paras 20, 21 and 28). *Satyajit Banerjee* v. *State of W.B.*, (2005) 1 SCC 115: 2005 SCC (Cri) 276: 2005 Cri LJ 648: (2004) 3 KLT 1098.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **D.M. Dharmadhikari**, JJ. [Date of decision: 23-11-2004]

[5749] — Ss. 386 and 157 — Retrial — Dishonest and faulty investigation — High Court coming to definite conclusion as to — Held, per se sufficient justification to have directed retrial of the case (Para 70). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

Karnel Singh v. State of M.P., (1995) 5 SCC 518: 1995 SCC (Cri) 977; Paras Yadav v. State of Bihar, (1999) 2 SCC 126: 1999 SCC (Cri) 104; Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517: 1998 SCC (Cri) 1085; Amar Singh v. Balwinder Singh, (2003) 2 SCC 518: 2003 SCC (Cri) 641, relied on

Clarified in Satyajit Banerjee v. State of W.B., (2005) 1 SCC 115

[5750] — Ss. 386 and 391 — Retrial — Additional evidence taken on record — Held, retrial not a necessary corollary when additional evidence taken on record

It is not that the Court has to be satisfied that the additional evidence would be necessary for rendering a verdict different from what was rendered by the trial court. Merely because the High Court permits additional evidence to be adduced, it does not necessarily lead to the conclusion that the judgment of the trial court was wrong. In a given case even after assessing the additional evidence, the High Court can maintain the verdict of the trial court and similarly the High Court on consideration of the additional evidence can upset the trial court's verdict. It all depends upon the relevance and acceptability of the additional evidence and its qualitative worth in deciding the guilt or innocence of the accused. Moreover, whenever additional evidence is accepted, retrial is not a necessary corollary. (Paras 58, 59, 73 and 21). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

Clarified in Satyajit Banerjee v. State of W.B., (2005) 1 SCC 115

[5751] — Ss. 386 and 391 — Retrial when to be ordered — *Held, whether retrial under S. 386 or taking up of additional evidence under S. 391 proper procedure will depend on facts and circumstances of each case — No straitjacket formula of universal and invariable application can be formulated — Ultimately courts must keep in view their very raison d'être, that is, to find out the truth and dispense justice impartially, in this regard — On facts, case found to be one writ large with serious infirmities, telltale even to the naked eye of an ordinary man, arbitrariness, where truth had become a casualty, without parallel, and which stood on its own as an exemplary one, special of its kind, necessary to prevent its recurrence and therefore fit and proper for retrial — Further held, a retrial in the*

(16) Rehearing/retrial *(contd.)*

case on hand was essentially called for, in order to save and preserve the justice-delivery system, unsullied and unscathed by vested interests — Retrial directed to be taken up on a day-to-day basis, to be concluded by December 2004

Whether a retrial under Section 386 or taking up of additional evidence under Section 391 is the proper procedure will depend on the facts and circumstances of each case for which no straitjacket formula of universal and invariable application can be formulated. In the ultimate analysis whether it is a case covered by Section 386 or Section 391 CrPC, 1973, the underlying object which the court must keep in view is the very reason for which the courts exist i.e. to find out the truth and dispense justice impartially and ensure also that the very process of courts is not employed or utilized in a manner which gives room to unfairness or lend themselves to be used as instruments of oppression and injustice. (Paras 52, 53 and 73)

It is not necessary to highlight all the infirmities in the judgment of the High Court or the approach of the trial court lest nothing credible or worth mentioning remains in the process. There are several infirmities which are telltale even to the naked eye of an ordinary common man. The entire approach of the High Court suffers from serious infirmities, its conclusions lopsided and lacks proper or judicious application of mind. Arbitrariness is found writ large on the approach as well as the conclusions arrived at in the judgment under challenge, in unreasonably keeping out relevant evidence from being brought on record. This appears to be a case where the truth has become a casualty in the trial. It is a fit and proper case, in the background of the nature of additional evidence sought to be adduced and the perfunctory manner of trial conducted on the basis of tainted investigation, where a retrial is a must and essentially called for in order to save and preserve the justice-delivery system unsullied and unscathed by vested interests. The case on hand is without parallel and comparison to any of the cases where even such grievances were sought to be made. It stands on its own as an exemplary one, special of its kind, necessary to prevent its recurrence. (Paras 73, 70, 59 and 21)

If the accused persons were not on bail at the time of conclusion of the trial, they shall go back to custody, if on the other hand they were on bail that order shall continue unless modified by the court concerned. It would be appropriate if the retrial is taken up on day-to-day basis keeping in view the mandate of Section 309 CrPC and completed by the end of December 2004. (Para 85). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

Clarified in Satyajit Banerjee v. State of W.B., (2005) 1 SCC 115

[5752] — Ss. 386(b), 374(2) and 218 — Joint sessions trial — Misjoinder of charges pleaded in appeal by the sixteen convicted out of forty-two put on trial — *No appeal by State against the acquittals — Held, High Court could not in appeal under S. 374(2) order retrial de novo and reverse the acquittals in such situation*

The High Court failed to appreciate that in an appeal by the respondents under S. 374(2) of the Code, the order of acquittal passed by the learned Additional Sessions Judge as against the 26 other accused could not be interfered with. The retrial directed by the High Court must necessarily revise the prosecution and must result in a trial de novo against the 42 accused. The 26 other accused acquitted by the learned Additional Sessions Judge were not impleaded as parties to the appeals before the High Court. In the absence of an appeal preferred by the State Government against their acquittal, the High Court could not under S. 386(*b*) on an appeal by the respondents against their conviction, alter the acquittal nor can there be a splitting up of the trial. *State of W.B.* v. *Laisal Haque*, (1989) 3 SCC 166: 1989 SCC (Cri) 513: AIR 1989 SC 129: 1989 Cri LJ 865.

Bench Strength **2**. Coram: **A.P. Sen** and *L.M. Sharma*, JJ. [Date of decision: 12-9-1988]

State of Karnataka v. Narsa Reddy, (1987) 4 SCC 170: 1987 SCC (Cri) 744, followed

(17) Interference by Supreme Court

See also S. 386, '(18) Remand/Final disposal by Supreme Court', below

See fully under CONSTITUTION OF INDIA, Arts. 134 to 136 in Vol. 8, *Complete Digest of Supreme Court Cases*, 2nd Edn.

[5753] — S. 386 — Question of appreciation of evidence and not a substantial question of law raised in appeal under Art. 136 — Both the views of trial court and High Court on the evidence possible — *In the circumstances, held, Supreme Court would not ordinarily interfere with the view taken by the High Court — Constitution of India — Art. 136. State of A.P.* v. *P. Anjaneyulu*, (1984) 2 SCC 445: 1984 SCC (Cri) 269: AIR 1982 SC 1598.

Bench Strength **2**. Coram: *O. Chinnappa Reddy* and *V. Balakrishna Eradi*, JJ. [Date of decision: 2-11-1982]

[5754] — S. 386 — Criminal appeal — Supreme Court's interference with High Court's judgment when called for, restated — *Constitution of India — Art. 136*

The appellate court will not abjure its duty to prevent miscarriage of justice by interfering where interference is imperative. Where doubt is based on irrelevant grounds or where the court allows itself to be deflected by red herrings drawn across the track, or where the evidence accepted by the trial court is rejected by the High Court after a perfunctory consideration or where the baneful approach of the court has resulted in vital and crucial evidence being ignored or for any such adequate reason, the court should feel obliged to secure the ends of justice, to appease the judicial conscience, as it were. (Para 7). *State of M.P.* v. *Dharkole*, (2004) 13 SCC 308: 2005 SCC (Cri) 225: AIR 2005 SC 44: 2005 Cri LJ 108.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 29-10-2004]

[5755] — S. 386 — Appeal against acquittal — *In absence of any illegality in the judgment of the High Court, no interference of Supreme Court called for. State of Maharashtra* v. *Sadruddin Jan Mohd. Bardia*, 1992 Supp (3) SCC 77: 1992 SCC (Cri) 974.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and *M. Fathima Beevi*, JJ. [Date of decision: 23-1-1992]

[5756] — S. 386 — Appeal against High Court's reversal of acquittal — Supreme Court can re-examine the evidence. *Bollavaram Pedda Narsi Reddy* v. *State of A.P.*, (1991) 3 SCC 434: 1991 SCC (Cri) 586: AIR 1991 SC 1468: 1991 Cri LJ 1833.

Bench Strength **2**. Coram: *Kuldip Singh* and **M. Fathima Beevi**, JJ. [Date of decision: 7-5-1991]

[5757] — S. 386 — Appeal by special leave — Concurrent findings — *Conviction recorded by trial court and confirmed by High Court based on appreciation of evidence — Supreme Court would not interfere. Shrishail Nageshi Pare* v. *State of Maharashtra*, (1985) 2 SCC 341: 1985 SCC (Cri) 235: AIR 1985 SC 866: 1985 Cri LJ 1173.

Bench Strength **2**. Coram: *O. Chinnappa Reddy* and *V. Balakrishna Eradi*, JJ. [Date of decision: 25-3-1985]

[5758] — S. 386 — Appeal to Supreme Court against conviction — One of several accused succeeding in appeal — *Held, where findings interdependent and inextricably integrated the benefit will go to non-appealing co-accused as well — Constitution of India — Art.136. Hari Nath* v. *State of U.P.*, (1988) 1 SCC 14: 1988 SCC (Cri) 14: AIR 1988 SC 345: 1988 Cri LJ 422.

Bench Strength **2**. Coram: *A.P. Sen* and **M.N. Venkatachaliah**, JJ. [Date of decision: 6-11-1987]

[5759] — S. 386 — Criminal appeal — *Though Supreme Court may view the evidence differently interference with acquittal by High Court not justified when the view taken by it was reasonably possible. State of U.P.* v. *Gopi*, 1980 Supp SCC 160: 1979 SCC (Cri) 630: 1979 Cri LJ 1121: 1979 ALJ 985.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *O. Chinnappa Reddy*, JJ. [Date of decision: 2-3-1979]

[5760] — S. 386 — Normally Supreme Court would not interfere with High Court's conclusion based on proper appreciation of evidence. *Ram Sharan Yadav* v. *Thakur Muneshwar Nath Singh*, (1984) 4 SCC 649: AIR 1985 SC 24.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *Sabyasachi Mukharji*, JJ. [Date of decision: 30-10-1984]

[5761] — Ss. 386 and 374(2) — High Court while disposing of appeal not applying its mind to the facts of the case — *Merely repeating what was stated in the judgment of the trial court — Held, necessary for Supreme Court to carefully scrutinise the evidence on record since the High Court, even though the first court of appeal, failed to do so — Constitution of India — Art. 136* (Para 1). *Hans Raj* v. *State of Haryana*, (2004) 12 SCC 257: AIR 2004 SC 2790: 2004 Cri LJ 1759.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 26-2-2004]

Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618: 2002 SCC (Cri) 1088; Sanju v. State of M.P., (2002) 5 SCC 371: 2002 SCC (Cri) 1141; State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73: 1994 SCC (Cri) 107, relied on

[5762] — Ss. 386 and 374(2) — Acquittal by High Court — Interference by Supreme Court, when not permissible — Appeal against acquittal — Interference with the finding of the High Court — *Held, not permissible where the view taken by the High Court is a possible and reasonable view — Constitution of India — Art. 136* (Para 21). *Vimal Suresh Kamble* v. *Chaluverapinake Apal S.P.*, (2003) 3 SCC 175: 2003 SCC (Cri) 596: AIR 2003 SC 818: 2003 Cri LJ 910.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 8-1-2003]

[5763] — Ss. 386 and 374(2) — Acquittal by High Court based on perverse reasoning, held, not proper — Appeal against acquittal — Interference by Supreme Court — When justified — *Reasoning of High Court for acquitting the accused wholly perverse — Evidence on record giving only one view which was neither ambivalent nor capable of an alternate appreciation consistent with innocence of the accused — Held, judgment of High Court liable to be set aside — Convictions recorded*

(17) Interference by Supreme Court *(contd.)*

by trial court, affirmed — Constitution of India — Art. 136 (Paras 9 and 23 to 25). *Prithvi v. Mam Raj, 2005 SCC (Cri) 198: AIR 2004 SC 2729.*

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **B.N. Srikrishna**, JJ. [Date of decision: 19-2-2004]

Harijana Thirupala v. Public Prosecutor, High Court of A.P., (2002) 6 SCC 470: 2002 SCC (Cri) 1370; Kali Ram v. State of H.P., (1973) 2 SCC 808: 1973 SCC (Cri) 1048, distinguished on facts

State of U.P. v. Gokaran, 1984 Supp SCC 482: 1985 SCC (Cri) 41, relied on

[5764] — Ss. 386 and 374(2) — Interference by Supreme Court — When justified — *Reasoning of High Court for acquitting the accused wholly perverse — Evidence on record giving only one view which was neither ambivalent nor capable of an alternate appreciation consistent with innocence of the accused — Held, judgment of High Court liable to be set aside — Convictions recorded by trial court, affirmed — Constitution of India — Art. 136* (Paras 9 and 23 to 25). *Prithvi* v. *Mam Raj*, (2004) 13 SCC 279: 2005 SCC (Cri) 198: AIR 2004 SC 2729.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **B.N. Srikrishna**, JJ. [Date of decision: 19-2-2004]

Harijana Thirupala v. Public Prosecutor, High Court of A.P., (2002) 6 SCC 470: 2002 SCC (Cri) 1370; Kali Ram v. State of H.P., (1973) 2 SCC 808: 1973 SCC (Cri) 1048, distinguished on facts

State of U.P. v. Gokaran, 1984 Supp SCC 482: 1985 SCC (Cri) 41, relied on

[5765] — Ss. 386, 374(2) and 368(c) — Reversal of judgment of trial court by High Court — Interference by Supreme Court — Scope — *Held, normally, unless the finding of the High Court is either arbitrary or perverse, Supreme Court would not interfere — On facts, judgment of High Court acquitting accused who was awarded death sentence, held, proper — Constitution of India, Arts. 134 and 136* (Para 5). *State of T.N.* v. *Sundar*, (2003) 12 SCC 695: AIR 2004 SC 1216: 2004 Cri LJ 913.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 11-12-2003]

[5766] — Ss. 386 and 374(2) — High Court in an appeal against conviction reversing the finding of fact recorded by the trial court and acquitting nine accused of the charges under Ss. 302/149 etc. IPC as well as altering the conviction of one accused from S. 302 to S. 304 Pt. I IPC — *Held, where the High Court had discussed all the aspects having bearing on the question in issue, the said finding of the High Court could not be disturbed in an appeal against acquittal under Art. 136 merely because a different view such as the one adopted by the trial court could be taken — Circumstances in which such an interference is permissible, restated — On facts, any interference with the finding of fact reached by the High Court in favour of the accused persons, held, was not called for — However, acquittal of the accused-Respondent 1 by the High Court, held, was not justified as he had clearly exceeded the right of private defence*

The learned Sessions Judge recorded the finding that the accused formed themselves into an unlawful assembly with the common object of taking forcible possession of the land in question which was in possession of PW 5. The Sessions Court did not accept the plea that the accused acted in exercise of the right of private defence of property. The High Court did not agree with the trial court's findings as regards possession of the land. The High Court was of the view that the deceased and his partisans went to the field to take possession thereof forcibly and in order to ward off their attempts and to save the property from their onslaughts, the accused had to defend themselves. The High Court held that Respondent 10, who gave the fatal blow to deceased *B* with a deadly weapon, exceeded his right of self-defence and therefore he was liable to be punished under Section 304 Part I instead of Section 302. The High Court observed that Respondents 1 to 9 were within their rights to inflict injuries on the complainant party short of causing death in exercise of the right of private defence of property. (Paras 4 and 5)

In this appeal against acquittal under Article 136, the Supreme Court cannot disturb the finding of fact reached by the High Court unless it is perverse or the material evidence is overlooked or an erroneous legal approach is adopted. The High Court had discussed all the aspects having a bearing on the question of possession. One more aspect noticed by the High Court in doubting the prosecution story is that no evidence has been let in to prove the allegation that crop was damaged by the cattle allegedly let loose by the accused. Thus, the finding of the High Court cannot be disturbed merely because a different view such as the one adopted by the trial court could be taken. (Paras 5 and 6)

The judgment of the High Court cannot be faulted excepting insofar as the acquittal of Respondent 1 is concerned. PW 6 suffered a grievous hurt within the meaning of clause eighthly of Section 320 on account of stab injuries inflicted by Respondent 1 with *bhala*. Such a brutal attack on PW 6 could have been avoided by Respondent 1, especially when PW 6 was unarmed and the other accused, at least two of them, had simultaneously started attacking him. The fourth clause of Section

99 IPC lays down the extent to which the right of private defence is available. Thus, Respondent 1 clearly exceeded his right of private defence and caused much more harm than necessary. Therefore, he is liable to be punished under Section 326 read with Section 322 IPC. (Paras 7, 9, 8 and 10). *State of Haryana* v. *Sher Singh*, (2002) 9 SCC 356: AIR 2002 SC 3223.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **P. Venkatarama Reddi**, JJ. [Date of decision: 11-9-2002]

[5767] — Ss. 386 and 374(2) — Reversal of conviction by High Court — Interference under Art. 136 by the Supreme Court — *Reversal of conviction by High Court under a total misconception of principles of law and vital facts proved — Interference in such case, held, permissible — Constitution of India — Art. 136*

Where the High Court is shown to have completely failed in appreciating the true effect of the materials brought on record and its findings are erroneous, perverse and result in miscarriage of justice, the Supreme Court will have no hesitation to interfere, all the more so when the High Court has chosen to reverse a verdict of conviction recorded by the learned trial Judge, under a total misconception of the principles of law as well as the vital and essential facts proved. (Para 7). *Govt. of NCT of Delhi* v. *Jaspal Singh*, (2003) 10 SCC 586.

Bench Strength **2**. Coram: **Doraiswamy Raju** and *H.K. Sema*, JJ. [Date of decision: 8-8-2003]

[5768] — Ss. 386 and 378 — Supreme Court's interference under Art. 136 justified where High Court's order of acquittal setting aside conviction recorded by trial court is perverse, illegal or unjustified — *Penal Code, 1860, S. 302 — Constitution of India — Art. 136*

The scope of appeals under Art. 136 is very much limited. The Supreme Court does not exercise its overriding powers under Art. 136 to reweigh the evidence. The Court does not disturb the concurrent findings of fact reached upon proper appreciation. Even if two views are reasonably possible, one indicating conviction and other acquittal, Court will not interfere with the order of acquittal. But the Court will not hesitate to interfere if the acquittal is perverse in the sense that no reasonable person would have come to that conclusion, or if the acquittal is manifestly illegal or grossly unjust. *State of U.P.* v. *Anil Singh*, 1988 Supp SCC 686: 1989 SCC (Cri) 48: AIR 1988 SC 1998.

Bench Strength **2**. Coram: *G.L. Oza* and **K. Jagannatha Shetty**, JJ. [Date of decision: 26-8-1988]

[5769] — Ss. 386 and 378 — Appeal against acquittal — Acquittal affirmed by High Court — *Interference with, in absence of any reason therefor, held, not warranted*

Coming to the appeal filed by the State in respect of which both the trial court and the High Court recorded acquittal, it is seen that there was no acceptable material. This aspect has been analysed in great detail by the trial court and the High Court and there is no reason to interfere with the conclusions of the courts below in that regard. (Para 36). *Bodhraj* v. *State of J&K*, (2002) 8 SCC 45: AIR 2002 SC 3164.

Bench Strength **2**. Coram: *Ruma Pal* and **Arijit Pasayat**, JJ. [Date of decision: 3-9-2002]

[5770] — Ss. 386 & 378 — Appeal as of right by accused whose acquittal by trial court reversed by the High Court — Scope of appeal before Supreme Court — *Held extends to all questions of facts and law — Therefore tests laid down by Supreme Court in appeals by special leave under Art. 136 for finding substantial and compelling reasons on behalf of the High Court to sustain its exercise of power under Ss. 378 and 386, Criminal Procedure Code, 1973, held not relevant. Bhajan Singh* v. *State of Punjab*, (1978) 4 SCC 77: 1978 SCC (Cri) 515: AIR 1978 SC 1759: 1979 Cri LJ 7.

Bench Strength **2**. Coram: *Jaswant Singh* and **P.S. Kailasam**, JJ. [Date of decision: 31-8-1978]

[5771] — S. 386 — Interference by Supreme Court — *Justified where High Court completely misdirected itself in reversing order of conviction passed by trial court — Constitution of India — Art. 136. Gauri Shanker Sharma* v. *State of U.P.*, 1990 Supp SCC 656: AIR 1990 SC 709: (1990) 1 Crimes 196.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *M. Fathima Beevi*, JJ. [Date of decision: 12-1-1990]

[5772] — S. 386 — Criminal appeal — Acquittal by High Court not justified on facts and reversed. *State of U.P.* v. *Nagau*, (1979) 3 SCC 427: 1979 SCC (Cri) 647: AIR 1979 SC 1568: 1979 Cri LJ 1082.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *O. Chinnappa Reddy*, JJ. [Date of decision: 2-3-1979]

[5773] — S. 386 — Criminal appeal — Reversal of acquittal justified where the High Court misread the evidence and based its findings on mere conjectures. *Mohan Lal* v. *Ajit Singh*, (1978) 3 SCC 279: 1978 SCC (Cri) 378: AIR 1978 SC 1183: 1978 Cri LJ 1107.

Bench Strength **2**. Coram: **P.N. Shinghal** and *D.A. Desai*, JJ. [Date of decision: 2-5-1978]

(17) Interference by Supreme Court *(contd.)*

[5774] — S. 386 — Interference by Supreme Court — Identification and motive of accused and recovery of crime weapon from them — *Conviction recorded by trial Court on the basis of evidence regarding — High Court finding the evidence to be unreliable — View of the High Court also reasonable and not perverse or wholly unsound — Thus at the most, two views can be said to be possible — Hence Supreme Court's interference under Art. 136 with High Court's acquittal not called for — Penal Code, 1860, Ss. 148, 302, 323, 324, 395 and 396 — Constitution of India — Art.136. State of U.P.* v. *Lalla Singh*, (1990) 2 SCC 687: 1990 SCC (Cri) 410: AIR 1990 SC 1013: (1990) 2 Crimes 280.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 13-3-1990]

[5775] — S. 386 — Acquittal by courts below under S. 401 IPC — Upheld by Supreme Court — No alternative charge under S. 410 IPC — Nor plea for conviction under S. 410 IPC canvassed in courts below — *In such situation Supreme Court cannot in appeal under Art. 136 convict under S. 410 especially when findings of fact were that none of the acquitted were found in possession of stolen property knowing it to be stolen — Penal Code, 1860, Ss. 410 and 401. Pandara Nadar* v. *State of T.N.*, 1991 Supp (2) SCC 458: 1991 SCC (Cri) 1069: AIR 1991 SC 391: 1991 Cri LJ 468.

Bench Strength **2**. Coram: *Kuldip Singh* and *K. Ramaswamy*, JJ. [Date of decision: 20-11-1990]

[5776] — S. 386 — Practice — Criminal appeal — Acquittal based on construction of statutory provision not approved by Supreme Court — However other defences had not been considered — *In view of peculiar circumstances acquittal not disturbed. Balakrishna Pillai* v. *Matha Medicals*, (1991) 2 SCC 203: 1991 SCC (Cri) 461: 1991 Cri LJ 691: (1991) 1 Crimes 448.

Bench Strength **2**. Coram: *B.C. Ray* and **J.S. Verma**, JJ. [Date of decision: 15-1-1991]

[5777] — S. 386 — State seeming not interested in pursuing the prosecution — Besides criminal proceedings pending for more than 10 years — *Directed to be dropped in the interest of justice. Munshi Ram Ram Niwas* v. *Collector, Food and Supplies Department*, 1991 Supp (2) SCC 310: 1991 SCC (Cri) 1037: AIR 1993 SC 1203: (1991) 55 ELT 452.

Bench Strength **3**. Coram: *M.H. Kania*, **N.M. Kasliwal** and *M. Fathima Beevi*, JJ. [Date of decision: 17-9-1991]

[5778] — S. 386(b) — Scope of appellate power under — *Where more than one person charged with the aid of S. 34 or 149 or 120-B IPC but only one convicted and others acquitted by trial court, held, it is still open to appellate court, if it disagrees with trial court's conclusion of facts, to ascertain involvement of the acquitted persons for the limited purpose of finding criminality of other accused with the aid of Ss. 34/149/120-B*

In the matter of appreciation of the evidence the powers of the appellate court are as wide as that of the trial court. It has full power to review the whole evidence. It is entitled to go into the entire evidence and all relevant circumstances to arrive at its own conclusion about the guilt or innocence of the accused. The provisions of S. 386(*b*) do not create a bar against the appellate court considering indirectly and incidentally a case against the person who was acquitted, if that becomes necessary when dealing with the case in the appeal presented on behalf of the other accused who are convicted. In considering the evidence as a whole, the appellate court may come to the conclusion that the evidence against the person acquitted was also good and need not have been discarded. When several persons are alleged to have committed an offence in furtherance of the common intention and all except one are acquitted, it is open to the appellate court to find out on a reappraisal of the evidence that some of the accused persons have been wrongly acquitted, although it could not interfere with such acquittal in the absence of an appeal by the State Government. The effect of such a finding is not to reverse the order of acquittal into one of conviction or visit the acquitted person with criminal liability. The finding is relevant only in invoking against the convicted person his constructive criminality. (Para 8). *Brathi* v. *State of Punjab*, (1991) 1 SCC 519: 1991 SCC (Cri) 203: AIR 1991 SC 318: 1991 Cri LJ 402.

Bench Strength **2**. Coram: *Kuldip Singh* and **M. Fathima Beevi**, JJ. [Date of decision: 31-10-1990]

Sunder Singh v. State of Punjab, AIR 1962 SC 1211: 1962 Supp 2 SCR 654: (1962) 2 Cri LJ 290, relied on

(18) Remand/Final disposal by Supreme Court

See also S. 386, '(17) Interference by Supreme Court', above

See also under CONSTITUTION OF INDIA, Art. 136 in Vol. 8, *Complete Digest of Supreme Court Cases*, 2nd Edn.

[5779] — S. 386 — Appeal against acquittal — Juristic status of rules altered — *Remittal of case for rehearing — Accused-respondent acquitted by trial court on ground of contravention of relevant Rules — Meanwhile, Supreme Court in another* *case however holding the concerned Rule to be purely directory — Trial court having acquitted the respondent on that one point alone, he had no occasion to raise other points in his defence — Hence, acquittal set aside and case remitted to trial court for disposal after hearing both parties — Prevention of Food Adulteration Rules, 1955, R. 22. Municipal Corpn. of Delhi* v. *Singh Cheung Co.*, (1982) 1 SCC 487: 1982 SCC (Cri) 259.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 7-3-1980]

[5780] — S. 386 — Improper disposal of appeal *— High Court acted improperly in setting aside the conviction by merely brushing aside the testimony of eyewitnesses on the solitary testimony in opposition without discussing the evidence and without reaching any conclusion of unworthiness or unreliability against the eyewitnesses — Matter remanded for disposal afresh — Penal Code, 1860, Ss. 302/149, 148 and 147. State of U.P.* v. *Raj Nath*, (1983) 1 SCC 204: 1983 SCC (Cri) 162: AIR 1983 SC 187: 1983 Cri LJ 347: 1983 ALJ 817.

Bench Strength **2**. Coram: *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 14-12-1982]

[5781] — Ss. 386 and 374 — Remand *— High Court not examining the testimony of the witnesses and other evidence on merits — Matter remitted to High Court for consideration afresh — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 18 and 50 — Constitution of India — Art. 136* (Para 27). *State of H.P.* v. *Pawan Kumar*, (2005) 4 SCC 350: 2005 SCC (Cri) 943: AIR 2005 SC 2265: 2005 Cri LJ 2208.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 8-4-2005]

[5782] — Ss. 386 and 374 — Plea raised in respect of a fact not considered by High Court *— Since the crucial plea of alibi raised by appellant escaped discussion and a finding in relation thereto by the High Court, matter remanded to High Court for disposal afresh — Penal Code, 1860, S. 302 r/w S. 34 — Evidence Act, 1872, S. 11 — Alibi*

The plea of alibi has not been considered at all by the High Court in the appeal filed by the appellant. There appears to be no reason as to why the crucial plea raised by the appellant escaped discussion and a finding by the final fact-finding court. Therefore, it is difficult to consider the correctness of the said plea in this appeal filed under Article 136. (Para 4). *Akanti Gopala Rao* v. *State of A.P.*, (2002) 10 SCC 265.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 12-12-2000]

[5783] — Ss. 386 and 374(2) — Acquittal by High Court based on erroneous conclusion arrived at without applying mind to the evidence on record objectively — Matter remitted to High Court for decision afresh — Thirteen persons killing all family members of PW 4 and *M* (including children) *— Names of accused-respondents indicated in FIR but not in so-called dying declaration made by PW 4 (who survived later on) — Acquittal of respondents by High Court merely on the said ground — Held on facts, was not proper — High Court did not apply its mind to the evidence on record objectively — Matter remitted for decision afresh — Penal Code, 1860 — Ss. 302/149, 307/149, 452, 148 and 147* (Para 6). *State of U.P.* v. *Veer Singh*, (2004) 10 SCC 117: 2004 SCC (Cri) 1672: 2004 All LJ 2809: 2004 Cri LJ 3835.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 28-4-2004]

[5784] — Ss. 386 and 374(2) — Acquittal by High Court based on unsatisfactory analysis of evidence and erroneous approach to the statutory prescriptions — Held, matter was required to be remitted to High Court for decision afresh in accordance with law *— Charas weighing 100 kg concealed in cavity of jeep — Recovery of, when jeep brought at Customs Office and searched in the presence of Superintendent, Customs — Conviction of accused driver, the sole occupant of jeep — Reversal of, by High Court — Propriety — Acquittal by High Court on grounds that (i) the owner of the vehicle and two other persons who accompanied the accused for a part of the journey were real culprits, (ii) the accused only possessed Rs 150 at the time of his arrest and he did not run away, (iii) prosecution failed to prove conscious possession, and (iv) that there was violation of S. 42, NDPS Act, held, was based on surmises and conjectures — Since High Court had not considered the effect of (i) admission of the accused before the Customs Authorities, (ii) presumption under S. 54, NDPS Act, and (iii) evidence relating to dispatch of information to the superior authorities, held, matter was required to be adjudicated afresh in accordance with law taking into account the evidence on record and applicable provisions of the governing statute — Hence, remitted to High Court — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 20(b)(ii), 23 and 54* (Paras 14 and 15). *Union of India* v. *Munna*, (2004) 7 SCC 178: 2004 SCC (Cri) 1905: 2004 All LJ 3244.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 27-8-2004]

(18) Remand/Final disposal by Supreme Court *(contd.)*

[5785] — **S. 386 — Practice — Final disposal by Supreme Court — Conviction (under S. 148 RPC 1989 Smvt.) set aside** — *But instead of adopting the usual course of remanding the matter to the High Court, accused acquitted, having regard to long lapse of time and simple injuries sustained by the complainant — Constitution of India, Art. 134. Naba Parray* v. *State of J & K*, AIR 1982 SC 1200.

Bench Strength **3**. Coram: **O. Chinnappa Reddy**, *A.P. Sen* and *Baharul Islam*, JJ. [Date of decision: 4-1-1982]

[5786] — S. 386 — Charge wrongfully quashed by High Court — *Even so matter should not be restored where in the fact situation owing to delay it would be difficult to collect the evidence to sustain the charge — Iron and Steel (Control) Order, 1956. State of A.P.* v. *P. Jagannadhan*, (1982) 3 SCC 365: 1983 SCC (Cri) 47.

Bench Strength **2**. Coram: *Y.V. Chandrachud, C.J.* and *O. Chinnappa Reddy*, J. [Date of decision: 9-11-1982]

[5787] — Ss. 386 & 370 — Appeal before Supreme Court against acquittal of accused — High Court's order of acquittal made without considering the evidence — *Reasons given for acquittal, found unsustainable — High Court's decision, though could be reversed on that ground alone, the evidence also scrutinised by the Supreme Court — Penal Code, 1860, Ss. 302/149, 307/149 and 148. State of U.P.* v. *Ram Swarup*, 1988 Supp SCC 262: 1988 SCC (Cri) 552: AIR 1988 SC 1028: 1988 ALJ 555: (1988) 1 Crimes 994.

Bench Strength **3**. Coram: *G.L. Oza*, *B.C. Ray* and **K. Jagannatha Shetty**, JJ. [Date of decision: 26-2-1988]

[5788] — Ss. 386 and 374(2) — Reversal of conviction by High Court by a non-reasoned judgment — *Considering the long passage of time, matter not remanded to High Court and Supreme Court deciding the case by analysing the evidence on record* (Para 15). *Raj Kishore Jha* v. *State of Bihar*, (2003) 11 SCC 519: 2004 SCC (Cri) 212: AIR 2003 SC 4664.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 7-10-2003]

[5789] — S. 386 — Reversal of conviction by High Court not justified — Murder — Motive — *Accused having an evil eye on the deceased established as a motive of the crime — Evidence of sole eyewitness, sister of deceased's husband, found reliable — Dying declaration of the deceased who was in a position to speak for about 10-15 minutes made to her mother-in-law who immediately reached there found acceptable — Recovery of revolver from the possession of the accused and evidence of ballistic expert that that very revolver had been used in firing at the deceased — Held, in the circumstances of the case, reversal of conviction by the High Court not justified — Penal Code, 1860 — S. 302. State of M.P.* v. *Dhirendra Kumar*, (1997) 1 SCC 93: 1997 SCC (Cri) 54: AIR 1997 SC 318.

Bench Strength **2**. Coram: *G.N. Ray* and **B.L. Hansaria**, JJ. [Date of decision: 5-11-1996]

[5790] — S. 386(b) — When Supreme Court's interference not called for — *The High Court in appreciating the evidence as a whole kept in mind the well accepted principles and while recording a contrary finding taken care to dispel the reasons given by the Sessions Judge effectively — Held, High Court's judgment does not suffer from any infirmity — Hence Supreme Court's interference not called for* (Paras 7, 21 and 22). *Brathi* v. *State of Punjab*, (1991) 1 SCC 519: 1991 SCC (Cri) 203: AIR 1991 SC 318: 1991 Cri LJ 402.

Bench Strength **2**. Coram: *Kuldip Singh* and **M. Fathima Beevi**, JJ. [Date of decision: 31-10-1990]

[5791] — S. 386(b)(iii) — Improper reduction of sentence by High Court in serious offences — State not filing appeal against — Supreme Court expressing dismay on — Duty of State — Duty to ensure adequate sentencing of convicts — *Improper reduction of sentence by High Court in serious offences committed by police personnel under Ss. 393 and 458 IPC — State not filing appeal against — Supreme Court expressing dismay on* (Para 11). *Ajmer Singh* v. *State of Punjab*, (2005) 6 SCC 633: 2005 SCC (Cri) 1481.

Bench Strength **2**. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 22-7-2005]

[5792] — Ss. 386(b)(iii), 374(2) and 377 — Appeal before High Court against conviction — Enhancement of sentence from life imprisonment to death sentence by High Court — Propriety of — *Trial court having regard to the facts and circumstances of the case and upon hearing the accused thought it proper to impose life imprisonment — Neither any appeal preferred nor any argument advanced by the State for enhancement of sentence, before the High Court — Imposition of death penalty by High Court, held on facts, was not proper — Penal Code, 1860 — Ss. 302 and 498-A* (Para 25). *Sardar Khan* v. *State of Karnataka*, (2004) 2 SCC 442: 2004 SCC (Cri) 564: AIR 2004 SC 1695: 2004 Cri LJ 910.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **S.B. Sinha**, JJ. [Date of decision: 20-1-2004]

— S. 387 *See* Ss. 357 and 421 & 431 and 374 and 389 & 387

— S. 388 *See* Ss. 386 and 388

— S. 389 *See also* S. 426, Criminal Procedure Code, 1898, p. 1227 in Vol. 2

— S. 389 *See* Ss. 357 and 421 & 431 and 374 and 389 & 387

See also Ss. 432, 433-A, 389 and 482

See also Ss. 436, 389, 437, 441 and 445

See also Ss. 437, 439, 438 and 389

See also Ss. 439 and 389

See also Ss. 439, 437 and 389

[5793] — S. 389 — Applicability — Bail pending appeal against conviction — Parameters to be adopted while dealing with application for bail by suspension of sentence during pendency of appeal, restated — *On facts, Respondent 2 convicted for offences punishable under Ss. 302 and 506 IPC — High Court allowing prayer for bail during pendency of appeal — Sustainability — Appellant informant contending that approach of High Court was clearly erroneous and as conviction was recorded by trial court after finding the evidence credible and cogent, High Court should not have by a cryptic order granted bail — Held, High Court's order shows complete non-application of mind and non-consideration of relevant aspects — Impugned order, therefore, unsustainable — Bail cancelled and matter remitted to High Court for reconsideration in accordance with law* (Paras 10, 3, 2, 5, 7, 12 and 13). *Khilari* v. *State of U.P.*, (2008) 11 SCC 180: AIR 2008 SC 1882: (2008) 3 All LJ 488.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 13-3-2008]

Kishori Lal v. Rupa, (2004) 7 SCC 638: 2004 SCC (Cri) 2021; Anwari Begum v. Sher Mohammad, (2005) 7 SCC 326: 2005 SCC (Cri) 1669, relied on

[5794] — S. 389 — Applicability — Parameters to be observed by High Court while dealing with application for suspension of sentence and grant of bail, restated — *On facts, respondents convicted by trial court, granted bail by High Court primarily on grounds that when bail was granted during trial liberty was not misused, that there was likelihood of delay in disposal of appeals and in one case because evidence appeared to be scanty — Sustainability — Contention of State that bail was granted without indicating any plausible reason, much less, the reasons contemplated under S. 389 and seriousness of allegations for which respondent-accused were convicted was completely lost sight of — Held, parameters to be applied in cases where life or death sentence is imposed, may not be applicable to other cases, but, the gravity of offence, sentence imposed and several other similar factors need to be considered by the court — Fact that accused were on bail during trial was certainly not a relevant factor — Herein, reasons indicated by High Court for granting bail do not satisfy the parameters — Trial court considering the gravity of offence had directed the sentences to run consecutively — This aspect was also not considered by High Court — In the circumstances, impugned order in each case is indefensible and is set aside — Considering that High Court had not applied correct principles, matter remitted to it for reconsidering all relevant aspects and passing orders in accordance with law* (Paras 10, 4, 6 and 11). *State of Maharashtra* v. *Madhukar Wamanrao Smarth*, (2008) 5 SCC 721: (2008) 3 SCC (Cri) 52: AIR 2008 SC 1793: 2008 Cri LJ 2591.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 24-3-2008]

Kishori Lal v. Rupa, (2004) 7 SCC 638: 2004 SCC (Cri) 2021; Vasant Tukaram Pawar v. State of Maharashtra, (2005) 5 SCC 281: 2005 SCC (Cri) 1052, relied on

[5795] — S. 389 — Effect of order under, suspending sentence or order appealed against — *Held (per curiam), what is suspended under S. 389 is not the conviction or sentence — It is only the execution of the sentence or order which is suspended; and it is suspended, not obliterated* (Para 42). *K. Prabhakaran* v. *P. Jayarajan*, (2005) 1 SCC 754: 2005 SCC (Cri) 451: AIR 2005 SC 688: (2005) 1 KLT 510.

Bench Strength 5. Coram: **R.C. Lahoti, C.J.**[1] and *Shivaraj V. Patil*[1], **K.G. Balakrishnan**[2], *B.N. Srikrishna*[1] and *G.P. Mathur*[1], JJ. [Date of decision: 11-1-2005]

Bengal Immunity Co. Ltd. v. State of Bihar, (1955) 2 SCR 603: AIR 1955 SC 661, relied on

[5796] — S. 389 — Power of appellate court to suspend conviction

Section 389(1), speaks of suspending "the *execution* of the sentence or order", it does not expressly speak of suspension of conviction. Even so, it may be possible to say that in certain situations, the appellate court may also have the power to suspend the conviction. *Director of Collegiate Education (Admn.)* v. *S. Nagoor Meera*, (1995) 3 SCC 377: 1995 SCC (L&S) 686: (1995) 29 ATC 574: AIR 1995 SC 1364: (1995) 2 SLR 379.

Bench Strength 2. Coram: **B.P. Jeevan Reddy** and *K.S. Paripoornan*, JJ. [Date of decision: 24-2-1995]

[5797] — S. 389 — Power of the appellate court under — Scope — The appellate court, held, can suspend only the execution of the sentence and not the sentence itself — *An order of the appellate* *court suspending the sentence, held, has to be treated as erroneously worded and should be understood as suspending only the execution of the sentence — Such an order, further held, would not remove the disqualification incurred by a candidate under S. 8(3) of Representation of the People Act — Representation of the People Act, 1951, Ss. 8 to 10-A*

Contending that the second respondent was not disqualified for the membership of the State Legislature, the respondents submitted that: (*a*) the High Court's order suspending the sentence passed against the second respondent was tantamount to suspension of her conviction and that culminated in suspension of the disqualification, (*b*) under Section 8(3) of the Representation of the People Act (for short "the Act"), the disqualification was attracted on the date on which a person was convicted of any offence and sentenced to imprisonment for not less than two years. Since the conviction and the sentence could be on different dates it was unworkable that the disqualification should operate from the date of conviction which could precede the date of sentence and therefore, the conviction referred to in Section 8(3) should be taken to be that confirmed by the appellate court because it was only in the appellate court that conviction and sentence would be on the same day, (*c*) the disqualifications set down in Section 8 of the Act would not apply until a final court had affirmed the conviction and sentence and the principles underlying Section 8(4) should be read down so as to extend the principles underlying therein to non-legislators as well, otherwise Article 14 would stand violated, and (*d*) The presumption of innocence continued until the final judgment affirming the conviction and sentence was passed and, therefore, no disqualification operated at the present stage against the accused. Rejecting these contentions,

Held :

The High Court's order suspending the sentence of imprisonment awarded to the second respondent has to be read in the context of Section 389 under which the power was exercised. Under that provision it is not within the power of the appellate court to suspend the sentence; it can only suspend the execution of the sentence pending the disposal of appeal. The suspension of the sentence, as the Madras High Court erroneously called it, was in fact only the suspension of the execution of the sentences pending the disposal of the appeals filed by the second respondent. The fact that second respondent secured the suspension of the execution of the sentences against her did not alter or affect the convictions and the sentences imposed on her and she remained disqualified from seeking legislative office under Section 8(3). (Para 34). *B.R. Kapur* v. *State of T.N.*, (2001) 7 SCC 231: AIR 2001 SC 3435.

Bench Strength 5. Coram: **S.P. Bharucha**[1], **G.B. Pattanaik**[2], *Y.K. Sabharwal*, *Ruma Pal* and **Brijesh Kumar**[3], JJ. [Date of decision: 21-9-2001]

[5798] — S. 389 — Conviction of candidate standing for election for criminal offence — Grant of stay of conviction by court before last date of filing nomination — *Effect of stay would be to render the order of conviction non-operative from the date of stay and consequently the disqualification arising out of conviction would also cease to operate*

Where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non-existent, but only non-operative. Be that as it may. Insofar as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifying the consequences if conviction was not stayed, that is, the appellant would incur disqualification to contest the election. The High Court after considering the special reason, granted the order staying the conviction. As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention of the respondent that the disqualification arising out of conviction continues to operate even after stay of conviction. On the dates of nomination and election, in view of the said order staying conviction, the appellant was not disqualified. The question whether subsequently the conviction was set aside in appeal or whether the matter is in further challenge before the Supreme Court is of no relevance for deciding the point in issue. (Paras 15 and 17). *Ravikant S. Patil* v. *Sarvabhouma S. Bagali*, (2007) 1 SCC 673: (2007) 1 SCC (Cri) 417: (2007) 1 KLT 685.

Bench Strength 3. Coram: *Y.K. Sabharwal, C.J.* and *C.K. Thakker* and *R.V. Raveendran*, JJ. [Date of decision: 14-11-2006]

State of T.N. v. A. Jaganathan, (1996) 5 SCC 329: 1996 SCC (Cri) 1026, relied on

Union of India v. Atar Singh, (2003) 12 SCC 434: 2004 SCC (Cri) Supp 461; State of Maharashtra v. Gajanan, (2003) 12 SCC 432: 2004 SCC (Cri) Supp 459; B.R. Kapur v. State of T.N., (2001) 7 SCC 231, distinguished

[5799] — S. 389 — Suspension of sentence by the appellate court — Implication of — *The sentence based on conviction get postponed or is kept in abeyance during pendency of appeal — Conviction however continues till it is set aside — Disciplinary* *action, such as dismissal or removal, against the govt. servant based on such conviction, held, will stand unimpaired during the pendency of the appeal*

Under Section 389 of the CrPC, the appellate court has power to suspend the execution of sentence and to release the accused on bail. When the appellate court suspends execution of the sentence and grants bail to an accused, the effect of the order is that the sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency of the appeal. In other words, by suspension of execution of sentence under Section 389 of CrPC an accused avoids undergoing sentence pending criminal appeal. However, the conviction continues and is not obliterated and if the conviction is not obliterated, any action taken against a government servant on a misconduct which lead to his conviction by the court of law does not lose its efficacy merely because the appellate court has suspended the execution of sentence. Such being the position of law, the Administrative Tribunal fell in error in holding that by suspension of execution of sentence by the appellate court, the order of dismissal passed against the respondent was liable to be quashed and the respondent is to be treated under suspension till disposal of criminal appeal by the High Court. *Union of India* v. *Ramesh Kumar*, (1997) 7 SCC 514: 1997 SCC (L&S) 1774: AIR 1997 SC 3531.

Bench Strength **2**. Coram: *K. Venkataswami* and **V.N. Khare**, JJ. [Date of decision: 2-9-1997]

[5800] — S. 389 — Suspension of "order appealed against" — Precondition for — Appellate court can suspend order of conviction only when the convict specifically shows the consequences that may follow if the order is not suspended or stayed — *Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case — Appellant charged of causing death of a person by inflicting fist-blows on head — Trial court acquitting the appellant — He then contested election and was elected as MP — But in State's appeal against acquittal, High Court convicted him under S. 304 Pt. II IPC and sentenced him to three years' RI and fine of Rs 1 lakh — In view of the order of conviction and sentence passed by High Court, appellant incurred a disqualification under S. 8(3) of Representation of the People Act, 1951 — Though he could have availed the protection under S. 8(4) of the Act of continuing to remain MP despite the disqualification by filing an appeal within three months, but he instead resigned from membership of Lok Sabha on moral ground and then chose to contest election again — Appellant filed appeal against High Court's order before Supreme Court which by an interim order suspended execution of the sentence — Appellant then moved application before Supreme Court seeking suspension or stay of High Court's order of conviction so as to enable him to contest the election — Having regard to prosecution evidence, judgments of trial court and High Court and other facts and circumstances, held, order of conviction deserved to be suspended/stayed — While considering the limited question whether the order of conviction should be suspended or stayed, submission that even if stay or suspension is granted the appellant would not be absolved of the disqualification is misplaced — Representation of the People Act, 1951, Ss. 7 and 8(3) & (4)*

According to prosecution, when on 27-12-1988 the car, in which the deceased and his companions were travelling was obstructed by the vehicle of the appellant, the deceased raised objection on which the appellant lost his temper. He got down from his car, abused the deceased, dragged him out of the car and gave fist-blows as a result of which the deceased fell down and the appellant then escaped from the place. When the deceased was brought to the hospital, doctors declared him dead. In the post-mortem examination subdural haemorrhage in the temporal region of head was found present but there was no external injury. The doctor was unable to explain the cause of death but in cross-examination he opined that subdural haemorrhage is not fatal in all cases. The pathological examination report showed that the deceased had a very weak heart and his main arteries were blocked. The medical board after nearly a fortnight gave its opinion attributing the death to the effects of head injury and cardiac condition and not to any external injury. In the FIR lodged by a companion of the deceased as also in his statement in court recorded after more than 4 years, he did not assign any role of causing injury on the head of the deceased to the appellant. The appellant was tried for charge under Section 302 IPC but was acquitted by the trial court on 22-9-1999. The appellant thereafter was elected as a Member of Parliament. But pursuant to the State's appeal against acquittal, the High Court in December 2006 allowed the appeal and convicted the appellant under Section 304 Part II IPC and sentenced him to three years' RI and fine of Rs 1 lakh. Consequently, the appellant incurred a disqualification under Section 8(3) of the Representation of the People Act, 1951 from being chosen as MP. The appellant filed an appeal before the Supreme Court against the judgment and order of the High Court. The Supreme Court passed an interim order staying execution of the sentence. The appellant then moved an application before the Supreme Court seeking suspension or stay of operation of the High Court's order of conviction pending the appeal on the ground that he was a sitting Member of Parliament on the date of the conviction and though he would not have incurred any disqualification and could have continued to remain as Member of Parliament by merely filing an appeal within three months and the protection would have enured to his benefit till the decision of the appeal by virtue of Section 8(4) of the Act but in order to set high standards in public life he immediately resigned from the membership of the Lok Sabha. He now wants to seek a fresh mandate from the electorate and wants to contest the election for membership of the Lok Sabha which is due to take place shortly on account of his resignation and that since now he wants to seek the mandate of the electorate again, the disqualification is required to be removed for that purpose.

Allowing the application,

Held :

Section 389(1) CrPC confers power not only to suspend the execution of sentence and to grant bail but also to suspend the operation of the order appealed against which means the order of conviction. Thus an appellate court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the attention of the appellate court to the consequences that may arise if the conviction is not stayed. Unless the attention of the court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an order of stay of conviction. Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case. (Paras 4 and 6)

In this case, the incident happened all of a sudden without any premeditation. The deceased was wholly unknown to the appellant. There was no motive for commission of the crime. The medical evidence does not conclusively establish that the death occurred due to blow given on the head. If in the FIR, which is the earliest version, and, also in his statement in the court which was recorded after more than 4 years, the PW did not assign any role of causing injury on the head of the deceased to the appellant, whether his subsequent statement given after several years, wherein he assigned the specific role to the appellant of hitting the deceased on the head by a fist and thereby making him responsible for causing the death of the deceased should be believed, will certainly require consideration at the time of hearing the appeal. If the statement which the PW gave after several years wherein he attributed the head injury to the appellant is not accepted for the reason that it is at variance with the version in the FIR and his earlier statement, the appellant cannot be held guilty under Section 304 Part II IPC. These features of the case which touch upon the culpability of the appellant, prima facie appear to be in his favour. Another feature which has a bearing is that the findings on factual aspects of the case recorded in favour of the appellant by the Sessions Judge resulting in acquittal have been reversed in appeal by the High Court. (Para 17)

The incident which took place in 1988 has no correlation with the public life of the appellant which he entered much later in 2004 when he was elected as a Member of Parliament. It is not a case where he took advantage of his position as MP in commission of the crime. It was not necessary for the appellant to have resigned from the membership of Parliament as he could in law continue as MP by merely filing an appeal within a period of 3 months and had he adopted such a course he could have easily avoided incurring any disqualification at least till the decision of the appeal. However, he has chosen to adopt a moral path and has set high standards in public life by resigning from his seat and in seeking to get a fresh mandate from the people. In the event prayer made by the appellant is not granted he would suffer irreparable injury as he would not be able to contest for the seat which he held and has fallen vacant only on account of his voluntary resignation which he did on purely moral grounds. Having regard to the entire facts and circumstances mentioned above it must be held that it is a fit case where the order of conviction passed by the High Court deserves to be suspended. (Para 18)

The contention that the appellant would not be absolved of the disqualification even if an order of suspension or stay of the conviction is passed by the Supreme Court has no force. The Court here is dealing with the limited question viz. the prayer made by the appellant for suspending or staying the order of conviction. The Court is not required to adjudicate upon the question as to what will be the effect of the order and further whether he will continue to be disqualified for the purpose of contesting the election even if the prayer made by the appellant is granted as such an issue is wholly alien to the present controversy which can arise only in an election petition where the validity of the election may be called in question. (Para 22). *Navjot Singh Sidhu* v. *State of Punjab*, (2007) 2 SCC 574: (2007) 1 SCC (Cri) 627: AIR 2007 SC 1003: 2007 Cri LJ 1427: (2007) 52 AIC 174 (SC).

Bench Strength 2. Coram: **G.P. Mathur** and *R.V. Raveendran*, JJ. [Date of decision: 23-1-2007]

Rama Narang v. Ramesh Narang, (1995) 2 SCC 513; Ravikant S. Patil v. Sarvabhouma S. Bagali, (2007) 1 SCC 673, relied on

B.R. Kapur v. State of T.N., (2001) 7 SCC 231; K. Prabhakaran v. P. Jayarajan, (2005) 1 SCC 754: 2005 SCC (Cri) 451, distinguished

[5801] — S. 389 — Stay or suspension of order of conviction — Distinction between — Effect of — *Appellate court has power not only to suspend execution of sentence but also to stay order of conviction appealed against — Stay of order of conviction results in rendering the order temporarily non-operative — But this result does not ensue in case of suspension of the order under appeal — Where a person seeking to contest election to Legislative Assembly or Parliament, having incurred disqualification under S. 8(3) of RP Act, 1951 due to order of conviction of an offence and sentence passed against him by trial court, prefers appeal thereagainst and the appellate court only suspends the order of trial court and grants him bail, held, it would not amount to temporarily wiping out the conviction so as to remove the disqualification — Representation of the People Act, 1951, Ss. 8(3) and 100*

By an order dated 9-5-2002 passed by the Addl. CJM, the appellant was convicted under Section 420 r/w Section 34 IPC and Section 468 r/w Section 34 IPC and was sentenced to two years' RI on each count and also under Section 471 IPC and sentenced to one year's RI. The appellant filed an appeal against the order before the Addl. Sessions Judge. He also filed an application before the appellate court under Section 389 CrPC seeking suspension of the sentence.

The appellate court by order dated 31-5-2002 suspended the judgment and order of the trial court dated 9-5-2002 and released the appellant on bail. The appellant filed nomination papers for election to Legislative Assembly. But in his affidavit filed along with the nomination, he did not disclose about the order of conviction and sentence passed against him. Therefore, his nomination was not cancelled by the Returning Officer. After counting of votes, the appellant was declared elected defeating the first respondent. The respondent filed an election petition alleging that the appellant was disqualified under Section 8(3) of the RP Act, 1951 in view of the order of conviction and sentence passed against him.

The defence of the appellant was that the judgment and order dated 9-5-2002 of the trial court having been stayed by the appellate court on 31-5-2002, he was not disqualified under Section 8(3) of the RP Act. The Single Judge of the High Court held that the Returning Officer committed an illegality in accepting the nomination of the appellant because the appellant's conviction was not stayed but suspended. Therefore, incumbent was disqualified at the time of scrutiny and accordingly the Single Judge decided this issue in favour of the election petitioner and consequently, the election petition was allowed and election was set aside.

In appeal before the Supreme Court, the question for consideration was whether suspension of the order of conviction and sentence by the appellate court in the criminal case amounted to staying of conviction of the appellant.

Dismissing the appeal,

Held :

It has been held in recent decisions of the Supreme Court that the appellate court has power to stay the execution of the conviction and if the appellate court has stayed the conviction then in that case, this will not operate as a disqualification. But simply order of suspension of the sentence will not operate as staying the conviction. It was specifically mentioned that the stay of order of the conviction will mean it is temporarily non-operative. (Para 11)

In the present case, the appellate court suspended the order of the trial court dated 9-5-2002 and granted the bail to the accused-appellant. The suspension does not mean the stay of the conviction. The application moved by the appellant before the Addl. Sessions Judge was a routine application under Section 389 whereby the appellant sought for the suspension of sentence. There is nothing in that application to suggest that the applicant therein had sought the stay of conviction in contradistinction to the suspension of sentence. Suspension does not amount to temporarily washing out the conviction. The conviction still remains, only the operation of the order and the sentence remain suspended but that does not amount to temporary stay of the conviction. A specific order staying conviction has to be sought. If the incumbent had been vigilant enough, he could have moved the court even later on for obtaining stay of the conviction, particularly in view of the fact that he wanted to contest the election but that was not done. (Paras 12 and 14). *Lalsai Khunte* v. *Nirmal Sinha*, (2007) 9 SCC 330: (2007) 3 SCC (Cri) 149.

Bench Strength **2**. Coram: **A.K. Mathur** and *V.S. Sirpurkar*, JJ. [Date of decision: 27-2-2007]

K. Prabhakaran v. P. Jayarajan, (2005) 1 SCC 754: 2005 SCC (Cri) 451; Sarat Chandra Rabha v. Khagendranath Nath, AIR 1961 SC 334; Ravikant S. Patil v. Sarvabhouma S. Bagali, (2007) 1 SCC 673: (2007) 1 SCC (Cri) 417; Navjot Singh Sidhu v. State of Punjab, (2007) 2 SCC 574: (2007) 1 SCC (Cri) 627; Rama Narang v. Ramesh Narang, (1995) 2 SCC 513, relied on

[5802] — S. 389 — Suspension of sentence and grant of bail by High Court pending appeal, does not obliterate the conviction — Imposition of penalty in departmental enquiry on conviction of criminal charge — Legality — *Canara Bank employee convicted under Ss. 420, 477-A, IPC and S. 5(2) read with S. 5(1)(d) of Prevention of Corruption Act — Notwithstanding the suspension of his sentence and grant of bail to him by the appellate court his conviction, held, not obliterated — Hence, provision in R. 11 of Discipline and Appeal Regulations for imposing penalty without following the ordinary procedure, held, attracted — Since the person concerned was not governed by Art. 311(2), the question whether disciplinary action could be taken during the pendency of criminal proceedings, left open — Canara Bank Officer Employees' (Discipline and Appeal) Regulations — Regns. 11, 6, 7 & 8 — Penal Code, 1860, Ss. 420 and 477-A — Prevention of Corruption Act, 1947, S. 5(1)(d) & (2) — Constitution of India, Art. 311(2). S. Vasundara* v. *Canara Bank*, (1997) 9 SCC 523: 1997 SCC (L&S) 1204: (1997) 1 CLR 181: (1997) 1 LLJ 687.

Bench Strength **2**. Coram: *K. Ramaswamy* and *G.B. Pattanaik*, JJ. [Date of decision: 28-10-1996]

[5803] — Ss. 389 and 374 — Stay of conviction — Held, can be granted by court under S. 389 — But such stay to be granted only in exceptional and rare circumstances where non-grant of stay would lead to injustice and irreversible consequences — *Person seeking stay must draw attention of the appellate court to specific consequences that may arise if conviction is not stayed, otherwise stay cannot be granted — In this case, appellant in his application [filed in his pending appeal under S. 374 CrPC] sought stay of his conviction under S. 376 IPC mentioning specific consequence of non-grant of stay i.e. that he would incur disqualification to contest election — Considering the facts and circumstances of the case High Court granted stay of the conviction — Effect of stay, on the disqualification bar under S. 8, RPA, 1951 discussed — Propriety of the stay was not in question*

The Supreme Court in *K.C. Sareen case* observed that when conviction is on a corruption charge against a public servant, the appellate court should not suspend the order of conviction during the pendency of the appeal, even if the sentence of imprisonment is suspended. The Bench further observed that it would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision. These observations would equally apply when a prayer for stay of order of conviction is made so as to remove the disability to contest an election except, in a very exceptional and rare case. (Para 16.3)

Where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non-existent, but only non-operative. Be that as it may. Insofar as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifying the consequences if conviction was not stayed, that is, the appellant would incur disqualification to contest the election. The High Court after considering the special reason, granted the order staying the conviction. As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention of the respondent that the disqualification arising out of conviction continues to operate even after stay of conviction. On the dates of nomination and election, in view of the said order staying conviction, the appellant was not disqualified. The question whether subsequently the conviction was set aside in appeal or whether the matter is in further challenge before the Supreme Court is of no relevance for deciding the point in issue. (Paras 15 and 17). *Ravikant S. Patil* v. *Sarvabhouma S. Bagali*, (2007) 1 SCC 673: (2007) 1 SCC (Cri) 417: (2007) 1 KLT 685.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.* and *C.K. Thakker* and *R.V. Raveendran*, JJ. [Date of decision: 14-11-2006]

Rama Narang v. Ramesh Narang, (1995) 2 SCC 513, followed

K.C. Sareen v. CBI, (2001) 6 SCC 584: 2001 SCC (Cri) 1186, applied

State of T.N. v. A. Jaganathan, (1996) 5 SCC 329: 1996 SCC (Cri) 1026, relied on

Union of India v. Atar Singh, (2003) 12 SCC 434: 2004 SCC (Cri) Supp 461; State of Maharashtra v. Gajanan, (2003) 12 SCC 432: 2004 SCC (Cri) Supp 459; B.R. Kapur v. State of T.N., (2001) 7 SCC 231, distinguished

[5804] — S. 389 — Suspension of sentence pending appeal and release of appellant on bail — Order in respect of, held, has to be passed by recording reasons — *Hence, said order to be passed after careful consideration of relevant aspects and not as a matter of routine — Bail distinguished from suspension of sentence — Conviction of appellant under Prevention of Corruption Act, 1988 for offence of possession of property disproportionate to his known sources of income — Appeal against — Prayer made therein for suspension of sentence and grant of bail — Rejection of — One of the reasons which weighed with the High*

Court was that fine imposed by trial court was not deposited — But, fine subsequently deposited — That apart, relevance of the forfeiture of the attached property not considered — Hence, High Court directed to reconsider the application under S. 389 — While doing so, effect and relevance of the order of conviction and sentence passed against appellant in another case involving offences under Prevention of Corruption Act, 1988 and IPC, also to be considered — Prevention of Corruption Act, 1988, S. 13(1)(e) r/w S. 13(2) (Paras 7 and 8). *Vasant Tukaram Pawar* v. *State of Maharashtra*, (2005) 5 SCC 281: 2005 SCC (Cri) 1052: 2005 Cri LJ 2531.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 15-4-2005]

[5805] — S. 389 — Suspension of sentence pending appeal; release of appellant on bail — Power of — Parameters and considerations for exercise of — Settled law emphasised — *Single Judge suspending conviction of respondent-accused without assigning any reasons during pendency of appeal — Held, though the power to suspend an order of conviction, apart from the order of sentence, is not alien to S. 389(1) of the Code, its exercise should be limited to very exceptional cases — Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction — Court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance — Impugned order directing the suspension/stay of the conviction as well as the order refusing to recall the said order unsustainable and hence set aside — Prevention of Corruption Act, 1988, Ss. 7 & 13(1)(d) r/w S. 13(2)* (Paras 3, 7 and 12). *State of Punjab* v. *Navraj Singh*, (2008) 11 SCC 71: AIR 2008 SC 2962: 2008 Cri LJ 3864.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *H.S. Bedi*, JJ. [Date of decision: 14-7-2008]

K.C. Sareen v. CBI, (2001) 6 SCC 584: 2001 SCC (Cri) 1186; State of Maharashtra v. Gajanan, (2003) 12 SCC 432: 2004 SCC (Cri) Supp 459; Union of India v. Atar Singh, (2003) 12 SCC 434: 2004 SCC (Cri) Supp 461; State of Haryana v. Hasmat, (2004) 6 SCC 175: 2004 SCC (Cri) 1757, relied on

[5806] — S. 389 — Suspension of sentence — If justified — Relevant factors — *Mere fact that during trial accused were granted bail and there was no allegation of misuse of liberty by them, held, not relevant — But High Court took into account grant of bail to respondents during trial and without appreciating respondents' case on merits and demerits, allowed their petition for suspension of sentence — Held, High Court's order directing suspension of sentence and grant of bail unsustainable — If fresh application is moved before High Court, it shall consider the matter in its proper perspective in accordance with law. Gajraj Yadav* v. *Rajendra Singh*, (2008) 15 SCC 573: (2009) 3 SCC (Cri) 1120: (2008) 71 AIC 1 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 24-10-2008]

Vijay Kumar v. Narendra, (2002) 9 SCC 364: 2003 SCC (Cri) 1195; Ramji Prasad v. Rattan Kumar Jaiswal, (2002) 9 SCC 366: 2003 SCC (Cri) 1197; Kishori Lal v. Rupa, (2004) 7 SCC 638: 2004 SCC (Cri) 2021; Vasant Tukaram Pawar v. State of Maharashtra, (2005) 5 SCC 281: 2005 SCC (Cri) 1052; Gomti v. Thakurdas, (2007) 11 SCC 160: (2008) 1 SCC (Cri) 644, relied on

[5807] — S. 389 — Suspension of sentence pending appeal — Propriety — *Conviction under Ss. 7 and 13(2), Prevention of Corruption Act, 1988, stipulating minimum statutory punishment of six months — Appellant-accused awarded 3 years' imprisonment, and he undergoing more than one year and eight months' custody — Submission that appellant was only a peon who had no authority to issue any domicile certificate, hence, conviction should not have been recorded — Held, where accused is convicted under Prevention of Corruption Act, it would not be prudent and desirable to give him protection under S. 389 — Taking into consideration circumstances of the case High Court directed to dispose of appeal expeditiously — Prevention of Corruption Act, 1988, Ss. 7 and 13(2)* (Paras 3 to 5, 7 and 8). *Shiv Kumar* v. *State (NCT of Delhi)*, (2008) 17 SCC 122.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 15-12-2008]

Bhagwan Rama Shinde Gosai v. State of Gujarat, (1999) 4 SCC 421: 1999 SCC (Cri) 553; Vijay Kumar v. Narendra, (2002) 9 SCC 364: 2003 SCC (Cri) 1195, distinguished

[5808] — S. 389 — Suspension of sentence pending appeal and release on bail — Factors that may be considered — Murder trial — *Appellant nearly 70 years old and in jail for nearly one year, and on bail during trial — He directed to be released on bail on his furnishing the stipulated security — However, clarified that release of Appellant 1 was only directed on considering his age and not on consideration of merits of the case — Penal Code, 1860, Ss. 342 and 302* (Paras 2, 7 and 8). *Anil Ari* v. *State of W.B.*, (2009) 11 SCC 363: (2009) 3 SCC (Cri) 1377: AIR 2009 SC 1564: 2009 Cri LJ 1328: (2009) 75 AIC 107 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 9-2-2009]

Kishori Lal v. Rupa, (2004) 7 SCC 638: 2004 SCC (Cri) 2021; Vasant Tukaram Pawar v. State of Maharashtra, (2005) 5 SCC 281: 2005 SCC (Cri) 1052; Gomti v. Thakurdas, (2007) 11 SCC 160: (2008) 1 SCC (Cri) 644, relied on

[5809] — S. 389 — Bail pending appeal against conviction — Considerations for grant of, stated — *In the present case, judgment of trial court convicting both appellants of offences punishable under Ss. 304-B and 498-A IPC upheld by High Court — Appellant 1 being the sole bread earner of family, held, no ground for releasing him on bail — Though convicted of serious offence, considering the old age of Appellant 2, that is, 80 years and that she had been in custody for more than a year, interim bail granted to her — Penal Code, 1860, Ss. 304-B and 498-A*

Disposing of the application for the grant of bail,

Held :

Cases where a serious offence had been committed and the accused had been held guilty for the said offence, then his application for grant of bail should not be decided leniently during the pendency of the appeal. The seriousness and gravity of the offence must be looked into before granting the bail. In the instant case, accused were convicted by the trial court for harassing, torturing and compelling the deceased to end her life by committing suicide, and the said conviction had been confirmed by the High Court. (Para 10)

Insofar as the first appellant is concerned, the only reason assigned for grant of bail is that he is the only bread earner of the family. In the light of decisions of the Supreme Court, this contention of the appellant does not impress to release him on bail for the alleged offence for which he had been convicted by the courts. Therefore, for the present he is not entitled to the relief sought in the application. (Para 12)

Looking at the age of Appellant 2 it does not seem fair to hold her back in jail during the pendency of appeal even if she had been convicted for the alleged serious offence, against which she has come before the Supreme Court. That Appellant 2 is an old lady of 80 years of age and she had already been in jail for more than one year, she is entitled for the relief prayed in the application. Accordingly, interim bail to the second appellant granted. (Paras 13 and 14). *Bakshish Ram* v. *State of Punjab*, (2009) 6 SCC 561.

Bench Strength 2. Coram: *Tarun Chatterjee* and *H.L. Dattu*, JJ. [Date of decision: 8-5-2009]

Talab Haji Hussain v. Madhukar Purshottam Mondkar, AIR 1958 SC 376: 1958 SCR 1226; State of Maharashtra v. Anand Chintaman Dighe, (1990) 1 SCC 397: 1990 SCC (Cri) 142; Kashmira Singh v. State of Punjab, (1977) 4 SCC 291: 1977 SCC (Cri) 559, relied on

Bakshish Ram v. State of Punjab, Criminal Appeal No. 487-SB of 1994 decided on 26-3-2008, referred to

[5810] — S. 389 — Refusal of bail, during pendency of appeal — When not justified — *Appellant convicted under Prevention of Corruption Act and sentenced to undergo two years' rigorous imprisonment and to pay fine — Since there was no likelihood of hearing of the appeal in near future and the sentence awarded was only of two years, held, High Court was not justified in rejecting the bail application — Prevention of Corruption Act, 1988, Ss. 7, 13(1)(d) and (2)* (Paras 2 and 3). *S. Venkatesh* v. *State of Karnataka*, (2007) 15 SCC 579.

Bench Strength 2. Coram: *R.P. Sethi* and *K.G. Balakrishnan*, JJ. [Date of decision: 19-4-2002]

[5811] — Ss. 389 and 439 — Bail — Grant of — Impropriety — Cancellation — *Prayer for grant of bail during pendency of appeal against conviction rejected twice by High Court — However, liberty granted in latter case to renew prayer after six months — High Court by impugned judgment granting bail to respondent-accused noticing the same — Held, merely liberty was granted to renew the prayer after six months which does not in any way show that there was entitlement for getting bail — Impugned order shows total non-application of mind, and hence, set aside — Matter remitted to High Court for reconsideration on merits with a direction to pass a reasoned order* (Paras 3 and 8 to 13). *Bhuvaneshwar Yadav* v. *State of Bihar*, (2008) 15 SCC 467: AIR 2009 SC 1452: (2008) 72 AIC 114 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 28-11-2008]

Omar Usman Chamadia v. Abdul, (2004) 13 SCC 234: 2005 SCC (Cri) 157, considered and relied on

V.D. Chaudhary v. State of U.P., (2005) 12 SCC 304: (2006) 1 SCC (Cri) 560; Chaman Lal v. State of U.P., (2004) 7 SCC 525: 2004 SCC (Cri) 1974; Anwari Begum v. Sher Mohammad, (2005) 7 SCC 326: 2005 SCC (Cri) 1669, relied on

[5812] — Ss. 389 and 354(3) — Supreme Court upholding conviction but since appellant suffering from paralysis allowing 3 months' time to surrender. *Kashiben Chhaganbhai Koli* v. *State of Gujarat*, (2008) 17 SCC 100: 2009 Cri LJ 1156: (2009) 1 Guj LR 876: (2009) 74 AIC 82 (SC): (2009) 2 ECrN 1484 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 4-12-2008]

[5813] — S. 389 — Suspension of sentence pending the appeal — Prayer for should be considered liberally unless there is any statutory restriction — *If the sentence of limited duration not suspended matter should be expedited — Appellate court may impose similar conditions when bail is granted — On facts, since High Court was not inclined to hear the appeal expeditiously, the sentence be suspended subject to some stringent conditions*

When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence so as to make the appeal right, meaningful and effective. Of course appellate courts can impose similar conditions when bail is granted. (Para 3). *Bhagwan Rama Shinde Gosai* v. *State of Gujarat*, (1999) 4 SCC 421: 1999 SCC (Cri) 553: AIR 1999 SC 1859.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 12-5-1999]

[5814] — Ss. 389, 397 and 401 — Suspension of sentence — Imposition of conditions for — Propriety — Offence under S. 138 Negotiable Instruments Act — *Revision — Requiring the revisionist to remit part of the fine in the court within a certain period for granting suspension of sentence during pendency of revision, held, advisable — Where the trial court had sentenced the revisionist to imprisonment and imposed fine in a large sum of Rs 20 lakhs, High Court's order requiring the accused revisionist to remit Rs 4 lakhs within a specified period as a condition to suspend the sentence, held, was not unjust or unconscionable — Negotiable Instruments Act, 1881, S. 138* (Para 2). *Stanny Felix Pinto* v. *Jangid Builders (P) Ltd.*, (2001) 2 SCC 416: 2001 SCC (Cri) 345: AIR 2001 SC 659.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 15-1-2001]

[5815] — S. 389 — Power to suspend conviction — *Held, should be exercised by appellate or revisional court in very exceptional cases having regard to all aspects including ramification of such suspension*

Though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal to challenge his conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. (Para 11). *K.C. Sareen* v. *CBI*, (2001) 6 SCC 584: 2001 SCC (Cri) 1186: AIR 2001 SC 3320.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 2-8-2001]

[5816] — S. 389 — Suspension of conviction, pending appeal — Sustainability — Grounds of possible delay in disposal and presence of arguable points, in appeal, for suspending sentence — Sufficiency of — *Held, such an order is not to be readily granted — On facts, held, High Court not assigning any special reasons while passing the order of suspension of conviction — Possible delay in disposal of appeal and presence of arguable points, by itself, may not be sufficient to grant suspension of sentence — Hence, on facts, held, High Court was not correct in its view — Prevention of Corruption Act, 1988, Ss. 7 and 13(2)*

The respondent, a public servant, was proceeded against in a case under Sections 7 and 13(2), Prevention of Corruption Act, 1988, in which he was sentenced to 18 months' RI with a fine of Rs 1000. He preferred an appeal thereagainst, wherein an application was filed by him under Section 389 CrPC for suspension of conviction recorded under the PC Act. By reason of order dated 11-1-2005, the said application was allowed.

An application was filed by the appellant State herein for vacation of stay of conviction granted to the respondent by reason of the said order with a prayer to recall the same. By reason of the impugned judgment, while the Court accepted that an order suspending the conviction could be allowed only in a very exceptional case, it dismissed the application. Hence this present appeal.

Counsel for the appellant submitted that the High Court being aware of the decisions of the Supreme Court holding that ordinarily the suspension of conviction should not be granted, must be held to have committed a manifest error in passing the impugned judgment.

Allowing the appeal,

Held :

An order of suspension of conviction admittedly is not to be readily granted. The High Court in its order dated 11-1-2005 passed a judgment irrespective of conviction and sentence, only on two grounds:

(*i*) A long time may be taken to decide the appeal.

(*ii*) There are good points to argue. (Para 6)

While passing the said order, the High Court did not assign any special reasons. Possible delay in disposal of the appeal and that there are arguable points by itself may not be sufficient to grant suspension of a sentence. The High Court while passing the said order merely noticed some points which could be raised in the appeal. The grounds so taken do not suggest that the respondent was proceeded against by the State, mala fide or in any bad faith. (Para 7)

The High Court was not correct in its view. Therefore, both the orders set aside. (Para 11). *State of Punjab* v. *Deepak Mattu*, (2007) 11 SCC 319: (2007) 59 AIC 220 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 18-9-2007]

K.C. Sareen v. CBI, (2001) 6 SCC 584: 2001 SCC (Cri) 1186; State of Maharashtra v. Gajanan, (2003) 12 SCC 432: 2004 SCC (Cri) Supp 459, relied on

[5817] — S. 389 — Suspension of execution of sentence during pendency of criminal appeal against conviction and sentence — Effect — *Dismissal on ground of conduct which had led to conviction on a criminal charge — Suspension on arrest of respondent govt. servant for accepting illegal gratification — Subsequent dismissal pursuant to conviction and sentence under S. 5(2) of Prevention of Corruption Act — Appeal against conviction admitted and execution of sentence suspended during pendency of the appeal — Held, that would not entitle the respondent to be treated as being under suspension till disposal of the criminal appeal — Vigilance Manual — Chap. VII, paras 15.2 and 15.3 — Prevention of Corruption Act, 1947, S. 5(2) — Central Civil Services (Classification, Control and Appeal) Rules, 1965, R. 19(i)*

The respondent was arrested on the ground that he accepted illegal gratification. He was placed under suspension. The trial court convicted him under Section 5(2) Prevention of Corruption Act, 1947. As a result of this conviction, the Disciplinary Authority dismissed him from service by invoking Rule 19 of the CCS (CCA) Rules, 1965 without holding detailed disciplinary enquiry. The High Court admitted the respondent's appeal against his conviction and passed the following interim order : "Pending hearing of the appeal, the execution of the sentence shall remain suspended and he shall be released on furnishing a personal bond in the sum of Rs 5000 with one surety in the like amount ...." After four years of his dismissal respondent filed an application in the Central Administrative Tribunal seeking his reinstatement in service. The Tribunal allowed the application. Reversing the order of the Tribunal,

Held :

Under Rule 19 of the CCS (CCA) Rules, 1965, the Disciplinary Authority is empowered to take action against a government servant on the ground of misconduct which has led to his conviction on a criminal charge. The rules, however, do not provide that on suspension of execution of sentence by the appellate court, the order of dismissal based on conviction stands obliterated and the dismissed government servant has to be treated under suspension till disposal of appeal by the appellate court. The rules also do not provide the Disciplinary Authority to await disposal of the appeal by the appellate court for taking action against him on the ground of misconduct which has led to his conviction by a competent court of law. Having regard to the provisions of the rules, the order dismissing respondent from service on the ground of misconduct leading to his conviction by a competent court of law has not lost its sting merely because a criminal appeal was filed by the respondent against his conviction and the appellate court has suspended the execution of sentence and enlarged the respondent on bail. *Union of India* v. *Ramesh Kumar*, (1997) 7 SCC 514: 1997 SCC (L&S) 1774: AIR 1997 SC 3531.

Bench Strength **2**. Coram: *K. Venkataswami* and **V.N. Khare**, JJ. [Date of decision: 2-9-1997]

State of Maharashtra v. Chandrabhan Tale, (1983) 3 SCC 387: 1983 SCC (L&S) 391: 1983 SCC (Cri) 667: AIR 1983 SC 803, distinguished

[5818] — S. 389 — Suspension of sentence — Should be ordered liberally in absence of any exceptional circumstances — *Appellants sentenced to imprisonment for a fixed period, approaching High Court for suspension of sentence — High Court refusing to do so by passing a one-line sentence — Held, High Court erred in refusing to suspend the sentence in absence of any exceptional circumstances. Suresh Kumar* v. *State (NCT of Delhi)*, (2001) 10 SCC 338.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 29-9-2000]

Bhagwan Rama Shinde Gosai v. State of Gujarat, (1999) 4 SCC 421: 1999 SCC (Cri) 553, followed

[5819] — Ss. 389 and 482 — Power to suspend conviction and sentence pending appeal/revision — Grounds — Such power can be exercised only when damage caused to the appellant/revisionist cannot be undone if he ultimately succeeds — Trifling matters should not be taken into consideration — *Loss of stipend etc. not valid* *consideration — Moral conduct of public servant is a relevant consideration — Conviction of Police Inspector under Ss. 392, 218 and 466 IPC while other public servants convicted under Prevention of Corruption Act — Held, discretionary power to suspend conviction under S. 389(1) or S. 482 cannot be exercised — High Court's order of suspension of conviction set aside — However, order of suspension of sentences maintained. State of T.N.* v. *A. Jaganathan*, (1996) 5 SCC 329: 1996 SCC (Cri) 1026: AIR 1996 SC 2449.

Bench Strength **2**. Coram: *Faizan Uddin* and *S.P. Kurdukar*, JJ. [Date of decision: 15-7-1996]

[5820] — S. 389 — Suspension of sentence pending appeal and release of appellants on bail — Discretion of High Court — Scope and manner of exercise of — Considerations involved — *Held, High Court has to consider each case on the basis of (i) nature of the offence, (ii) manner in which occurrence had taken place, and (iii) whether in any manner bail granted earlier had been misused — High Court has ample power and discretion to suspend sentence, but that discretion has to be exercised judiciously depending on the facts and circumstances of each case — No straitjacket formula can be applied in exercising the discretion — Facts and circumstances of each case will govern the exercise of judicial discretion — Considering the fact position in its entirety, Supreme Court suspending sentence pending appeal and directing release of appellants on bail — Penal Code, 1860, Ss. 326 and 34*

Disposing of the appeal,

Held :

When an appeal is preferred against conviction in the High Court, the High Court has ample power and discretion to suspend the sentence, but that discretion has to be exercised judiciously depending on the facts and circumstances of each case. While considering the suspension of sentence, each case is to be considered on the basis of nature of the offence, manner in which occurrence had taken place, whether in any manner bail granted earlier had been misused. In fact, there is no straitjacket formula which can be applied in exercising the discretion. The facts and circumstances of each case will govern the exercise of judicial discretion while considering the application filed by the convict under Section 389 CrPC. (Para 14)

In the present case, the appellants were on bail during the pendency of the case before the Sessions Court. The Sessions Court has acquitted most of the accused persons after trial except the appellants who were convicted under Section 326 read with Section 34 IPC and sentenced to four years' rigorous imprisonment with a fine of Rs 2000. It is not the case of the other side, that, when the accused were on bail they had indulged themselves in any offence either under the provisions of the Penal Code or any other statute. It is also not the case of the prosecution that when the appellants were on bail they had either jumped the bail or were any way responsible for prolonging the proceedings before the Sessions Court, and it is also not the case of the other side that they would abscond and would not be available to undergo the sentence if the appellate court affirms the order passed by the Sessions Court. (Paras 23 and 13)

Taking into consideration an overall view of the matter and in particular the offence alleged and sentence imposed and further taking into consideration the acquittal of the other accused persons, who were also charge-sheeted for the same offences as that of the appellants and further taking into consideration the conduct of the appellants during the trial before the Sessions Court when they were on bail, the High Court could have suspended the sentence and granted bail to the appellants. Therefore, interference with the discretion exercised by the High Court would be justified under Article 136 of the Constitution. The sentence is suspended and the appellants are directed to be released on bail on each one of them executing a bond with two solvent sureties to the satisfaction of the trial court. (Para 24). *Angana* v. *State of Rajasthan*, (2009) 3 SCC 767.

Bench Strength **2**. Coram: *Tarun Chatterjee* and *H.L. Dattu*, JJ. [Date of decision: 6-2-2009]

Takht Singh v. State of M.P., (2001) 10 SCC 463: 2003 SCC (Cri) 800; Kashmira Singh v. State of Punjab, (1977) 4 SCC 291: 1977 SCC (Cri) 559; Babu Singh v. State of U.P., (1978) 1 SCC 579: 1978 SCC (Cri) 133; Emperor v. H.L. Hutchinson, AIR 1931 All 356; Bhagwan Rama Shinde Gosai v. State of Gujarat, (1999) 4 SCC 421: 1999 SCC (Cri) 553; Suresh Kumar v. State (NCT of Delhi), (2001) 10 SCC 338: 2002 SCC (Cri) 1043, relied on

Kishori Lal v. Rupa, (2004) 7 SCC 638: 2004 SCC (Cri) 2021; Vasant Tukaram Pawar v. State of Maharashtra, (2005) 5 SCC 281: 2005 SCC (Cri) 1052; Sidhartha Vashisht v. State (NCT of Delhi), (2008) 5 SCC 230: (2008) 2 SCC (Cri) 571; Gomti v. Thakurdas, (2007) 11 SCC 160: (2008) 1 SCC (Cri) 644, considered

[5821] — S. 389 and S. 482 — Suspension of sentence pending appeal, release of appellant on bail — High Court suspending conviction of respondent-accused imposed by trial court by an unreasoned order — Sustainability — *Order of High Court, held, unsustainable and hence, set aside — Case law pertaining to scope and ambit of S. 389 discussed* (Paras 3, 4, 7 and 12). *CBI* v. *M.N. Sharma*, (2008) 8 SCC 549: (2008) 3 SCC (Cri) 572.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *H.S. Bedi*, JJ. [Date of decision: 21-7-2008]

K.C. Sareen v. CBI, (2001) 6 SCC 584: 2001 SCC (Cri) 1186; State of Maharashtra v. Gajanan, (2003) 12 SCC 432: 2004 SCC (Cri) Supp 459; Union of India v. Atar Singh, (2003) 12 SCC 434: 2004 SCC (Cri) Supp 461; State of Haryana v. Hasmat, (2004) 6 SCC 175: 2004 SCC (Cri) 1757, considered and relied on

[5822] — S. 389 — Suspension of conviction, pending appeal — Power of the appellate or the revisional court to suspend conviction — *Order should not be passed mechanically — Held, though such a discretion is undoubtedly granted, yet the Supreme Court can always weigh the correctness of the discretion exercised and pass appropriate orders in the event it comes to a contrary conclusion — On facts held, the High Court erred in suspending conviction only on the ground that non-suspension may entail removal of the delinquent public service from office — Constitution of India — Art.136 — Prevention of Corruption Act, 1988, S. 13* (Para 3). *Union of India* v. *Atar Singh*, (2003) 12 SCC 434.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *Ruma Pal*, JJ. [Date of decision: 29-10-2001]

K.C. Sareen v. CBI, (2001) 6 SCC 584: 2001 SCC (Cri) 1186, relied on

Rama Narang v. Ramesh Narang, (1995) 2 SCC 513; Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, distinguished

[5823] — S. 389 — Suspension of sentence pending appeal; release of appellant on bail — Powers of the appellate court — *Ingredients and requirements for the exercise of — Held, appellate court duty-bound to objectively assess the matter and record reasons for its conclusions — Relevant factors to be considered while granting benefit under S. 389 in case involving serious offence like murder, stated by referring to various case-laws — Ground relied on in the instant case, held, was not of much significance — Bail distinguished from suspension of sentence — Penal Code, 1860, S. 302 r/w S. 34* (Paras 4 to 6, 8 and 9). *Kishori Lal* v. *Rupa*, (2004) 7 SCC 638: 2004 SCC (Cri) 2021.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 23-9-2004]

[5824] — Ss. 389 and 439 — Non-application of mind — Suspension of execution of sentence and grant of bail in case of serious offence like murder — Proper application of mind to relevant factors and recording of reasons germane to justify grant of bail by court, held, is essential — *High Court in its first order granting bail indicated no reason except stating that appellant-accused were on bail during trial and in its second order indicated the reason that co-accused persons had already been released on bail, that presence of the applicant accused at the time of occurrence was doubtful as he was medically examined on the next day of lodging the report, that he had gone to lodge the report along with the complainant and that he was in jail for about four years — Held, orders directing suspension of sentences and grant of bail unsustainable and so set aside. Gomti* v. *Thakurdas*, (2007) 11 SCC 160: (2007) 53 AIC 48 (SC): (2007) 3 All LJ 614: 2007 Cri LJ 2431.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 13-4-2007]

Kishori Lal v. Rupa, (2004) 7 SCC 638: 2004 SCC (Cri) 2021; Vasant Tukaram Pawar v. State of Maharashtra, (2005) 5 SCC 281: 2005 SCC (Cri) 1052, relied on

[5825] — S. 389 — Power of suspension of sentence under — Held, the normal practice in cases like murder is not to suspend the sentence — *It is only in exceptional cases that the benefit of suspension of sentence can be granted — In the instant case, the first respondent, who was convicted under S. 302 IPC by the trial court, granted bail in appeal pending before the High Court at the first instance itself — No reason given by the High Court for adopting this exceptional course in a case of murder — Hence, High Court's impugned order set aside — Penal Code, 1860 — S. 302. Ramji Prasad* v. *Rattan Kumar Jaiswal*, (2002) 9 SCC 366: 2003 SCC (Cri) 1197: AIR 2000 SC 3564.

Bench Strength **2**. Coram: *K.T. Thomas* and *Ruma Pal*, JJ. [Date of decision: 18-4-2000]

[5826] — S. 389 — Power to grant bail in pending appeal — Murder case — Conviction by trial court — *High Court by a cryptic, non-speaking order granting bail to accused-respondents in appeal pending before it — Hence, High Court's order granting bail set aside — Relevant factors to be taken into account by the court while considering the prayer for bail in a case involving serious offence like murder, restated — Penal Code, 1860, Ss. 302/34*

The High Court has neither given any reason nor has indicated any exceptional circumstance for granting bail to the respondents. It is difficult for us to even surmise the circumstance which prompted the learned Single Judge to consider the accused persons to be entitled to the discretionary relief of bail pending the appeal. The principle is well settled that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the court should consider the relevant factors like the nature of the accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder. The

High Court did not take into consideration the relevant factors while passing the bail order. In the context of the facts and circumstances of the case the High Court was in error in passing the order releasing the respondents on bail. (Para 10). *Vijay Kumar* v. *Narendra*, (2002) 9 SCC 364.

Bench Strength **2**. Coram: *D.P. Mohapatra* and *Brijesh Kumar*, JJ. [Date of decision: 5-3-2002]

Ramji Prasad v. Rattan Kumar Jaiswal, (2002) 9 SCC 366, relied on

[5827] — S. 389 — Suspension of sentence and release on bail — Jurisdiction and exercise of power in respect of — Appellate court (Supreme Court in the present case) held, is empowered to suspend sentence — *Such action can however be taken after affording opportunity to Public Prosecutor if offence is punishable with death or life imprisonment or ten years' or more imprisonment, and after recording reasons — Mere admission of appeal by the Supreme Court is not in itself a ground for suspension of sentence — Person acquitted by trial court but convicted by High Court cannot be considered an innocent person, deserving suspension of sentence — It is also not sufficient that the applicant was on bail during trial and he did not misuse this liberty — Real consideration is whether reasons exist to suspend execution of sentence and grant of bail — On facts held, applicant's appeal was on board and was therefore likely to be heard within "measurable distance of time" — Keeping in view that the applicant was convicted by High Court under S. 302 IPC, no case made out for exercise of power under S. 389 CrPC — Application therefore rejected — Penal Code, 1860 — S. 302*

This was an application filed under Section 389 CrPC, for suspension of sentence and releasing the applicant on bail pending consideration of his appeal by the Supreme Court. The applicant was charged under Section 302 IPC. He was acquitted by trial court but convicted by High Court. He filed appeal under Section 2(*a*) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. The appeal had since been admitted by the Supreme Court on 7-3-2007. On 2-4-2007, the Supreme Court, passed bail orders for other accused persons but in respect of the applicant, the Court fixed final hearing of the matter. However, final hearing did not take place up to 12-2-2008. Application under Section 389 CrPC was filed mainly on the ground that the applicant was in jail and if his appeal was not heard for a considerably long time, serious prejudice would be caused to him.

Rejecting the application,

Held :

During pendency of appeal, an appellate court is empowered to suspend sentence on the appellant by releasing him on bail. Such action, however, can be taken only after affording opportunity to the Public Prosecutor in case of offence punishable with death or life imprisonment or imprisonment for ten years or more and after recording reasons in writing. (Para 26)

It has been held in *Kashmira Singh case*, (1977) 4 SCC 291, that so long as the Supreme Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail where special leave has been granted to the accused to appeal against his conviction and sentence. The other consideration, however, is equally important and relevant. When a person is convicted by an appellate court, he cannot be said to be an innocent person until the final decision is recorded by the superior court in his favour. (Para 29)

Mere fact that during the period of trial, the accused was on bail and there was no misuse of liberty, does not per se warrant suspension of sentence and grant of bail. What is really necessary is to consider whether reasons exist to suspend execution of sentence and grant of bail. (Para 32)

On the facts and in the circumstances of the case, this is not a fit case to exercise power under Section 389 CrPC. Though the trial court has acquitted the applicant accused for the offences with which he was charged, the High Court reversed the order of acquittal and convicted him under Section 302 IPC and ordered him to undergo rigorous imprisonment for life. Being aggrieved by the said order, he has filed an appeal which has been admitted, is already on board and awaits final hearing. Hence, within "measurable distance of time" the appeal is likely to be heard. Keeping in view the seriousness of offence, the manner in which the crime was said to have been committed and the gravity of offence, no case has been made out by the applicant for suspension of sentence and grant of bail. (Para 33). *Sidhartha Vashisht* v. *State (NCT of Delhi)*, (2008) 5 SCC 230: (2008) 2 SCC (Cri) 571: 2008 Cri LJ 3524.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 12-5-2008]

Emperor v. H.L. Hutchinson, AIR 1931 All 356: 32 Cri LJ 1271: 134 IC 842; Kashmira Singh v. State of Punjab, (1977) 4 SCC 291: 1977 SCC (Cri) 559; State of Haryana v. Hasmat, (2004) 6 SCC 175: 2004 SCC (Cri) 1757, relied on

[5828] — Ss. 389 and 437 — Bail while appeal pending — Granted in the interest of justice — Old age and pending arrears as factors — Conviction under Ss. 302/34 IPC, sentence, life imprisonment — Age of accused above 70 — *Application for suspension of sentence not allowed by High Court due to gravity of offence and prima facie merit of case — Held, in the interest of justice, taking into account age of accused, who in custody for 71/2 years, and arrears in High Court, accused may be released on conditional bail — Conditions include duty to intimate address, stay out of municipal limits NCT of Delhi and to report weekly to local police station. Pritpal Singhal* v. *State of Delhi*, (1999) 1 SCC 169: 1999 SCC (Cri) 73.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *A.P. Misra*, JJ. [Date of decision: 25-9-1998]

[5829] — S. 389 — Bail during pendency of appeal against conviction in offences of murder, attempt to murder, etc. — Grant of, held on facts, was not justified — *Bail cancelled by exercising power under Art. 136 of the Constitution — Grave apprehension of likelihood of accused tampering with evidence — Grant of bail by High Court during pendency of appeal against conviction in relation to said offences — High Court not considering the gravity of the crime, the said apprehension of the prosecution and threats to the life of the complainant and other witnesses given by the accused — It passing the bail order in a mechanical fashion without proper application of mind and without going into the merits and evidence on record against the accused persons — In such circumstances, restating the object of cancellation of bail, held, the Supreme Court will be justified under Art. 136 in interfering with the order of the High Court granting bail — Constitution of India — Art. 136*

Allowing the appeals filed by the complainant against the non-speaking orders passed by the High Court granting bail,

Held :

The object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime and if there is delay in such a case the underlying object of cancellation of bail practically loses all its purpose and significance to the greatest prejudice and the interest of the prosecution. It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation. (Para 13)

There was total non-application of mind by the Court to the gravity of the crime, the apprehension of tampering with the evidence and threats to the life of the complainant and other witnesses given by the accused. The High Court passed the impugned order in a mechanical fashion without proper application of mind and without going into the merits and evidence on record against the accused persons. The High Court failed to see and appreciate that the accused respondents herein who are the main Accused 1 to 3 are the masterminds behind the crime committed. The High Court has not considered the material evidence available on record against the accused which prima facie establishes the criminal liability of the respondents. The High Court also failed to see that the learned Sessions Judge, after taking into consideration the seriousness and the gravity of the crime convicted the accused for the crime. (Para 11)

Thus, looking into the gravity of the crime, apprehension of tampering with the evidence and threats to the life of the complainant and other witnesses given by the accused, it is held that the High Court did not take into proper account the grave apprehension of the prosecution that there was a likelihood of the accused persons tampering with the prosecution witnesses. In the peculiar nature of the case revealed from the allegations and the position of the accused in relation to the eyewitnesses it was incumbent upon the High Court to give proper weight to the serious apprehension of the complainant which was urged before it in resisting the application for bail. The High Court had failed to properly appreciate the entire position. Therefore, the Supreme Court will be justified under Article 136 of the Constitution in interfering with the discretion exercised by the High Court in granting bail to the accused persons. (Para 18). *Panchanan Mishra* v. *Digambar Mishra*, (2005) 3 SCC 143: 2005 SCC (Cri) 660: AIR 2005 SC 1299: 2005 Cri LJ 1721.

Bench Strength **2**. Coram: *Ashok Bhan* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 17-1-2005]

Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118: 1978 SCC (Cri) 41; State (Delhi Admn.) v. Sanjay Gandhi, (1978) 2 SCC 411: 1978 SCC (Cri) 223, followed

Dolat Ram v. State of Haryana, (1995) 1 SCC 349: 1995 SCC (Cri) 237; Mehboob Dawood Shaikh v. State of Maharashtra, (2004) 2 SCC 362: 2004 SCC (Cri) 551, distinguished

[5830] — S. 389 — Requirement under, that the accused preferring criminal appeal before Supreme Court has to surrender prior to registration of said appeal — Contention that once bail granted by trial court in terms of S. 389(3) CrPC, Supreme Court cannot insist that the accused should surrender in terms of Or. 21 R. 13-A, Supreme Court Rules — Sustainability of — *Per Altamas Kabir, J., held, said contention not sustainable as S. 389(3) CrPC empowers the trial court to release a convicted person on bail only for such period as will afford him sufficient time to present an appeal and obtain orders of the appellate court under sub-section (1) of S. 389 — Grant of bail in appeal presupposes surrender by the convicted person — Provisions of S. 389 CrPC and that of the 1966 Rules are independent provisions and will have to be considered on their own standing — Supreme Court Rules, 1966, Or. 21 R. 13-A* (Para 19). *Mayuram Subramanian Srinivasan* v. *CBI*, (2006) 5 SCC 752: (2006) 3 SCC (Cri) 83: AIR 2006 SC 2449: 2006 Cri LJ 3285: (2006) 3 KLT 489.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 16-6-2006]

[5831] — S. 389 — Expeditious disposal of cases — High Court directed to dispose of the pending appeal within a period of one year — *Constitution of India — Art. 136* (Para 4). *Union of India* v. *Shiv Saran Gupta*, (2005) 12 SCC 354.

Bench Strength **2**. Coram: *S.N. Variava* and *H.K. Sema*, JJ. [Date of decision: 10-1-2005]

[5832] — S. 389 — Interim order granting bail passed by Supreme Court — No misuse of bail — Interim order confirmed — *It will remain operative till the disposal of criminal appeal pending before High Court — Constitution of India — Art. 136* (Paras 2 and 3). *Sudarshana Devi* v. *State of Punjab*, (2005) 10 SCC 213: 2005 SCC (Cri) 1512.

Bench Strength **2**. Coram: *B.N. Agrawal* and *H.K. Sema*, JJ. [Date of decision: 13-4-2005]

[5833] — S. 389 — Interim bail during appeal before Supreme Court — Sentence already undergone and time to be taken in final disposal of appeal — Consideration of — *Appellant awarded sentence of 10 years' imprisonment — He had already undergone sentence of 8 years and 8 months' imprisonment — Final disposal of appeal may take further time due to reference of matter to larger Bench by Supreme Court — Hence, appellant directed to be released on interim bail pending disposal of appeal finally — Constitution of India — Art. 136* (Para 10). *Vijaysinh Chandubha Jadeja* v. *State of Gujarat*, (2007) 1 SCC 433: (2007) 1 SCC (Cri) 370: (2007) 1 Guj LR 768.

Bench Strength **3**. Coram: *K.G. Balakrishnan, Dalveer Bhandari* and *Lokeshwar Singh Panta*, JJ. [Date of decision: 2-11-2006]

[5834] — S. 389 — Sentence under S. 26, NDPS Act — Held, cannot be suspended by the trial court by resorting to S. 389(3), CrPC — *Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 32-A & 26. Maktool Singh* v. *State of Punjab*, (1999) 3 SCC 321: 1999 SCC (Cri) 417: AIR 1999 SC 1131.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 17-3-1999]

Jyotiben Ramlal Purohit v. State of Gujarat, (1997) 3 Recent CrR 607, overruled

[5835] — Ss. 389, 437 and 439 — Conviction for rape with life imprisonment — Suspension of sentence and enlargement on bail — Propriety — *High Court by impugned judgment granting bail and suspending sentence of life imprisonment passed against respondent-accused for offence punishable under Ss. 376 and 450 IPC — Victim a British journalist and businesswoman who was staying in guest house belonging to respondent-accused, where he forcibly barged into her room and raped her — Held, it was not a fit case where sentence awarded should have been suspended and accused released on bail — High Court totally unjustified in granting bail to accused, or in suspending the sentence — Impugned judgment set aside and High Court directed to dispose of the appeal expeditiously — Penal Code, 1860 — Ss. 376 and 450* (Paras 3, 5 and 6). *Suzanne Louise Martin* v. *State of Rajasthan*, (2009) 4 SCC 376.

Bench Strength **2**. Coram: *Markandey Katju* and *V.S. Sirpurkar*, JJ. [Date of decision: 16-1-2009]

[5836] — Ss. 389, 437 and 439 — Suspension of sentence and grant of bail in appeal against conviction — Grant of — Propriety — Reasoned order/Speaking order — Necessity — *High Court by impugned order granting bail to respondent-accused convicted under Ss. 302 and 506 IPC by cryptic order without applying its mind and not considering relevant aspects — Impermissibility — Impugned order set aside and matter remitted to High Court for consideration afresh — Penal Code, 1860, Ss. 302 and 506* (Paras 11 and 12). *Khilari* v. *State of U.P.*, (2009) 4 SCC 23.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 23-1-2009]

Kishori Lal v. Rupa, (2004) 7 SCC 638: 2004 SCC (Cri) 2021; Anwari Begum v. Sher Mohammad, (2005) 7 SCC 326: 2005 SCC (Cri) 1669, followed

[5837] — S. 389 — Release on bail and suspension of sentence pending appeal — Power of appellate court — Scope of — Need for reasoned order — *Respondents accused of offence punishable under S. 302 IPC — Bail granted and sentence suspended by High Court through an unreasoned order — Release granted in absence of an application — Even during trial, accused persons had not been released on bail — Accused persons had also escaped from custody and were convicted for such escape — No opportunity given to Public Prosecutor to oppose the release — High Court's order, held, indefensible — Respondent-accused directed to surrender to custody. Masood Ali Khan* v. *State of U.P.*, (2009) 3 SCC 492.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 5-2-2009]

Kishori Lal v. Rupa, (2004) 7 SCC 638: 2004 SCC (Cri) 2021; Vasant Tukaram Pawar v. State of Maharashtra, (2005) 5 SCC 281: 2005 SCC (Cri) 1052; Gomti v. Thakurdas, (2007) 11 SCC 160: (2008) 1 SCC (Cri) 644, relied on

[5838] — S. 389 — Bail pending appeal — Entitlement to, when bail granted to accused earlier misutilised by him — *Accused while on bail in another case committing the offence of murder in question — High Court during pendency of appeal against conviction granting bail to accused — Held, the accused who misutilised the liberty granted to him earlier was not entitled to the privilege of being released on bail — Bail cancelled and accused directed to be taken into custody forthwith — Penal Code, 1860 — S. 302* (Para 2). *Ramesh Kumar Singh* v. *Jhabbar Singh*, (2003) 10 SCC 195.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *Ruma Pal*, JJ. [Date of decision: 9-8-2002]

[5839] — S. 389 — Bail pending appeal — When to be granted — *Appeal against conviction under Ss. 304-B and 498-A IPC — No chance of said appeal being heard in the near future — Accused already suffered sentence of 3 years and 6 months — In these circumstances, held, accused should be released on bail on his furnishing bail bond and surety to the satisfaction of the trial court — Penal Code, 1860, Ss. 304-B and 498-A* (Para 3). *Salim Javed* v. *State of Rajasthan*, (2006) 9 SCC 602: (2006) 3 SCC (Cri) 354.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 27-3-2006]

[5840] — S. 389 — Bail pending appeal in a case under S. 302 IPC — Grant of — Propriety — *High Court while granting bail, pending appeal not considering the fact that accused was convicted under S. 302 and subsequently involved in another case under S. 302 IPC — Held, the present case was not a fit one for grant of bail — High Court's order set aside — Constitution of India — Art.136* (Paras 4 and 5). *Veer Sen* v. *Jai Singh*, (2005) 12 SCC 252.

Bench Strength **2**. Coram: *B.N. Agrawal* and *P.K. Balasubramanyan*, JJ. [Date of decision: 11-3-2005]

[5841] — S. 389 — Conviction under Ss. 302, 307, 148 r/w S. 149, IPC — Suspension of sentence and grant of bail during pendency of appeal — *Direction by High Court in respect of, merely on the ground that during the period of parole accused did not misuse the liberties, held, unsustainable — Bail distinguished from suspension of sentence — Appellate court to consider whether reasons exist to suspend the execution of sentence and thereafter grant bail — Recording of reasons for conclusion that the case warrants suspension of execution of sentence and grant of bail, held, essential — Relevant factors to be considered while granting benefit under S. 389 in cases involving serious offence like murder, stated by referring to various case-laws — Penal Code, 1860 — Ss. 302, 307, 148 r/w S. 149*

Section 389 CrPC deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the appellate court to record reasons in writing for ordering suspension of execution of the sentence or order appealed. Thus the appellate court is duty-bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail. The mere fact that during the period of parole the accused has not misused the liberties does not per se warrant suspension of execution of sentence and grant of bail. What really was necessary to be considered by the High Court was whether reasons existed to suspend the execution of sentence and thereafter grant bail. (Paras 6 to 8)

In *Vijay Kumar* v. *Narendra*, (2002) 9 SCC 364 and *Ramji Prasad* v. *Rattan Kumar*, (2002) 9 SCC 366, it was held that in cases involving conviction under Section 302 IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. The impugned order of the High Court does not meet the requirement. In *Vijay Kumar case* it was held that in considering the prayer for bail in a case involving a serious offence like murder, the Court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder. These aspects have not been considered by the High Court, while passing the impugned order. Hence, the order directing suspension of sentence and grant of bail is clearly unsustainable and is set aside. (Paras 9 and 10). *State of Haryana* v. *Hasmat*, (2004) 6 SCC 175: 2004 SCC (Cri) 1757: AIR 2004 SC 3936.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 26-7-2004]

Vijay Kumar v. Narendra, (2002) 9 SCC 364: 2003 SCC (Cri) 1195; Ramji Prasad v. Rattan Kumar Jaiswal, (2002) 9 SCC 366: 2003 SCC (Cri) 1197, followed

[5842] — Ss. 389, 439, 432 and 433 — Parole — Power to grant — *Held, lies entirely with the State Govt. and the High Court can only release an accused either for a full term or a short term, in exercise of the powers conferred upon it under the CrPC — Supreme Court expressing strong displeasure at the High Court's callous way in releasing the accused in the garb of parole for one month and further extending it for another month, despite Supreme Court's earlier order cancelling his bail — More so since the Supreme Court had cancelled the order granting bail considering the gravity of the offence and the seriousness of the charges, where three murders had been committed in broad daylight* (Paras 2 and 4). *Rakesh Kumar Pandey* v. *Udai Bhan Singh*, (2008) 17 SCC 764.

Bench Strength **3**. Coram: *G.B. Pattanaik*, *Ruma Pal* and *S.N. Variava*, JJ. [Date of decision: 30-9-2002]

[5843] — S. 389 — Conviction under S. 302 r/w S. 34 IPC — Suspension of sentence and grant of bail during pendency of appeal — *Held, it is only in exceptional cases that such benefit can be granted — Direction by High Court in respect of, merely on the ground that during trial, the accused who were on bail did not misuse liberties provided, unsustainable* (Paras 6 and 9). *Kishori Lal* v. *Rupa*, (2004) 7 SCC 638: 2004 SCC (Cri) 2021.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 23-9-2004]

State of Haryana v. Hasmat, (2004) 6 SCC 175: 2004 SCC (Cri) 1757, relied on

Vijay Kumar v. Narendra, (2002) 9 SCC 364: 2003 SCC (Cri) 1195; Ramji Prasad v. Rattan Kumar Jaiswal, (2002) 9 SCC 366: 2003 SCC (Cri) 1197, followed

[5844] — S. 389 — Refusal by High Court to grant bail pending disposal of appeal — Propriety — *Held, was not proper since appellant had already served a substantial period of the sentence (i.e. about 2 years and four months out of seven years) — Penal Code, 1860, S. 304-B — Constitution of India, Art. 136* (Para 2). *Kamal* v. *State of Haryana*, (2004) 13 SCC 526.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *Tarun Chatterjee*, JJ. [Date of decision: 15-10-2004]

[5845] — S. 389 — Release on bail of appellant sentenced to life imprisonment pending disposal of his appeal by special leave — *Held, justified where the Court is not in a position to dispose of the appeal expeditiously — Past practice of Supreme Court no longer just*

No practice howsoever sanctified by usage and hallowed by time can be allowed to prevail if it operates to cause injustice. Every practice of the Court must find its ultimate justification in the interest of justice. The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in the Supreme Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period.

The rationale of the above practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him.

Therefore so long as the Supreme Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and sentence. The very fact that the Supreme Court has granted to the appellant special leave to appeal against his conviction shows that, in the opinion of this Court, he has prima facie a good case to consider and in the circumstances it would be highly unjust to detain him in jail any longer during the hearing of the appeal. *Kashmira Singh* v. *State of Punjab*, (1977) 4 SCC 291: 1977 SCC (Cri) 559: AIR 1977 SC 2147: 1977 MLJ (Cri) 559: 1977 Cri LJ 1746.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *A.C. Gupta*, JJ. [Date of decision: 2-9-1977]

But see Rajesh Ranjan Yadav v. CBI, (2007) 1 SCC 70

[5846] — Ss. 389, 432 & 433 — Courts powers under, held, cannot be legislated away — Held, S. 32-A, NDPS Act, 1988 partly unconstitutional — S. 32-A, NDPS Act is unconstitutional to the extent it takes away the right of the court to suspend the sentence of a person convicted under

Act and thus intermeddles with the right of appeal in such a way as to actually take away the power of judicial review, the heart and soul of the constitutional scheme — Taking away of the right of the executive to suspend, remit and commute sentences under the Act, however, held valid — *Clarified that S. 32-A does not affect in any way the powers of authorities to grant parole — Further clarified that only appellate court can suspend a sentence imposed under the Act and that too, strictly subject to the conditions set out in S. 37 — Contention rejected that S. 32-A was enacted in discharge of international obligations — Held, petitioners may apply for parole and suspension of sentence, but cannot claim them as a matter of right — Constitution of India — Art.21 — U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 32-A*

Partly allowing the petitions,

Held :

The distinction between convicts under the Narcotic Drugs and Psychotropic Substances Act, 1985 and under other statutes, insofar as it relates to the exercise of executive powers under Sections 432 and 433 of the Code is concerned, cannot be termed to be either arbitrary or discriminatory being violative of Article 14 of the Constitution. Such deprivation of the executive can also not be stretched to hold that the right to life of a person has been taken away except, according to the procedure established by law. It is not contended on behalf of the petitioners that the procedure prescribed under the Act for holding the trial is not reasonable, fair and just. The offending section, insofar as it relates to the executive in the matter of suspension, remission and commutation of sentence, after conviction, does not, in any way, encroach upon the personal liberty of the convict tried fairly and sentenced under the Act. (Para 15)

Awarding sentence, upon conviction, is concededly a judicial function to be discharged by the courts of law established in the country. It is always a matter of judicial discretion, however, subject to any mandatory minimum sentence prescribed by the law. The award of sentence by a criminal court wherever made subject to the right of appeal cannot be interfered or intermeddled with in a way which amounts to not only interference but actually taking away the power of judicial review. Awarding the sentence and consideration of its legality or adequacy in appeal is essentially a judicial function embracing within its ambit the power to suspend the sentence under the peculiar circumstances of each case, pending the disposal of the appeal. (Para 16)

However, providing atleast one right of appeal would negate the due process of law in the matter of dispensation of criminal justice. There is no doubt that the right of appeal is the creature of a statute and when conferred, a substantive right. Providing a right of appeal but totally disarming the court from granting interim relief in the form of suspension of sentence would be unjust, unfair and violative of Article 21 of the Constitution particularly when no mechanism is provided for early disposal of the appeal. The pendency of criminal litigation and the experience in dealing with pending matters indicate no possibility of early hearing of the appeal and its disposal on merits atleast in many High Courts. In this view of the matter, the appellate powers of the court cannot be denuded by executive or judicial process. (Para 17)

When a convicted person is sentenced to a fixed period of sentence and the appellate court finds that due to practical reasons the appeal cannot be disposed of expeditiously, it can pass appropriate orders for suspension of sentence. The suspension of the sentence by the appellate court has, however, to be within the parameters of the law prescribed by the legislature or spelt out by the courts by judicial pronouncements. The exercise of judicial discretion on well-recognised principles is the safest possible safeguard for the accused which is at the very core of criminal law administered in India. The legislature cannot, therefore, make law to deprive the courts of their legitimate jurisdiction conferred under the procedure established by law. (Para 18)

The offending section is stated to have been enacted in discharge of the international obligations as claimed by the Minister concerned in Parliament. This submission appears to be without any substance. Countries, parties to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, in the 6th plenary meeting held on 19-12-1988 resolved to adopt means and measures to curb the rising trend in the illicit production or demand for and traffic in narcotic drugs and psychotropic substances which posed a serious threat to the health and welfare of human beings and adversely affected the economic, cultural and political foundations of society. (Para 21)

A perusal of the agreement of the Convention to which India is claimed to be a party, clearly and unambiguously shows that the court's jurisdiction with respect to the offences relating to narcotic drugs and psychotropic substances was never intended to be ousted, taken away or curtailed. The declaration was made, subject to "constitutional principles and the basic concepts of its legal system prevalent in the polity of a member country". The international agreement emphasised that the courts of the member countries shall always bear in mind the serious nature of offences sought to be tackled by the declaration while considering the eventuality of early release of persons convicted of such offences. There was no international agreement to put a blanket ban on the power of the court to suspend the sentence awarded to a criminal under the Act, notwithstanding the constitutional principles and basic concepts of its legal system. It cannot be denied that judicial review is the heart and soul of the constitutional scheme. The judiciary is constituted the ultimate interpreter of the Constitution and is assigned the delicate task of determining the extent and scope of the powers conferred on each branch of the Government, ensuring that action of any branch does not transgress its limits. (Para 23)

Judged from any angle, the section insofar as it completely debars the appellate courts from the power to suspend the sentence awarded to a convict under the Act cannot stand the test of constitutionality. Thus Section 32-A of the Narcotic Drugs and Psychotropic Substances Act insofar as it ousts the jurisdiction of the court to suspend the sentence awarded to a convict under the Act is unconstitutional. (Para 25)

However the declaration of Section 32-A to be unconstitutional, insofar as it affects the functioning of the courts in the country, would not render the whole of the section invalid, the restriction imposed by the offending section being distinct and severable. (Para 26)

Holding Section 32-A as void insofar as it takes away the right of the courts to suspend the sentence awarded to a convict under the Act, would neither entitle such convicts to ask for suspension of the sentence as a matter of right in all cases nor would it absolve the courts of their legal obligations to exercise the power of suspension of sentence within the parameters prescribed under Section 37 of the Act. (Para 27)

Under the circumstances the writ petitions are disposed of by holding that:

(*1*) Section 32-A does not in any way affect the powers of the authorities to grant parole.

(*2*) It is unconstitutional to the extent it takes away the right of the court to suspend the sentence of a convict under the Act.

(*3*) Nevertheless, a sentence awarded under the Act can be suspended by the appellate court only and strictly subject to the conditions spelt out in Section 37 of the Act, as dealt with in this judgment. (Para 29). *Dadu* v. *State of Maharashtra*, (2000) 8 SCC 437: 2000 SCC (Cri) 1528: AIR 2000 SC 3203.

Bench Strength **3**. Coram: *K.T. Thomas*, **R.P. Sethi** and *S.N. Variava*, JJ. [Date of decision: 12-10-2000]

Bhagwan Rama Shinde Gosai v. State of Gujarat, (1999) 4 SCC 421: 1999 SCC (Cri) 553; Denny v. Mattoon, 2 Allen 361; S.S. Bola v. B.D. Sardana, (1997) 8 SCC 522; S.P. Sampath Kumar v. Union of India, (1987) 1 SCC 124: (1987) 2 ATC 82, relied on

Ram Charan v. Union of India, (1991) 9 LCD 160 (All), approved

Ishwar Sinh M. Rajput v. State of Gujarat, (1990) 2 Guj LR 1365: (1991) 2 Crimes 160, overruled

Maktool Singh v. State of Punjab, (1999) 3 SCC 321: 1999 SCC (Cri) 417, partly overruled

[5847] — S. 389 (Ch. XXIX) — Held S. 32-A, NDPS Act, overrides the provisions of CrPC — *"So far as may be applicable" — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 32-A. Maktool Singh* v. *State of Punjab*, (1999) 3 SCC 321: 1999 SCC (Cri) 417: AIR 1999 SC 1131.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 17-3-1999]

But S. 32-A held partly unconstitutional in Dadu v. State of Maharashtra, (2000) 8 SCC 437: 2000 SCC (Cri) 1528

[5848] — S. 389 (Ch. XXIX) — Powers of High Court under Ch. XXIX of CrPC preserved by S. 36-B, NDPS Act — Scope — *Held, does not include the power to suspend during pendency of appeal, the sentence passed on a convict under the Act — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 36-B and 32-A*

Section 32-A of the Act has taken away the powers of the court to suspend a sentence passed on persons convicted of offences under the Act (except Section 27) either during pendency of any appeal or otherwise. Similarly, the power of the Government under Sections 432, 433 and 434 of the CrPC have also been taken away. Section 32-A would have an overriding effect with regard to the powers of suspension, commutation and remission provided under the Criminal Procedure Code. *Maktool Singh* v. *State of Punjab*, (1999) 3 SCC 321: 1999 SCC (Cri) 417: AIR 1999 SC 1131.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 17-3-1999]

But S. 32-A held partly unconstitutional in Dadu v. State of Maharashtra, (2000) 8 SCC 437: 2000 SCC (Cri) 1528

[5849] — S. 389 — Repeat offender — Bail during pendency of appeal by High Court merely on the ground that his co-accused had been granted bail — *Held, not justified — Legislative intent of the NDPS Act, held, totally ignored by the High Court*

The respondent herein was convicted by the Special Judge, NDPS Court, Lucknow, under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act"). Since he was a previous offender, the court awarded him the enhanced punishment provided under Section 31 of the Act. The other accused (A-1), who was a first offender, was sentenced under Section 21 of the Act.

The High Court while entertaining an appeal against the said conviction filed by the respondent herein, did not grant the respondent's prayer for bail. Consequently, the said application for bail was rejected. On a second application filed by the respondent for grant of bail, the High Court allowed the said application by the impugned order dated 4-3-2003 solely on the ground that A-1 from whom the contraband was recovered was released on bail and the contraband in question was not recovered from the respondent. The Union of India challenged the said order of the High Court by filing the instant appeal before the Supreme Court.

Allowing the appeal and setting aside the impugned order,

Held :

The learned Judge has totally ignored the legislative intent of the Act. In the impugned judgment there has been absolutely no application of mind to the requirement of law while granting bail to the respondent. The learned Judge seriously erred in granting bail to a repeat offender merely on the ground that a co-accused has been granted bail. (Para 10). *Union of India* v. *Mahaboob Alam*, (2004) 4 SCC 105: 2004 SCC (Cri) 912: 2004 All LJ 1071: 2004 Cri LJ 1789.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 27-2-2004]

Dadu v. State of Maharashtra, (2000) 8 SCC 437: 2000 SCC (Cri) 1528; Union of India v. Ram Samujh, (1999) 9 SCC 429, relied on

[5850] — S. 389 — Bail — Grant of, merely on the ground that there was no prospect of early hearing of the appeal — Propriety of — *Held on facts, was not proper — The same was in disregard of the statutory provisions — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 37* (Paras 4 and 5). *Union of India* v. *Abdul Momin*, (2005) 13 SCC 144: (2006) 2 SCC (Cri) 130.

Bench Strength **2**. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 7-10-2005]

[5851] — S. 389 — Suspension of sentence pending the appeal — Release of appellant on bail — Refusal by High Court — Propriety — *Appellant, guilty of offence punishable under Ss. 8/18 and 8/15 of the Narcotic Drugs and Psychotropic Substances Act, 1985, awarded sentence of rigorous imprisonment for 10 years with fine of Rs 1 lakh on each count, had already undergone more than seven years of imprisonment — No likelihood of the appeal being heard in the near future — On such facts, on the appellant depositing the amount of fine, the execution of the sentence of imprisonment shall remain suspended during the hearing of the appeal by the High Court, and the appellant shall be released on bail — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 8/18 and 8/15* (Paras 2, 3 and 4). *Mansingh* v. *Union of India*, (2004) 13 SCC 42.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and *P.K. Balasubramanyan* and *P.P. Naolekar*, JJ. [Date of decision: 27-9-2004]

[5852] — Ss. 389 and 439 — Bail — Grant of — Propriety — Provisions of S. 37, NDPS Act not taken into consideration or complied with — *Hence, impugned order set aside — Bail application would stand rejected — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 37* (Para 4). *Union of India* v. *Shiv Saran Gupta*, (2005) 12 SCC 354.

Bench Strength **2**. Coram: *S.N. Variava* and *H.K. Sema*, JJ. [Date of decision: 10-1-2005]

[5853] — Ss. 389 and 439 — Bail, pending appeal — Grant of, without considering condition contained in S. 37, NDPS Act with regard to enlarging of accused on bail, held, not proper — *Contention that since Public Prosecutor did not oppose the bail application, S. 37 would not apply, not sustainable — The very fact that the Public Prosecutor appeared would suggest that he appeared to oppose the bail application — In any event, High Court's order did not suggest that the Public Prosecutor had agreed for bail being granted — Hence, bail cancelled — Constitution of India — Art.136 — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 37* (Para 4). *Narcotics Control Bureau* v. *Karma Phuntsok*, (2005) 12 SCC 480.

Bench Strength **2**. Coram: *H.K. Sema* and *B.N. Srikrishna*, JJ. [Date of decision: 22-8-2005]

[5854] — S. 389 — Suspension of sentence — Similar treatment to all accused similarly situated — Need for — *Four accused convicted under Ss. 364/302/34 IPC and sentenced to life imprisonment — During pendency of appeal preferred by all the accused before High Court, sentences passed on three of the accused suspended and order passed for their release on bail by High Court but prayer for suspension of sentence made by appellant* *rejected — Held, case of the appellant cannot be distinguished from cases of other accused as regards role assigned to them in the incident — Therefore, it would be just and proper not to deny similar relief to appellant also* (Paras 3 and 4). *Sham Lal* v. *State of Haryana*, (2004) 13 SCC 469.

Bench Strength **2**. Coram: *R.C. Lahoti, C.J.* and *G.P. Mathur*, J. [Date of decision: 6-8-2004]

[5855] — S. 389 — Suspension of sentence as well as of conviction of the respondent public servant convicted under the Prevention of Corruption Act, 1988 by the High Court while entertaining appeal — *Held, such power should be exercised by the appellate or the revisional court only in exceptional cases, considering all aspects including ramification of such suspension — High Court in the instant case had passed the impugned order only to enable the respondent to continue in service despite conviction, which cannot be said to be exceptional circumstances — Hence High Court's order cannot be sustained — Constitution of India — Art. 32 — Prevention of Corruption Act, 1988, S. 7* (Paras 4 and 5). *State of Maharashtra* v. *Gajanan*, (2003) 12 SCC 432: AIR 2004 SC 1188: 2004 Cri LJ 919.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 18-12-2003]

K.C. Sareen v. CBI, (2001) 6 SCC 584: 2001 SCC (Cri) 1186; Union of India v. Atar Singh, (2003) 12 SCC 434, followed

[5856] — S. 389 — Suspension of sentence pending the appeal — Release of appellant on bail — Refusal of, by High Court — Propriety — *Conviction and sentence under S. 302 r/w S. 34 IPC — Co-accused, to whom a stab injury by knife was attributed, already released on bail — The only allegation against the appellant was that he caused an injury with a piece of brick — Under the said circumstances, held, appellant was also entitled to be enlarged on bail — Sentence passed against him suspended, pending the criminal appeal* (Para 6). *Jagan* v. *State of Haryana*, (2004) 13 SCC 507.

Bench Strength **2**. Coram: *Shivaraj V. Patil* and *B.N. Srikrishna*, JJ. [Date of decision: 29-11-2004]

[5857] — S. 389 — Bail — Interim bail — Grant of during pendency of appeal — Grounds for — *Appellant convicted under Ss. 409, 420, 467, 468, 471/465 and 477-A r/w S. 120-B IPC and S. 13(2) r/w Ss. 13(1)(c) & (d) of the Prevention of Corruption Act, 1988 and sentenced to imprisonment for four years by trial court — High Court rejecting his application for bail observing that he may renew his prayer for bail after serving half sentence — Appellant in jail for nearly two years, and no possibility of his appeal being heard in near future — Hence, interim bail granted to him — Penal Code, 1860, Ss. 409, 420, 467, 468, 471/465 and 477-A r/w S. 120-B — Prevention of Corruption Act, 1988, Ss. 13(1)(c) & (d) r/w S. 13(2)* (Paras 1, 4 and 5). *Dinesh Kumar Sinha* v. *State of Jharkhand*, (2009) 6 SCC 628.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **H.L. Dattu**, JJ. [Date of decision: 15-5-2009]

[5858] — S. 389 — Power under — Exceptional exercise of — Application for suspension/stay of conviction, pending appeal — *Petitioner-appellant found guilty under S. 3 and S. 7 r/w Ss. 25(1-A) and (1-B), Arms Act, 1959 and sentenced to six years' RI — Appeal thereagainst, pending consideration before Supreme Court, during which petitioner was granted bail — Petitioner desirous of contesting election, but in view of S. 8(3), RP Act, 1951, because of aforesaid conviction and sentence, he incurring disqualification from contesting election — Therefore, petition filed by him under S. 389, praying that execution of order of his conviction and sentence be suspended, pending final hearing of appeal, to enable him to contest election — Tenability — Held, petitioner was convicted for serious offences, which lies challenged before Supreme Court — Petitioner is a cine artist and son of well-known film actor/politician — He is not a habitual criminal nor had been involved in any other criminal case — Despite all these favourable circumstances, this is not a fit case where conviction and sentence could be suspended so that bar under S. 8(3), RP Act, 1951 will not operate against petitioner — In face of S. 8(3), RP Act, 1951, power of court under S. 389 CrPC shall be exercised only under exceptional circumstances — Hence, in view of serious offence for which petitioner was convicted, held, his conviction and sentence, cannot be suspended — Arms Act, 1959, Ss. 25(1-A) and (1-B) — Representation of the People Act, 1951, S. 8(3) — Suspension of conviction to enable contesting of election — Permissibility* (Paras 10 to 12 and 14). *Sanjay Dutt* v. *State of Maharashtra*, (2009) 5 SCC 787.

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and **P. Sathasivam** and *R.M. Lodha*, JJ. [Date of decision: 31-3-2009]

Navjot Singh Sidhu v. State of Punjab, (2007) 2 SCC 574: (2007) 1 SCC (Cri) 627, distinguished

[5859] — Ss. 389 and 374 — Suspension of sentence pending the appeal — Appeal before High Court — Conviction under Ss. 460, 376, 325 and 506 IPC — *During the pendency of appeal High Court rejecting appellant's application for suspension of sentence — Held, the normal rule is that when the appeal of a person convicted and sentenced* *is pending the sentence passed on him should be suspended unless any exceptional reason existing therein requires the denial of the same — There being no exceptional reason recorded in the impugned order, Supreme Court suspending the sentence and directing release of appellant on bail — Constitution of India — Art.136 — Penal Code, 1860, Ss. 376, 460, 325 and 506. Kiran Kumar* v. *State of M.P.*, (2001) 9 SCC 211.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 28-8-2000]

Bhagwan Rama Shinde Gosai v. State of Gujarat, (1999) 4 SCC 421: 1999 SCC (Cri) 553, followed

[5860] — Ss. 389 and 421 — Sentence under S. 70, IPC levying fine — Limitation period for levy of fine — *Applicability — Recovery of fine stayed during pendency of appeal before Supreme Court against conviction and sentence and thus fine ceased to be leviable — Held, limitation for recovery of fine would not begin till passing of order of Supreme Court confirming conviction and sentence — On facts held, recovery proceedings initiated after order confirming conviction and sentence was within time. State of U.P.* v. *Kamal Kishore*, (1992) 1 SCC 148: 1992 SCC (Cri) 79: (1992) 1 MWN (Cr) 39.

Bench Strength **2**. Coram: *Kuldip Singh* and **Yogeshwar Dayal**, JJ. [Date of decision: 5-12-1991]

Mehtab Singh v. State of U.P., (1979) 4 SCC 597: 1980 SCC (Cri) 142, followed

— S. 389(1) *See also* Ss. 389(3) & (1)

[5861] — S. 389(1) — For public servant convicted for corruption, order of conviction should not be suspended though sentence of imprisonment may be suspended till disposal of the appeal — *It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision*

The appellant, a Bank Officer, was convicted by Special Judge inter alia under Section 13(2) of the Prevention of Corruption Act and was sentenced to one year's RI and fine of Rs 500. The appellant preferred appeal against the conviction and sentence before High Court which admitted the appeal and suspended the sentence passed against him. Meanwhile disciplinary proceedings were initiated against the appellant and on the strength of the conviction recorded by the trial court, the bank authorities dismissed him from service. The appellant then moved the High Court to have the conviction also suspended. That motion was dismissed by the High Court. But the appellant once again moved the High Court at a later stage by supplying certain additional facts to the High Court for fresh consideration of his plea for suspension of the conviction. One of the causes stated by him was the order of dismissal passed against him on the premise of his conviction. Another ground highlighted by him was that his appeal in the High Court was not likely to be heard for next years and that itself would defeat the ends of justice. Alternatively he made a bid to show that the conviction was based on very slender reasoning and hence he has "a fair chance of getting acquitted in appeal". But the High Court again declined to suspend the conviction by observing that no ground was made out therefor. Dismissing the appeal,

Held :

Though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal to challenge his conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. (Para 11)

No doubt when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under the Prevention of Corruption Act, the superior court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the Prevention of Corruption Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter. (Para 11)

When conviction is on a corruption charge against a public servant the appellate court or the revisional court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision. (Para 13)

When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes, even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a court order suspending the conviction. The above policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. (Paras 12 and 13)

Therefore, the High Court had rightly refused to suspend the conviction in this case. It is open to the appellant to move the High Court for early hearing. If the High Court is satisfied that the appellant has a reasonably good prospect of being exonerated or that there is any other special reason, it is hoped that the High Court would board the appeal for hearing on an early date. (Para 16). *K.C. Sareen* v. *CBI*, (2001) 6 SCC 584: 2001 SCC (Cri) 1186: AIR 2001 SC 3320.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 2-8-2001]

Rama Narang v. Ramesh Narang, (1995) 2 SCC 513; Dy. Director of Collegiate Education (Admn.) v. S. Nagoor Meera, (1995) 3 SCC 377: 1995 SCC (L&S) 686: (1995) 29 ATC 574; State of T.N. v. A. Jaganathan, (1996) 5 SCC 329: 1996 SCC (Cri) 1026, relied on

Akhtari Bi v. State of M.P., (2001) 4 SCC 355: 2001 SCC (Cri) 714, distinguished

[5862] — **Ss. 389(1) and 482 & 373 — 'Execution of sentence or order appealed against be suspended' — 'Order' in the context — Meaning** — *Order must be executable, such as orders of sentence or compensation or fine — Order of conviction can also be executable in certain situations, such as when it incurs disqualification of Managing Director of a company under S. 267(c) of Companies Act, 1956 — In appropriate case High Court in appeal on being satisfied about need for suspending the order of conviction, can grant interim stay — But person approaching the High Court should invite the court's attention to the specific consequence which is likely to fall upon conviction so as to enable the court to apply its mind on that point before granting the stay*

Section 389(1) empowers the Appellate Court to order that the execution of the sentence or order appealed against be suspended pending the appeal. What can be suspended under this provision is the execution of the sentence or the execution of the order. The order referred to in Section 389(1) must be an order capable of execution. An order of conviction by itself is not capable of execution under the Code. It is the order of sentence or an order awarding compensation or imposing fine or release on probation which are capable of execution and which, if not suspended, would be required to be executed by the authorities. (Para 15)

However, if the order of conviction is to result in some disqualification of the type mentioned in Section 267 of the Companies Act, a narrow meaning should not be given to Section 389(1) of the Code to bar the Court from granting an order staying operation of order of conviction in a fit case. In certain situations the order of conviction can be executable, in the sense, it may incur a disqualification as in the instant case. In such a case the power under Section 389(1) of the Code could be invoked. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both the conviction and sentence and therefore, there is no reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction, although that issue in the instant case recedes to the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389(1) of the Code. In a fit case if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the convicted person does not suffer from a certain disqualification provided for in any other statute, it may exercise the power because otherwise the damage done cannot be undone; the disqualification incurred by Section 267 of the Companies Act and given effect to cannot be undone at a subsequent date if the conviction is set aside by the Appellate Court. But while granting a stay or suspension of the order of conviction the Court must examine the pros and cons and if it feels satisfied that a case is made out for grant of such an order, it may do so and in so doing it may, if it considers it appropriate, impose such conditions as are considered appropriate to protect the interest of the shareholders and the business of the company. (Para 19)

In a situation where the order of conviction may incur a disqualification, as in this case, the attention of the Appellate Court must be specifically invited to the consequence that is likely to fall to enable it to apply its mind to the issue since under Section 389(1) it is under an obligation to support its order "for reasons to be recorded by it in writing". No one can be allowed to play hide and seek with the Court; he cannot suppress the precise purpose for which he seeks suspension of the conviction and obtain a general order of stay and then contend that the disqualification has ceased to operate. *Rama Narang* v. *Ramesh Narang*, (1995) 2 SCC 513: (1995) 83 Comp Cas 194.

Bench Strength **3**. Coram: **A.M. Ahmadi, C.J.** and *R.M. Sahai* and *K. Jayachandra Reddy*, JJ. [Date of decision: 19-1-1995]

[5863] — S. 389(3) — Applicability of provisions under, which empower the trial court to release a convicted person on bail for such period as will afford him sufficient time to present an appeal and obtain orders of release on bail therein — *Held, S. 389(3) has application when there is a right of appeal — Where prayer for grant of certificate of High Court to appeal under Art. 136 or Art. 134-A of the Constitution is made, there is no right of appeal involved — Therefore, in such cases S. 389(3) has no application — But, position is different when a case falls under Art. 134(1)(a) or Art. 134(1)(b) being covered under S. 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 — Appeal under S. 10 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, falls to the category of cases where there is right of appeal* (Para 5). *Mayuram Subramanian Srinivasan* v. *CBI*, (2006) 5 SCC 752: (2006) 3 SCC (Cri) 83: AIR 2006 SC 2449: 2006 Cri LJ 3285: (2006) 3 KLT 489.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 16-6-2006]

Ram Kumar Pandey v. State of M.P., (1975) 3 SCC 815: 1975 SCC (Cri) 225; Chandra Mohan Tiwari v. State of M.P., (1992) 2 SCC 105: 1992 SCC (Cri) 252, relied on

[5864] — Ss. 389(3) & (1) — Suspension of sentence pending appeal — Suspension of sentence for certain period by trial court acting under Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Extension of said period by Supreme Court in appeal under the said Act — Power in relation to — *Exercise of, held, was discretionary but subject to mandatory provisions of Or. 21 R. 13-A of the Supreme Court Rules, 1966 (which require that the accused must first surrender or seek exemption from surrendering before his appeal can be registered) — Contention that Or. 21 R. 13-A cannot in any way affect the powers available to the trial court under S. 9(4) of the 1992 Act, not sustainable* (Para 13). *Mayuram Subramanian Srinivasan* v. *CBI*, (2006) 5 SCC 752: (2006) 3 SCC (Cri) 83: AIR 2006 SC 2449: 2006 Cri LJ 3285: (2006) 3 KLT 489.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 16-6-2006]

— **S. 390** *See also* S. 427, Criminal Procedure Code, 1898, p. 1227 in Vol. 2

[5865] — S. 390 — Issue of warrant — Appellant complainant not present in court when her appeal against acquittal of the accused came up for hearing — *High Court issuing bailable warrant against her — On appeal to the Supreme Court against the order of the High Court, Supreme Court directing the Registry to obtain information from the High Court as to the reasons for issue of the bailable warrant — In the meantime case coming up for hearing before another Judge in the High Court and in the absence of the appellant complainant, he issuing a non-bailable warrant against her — Passing of such orders deprecated — Held, some degree of care must be taken before passing an order of issue of warrants, bailable or non-bailable — State of U.P. asked to pay compensation. Omwati* v. *State of U.P.*, (2004) 4 SCC 425: 2004 SCC (Cri) 1287.

Bench Strength **2**. Coram: *Brijesh Kumar* and *Arun Kumar*, JJ. [Date of decision: 30-1-2004]

[5866] — Ss. 390 and 378 — Arrest of accused in appeal from acquittal — Power of High Court under S. 390 — *Held, High Court has the power to rearrest the accused pending disposal of appeal against acquittal — On facts, appellant and five others acquitted by trial court for offences under S. 396 r/w Ss. 3 and 35 of Arms Act, 1959 — In appeal, High Court noting that in test identification parade and trial, PW 18 correctly identified the accused persons — Forensic science laboratory report confirmed foot moulds taken were of the accused and seized hair from hands of deceased tallied with that* *of accused in DNA test — Finding that trial court had not considered evidence in proper perspective, High Court directed arrest of two accused persons and release of others on bail pending disposal of appeal — Held, no infirmity in the order warranting interference — Penal Code, 1860, S. 396 — Arms Act, 1959, Ss. 3 and 35* (Paras 13, 16 and 17). *Amin Khan* v. *State of Rajasthan*, (2009) 3 SCC 776.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 25-2-2009]

[5867] — S. 390 — Grant of special leave against order of acquittal on capital charge — *Held, the Supreme Court can exercise the same powers which the High Court has under S. 427, CrPC, 1898 and issue a non-bailable warrant for the arrest and committal to prison of the accused-respondent — Such exercise of power does not offend Art. 21 — Criminal Procedure Code, 1898, S. 427*

As soon as the High Court on perusing a petition of appeal against an order of acquittal, considers that there is sufficient ground for interfering and issuing process to the respondent, his status as an accused person and the proceedings against him, revive. The question of judging his guilt or innocence in respect of the charge against him, once more becomes sub judice.

Similar is the position when the Supreme Court, in its discretion, grants special leave to appeal under Art. 136 of the Constitution, against an order of acquittal passed by the High Court.

Whether in the circumstances of the case, the attendance of accused-respondent can be best secured by issuing a bailable warrant or non-bailable warrant, is a matter which rests entirely in the discretion of the Court. Although the discretion is exercised judicially, it is not possible to computerise and reduce into immutable formulae the diverse considerations on the basis of which this discretion is exercised. Broadly speaking, the Court would take into account the various factors, such as the nature and seriousness of the offence, the character of the evidence, circumstances peculiar to the accused, possibility of his absconding, larger interest of the public and State. In addition, the Court may also take into consideration the period during which the proceedings against the accused were pending in the courts below and the period which is likely to elapse before the appeal comes up for final hearing in the Supreme Court. *State of U.P.* v. *Poosu*, (1976) 3 SCC 1: 1976 SCC (Cri) 368: AIR 1976 SC 1750: (1976) 3 SCR 1005: 1976 Cri LJ 1373.

Bench Strength **5**. Coram: *A.N. Ray, C.J.* and *M.H. Beg*, **R.S. Sarkaria**, *P.N. Shinghal* and *Jaswant Singh*, JJ. [Date of decision: 2-4-1976]

— S. 391 *See also* S. 428, Criminal Procedure Code, 1898, p. 1228 in Vol. 2

— S. 391 *See* Ss. 157, 161, 164, 311 and 391
See also Ss. 311, 386 and 391
See also Ss. 311 and 391
See also Ss. 311, 391 and 386
See also Ss. 344, 311 and 391
See also Ss. 386, 311 and 391
See also Ss. 386 and 391
See also Ss. 482, 311, 391, 173(8), 216 and 24

[5868] — S. 391 — Nature, scope and object of — Legislative intent behind, indicated — Power under when and for whom to be exercised, discussed in detail — *Wide discretion of appellate court — Requirement of recording of reasons safety valve on — Importance of pragmatic considerations — Impermissibility of filling of any lacunae — Question of sufficiency of evidence already on record vis-à-vis the admissibility of additional evidence sought to be adduced — Held, it cannot be laid down as a rule of universal application that the court has to first find out whether evidence already on record is sufficient — Both exercises, that is, whether evidence already on record is sufficient and admissibility of additional evidence sought to be adduced, have to be taken up together — Further held, when circumstances clearly indicate prima facie substance in application for adduction of additional evidence, appropriate course for courts would be to admit additional evidence for final adjudication, so that acceptability or otherwise of evidence tendered by way of additional evidence can be tested properly, and legally tested in the context of the probative value of the two versions — There cannot be a straitjacket formula or rule of universal application when alone it can be done and when not — Whether appellate court maintains or upsets verdict of trial court depends upon relevance and acceptability of the additional evidence and its qualitative worth in deciding the guilt or innocence of the accused — This is not a factor in determining the admissibility of additional evidence sought to be adduced*

Section 391 CrPC, 1973 is another salutary provision which clothes the courts with the power to effectively decide an appeal. Though Section 386 envisages the normal and ordinary manner and method of disposal of an appeal, yet it does not and cannot be said to exhaustively enumerate the modes by which alone the court can deal with an appeal. Section 391 is one such exception to the ordinary rule and if the appellate court considers additional evidence to be necessary, the provisions in Section 386 and Section 391 have to be harmoniously considered, to enable the appeal to be considered and disposed of in the light of the additional evidence as well. For this purpose it is open to the appellate court to call for further evidence before the appeal is disposed of. The appellate court can direct the taking up of further evidence in support of the prosecution; a fortiori it is open to the court to direct that the accused persons may also be given a chance of adducing further evidence, who may file an application in this regard, in an appropriate case. Section 391 is in the nature of an exception to the general rule and the powers under it must also be exercised with great care, especially on behalf of the prosecution lest the admission of additional evidence for the prosecution operates in a manner prejudicial to the defence of the accused. The legislative intent in enacting Section 391 appears to be the empowerment of the appellate court to see that justice is done between the prosecutor and the persons prosecuted by arriving at the truth, that is, the prevention of the guilty man's escape through some careless or ignorant proceedings before a court or vindication of an innocent person wrongfully accused: and if the appellate court finds that certain evidence is necessary in order to enable it to give a correct and proper finding, it would be justified in taking action under Section 391. However, there is no question of filling of any lacuna in the case on hand. (Paras 47, 48, 58, 21 and 50)

There is no restriction in the wording of Section 391 either as to the nature of the evidence, or that the provisions of the section are only to be invoked when formal proof for the prosecution is necessary. The matter is one of discretion of the appellate court and any approach without pragmatic consideration defeats the very purpose for which Section 391 CrPC, 1973 has been enacted. However, the same has to be exercised judicially and the legislature has put a safety valve by requiring the recording of reasons. The necessity for additional evidence arises when the court feels that some evidence which ought to have been before it is not there or that some evidence has been left out or erroneously brought in. It is true that merely because an affidavit has been filed stating that the witnesses were threatened, as a matter of routine, additional evidence should not be permitted. But when the circumstances, as in this case, clearly indicate that there is some truth or prima facie substance in the grievance made, having regard to background of events that happened, the appropriate course for the courts would be to admit additional evidence for final adjudication, so that the acceptability or otherwise of evidence tendered by way of additional evidence can be tested properly, and legally tested in the context of the probative value of the two versions. There cannot be a straitjacket formula or rule of universal application when alone it can be done and when, not. (Paras 49, 59, 58, and 73)

In all cases, it cannot be laid down as a rule of universal application, that the court has to first find out whether the evidence already on record is sufficient. The nature and quality of the evidence on record is also relevant. If the evidence already on record is shown or found to be tainted, tailored to suit or help a particular party or side and the real truth has not and could not have been spoken or brought forth during trial, it would constitute merely an exercise in futility, if it is considered first whether the evidence already on record is sufficient to dispose of the appeals. Disposal of appeal does not mean disposal for statistical purposes but effective and real disposal to achieve the object of any trial. The exercise has to be taken up together. It is not that the Court has to be satisfied that the additional evidence would be necessary for rendering a verdict different from what was rendered by the trial court. Merely because the High Court permits additional evidence to be adduced, it does not necessarily lead to the conclusion that the judgment of the trial court was wrong. In a given case even after assessing the additional evidence, the High Court can maintain the verdict of the trial court and similarly the High Court on consideration of the additional evidence can upset the trial court's verdict. It all depends upon the relevance and acceptability of the additional evidence and its qualitative worth in deciding the guilt or innocence of the accused. Moreover, whenever additional evidence is accepted, retrial is not a necessary corollary. (Paras 58, 59, 73 and 21)

Nowhere has the High Court effectively dealt with the application under Section 391 as a part of the exercise to deal with and dispose of the appeal. In fact the High Court dealt with it practically in one paragraph, accepting the stand of counsel for the accused that the consideration of the appeal has to be limited to the records sent up under Section 385(2) CrPC for disposal of the appeal under Section 386. This perception of the powers of the appellate court and misgivings as to the manner of disposal of an appeal per se vitiates the decision rendered by the High Court. If the stand of counsel for the accused as was accepted by the High Court is maintained, it would mean that Section 391 CrPC would be a dead letter in the statute-book. (Para 58). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

Rambhau v. State of Maharashtra, (2001) 4 SCC 759: 2001 SCC (Cri) 812; Rajendra Prasad v. Narcotic Cell, (1999) 6 SCC 110: 1999 SCC (Cri) 1062; Ram Chander v. State of Haryana, (1981) 3 SCC 191: 1981 SCC (Cri) 683; Jamatraj Kewalji Govani v. State of Maharashtra, AIR 1968 SC 178: (1967) 3 SCR 415: 1968 Cri LJ 231; Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595, relied on

Clarified in Satyajit Banerjee v. State of W.B., (2005) 1 SCC 115

[5869] — Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247 — Purpose of and role of court in criminal trial — Presiding Judge — Purpose of and role of — Held, is the discovery, vindication and establishment of truth — *Hence, the trial should be a search for the truth and not a bout over technicalities — Presiding Judge must cease to be a spectator and a mere recording machine — He must become a participant in the trial evincing intelligence, active interest and eliciting all relevant materials necessary for reaching the correct conclusion to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community — Restraints on processes for determining the truth*

Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice. Restraints on the processes for determining the truth are multifaceted. They have emerged in numerous different ways, at different times and affect different areas of the conduct of legal proceedings. (Paras 30 and 32)

A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators. (Paras 37 and 35)

The courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice-often referred to as the duty to vindicate and uphold the "majesty of the law." Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. (Para 35). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694: (2006) 2 Guj LR 1493.

Bench Strength 2. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

[**Ed.**: *See also* Shortnote K in *Zahira (1) case*, (2004) 4 SCC 158.]

[5870] — Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247 — Purpose of and role of court in criminal trial — Presiding Judge — Purpose of and role of — Held, is the discovery, vindication and establishment of truth — *Hence, the trial should be a search for the truth and not a bout over technicalities — Presiding Judge must cease to be a spectator and a mere recording machine — He must become a participant in the trial evincing intelligence, active interest and eliciting all relevant materials necessary for reaching the correct conclusion to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community — Restraints on processes for determining the truth*

Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of courts of justice. However, restraints on the processes for determining the truth are multifaceted. They have emerged in numerous different ways, at different times and affect different areas of the conduct of legal proceedings. (Paras 30 and 32)

A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine, by becoming a participant in the trial evincing intelligence, active interest and eliciting all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to the proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators. (Paras 35, 38, 43, 46 and 55). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

Jennison v. Baker, (1972) 1 All ER 997: (1972) 2 QB 52: (1972) 2 WLR 429 (CA), relied on

[5871] — Ss. 391 and 231, 242, 244, 233, 243 & 247 — Admissibility of evidence initially or as additional evidence distinguished from its efficacy, reliability and acceptability — *Evidence Act, 1872, Ss. 5 and 3*

The question of admission of evidence, initially or as additional evidence under Section 391 CrPC, is distinct from the efficacy, reliability and its acceptability for consideration of claims in the appeal on merits. (Paras 59 and 24)

The High Court has observed that the question of accepting the application for additional evidence would be dealt with separately, but has in fact dealt with it in a cryptic manner, practically in one paragraph, and did not think it necessary to accept the additional evidence — but at the same time made threadbare analysis of the affidavits as if it had accepted them as additional evidence and was testing their acceptability. The High Court should not have thrown out the application, as well as the materials sought to be brought on record, even at the threshold and yet gone on to surmise on reasons, at the same time, professing to decide on its correctness. (Paras 59, 24 and 71). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

[5872] — Ss. 391 and 311 — Additional evidence — Application for — Powers of the appellate court re — *Held, court should objectively consider acceptability of such application — If any witness wants to give evidence different from that given by him earlier at the trial, appellate court would consider genuineness of the prayer in the context as to whether the witness concerned had fair opportunity to speak the truth earlier and should not accept it in a routine manner — Evidence Act, 1872, S. 137*

The evidence of the eyewitnesses (PWs 5 and 6) was attacked by the accused-appellants on the ground that their presence at the alleged spot of occurrence was not believable. PW 6 made an application before the trial court alleging pressure on him to depose falsely and for getting examined afresh. The application was rejected. Again the defence filed a similar application. The Court considered the same and found it to be without substance. The High Court elaborately dealt with this issue and concluded that the prayer was rightly held to be not tenable. It was contended before the Supreme Court that no cogent reasons have been given to discard the prayer made by PW 6 for his fresh examination.

Held :

This contention was specifically urged before the High Court and the High Court after consideration held that the plea appeared to be an afterthought and there was no cogent reason for accepting the prayer. It is true that in a given case the accused can make an application for adducing additional evidence to substantiate his claim of innocence. Whenever any such application is filed before the court, acceptability of the prayer in question is to be objectively considered. (Para 11)

It is not that in every case where the witness who had given evidence before court wants to change his mind and is prepared to speak differently, that the court concerned should readily accede to such request by lending its assistance. If the witness who deposed one way earlier comes before the appellate court with a prayer that he is prepared to give evidence which is materially different from what he has given earlier at the trial with the reasons for the earlier lapse, the court can consider the genuineness of the prayer in the context as to whether the party concerned had a fair opportunity to speak the truth earlier and in an appropriate case, accept it. It is not that the power is to be exercised in a routine or cavalier manner, but being an exception to the ordinary rule of disposal of appeal on the basis of records received in exceptional cases or extraordinary situation the court can neither feel powerless nor abdicate its duty to arrive at the truth and satisfy the ends of justice. In the instant case, a bare reading of the application made by PW 6 shows that the same is extremely vague and bereft of substance. Though it was stated that pressure was put on him and he was subjected to third-degree treatment, he has not specifically named anybody and made vague mention about "some police officials". Hence the High Court was justified in rejecting his application. (Paras 9 and 12). *Anil Sharma* v. *State of Jharkhand*, (2004) 5 SCC 679: 2004 SCC (Cri) 1706: AIR 2004 SC 2294: 2004 Cri LJ 2527.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 30-4-2004]

[5873] — S. 391 — Appellate Court's discretionary power to take additional evidence in a suitable case — *Discretion should not be exercised to fill up gaps or lacunae in the prosecution evidence. Bir Singh* v. *State of U.P.*, (1977) 4 SCC 420: 1977 SCC (Cri) 640: AIR 1978 SC 59: 1978 Cri LJ 177: 1978 ALJ 365.

Bench Strength **2**. Coram: *A.C. Gupta* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 18-8-1977]

[5874] — S. 391 — Appellate court's power to receive additional evidence — *It is not intended to fill up gap in the prosecution and to cause prejudice to accused but to oversee that concept of justice prevails — Additional evidence can be taken to rectify any irregularity — "Irregularity" — Meaning — Prevention of Corruption Act, 1988, Ss. 13(1)(d) r/w 13(2)*

The High Court recorded it to be a mere irregularity and there is no reason as to why such a course ought not to be permitted to be taken recourse to, in the fact situation of the matter under consideration. The omission cannot but be ascribed to be a mere irregularity. The word "irregularity" in common English parlance means and implies contrary to rule. (Paras 12 and 6)

There is available a very wide discretion in the matter of obtaining additional evidence in terms of Section 391 of the Code of Criminal Procedure. But this additional evidence cannot and ought not to be received in such a way so as to cause any prejudice to the accused. It is not a disguise for a retrial or to change the nature of the case against the accused. The order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it. However, it is the concept of justice which ought to prevail and in the event, the same dictates exercise of power as conferred by the Code, there ought not to be any hesitation in that regard. Section 391 was introduced in the statue-book for the purpose of making it available to the court, not to fill up any gap in the prosecution case but to oversee that the concept of justice does not suffer. (Paras 2 and 6). *Rambhau* v. *State of Maharashtra*, (2001) 4 SCC 759: 2001 SCC (Cri) 812: AIR 2001 SC 2120: 2001 Cri LJ 2343.

Bench Strength **2**. Coram: **U.C. Banerjee** and *K.G. Balakrishnan*, JJ. [Date of decision: 26-4-2001]

Rajeswar Prasad Misra v. State of W.B., AIR 1965 SC 1887: 1965 Cri LJ 817; Martin Burn Ltd. v. Corpn. of Calcutta, AIR 1966 SC 529, relied on

Corpn. of Calcutta v. Chandoolal Bhai Chand Modi, (1952-53) 57 CWN 882: AIR 1953 Cal 773, approved

[5875] — S. 391 — Contradictions/ inconsistency between evidence adduced earlier and additional evidence sought to be adduced — Admissibility of additional evidence in light of — *Creditworthiness and acceptability of depositions made in earlier evidence or additional evidence due to contradictions/inconsistencies therebetween, to be considered only after admission — Additional evidence not to be rejected at threshold merely because of contradictions, especially in sensitive cases like the present one — Witness claiming that he did not speak truthfully before trial court but was willing to speak the truth before appellate court — Power under S. 391 to be exercised and such testimony to be accepted only if appellate court is satisfied for reasons on record that such a course should be adopted — In this regard, the court can consider whether the party concerned had a fair opportunity to speak the truth earlier*

It is only after admission, that the court should consider in each case whether on account of a contradiction between the evidence adduced earlier before the court and the testimony allowed to be given as additional evidence, which of them or any one part or parts of the depositions are creditworthy and acceptable, after a comparative analysis and consideration of the probabilities and probative value of the materials for adjudging the truth. To reject additional evidence merely because of contradictions, and that too in a sensitive case like this one, with a horror and terror oriented history of its own, would amount to a conspicuous omission and deliberate dereliction of discharging functions judiciously and with a justice-oriented mission. In a given case when the court is satisfied that for reasons on record the witness had not stated truthfully before the trial court and was willing to speak the truth before it, the power under Section 391 CrPC, 1973 is to be exercised. However, it is not that in every case where the witness, who had given evidence before court, wants to change his mind and is prepared to speak differently, that the court concerned should readily accede to such a request by lending its assistance. If the witness who deposed one way earlier comes before the appellate court with a prayer that he is prepared to give evidence which is materially different from what he has given earlier at the trial with the reasons for the earlier lapse, the court can consider the genuineness of the prayer in the context as to whether the party concerned had a fair opportunity to speak the truth earlier and in an appropriate case, accept it. (Paras 59, 24, 71 and 45)

Whether the witness had told the truth before the trial court or as stated in the affidavit, were matters for assessment of evidence when admitted and tendered, and when the affidavit itself was not tendered as evidence, the question of analysing it to find fault was not the proper course to be adopted by the High Court. The affidavits were filed to emphasise the need for permitting additional evidence to be taken and for being considered as the evidence themselves. Even the conclusions arrived at with reference to those affidavits do not appear to be correct and seem to suffer from apparent judicial obstinacy and an avowed determination to reject them. For example, to brand a person as not truthful because a different statement was given before the trial court, unmindful of the earliest statement given during investigation and the reasons urged for turning hostile before the trial court negates the legislative intent and purpose of incorporating Section 391 in CrPC, 1973. (Paras 59, 24 and 71)

Even if the appellant Z had taken different stands as concluded by the High Court, it was obligatory for the Court to find out as to what was the correct stand and the real truth, which could have been decided and examined by accepting the prayer for additional evidence. The disclosed purpose in the State Government's prayer with reference to the affidavits was to bring to the High Court's notice the situation which prevailed during trial and the reasons as to why the witnesses gave the version as noted by the trial court. (Paras 24 and 71). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

[5876] — S. 391 — Grounds for not admitting additional evidence — *Held, that the affidavits sought to be adduced as additional evidence were also filed in the Supreme Court, in another proceeding, is no reason in the eye of the law to refuse to take on record additional evidence* (Para 24). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

[5877] — S. 391 — Grounds for not admitting additional evidence — *Veracity of affidavits sought to be adduced as additional evidence doubted by High Court on grounds that witnesses who had filed them were of unsound mind, untruthful, capable of being manipulated, and were in hands of persons using them with "oblique motives", without any material or reasonable and concrete basis to support such conclusions — Such finding made by High Court after holding that the affidavits were not being taken on record — Held, course adopted by High Court improper and logic applied by High Court to reject the affidavits unsustainable*

After having held that the affidavits were not to be taken on record, the High Court has recorded findings regarding the contents of those affidavits, and has held that the affidavits are not truthful and are false. The High Court has gone to the extent of saying that the appellant Z has been used by some persons with oblique motives. The witnesses who filed affidavits have been termed to be of unsound mind, untruthful and capable of being manipulated, without any material or reasonable and concrete basis to support such conclusions. In any event, the logic applied by the High Court to discard the affidavits of Z and others, that they have fallen subsequently into the hands of some who remained behind the curtain, can be equally applied to accept the plea that the accused or persons acting at their behest had only created fear in the minds of the appellant Z and others by threats on the earlier occasion before deposing in court. (Paras 20, 11 and 12). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

[5878] — Ss. 391 and 386 — Relative operation of Ss. 391 and 386 — *Held, S. 386 does not and cannot be said to exhaustively enumerate the modes by which alone the court can deal with an appeal — Ss. 391 and 386 are to be harmoniously considered to enable the appeal to be considered and disposed of in the light of additional evidence as well — S. 391 is in the nature of an exception to the general rule*

Though Section 386 envisages the normal and ordinary manner and method of disposal of an appeal, yet it does not and cannot be said to exhaustively enumerate the modes by which alone the court can deal with an appeal. Section 391 is one such exception to the ordinary rule and if the appellate court considers additional evidence to be necessary, the provisions in Section 386 and Section 391 have to be harmoniously considered, to enable the appeal to be considered and disposed of in the light of the additional evidence as well. For this purpose it is open to the appellate court to call for further evidence before the appeal is disposed of. The appellate court can direct the taking up of further evidence in support of the prosecution; a fortiori it is open to the court to direct that the accused persons may also be given a chance of adducing further evidence, who may file an application in this regard, in an appropriate case. Section 391 is in the nature of an exception to the general rule and the powers under it must also be exercised with great care, especially on behalf of the prosecution lest the admission of additional evidence for the prosecution operates in a manner prejudicial to the defence of the accused. (Para 47)

Nowhere has the High Court effectively dealt with the application under Section 391 as a part of the exercise to deal with and dispose of the appeal. In fact the High Court dealt with it practically in one paragraph, accepting the stand of counsel for the accused that the consideration of the appeal has to be limited to the records sent up under Section 385(2) CrPC for disposal of the appeal under Section 386. This perception of the powers of the appellate court and misgivings as to the manner of disposal of an appeal per se vitiates the decision rendered by the High Court. If the stand of counsel for the accused as was accepted by the High Court is maintained, it would mean that Section 391 CrPC would be a dead letter in the statute-book. (Para 58). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

[5879] — S. 391 — Additional evidence at appellate stage — Application for examining a witness made after a lapse of seven years from the date of the occurrence — *Held, in the circumstances, rightly rejected by the High Court. Nishar Ahmed Fajmohmed Kaji* v. *State of Gujarat*, (1998) 9 SCC 23: 1998 SCC (Cri) 967.

Bench Strength **2**. Coram: *M.M. Punchhi* and **M. Srinivasan**, JJ. [Date of decision: 7-11-1997]

[5880] — S. 391 — Additional evidence before High Court to remove technical or formal defect — *While report of Mint Master that article seized was made of pure gold already placed on record, additional evidence sought to prove the report — Held, High Court erred in refusing to adduce the additional evidence merely on ground of lapse of six years*

On a search conducted by the Superintendent of Customs on the person of respondent 1 while he was travelling by train, a waistchain (kandora) worn by him weighing 820 grammes, which according to the prosecution, was made of pure gold and was coated with mercury so as to give an appearance of being made of silver, was seized. The trial court acquitted the respondent of the charges under S. 85 of the Gold (Control) Act as well as S. 135(1) read with S. 111 of the Customs Act and also found that the presumption under S. 123 of the Customs Act could not be raised as the Superintendent of Customs who had made the seizure could not have "entertained a reasonable belief" that the article in question was made of smuggled gold. The trial court also found fault in regard to the proof of report of the Mint Master that the article in question was made of pure gold of the specified fineness. The High Court confirmed the acquittal on all the three grounds. The request made by the Assistant Public Prosecutor for adducing additional evidence under S. 391, CrPC in order to remove the alleged formal defect in the proof of the Mint Master was rejected.

Held :

To deny the opportunity to remove the formal defect was to abort a case against an alleged economic offender. The mere fact that six years had elapsed, for which time-lag the prosecution was in no way responsible, was no good ground for refusing to act in order to promote the interests of justice in an age when delays in the court have become very common. The High Court was therefore altogether unjustified in rejecting the application invoking the powers of the court under S. 391 CrPC.

Ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a persona non grata whose cause may be treated with disdain. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism. *State of Gujarat* v. *Mohanlal Jitamalji Porwal*, (1987) 2 SCC 364: 1987 SCC (Cri) 364: AIR 1987 SC 1321: 1987 Cri LJ 1061: (1987) 13 ECC 12.

Bench Strength 2. Coram: **M.P. Thakkar** and *S. Natarajan*, JJ. [Date of decision: 26-3-1987]

[5881] — S. 391 — Additional evidence before Supreme Court — *Submission that one of the accused was a juvenile not taken note of by Supreme Court because the birth certificate was not brought on record earlier but had come into existence much after completion of trial and disposal of appeal by High Court* (Paras 8 and 9). *Chaman* v. *State of Uttaranchal*, (2008) 17 SCC 431: AIR 2009 SC 1036: (2009) 1 All LJ 680: 2009 Cri LJ 978: (2009) 75 AIC 129 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 1-12-2008]

— **S. 392** *See also* S. 429, Criminal Procedure Code, 1898, pp. 1229 et seq. in Vol. 2

[5882] — S. 392 — Judges of appeal equally divided — Reference to third Judge — *Third Judge is free to decide the appeal in the manner he thinks fit — He is not obliged, either as a rule of prudence or on the score of judicial etiquette, to accept the view of one of the Judges holding in favour of acquittal of the accused — Criminal Procedure Code, 1898, S. 429*

The plain reading of Section 392 clearly indicates that it is for the third Judge to decide on what points he shall hear arguments, if any, and it necessarily postulates that the third Judge is free to decide the appeal by resolving the difference in the manner, he thinks proper.

Where a case is referred to a third Judge under Section 392 CrPC, such Judge is not only entitled to decide on what points he shall hear the arguments, if any, but his decision will be final and the judgment in the appeal will follow his decision.

In the scheme of Section 392 CrPC, the view that the third Judge, as a rule of prudence or on the question of judicial etiquette, will lean in favour of the view of one of the Judges in favour of acquittal of the accused, cannot be sustained. There is no manner of doubt that the third Judge has a statutory duty under Section 392 CrPC to consider the opinions of the two Judges whose opinions are to be laid before the third Judge for giving his own opinion on consideration of the facts and circumstances of the case. *Tanviben Pankajkumar Divetia* v. *State of Gujarat*, (1997) 7 SCC 156: 1997 SCC (Cri) 1004: AIR 1997 SC 2193: 1997 Cri LJ 2535: (1997) 1 Guj LH 851: (1997) 2 Guj LR 1346.

Bench Strength 2. Coram: **G.N. Ray** and *G.T. Nanavati*, JJ. [Date of decision: 6-5-1997]

Babu v. State of U.P., AIR 1965 SC 1467: (1965) 2 SCR 771; Hethubha v. State of Gujarat, (1970) 1 SCC 720: 1970 SCC (Cri) 280; Union of India v. B.N. Ananti Padmanabiah, (1971) 3 SCC 278: 1971 SCC (Cri) 535; State of A.P. v. P.T. Appaiah, (1980) 4 SCC 316 ; 1980 SCC (Cri) 960, followed

*Empress v. Debi Singh, 1886 All WN 275; Narsiah, In re, AIR 1959 AP 313: 1959 Cri LJ 689: 1959 An LT 139, **overruled***

Balku v. Emperor, AIR 1948 All 237: 1948 All LJ 102: 49 Cri LJ 264; Nemai Mondal v. State of W.B., AIR 1966 Cal 194: 1966 Cri LJ 522; Dharam Singh v. State of U.P., (1964) 1 Cri LJ 78: 1962 All LJ 748 (SC), approved

[5883] — S. 392 — Judges of appeal equally divided — Reference to third judge — Course open to — *Held, the third judge is not obliged, either as a rule of prudence or on the score of judicial etiquette, to accept the view of one of the Judges holding in favour of acquittal — Criminal Procedure Code, 1898, S. 429*

The criminal appeal filed by the appellants in the present case was heard by a Division Bench of High Court consisting of judges *S* and *K*. There was a difference of opinion between the two learned Judges. One of the judges i.e. *S* was of the opinion that the appeal should be allowed and the conviction of the appellants and the sentences imposed thereunder were liable to be set aside. In view of the said difference of opinion, the appeal was placed for hearing before a third judge *U*, who came to the conclusion that the appeal deserved to be dismissed. Before the Supreme Court, it was contended by the appellants that the third judge should have leaned in favour of the view taken by *S* as a rule of prudence and should not have differed from the findings recorded by Judge *S* unless the same were perverse or there were strong and weighty reasons for doing so.

Held :

Section 392 CrPC lays down that when an appeal under Chapter XXIX is heard by a High Court before a Bench of Judges and they are divided in opinion, the appeal with their opinions, shall be laid before another Judge of that Court, and that Judge, after such hearing as he thinks fit, shall deliver his opinion and the judgment and order shall follow that opinion. The settled position being that the third judge is under no obligation to accept the view of one of the Judges holding in favour of acquittal of the accused either as a rule of prudence or on the score of judicial etiquette, it is not possible to accept the contention raised by the appellant. (Paras 8 and 10). *Radha Mohan Singh* v. *State of U.P.*, (2006) 2 SCC 450: (2006) 1 SCC (Cri) 661: AIR 2006 SC 951: (2006) 1 KLJ 535: (2006) 2 All LJ 242: 2006 Cri LJ 1121.

Bench Strength **3**. Coram: *K.G. Balakrishnan*, *Arun Kumar* and **G.P. Mathur**, JJ. [Date of decision: 20-1-2006]

Tanviben Pankajkumar Divetia v. State of Gujarat, (1997) 7 SCC 156: 1997 SCC (Cri) 1004; Dharam Singh v. State of U.P., (1964) 1 Cri LJ 78: 1962 Supp (3) SCR 769, followed

Babu v. State of U.P., (1965) 2 SCR 771: AIR 1965 SC 1467: (1965) 2 Cri LJ 539; Hethubha v. State of Gujarat, (1970) 1 SCC 720: 1970 SCC (Cri) 280; State of A.P. v. P.T. Appaiah, (1980) 4 SCC 316: 1980 SCC (Cri) 960, relied on

[5884] — S. 392 — Reference of appeal to third Judge — *Appeal as a whole must be laid before him — Appeal against acquittal of 32 accused — Division Bench agreeing on acquittal of 22 accused but disagreeing with regard to remaining accused — Upholding the acquittal of the said 22 accused the Division Bench making reference of the remaining accused to third Judge — Pursuant to the opinion of the third Judge acquittal of only 2 accused partly reversed — Held, order of acquittal of 22 accused by the Division Bench is non est — Even though order pursuant to the opinion of third Judge related to 10 out of 32 accused the order must be regarded as the final order whereby appeal of the State was partly allowed with only 2 of them being convicted and remaining acquitted. State of U.P.* v. *Dan Singh*, (1997) 3 SCC 747: 1997 SCC (Cri) 469: AIR 1997 SC 1654: 1997 Cri LJ 1150: 1997 All LJ 647.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **B.N. Kirpal**, JJ. [Date of decision: 3-2-1997]

[5885] — S. 392 — Third Judge, before whom the case is laid for opinion under, held, is competent to deal with the whole case and is not bound to confine his judgment only to the matter concerning difference of opinion between the other two Judges — *On facts, view taken by the third Judge not being unreasonable and perverse, held, is not open to challenge — Criminal Procedure Code, 1898, S. 429. State of A.P.* v. *P.T. Appaiah*, (1980) 4 SCC 316: 1980 SCC (Cri) 960: AIR 1981 SC 365: 1980 Cri LJ 1410.

Bench Strength **2**. Coram: *R.S. Sarkaria* and **A.C. Gupta**, JJ. [Date of decision: 28-8-1980]

[5886] — S. 392 — Reference to third Judge — Double murder — *Except brief reference to the testimony of one eyewitness, no independent consideration of the testimony of other two eyewitnesses by the third Judge to whom the matter was referred due to the difference of opinion between the two Judges of Division Bench — Held, where the Judges in different dissenting opinions had given detailed reasons, for and against the acceptance of version as deposed to by the said eyewitnesses, the third Judge was required to independently examine the matter and express his opinion — Matter remitted for disposal afresh by a third Judge — Practice and Procedure — In limine dismissal/Speaking order necessity — Penal Code, 1860 — S. 302 — Allahabad High Court Rules, 1952, Ch. V, R. 6. Mattar* v. *State of U.P.*, (2002) 6 SCC 460: 2002 SCC (Cri) 1360: AIR 2002 SC 2783.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *H.K. Sema*, JJ. [Date of decision: 23-7-2002]

[5887] — S. 392 — Scope of, compared with S. 429 of the old Code — *Criminal Procedure Code, 1898, S. 429*

In the present Code a proviso has been added to Section 392. But for this proviso effect of Section 429 of the old Code and Section 392 of the present Code would appear to be the same. *Sajjan Singh* v. *State of M.P.*, (1999) 1 SCC 315: 1999 SCC (Cri) 44: AIR 1998 SC 2756.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **D.P. Wadhwa**, JJ. [Date of decision: 2-9-1998]

[5888] — Ss. 392 and 379 — Third Judge to whom the case is referred to, under S. 392 — Jurisdiction, powers and duty of — *Held, he is required to examine independently the entire case including the points on which the two Judges of the Division Bench had concurred — His position is not that of a Judge sitting in a three-Judge Bench where majority opinion prevails — His opinion is rather the material one and it is against the judgment that follows therefrom that an appeal lies under Art. 136 or 134 of the Constitution or under S. 379 CrPC — On facts, therefore, the third Judge was bound to examine appeal of the three accused whose conviction had been upheld by both the Judges — However, despite the third Judge having not followed the correct procedure, in the peculiar circumstances of the case, matter decided by Supreme Court itself on merits and not remanded — Constitution of India — Arts. 136, 142 and 134 — Criminal Procedure Code, 1898, S. 429*

Eleven persons, including the three appellants herein, were tried for offences under Sections 302/149 IPC. Two of them were charged also under Section 404. The trial court acquitted one *B* and convicted the rest ten under Sections 302/149 and sentenced them to life imprisonment. Their appeal was heard by a Division Bench of the High Court. Both the Judges comprising the Division Bench upheld the acquittal of *B*. But so far as the rest ten were concerned, one of the Judges opined that the conviction of all of them should be upheld while the other Judge felt that the conviction of only three of them should be upheld and that the rest seven should be acquitted. The matter was referred to a third Judge who acquitted four persons and upheld the conviction of six persons including the three persons convicted by both the Judges of the Division Bench. The third Judge did so without at all examining the cases of the said three persons as he thought himself to be bound by the opinion of the two Judges of the Division Bench. He rejected the plea that he had to independently examine the appeal of the said three persons. One of the new three convictees viz. *SS* and two of the three persons who had been convicted unanimously by the two Judges of the Division Bench, viz., *M* and *B* approached the Supreme Court. Dismissing the appeal of *M* and allowing that of *B* and *SS*,

Held :

Where a case is laid before a third Judge under Section 392 CrPC, 1973, it is the third Judge whose opinion matters and it is against the judgment that follows therefrom that an appeal lies to the Supreme Court by way of special leave petition under Article 136 of the Constitution or under Article 134 of the Constitution or under Section 379 of the Code. The third Judge is, therefore, required to examine whole of the case independently and it cannot be said that he is bound by that part of the two opinions of the two Judges comprising the Division Bench where there is no difference. As a matter of fact the third Judge is not bound by any such opinion of the Division Bench. He is not hearing the matter as if were sitting in a three-Judge Bench where the opinion of majority would prevail. Hence, in the instant case, the third Judge was not right in his approach and his hands were not tied as far as the three appellants, viz., *G*, *M* and *B*, in respect of whom both Judges of the Division Bench opined that they were guilty and their conviction and sentences were to be upheld.

Out of them only *M* and *B* are appellants herein. In normal circumstances the case might have to be remanded back to the third Judge to examine the matter afresh so far as these two appellants are concerned. However, in the instant case it would not be proper to adopt that course in respect of the third appellant, namely, *SS*, whose case was considered by the third Judge independently and who is also one of the appellants herein. In view of the matter having been heard by the Supreme Court in respect of all the three appellants at length it would not be desirable at this stage to remand the matter when only some of the appellants could be said to have been prejudiced because of the approach adopted by the third Judge. *Sajjan Singh* v. *State of M.P.*, (1999) 1 SCC 315: 1999 SCC (Cri) 44: AIR 1998 SC 2756.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **D.P. Wadhwa**, JJ. [Date of decision: 2-9-1998]

Babu v. State of U.P., AIR 1965 SC 1467: (1965) 2 SCR 771; State of U.P. v. Dan Singh, (1997) 3 SCC 747: 1997 SCC (Cri) 469; Tanviben Pankajkumar Divetia v. State of Gujarat, (1997) 7 SCC 156: 1997 SCC (Cri) 1004, followed

— **S. 393** *See also* S. 430, Criminal Procedure Code, 1898, p. 1231 in Vol. 2

— **S. 393** *See* Ss. 374, 393 & 401
See also Ss. 378, 386 and 393

[5889] — S. 393 — Second appeal — Against conviction and sentence — *Entire matter along with question of sentence fusing into one becomes subject matter of appeal — Hence second appellate court/authority will also have the powers conferred on the first appellate court/authority. Director of Enforcement* v. *New Central Jute Mills Co. Ltd.*, 1991 Supp (2) SCC 34: 1991 SCC (Cri) 843: AIR 1991 SC 719.

Bench Strength **3**. Coram: *Ranganath Misra, C.J.* and *M.H. Kania* and *Kuldip Singh*, JJ. [Date of decision: 6-11-1990]

— **S. 394** *See also* S. 431, Criminal Procedure Code, 1898, pp. 1232 et seq. in Vol. 2

[5890] — S. 394 — Abatement of appeal — Criminal appeal — Death of appellant during pendency of appeal — Appeal abated — *Legal representative of the appellant cannot be permitted to pursue the remedy regarding outstanding claims from the department concerned which was due to the appellant — Legal representative can pursue the remedy departmentally in accordance with law — Constitution of India — Art. 136. Narain Lal Nirala* v. *State of Rajasthan*, 1994 SCC (Cri) 1404: AIR 1994 SC 118.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *N.P. Singh*, JJ. [Date of decision: 22-4-1993]

[5891] — S. 394 — Limitation — Appeal against quashing of detention order — Death of the detenu during pendency of appeal — Abatement — *Fact of death of the detenu known to the appellant but no application for substitution of the heirs of the deceased made within the prescribed period of limitation — Application for setting aside abatement after condonation of delay also not made — Pendency of other appeals against quashing of notices to the sons of the deceased under S. 6 of the SAFEMA in which question of validity of* *detention order of the deceased was also to be determined — Held, merely because in connected appeals the heirs of the deceased were already on record it could not be said that there was no question of abatement of appeal against quashing of the detention order — Hence application for substitution of heirs liable to be rejected as being time-barred. Union of India* v. *Ghamandiram Kewalji Gowani*, (1995) 1 SCC 40: 1995 SCC (Cri) 14.

Bench Strength **2**. Coram: *G.N. Ray* and *Faizan Uddin*, JJ. [Date of decision: 28-9-1994]

Mahabir Prasad v. Jage Ram, (1971) 1 SCC 265: (1971) 3 SCR 301, distinguished

[5892] — S. 394 — Abatement of appeal — Appeal to Supreme Court against acquittal by High Court of accused and his abettor — *On death of the accused, held, the appeal would abate not only against him but also the abettor — Constitution of India — Art.136. State of Maharashtra* v. *Eknath Yeshwant Pagar*, (1981) 2 SCC 299: 1981 SCC (Cri) 462: AIR 1981 SC 1571.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision: 7-1-1981]

[5893] — S. 394 — Abatement of criminal appeal on death of accused — Whether S. 431, CrPC, 1898, applicable to an appeal by special leave under Art. 136 against a composite sentence of imprisonment and fine — *Criminal Procedure Code, 1898, S. 431*

Though strictly speaking S. 431, CrPC, 1898 does not apply to appeals by special leave, yet, in the interests of uniformity there is no valid reason for applying to appeals under Art. 136 a set of rules different from those which govern appeals under the Code in the matter of abatement.

Now every appeal against conviction abates on the death of accused except an appeal from a sentence of fine. An appeal from a sentence of fine is excepted from the all-pervasive rule of abatement of criminal appeals for the reason that the fine constitutes a liability on the estate of the deceased and the legal representatives on whom the estate devolves are entitled to ward off that liability. The sentence of fine remains outstanding though the right to recover the fine is circumscribed by a sort of a period of limitation prescribed by S. 70, IPC.

Though an appeal from a composite order of sentence is ordinarily directed against both the substantive imprisonment and the fine, it does not cease to be an appeal from a sentence of fine. The plain meaning of S. 431 is that every criminal appeal abates on the death of the accused "except an appeal from a sentence of fine". The section for its application requires that the appeal must be directed to the sentence of fine and not that it must be directed to that sentence only. If by the judgment under appeal a sentence of fine is imposed either singularly or in conjunction with a sentence of imprisonment the appeal against conviction would be an appeal from a sentence of fine within the meaning of S. 431. All that is necessary is that a sentence of fine should have been imposed on the accused and the appeal filed by him should involve the consideration of the validity of that sentence.

In this regard it is incorrect to state that even after finding that the conviction is illegal, the Court must only set aside the sentence of fine permitting the illegal conviction and the substantive sentence founded upon it to remain. *Harnam Singh* v. *State of H.P.*, (1975) 3 SCC 343: 1974 SCC (Cri) 951: AIR 1975 SC 236: 1975 Cri LJ 276: 1975 MLJ (Cri) 493.

Bench Strength **2**. Coram: **Y.V. Chandrachud** and *P.N. Bhagwati*, JJ. [Date of decision: 21-11-1974]

***Applied in** State of A.P. v. S. Narasimha Kumar, (2006) 5 SCC 683; Shankar Prasad Ghosh v. State of Bihar, (2008) 11 SCC 373*

[5894] — S. 394 — Abatement of appeal — Death of accused-employees during pendency of appeals against acquittal — *Appeals against deceased-accused abated and remaining accused convicted — Charge of conspiracy against the accused-respondents and the deceased-accused common and evidence against them same — Held, in the circumstances, legal heirs of deceased-accused not entitled to claim any arrears of wages and/or any service benefits*

It is no doubt correct that the appeals against the deceased accused have abated and their acquittal by the High Court cannot be technically interfered, but having allowed these appeals and convicting the respondents even on the charge of conspiracy, it would not be in the interest of justice to permit the legal heirs of deceased accused persons to claim arrears of wages on the ground that their acquittal has not been set aside because of the abatement of the appeals. The charge of conspiracy against accused-respondents and the deceased-accused was common. The same evidence which has been believed qua the respondents is also directed against the deceased-accused. Under these circumstances it would be wholly unjust to permit the legal heirs of the deceased-accused to take advantage of their acquittal by the High Court and claim huge amount of arrears of wages from the Corporation.

[In order to do complete justice between the parties, the Supreme Court directed that the legal heirs of the deceased-accused whose acquittal could not be set aside due to the intervention of death shall not be entitled to claim any arrears of wages and/or any service benefits.]. *State of T.N.* v. *T. Thulasingam*, 1994 Supp (2) SCC 405: 1994 SCC (Cri) 1504: AIR 1995 SC 1314.

Bench Strength **2**. Coram: *Kuldip Singh* and **Yogeshwar Dayal**, JJ. [Date of decision: 13-5-1994]

[5895] — S. 394 — Abatement of appeals — Delay in filing application in Supreme Court — *High Court upholding appellant's conviction under Ss. 409, 477-A read with Ss. 34, 467 and 471 IPC and S. 5(2) read with S. 4(1)(c) and S. 5(1)(d) of Prevention of Corruption Act, 1947 — During pendency of appeal in Supreme Court appellant S dying and after about 5 years applications filed under S. 394(2) to bring on record the LRs for continuing the appeal — Statutory period for making such application was 30 days — No explanation offered for the delay — Without going into the question of condonation of delay, appeal held to have abated on death of appellant S — Principles underlying S. 394 apply to appeals before Supreme Court* (Paras 1 to 3 and 7). *Shankar Prasad Ghosh* v. *State of Bihar*, (2008) 11 SCC 373: (2008) 67 AIC 99 (SC): 2008 Cri LJ 3188.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 13-6-2008]

State of A.P. v. S. Narasimha Kumar, (2006) 5 SCC 683: (2006) 3 SCC (Cri) 54; S.V. Kameswar Rao v. State, 1991 Supp (1) SCC 377: 1991 SCC (Cri) 694; Harnam Singh v. State of H.P., (1975) 3 SCC 343: 1974 SCC (Cri) 951, applied

[5896] — S. 394 — Applicability — *Abatement of State appeal under Art. 136 pending in Supreme Court on death of accused — Appeal filed by State against order of High Court which set aside conviction and sentence of accused — Held, said appeal abated on death of accused —* Bondada Gajapathy Rao, *AIR 1964 SC 1645 and* Harnam Singh, *(1975) 3 SCC 343 followed* (Para 8). *State of A.P.* v. *S. Narasimha Kumar*, (2006) 5 SCC 683: (2006) 3 SCC (Cri) 54: AIR 2006 SC 2924: (2006) 3 KLT 505.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 13-7-2006]

Bondada Gajapathy Rao v. State of A.P., (1964) 7 SCR 251: AIR 1964 SC 1645: (1964) 2 Cri LJ 598; Harnam Singh v. State of H.P., (1975) 3 SCC 343: 1974 SCC (Cri) 951, applied

Applied in Shankar Prasad Ghosh v. State of Bihar, (2008) 11 SCC 373

[5897] — S. 394(2) — Abatement of appeal before Supreme Court — Delay in applying for substitution of LRs of deceased accused — Unsatisfactory explanation — Effect — *Matter adjourned several times and delayed by one year (limitation period being 30 days) — Plea of ignorance of LRs regarding substitution application and consequential failure to inform counsel regarding death of accused — Held, was without substance — Therefore, appeal abated — Principles underlying S. 394 apply to appeals before Supreme Court — Gold (Control) Act, 1968, Ss. 85(1)(ii), (iii), (viii) and (ix) — Customs Act, 1962, S. 135(1)(b)(i) — Limitation Act, 1963, Ss. 5 and 3*

The appellant-accused was convicted for offences punishable under Section 135(1)(*b*)(*i*) of the Customs Act, 1962 (the Customs Act) and Sections 85(1)(*ii*), (*iii*), (*viii*) and (*ix*) of the Gold (Control) Act, 1968 (the Gold Act) by the trial court. The High Court by the impugned order set aside the conviction and sentence for the offence punishable under Section 135(1)(*b*)(*i*) of the Customs Act while upholding the conviction for the offence punishable under Section 85 of the Gold Act. An application was filed on 4-1-2008 for substitution for bringing legal representatives of the appellant on record along with the application for condonation of delay. The only ground indicated in the application seeking condonation was that the legal heirs of the appellant were not aware that the death of their father has to be intimated to the counsel at Delhi for preparing and filing the application for substitution. The moment they knew about this requirement they contacted their counsel and application was filed.

Disposing the appeal,

Held :

The appeal has abated on the death of the appellant and has to be disposed of accordingly. There is no need to go into the question as to whether there is scope for condonation of delay as no acceptable explanation has been offered for the delayed presentation. The plea that the legal heirs did not know the requirement is clearly without any substance. The period of 30 days has been statutorily fixed under Section 394 CrPC for making an application by the legal heirs, however, in the instant case, the application was filed nearly after one year. Moreover, several times the matter was adjourned at the request of learned counsel who appeared for the original appellant. (Paras 10 and 9). *Hari Prasad Chhapolia* v. *Union of India*, (2008) 7 SCC 690: (2008) 3 SCC (Cri) 220: (2008) 227 ELT 345: (2008) 68 AIC 129 (SC): 2008 Cri LJ 3198.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *G.S. Singhvi*, JJ. [Date of decision: 20-6-2008]

State of A.P. v. S. Narasimha Kumar, (2006) 5 SCC 683: (2006) 3 SCC (Cri) 54; S.V. Kameswar Rao v. State, 1991 Supp (1) SCC 377: 1991 SCC (Cri) 694; Harnam Singh v. State of H.P., (1975) 3 SCC 343: 1974 SCC (Cri) 951, relied on

[5898] — S. 394(2) — Appeal to Supreme Court against conviction under S. 5(2) of Prevention of Corruption Act, 1947 read with S. 161, IPC — Death of appellant during the pendency of the appeal — *Substitution of near relatives granted — Held, appeal would not abate — Concession by State to strike off the imposition of fine therefore immaterial. Lakshmi Shanker Srivastava* v. *State (Delhi Admn.)*, (1979) 1 SCC 229: 1979 SCC (Cri) 269: AIR 1979 SC 451: 1979 Cri LJ 207.

Bench Strength 3. Coram: *P.S. Kailasam*, **D.A. Desai** and *A.D. Koshal*, JJ. [Date of decision: 21-11-1978]

[5899] — S. 394(2) proviso — Abatement of appeal — Death of appellant Government servant during pendency of appeal against his conviction and sentence under S. 4(1) of Prevention of Corruption Act r/w S. 161 IPC — *Application made by his son ten years after appellant's death for leave to continue the appeal and for condonation of delay so that in case of acquittal, he could secure consequential benefits — No explanation given nor sufficient cause shown for not approaching the court within prescribed period and making undue and inordinate delay — Held, appeal abated. S.V. Kameswar Rao* v. *State*, 1991 Supp (1) SCC 377: 1991 SCC (Cri) 694: AIR 1991 SC 2085.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *M. Fathima Beevi*, JJ. [Date of decision: 30-11-1990]

Applied in Shankar Prasad Ghosh v. State of Bihar, (2008) 11 SCC 373

[5900] — S. 394(2) proviso — Permission to continue appeal subsequent to death of accused-appellant — *Sought by widow of appellant after "delay of 149 days" — Condoning the delay, Supreme Court granting the said permission — Criminal Procedure Code, 1898, S. 431* (Para 11). *Girja Prasad* v. *State of M.P.*, (2007) 7 SCC 625: (2007) 3 SCC (Cri) 475: (2007) 4 KLT 99: (2007) 58 AIC 230 (SC).

Bench Strength 2. Coram: **C.K. Thakker** and *Tarun Chatterjee*, JJ. [Date of decision: 27-8-2007]

— S. 395 *See also* S. 432, Criminal Procedure Code, 1898, p. 1234 in Vol. 2

— S. 395 *See* Ss. 319 and 395
See also Ss. 374 and 395

[5901] — Ss. 395 & 396 — Order passed by criminal court (such as one under S. 144, Criminal Procedure Code) ceasing to be operative (e.g. by efflux of time) — *Held, High Court not justified in dealing with the reference and pronouncing its view on such order as also giving its findings on rights, title, property etc., merely on ground of avoiding future complications. Mohd. Ibrahim* v. *City Magistrate, Varanasi*, (1983) 2 SCC 153: 1983 SCC (Cri) 365.

Bench Strength 3. Coram: *A.N. Ray, C.J.* and *M.H. Beg* and *Jaswant Singh*, JJ. [Date of decision: 6-12-1976]

— S. 396 *See* Ss. 395 & 396

— S. 397 *See also* S. 435, Criminal Procedure Code, 1898, pp. 1234 et seq. in Vol. 2

— S. 397 *See* Ss. 125 and 397
See also Ss. 125, 397 and 401
See also Ss. 145, 146 and 397 & 401
See also Ss. 156, 157, 465, 401 and 397
See also Ss. 204 and 397
See also Ss. 227 & 228, 401 & 397 and 482
See also Ss. 245, 227, 397 and 482
See also Ss. 245, 397, 399 and 482
See also Ss. 321, 227, 239 and 397
See also Ss. 321 and 397
See also Ss. 321, 397 and 401
See also Ss. 357, 358 and 397
See also Ss. 374, 384, 386, 401 & 397
See also Ss. 376, 384 and 397
See also Ss. 389, 397 and 401
See also Ss. 398 and 397
See also Ss. 401, 377(3), 397 & 386
See also Ss. 401 & 397
See also Ss. 401, 397 and 204
See also Ss. 401 & 397 and 227 & 228
See also Ss. 401, 397 and 228
See also Ss. 401, 397, 235, 248 and 255
See also Ss. 401, 397 and 239
See also Ss. 401, 397 and 378
See also Ss. 401, 397 and 398
See also Ss. 401, 397 & 482 and 197
See also Ss. 401, 399 & 397
See also Ss. 401(3) & 397
See also Ss. 401(3), 397, 399 and 386
See also Ss. 403, 397 to 399 and 401
See also Ss. 482, 245, 397 and 399
See also Ss. 482, 374(2), 386 and 397
See also Ss. 482 and 397
See also Ss. 482, 397, 166-A and 401
See also Ss. 482, 397, 227 & 228
See also Ss. 482, 397 and 399
See also Ss. 482, 397 and 401
See also Ss. 482, 397, 401, 239, 240 and 173

[5902] — S. 397 — Orders not interlocutory under — Held, indisputably issuance of summons is not an interlocutory order within the meaning of S. 397 (Para 6). *Dhariwal Tobacco Products Ltd.* v. *State of Maharashtra*, (2009) 2 SCC 370.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 17-12-2008]

[5903] — S. 397 — Revision — Scope of discretionary power of High Court

Under S. 397, the High Court possesses the general power of superintendence over the actions of courts subordinate to it which discretionary power when administered on administration side, is known as the power of superintendence and on the judicial side as the power of revision. In exercise of the discretionary powers conferred on the High Court under the provisions of this section, the High Court can, at any stage, on its own motion, if it so desires and certainly when illegalities and irregularities resulting in injustice are brought to its notice, call for the records and examine them. The words in the Section are, however, very general and they empower the High Court to call for the record of a case not only when it intends to satisfy itself about the correctness of any finding, sentence or order but also as to the regularity of any proceeding of any subordinate court. *Janata Dal* v. *H.S. Chowdhary*, (1992) 4 SCC 305: 1993 SCC (Cri) 36: AIR 1993 SC 892.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 28-8-1992]

[5904] — S. 397 — Revisional jurisdiction under — Concept and Scope of

Per Fazal Ali and Sen, JJ.

The term 'interlocutory order' used in the Code of Criminal Procedure has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial because the bar contained in S. 397(3) of the Code would apply to a variety of cases coming up before the courts not only being offences under the Penal Code but under numerous Acts. If, therefore, the right of revision was to be barred, the provision containing the bar must be confined within the four corners of the spirit and the letter of the law. In other words, the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi final. *V.C. Shukla* v. *State through CBI*, 1980 Supp SCC 92: 1980 SCC (Cri) 695: AIR 1980 SC 962: 1980 Cri LJ 690: 1980 MLJ (Cri) 664.

Bench Strength **4**. Coram: **S. Murtaza Fazal Ali**[1], **P.N. Shinghal**[2], **D.A. Desai**[3] and *A.P. Sen*[1], JJ. [Date of decision: 7-12-1979]

[5905] — Ss. 397 and 401 — Revisional power of High Court — Scope — *Held, cannot be exercised as a second appellate power — In exercise of revisional power High Court cannot undertake in-depth and minute re-examination of entire evidence and upset concurrent findings of trial court and first appellate court*

Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. It is for the purpose, as set out in Section 397, that if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power. The High Court is required to exercise self-restraint in a revision under Section 397. In this case the High Court exceeded its revisional jurisdiction by embarking upon an in-depth re-examination of the oral and medical evidence and coming to a conclusion, contrary to the consistent one reached by the two courts below. (Paras 22 and 14). *State of Maharashtra* v. *Jagmohan Singh Kuldip Singh Anand*, (2004) 7 SCC 659: 2004 SCC (Cri) 2003: AIR 2004 SC 4412: (2004) 172 ELT 19.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **D.M. Dharmadhikari**, JJ. [Date of decision: 27-8-2004]

Ram Briksh Singh v. Ambika Yadav, (2004) 7 SCC 665, distinguished

Duli Chand v. Delhi Admn., (1975) 4 SCC 649: 1975 SCC (Cri) 663: AIR 1975 SC 1960, relied on

Followed in Johar v. Mangal Prasad, (2008) 3 SCC 423

[5906] — Ss. 397, 398 and 401 — Superintendence of criminal trials by High Court — Need for proactive note, stressed — Criminal justice system — Insulation of, from external influences aimed to subvert trials — Positive intervention called for — General guidelines issued for assuming a more proactive role — *Held, authority of High Court of superintendence over subordinate courts has great dynamism — It is time to add to it another dimension for monitoring and protection of criminal trials — Superintendence should not be confined only to posting, transfer and promotion of the officers of the subordinate judiciary — Power of control should also be exercised to protect them from external interference that may sometimes appear overpowering to them and to support them to discharge their duties fearlessly — Constitution of India, Arts. 227 and 235*

At the root of this odious affair is the way the BMW trial was allowed to be constantly interfered with till it almost became directionless. All this and several other similar developments calculated to derail the trial would not have escaped the notice of the Chief Justice or the Judges of the Delhi High Court. But there is nothing to show that the High

Court, as an institution, as a body took any step to thwart the nefarious activities aimed at undermining the trial and to ensure that it proceeded on the proper course. As a result, everyone seemed to feel free to try to subvert the trial in any way they pleased. This indifferent and passive attitude is not confined to the BMW trial or to the Delhi High Court alone. It is shared in greater or lesser degrees by many other High Courts. (Paras 337 to 339)

Every failed trial is also, in a manner of speaking, a negative comment on the State's High Court that is entrusted with the responsibility of superintendence, supervision and control of the lower courts. It is, therefore, high time for the High Courts to assume a more proactive role in such matters. A step in time by the High Court can save a criminal case from going astray. An enquiry from the High Court Registry to the quarters concerned would send the message that the High Court is watching; it means business and it will not tolerate any nonsense. Even this much would help a great deal in insulating a criminal case from outside interferences. In very few cases where more positive intervention is called for, if the matter is at the stage of investigation the High Court may call for status report and progress reports from police headquarters or the Superintendent of Police concerned. That alone would provide sufficient stimulation and pressure for a fair investigation of the case. (Para 341)

In rare cases if the High Court is not satisfied by the status/progress reports it may even consider taking up the matter on the judicial side. Once the case reaches the stage of trial the High Court obviously has far wider powers. It can assign the trial to some judicial officer who has made a reputation for independence and integrity. It may fix the venue of the trial at a proper place where the scope for any external interference may be eliminated or minimised. It can give effective directions for protection of witnesses and victims and their families. It can ensure a speedy conclusion of the trial by directing the trial court to take up the matter on a day-to-day basis. (Para 342)

The High Court has got ample powers for all this both on the judicial and administrative sides. Article 227 of the Constitution of India that gives the High Court the authority of superintendence over the subordinate courts has great dynamism and now is the time to add to it another dimension for monitoring and protection of criminal trials. Similarly, Article 235 of the Constitution that vests the High Court with the power of control over subordinate courts should also include a positive element. It should not be confined only to posting, transfer and promotion of the officers of the subordinate judiciary. The power of control should also be exercised to protect them from external interference that may sometimes appear overpowering to them and to support them to discharge their duties fearlessly. (Para 343). *R.K. Anand* v. *Delhi High Court*, (2009) 8 SCC 106: (2009) 161 DLT 130.

Bench Strength **3**. Coram: *B.N. Agrawal, G.S. Singhvi* and **Aftab Alam**, JJ. [Date of decision: 29-7-2009]

[5907] — Ss. 397 and 401 — Scope and object of revisional power of High Court under

Exercise of the revisional power by the High Court under Section 397 read with Section 401 is to call for the records of any inferior criminal court and to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court and to pass appropriate orders. The Court of Sessions and the Magistrates are inferior criminal courts to the High Court and Courts of Judicial Magistrate are inferior criminal courts to the Sessions Judge. Ordinarily, in the matter of exercise of power of revision by any High Court, Section 397 and Section 401 are required to be read together. Section 397 gives powers to the High Court to call for the records as also suo motu power under Section 401 to exercise the revisional power on the grounds mentioned therein, i.e., to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court, and to dispose of the revision in the manner indicated under Section 401 of the Code. The revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that its subordinate courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior criminal courts or to prevent miscarriage of justice.

The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order. *Krishnan* v. *Krishnaveni*, (1997) 4 SCC 241: 1997 SCC (Cri) 544: AIR 1997 SC 987: 1997 Cri LJ 1519: (1997) 1 Mah LJ 509.

Bench Strength **3**. Coram: **K. Ramaswamy**, *S. Saghir Ahmad* and *G.B. Pattanaik*, JJ. [Date of decision: 24-1-1997]

[5908] — Ss. 397 and 401 — Revision — Nature and scope of — *Respondent filed revision petition before High Court against order of trial court permitting examination of three defence witnesses — High Court without examining acceptability of challenge suspended the said order and directed trial court to dispose of the case — Held, High Court granted final relief at an interim stage — Hence, orders passed by High Court set aside and High Court directed to hear revision petition on merits*

In the application filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973, the order dated 12-12-2006 passed by the IIIrd Additional Chief Metropolitan Magistrate, was questioned. The High Court noted that because of the order of stay passed by the High Court in an earlier proceeding in Criminal RC No. 2026 of 2006, the trial court was justified in completing the trial.

Allowing the appeal,

Held :

It is to be noted that in Criminal Revision No. 2026 of 2006 Respondent 1 had questioned the correctness of the order permitting the examination of the three defence witnesses. Without examining the acceptability of the challenge the High Court could not have directed disposal of the trial itself while directing suspension of the order impugned before it. In other words, the final relief was granted at an interim stage. When the petition, which is the subject-matter of the consideration in the appeal, was taken up by the High Court a fait accompli was presented that the orders have been passed pursuant to the earlier order of the High Court. In the circumstances the orders dated 8-12-2006 and 19-12-2006 passed by the High Court were set aside. The High Court shall now hear Criminal RC No. 2026 of 2006 and decide it on merits. As a consequence of this order, if any adjudication has been done by the trial court the same shall get nullified. (Paras 5 to 7). *Sri Krishna Tyres* v. *J.K. Industries Ltd.*, (2009) 13 SCC 554: AIR 2009 SC 2538.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 27-4-2009]

[5909] — Ss. 397, 401, 228 and 227 — Revision — Scope — Suo motu revision by High Court — Unsustainably erroneous framing of charge by Sessions Judge — Observations and correctional suggestions by High Court ultimately resulting in denial of selection grade to appellant Sessions Judge against whose judgment revision undertaken — Propriety of such remarks — *Appellant Sessions Judge though having requisite experience to frame correct charge, framing charge under S. 304 IPC when there was a prima facie case under S. 302 IPC — Appellant not giving any reasons for such unjustified dilution of charge — Single Judge, High Court therefore, suggesting to High Court on administrative side that if appellant was not yet confirmed, his probation should continue and if his services were already confirmed, his performance be verified before giving him the higher scale — Since appellant's service had been confirmed, High Court administrative side after checking his record and finding serious deficiencies, denying him selection grade — On facts, observations and correctional suggestions, held, were necessary and justified — Suggestions did not have any adverse or disparaging remarks — Plea that Revisional Court did not reopen criminal case on higher charges is not tenable as accused had already undergone 5 years' RI — Penal Code, 1860, S. 302 or S. 304 — Constitution of India, Arts. 227 and 235*

The appellant, a retired Additional Sessions Judge challenged the judgment and order rendered by a Single Judge of the High Court in a suo motu criminal revision, wherein the Single Judge had made certain observations against the appellant affecting his career to the effect of denying him higher scale of pay. These remarks were made on account of the appellant not framing the charge under Section 302 IPC and instead framing charge under Section 304 IPC against the accused in that case, when the material on record warranted framing of that charge.

Dismissing the appeal.

Held :

There is no reason to interfere in the impugned order making certain observations and suggestions which were necessary in the facts and circumstances of the case. The appellant was responsible for an unjustified dilution of the charge and, therefore, the thorough checking of his service record was necessary which is what was directed in the impugned order. (Paras 31 and 30)

The impugned order did not make any adverse or disparaging remarks but only made a correctional suggestion to the High Court Administration which the Administration accepted. It was suggested to the High Court Administration, that if the appellant was not yet confirmed, his probation should wait and if his services were already confirmed, his performance be verified before giving him the higher scale. Since the appellant was already confirmed in service, all that the High Court did on the administrative side was to check his record, and thereafter to deny him the selection grade. (Paras 28 and 29)

It cannot be said that the appellant did not have requisite experience to pass a correct legal order under Section 228 CrPC. The impugned order of the Single Judge deciding revision notes that the appellant had been functioning in the rank of the District Judge from August 1991 onwards i.e. for nearly 5 years prior to his order dated 21-3-1996. The impugned order further states in para 5 that a judicial officer, before being posted as an Additional Sessions Judge, gets an experience of taking the sessions cases as Assistant Sessions Judge. (Para 27)

The appellant cannot take advantage of the fact that the High Court, while passing the impugned order in revision, did not reopen the case under Section 401 CrPC. By the time the suo motu revision was decided, the accused had already undergone the punishment of rigorous imprisonment of 5 years. (Para 30)

The selection grade is not to be conferred as a matter of right. The record of the Judge concerned has to be seen, and that having been done in the present case (in pursuance to the observations of the Single Judge), and having noted the serious deficiencies, the High Court has denied the selection grade to the appellant. (Para 29). *R.S. Mishra* v. *State of Orissa*, (2011) 2 SCC 689.

Bench Strength **2**. Coram: *J.M. Panchal* and **H.L. Gokhale**, JJ. [Date of decision: 1-2-2011]

'K' A Judicial Officer, In re, (2001) 3 SCC 54; V.K. Jain v. High Court of Delhi, (2008) 17 SCC 538; Parkash Singh Teji v. Northern India Goods Transport Co. (P) Ltd., (2009) 12 SCC 577: (2010) 1 SCC (L&S) 160, distinguished

[5910] — **Ss. 397, 399 and 401 — Maintainability of revision — Dismissal of S. 319 petition for proceeding against appellant by Magistrate — Persons who may bring revision against — Person neither the complainant nor having any connection with alleged offence — Long lapse of time — Effect** — *In a case of theft of idols, trial court convicted four persons for offences under Ss. 457, 380, 411 and 414 IPC — Magistrate dismissing prosecution's petition under S. 319 for proceeding against appellant since final report of police found no case against appellant — Sessions Court ex parte allowing revision petition filed by a third party two years thereafter for proceeding against appellant and directing Magistrate to take cognizance of offence — Appellant not having any information about these subsequent events — High Court dismissing writ petition of appellant thereagainst — Matter remitted to High Court to consider maintainability of revision petition at the instance of third party after such delay, with requirement of opportunity of hearing to appellant and notice to informant — Penal Code, 1860, Ss. 457, 380, 411, 413 and 414 — Constitution of India — Arts. 226 and 227* (Paras 11 and 12). *Ram Naresh Prasad* v. *State of Jharkhand*, (2009) 11 SCC 299: (2009) 3 SCC (Cri) 1336: (2009) 77 AIC 221 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 12-2-2009]

Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117, impliedly followed

[5911] — Ss. 397 & 401, 386 and 313 — Powers of revisional or appellate court — Interference with conviction and sentence — *Mere omission by trial court to put any question to an accused, even if it is of a vital nature, held, cannot be a ground for appellate or revisional court to set aside the conviction and sentence as an inevitable consequence*

The respondent failed to show that there was any failure of justice on account of the omission to put a question concerning such formal evidence when he was examined under Section 313 of the Code. No objection was raised by the accused, either in the trial court or in the appellate court, on the ground of such omission. Even if the said omission is of a vital nature, it alone should not result in setting aside the conviction and sentence as an inevitable consequence. Effort should be made to undo or correct the lapse. If it is not possible to correct it by any means, the court should then consider the impact of the lapse on the overall aspect of the case. After keeping that particular item of evidence aside, if the remaining evidence is sufficient to bring home the guilt of the accused, the lapse does not matter much, and can be sidelined justifiably. But if the lapse is so vital as would affect the entire case, the appellate or revisional court can endeavour to see whether it could be rectified. Such an omission does not ipso facto vitiate the proceedings unless any prejudice having been caused to the accused is established by him before the court. At any rate, the omission to put the question concerning evidence, which is purely of a formal nature, is too insufficient for holding that the proceedings were vitiated. (Paras 12, 16 and 6). *State of Punjab* v. *Naib Din*, (2001) 8 SCC 578: 2002 SCC (Cri) 33: AIR 2001 SC 3955.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 28-9-2001]

Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87, relied on

[5912] — S. 397 — Revision power of High Court cannot be restricted on technical grounds such as limitation — *Magistrate acquitting the accused in a food adulteration case relying upon a Supreme Court decision — Supreme Court overruling that decision thus rendering the acquittal order unsustainable — High Court held not justified in dismissing the revision petition on ground of limitation. Municipal Corpn. of Delhi* v. *Girdharilal Sapru*, (1981) 2 SCC 758: 1981 SCC (Cri) 598: AIR 1981 SC 1169: 1981 Cri LJ 632.

Bench Strength **2**. Coram: **D.A. Desai** and *A.P. Sen*, JJ. [Date of decision: 11-2-1981]

[5913] — S. 397 — Scope of revisional power under — Detailed appreciation of facts not open in revision

Per Khalid and Natarajan, JJ.

There is no appeal provided by the Act against an order giving consent under S. 321. But the order is revisable under S. 397 of the Criminal Procedure Code. Section 397 gives the High Court or the Sessions Judge jurisdiction to consider the correctness, legality or propriety of any finding, sentence or order and as to the regularity of the proceedings of any inferior court. While considering the legality, propriety or the correctness of a finding or a conclusion, normally, the revising court does not dwell at length upon the facts and evidence of the case. The court in revision considers the materials only to satisfy itself about the correctness, legality and propriety of the findings, sentence or order and refrains from substituting its own conclusion on an elaborate consideration of evidence.

Per Bhagwati, C.J. and Oza, J.

The revisional power exercised by the High Court under S. 397 is couched in words of widest amplitude and in exercise of this power can satisfy itself as to the correctness, legality or propriety of any order passed by the Magistrate or as to the regularity of any proceedings of such Magistrate. When Supreme Court is hearing an appeal against an order made by the High Court in the exercise of its revisional power under S. 397 it is the same revisional power which Supreme Court would be exercising and Supreme Court therefore certainly can interfere with the order made by the Magistrate and confirmed by the High Court if it is satisfied that the order is incorrect, illegal, or improper. *Sheonandan Paswan* v. *State of Bihar*, (1987) 1 SCC 288: 1987 SCC (Cri) 82: AIR 1987 SC 877: 1987 Cri LJ 793.

Bench Strength **5**. Coram: **P.N. Bhagwati, C.J.**[1] and **E.S. Venkataramiah**[2], **V. Khalid**[3], *G.L. Oza*[1] and **S. Natarajan**[4], JJ. [Date of decision: 20-12-1986]

[5914] — Ss. 397, 401, 91, 311 and 200 — Exercise of power of revision — Denial of right of hearing — Effect of — *Application by respondent before trial court under S. 91 seeking directions for production of personal documents in possession of appellant — Also application under S. 311 for recalling appellant for cross-examination — Trial court rejecting both applications — High Court in revision petition allowing the applications of respondent without issuing notice to appellant — High Court concluding that production of documents would cause no prejudice to appellant — Held, the very nature of documents was such that issuing a notice to appellant was imperative — More so because appellant had not been cross-examined in respect of those documents — Moreover, revision of the orders in question was barred under S. 397(2) — Hence, High Court's order set aside* (Para 4). *Sethuraman* v. *Rajamanickam*, (2009) 5 SCC 153.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 18-3-2009]

[5915] — S. 397 — Revision — Direct recourse to High Court — Permissibility — *Held, revision can be preferred directly before High Court against order of CJM, instead of first moving Sessions Court — There is no bar for High Court to entertain such revision petition — Held on facts, High Court erred in criticising CBI for filing petition under S. 397 directly before it bypassing Sessions Court* (Paras 3 and 5). *CBI* v. *State of Gujarat*, (2007) 6 SCC 156: (2007) 3 SCC (Cri) 65: AIR 2007 SC 2522: (2007) 56 AIC 65 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *B.P. Singh*, JJ. [Date of decision: 21-6-2007]

[5916] — Ss. 397 & 401 and Ss. 156(3) & 200 — Revisional powers of High Court — Exercise of, in absence of accused — Sustainability — *Respondent 1, a registered company filing a complaint petition before Metropolitan Magistrate alleging commission of offences purported to be under Ss. 323, 382, 420, 465, 468, 471, 120-B, 506* *and 34 IPC accompanied by an application under S. 156(3) — Metropolitan Magistrate refusing to direct investigation in terms of S. 156(3) and complainant asked to lead pre-summoning evidence — However, High Court in revision application filed thereagainst wherein only State was impleaded, without hearing accused setting aside said order and directing Metropolitan Magistrate to examine matter afresh after calling report from police authorities — Held, one of the questions which arises for consideration is as to whether the learned Magistrate has taken cognizance of the offence — Indisputably, if he had taken cognizance of the offence and merely issuance of summons upon the accused persons had been postponed, in a criminal revision filed on behalf of the complainant, the accused was entitled to be heard before the High Court — S. 401(2) refers not only to an accused but also to any person and if he is prejudiced, he is required to be heard — An order was passed partially in his favour as Metropolitan Magistrate had refused to exercise its jurisdiction under S. 156(3) — Had an opportunity of hearing been given to the appellant, he could have shown that no revision application was maintainable and/or even otherwise, no case has been made out for interference with the impugned judgment — Besides, in the instant case learned Magistrate had taken cognizance — He had applied his mind and refused to exercise his jurisdiction under S. 156(3) — He arrived at a conclusion that the dispute is a private dispute in relation to an immovable property and, thus, police investigation is not necessary — It was only with that intent in view, he directed examination of the complainant and his witnesses — Hence, impugned judgment cannot be sustained and is accordingly set aside — Penal Code, 1860, Ss. 323, 382, 420, 465, 468, 471, 120-B, 506 and 34* (Paras 4 to 6, 11 to 14 and 19 to 23). *Raghu Raj Singh Rousha* v. *Shivam Sundaram Promoters (P) Ltd.*, (2009) 2 SCC 363.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 17-12-2008]

Mohd. Yousuf v. Afaq Jahan, (2006) 1 SCC 627: (2006) 1 SCC (Cri) 460, distinguished on facts

Chandra Deo Singh v. Prokash Chandra Bose, AIR 1963 SC 1430; Makkapati Nagaswara Sastri v. S.S. Satyanarayan, (1981) 1 SCC 62: 1981 SCC (Cri) 111; P. Sundarrajan v. R. Vidhya Sekar, (2004) 13 SCC 472: (2006) 1 SCC (Cri) 345; Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar, AIR 1960 SC 1113; Divine Retreat Centre v. State of Kerala, (2008) 3 SCC 542: (2008) 2 SCC (Cri) 9, considered

[5917] — S. 397 — Revision — Speaking order giving reasons in brief and indicating application of mind on the facts or pleas raised before the Court necessary — *Merely saying that no illegality, impropriety or jurisdictional error was found without even a whisper of the merit of the matter or nature of pleas raised not good enough — Matter remitted for consideration afresh — Bald order — Nature of — Penal Code, 1860, Ss. 279 and 304-A*

The appellant was convicted and sentenced under Section 279 read with Section 304-A IPC. The appeal preferred against the conviction and sentence was dismissed. In revision before the High Court one of the pleas raised was that the appellant, a Driver in the Police Deptt., had been acting under the colour of his official duty while driving the official vehicle at the time of the occurrence and as such it was obligatory to obtain sanction before initiation of the prosecution which is otherwise barred under Section 140 of the Delhi Police Act and that the prosecution was bad for want of sanction by the competent authority. It was also submitted that there was no eyewitness account alleging rash or negligent driving on the part of the appellant and the courts below erred in fastening the guilt upon the appellant only by application of the maxim *res ipsa loquitur.* The High Court dismissed the revision passing the following order:

"I have heard the learned counsel for the petitioner. I find no illegality, impropriety or jurisdictional error in the judgment under challenge. Dismissed."

Question before the Supreme Court was whether the revision should have been disposed of by means of a bald and non-speaking order by the High Court. It was submitted that probably the revision had been disposed of by the High Court having the provisions of Section 115 CPC in mind since the order observed about "no jurisdictional" error having been committed by the courts below. Allowing the appeal,

Held :

The question of error in exercise of jurisdiction may arise sometimes in criminal revisions as well. Be that as it may, the submissions made on behalf of the appellant could not be negated without examining them on merit. The order impugned however does not indicate any trace of application of mind on the facts or the pleas raised before the court. The reasons, howsoever brief they may be, are to be indicated in an order disposing of any matter, more so when such orders are subject to appeal or review before the higher forum. It is true that it may depend upon the nature of the matter which is being dealt with by the court and the nature of jurisdiction being exercised as to in what manner the reasons may be recorded e.g. in an order of affirmance detailed reasons or discussion may not be necessary but some brief indication by which application of mind may be traceable to affirm an order would certainly be required. Mere ritual of repeating the words or language used in the provisions, saying that no illegality, impropriety or jurisdictional error is found in the judgment under challenge without even a whisper of the merit of the matter or nature of pleas raised does not meet the requirement of decision of a case judicially. It is a matter in which the High Court may consider the matter afresh and pass an appropriate order in accordance with law. (Paras 7 to 9). *Paul George* v. *State*, (2002) 2 SCC 406: 2002 SCC (Cri) 340: AIR 2002 SC 657: 2002 Cri LJ 996.

Bench Strength **2**. Coram: *R.C. Lahoti* and **Brijesh Kumar**, JJ. [Date of decision: 21-1-2002]

S.N. Mukherjee v. Union of India, (1990) 4 SCC 594: 1991 SCC (L&S) 242: 1990 SCC (Cri) 669; Maharashtra State Board of S. & H.S. Education v. K.S. Gandhi, (1991) 2 SCC 716; M.J. Sivani v. State of Karnataka, (1995) 6 SCC 289; State of A.P. v. Rajagopala Rao, (2000) 10 SCC 338: 2000 SCC (Cri) 1379, relied on

[5918] — S. 397 — Revision — Ex parte disposal of — Revision petition filed by appellant, being accused of offence under S. 494 IPC, against orders passed by trial Magistrate (Addl. CJM) and appellate court (Distt. & Sessions Judge) — *Even though appellant's counsel failed to appear on the date fixed, revision petition dismissed by High Court by refusing to interfere with the concurrent findings of the courts below — Application filed to recall the ex parte order of dismissal of the revision also dismissed by High Court — Appellant's stand that he had always been diligently pursuing the remedy not disputed, nor the circumstances pointed out by appellant due to which his counsel could not appear on the date fixed disbelieved, nor was it the case of respondent that appellant was in any manner responsible for delay in the proceedings — In the circumstances held, High Court's orders dismissing the revision petition and application for recall liable to be set aside — High Court shall hear the matter on merits. Ram Abhilakh* v. *State of U.P.*, (2007) 3 SCC 155: (2007) 2 SCC (Cri) 54: 2007 Cri LJ 1439: (2007) 2 All LJ 691: (2007) 51 AIC 57 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 2-2-2007]

[5919] — Ss. 397 and 401 — Revision — Notice to respondent(s) — Necessity — *High Court allowing revision petition filed by Respondent 2, without issuing notice to appellants and other parties — Impugned order passed by High Court by only hearing Respondent 2 — Impermissibility — Relying on the position of law, impugned order set aside and matter remitted back to High Court for consideration afresh after issuing notice to respondents in revision* (Paras 3 and 4). *Uma Nath Pandey* v. *State of U.P.*, (2009) 12 SCC 40: AIR 2009 SC 2375: (2009) 77 AIC 132 (SC): (2009) 237 ELT 241: (2009) 4 All LJ 515.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 16-3-2009]

Canara Bank v. V.K. Awasthy, (2005) 6 SCC 321; Suresh Chandra Nanhorya v. Rajendra Rajak, (2006) 7 SCC 800, followed

[5920] — S. 397 — Revision — Disposal without assigning any reasons, is improper — *Constitution of India, Art. 227*

The dismissal of the revision petition by the High Court in the manner done is clearly unsustainable. The absence of reasons has rendered the High Court's order unsustainable. (Para 6). *Iqbal Bano* v. *State of U.P.*, (2007) 6 SCC 785: (2007) 3 SCC (Cri) 258: AIR 2007 SC 2215: (2007) 3 KLT 63: (2007) 4 All LJ 587: (2007) 55 AIC 4 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 5-6-2007]

[5921] — S. 397 — Petition under, held, cannot be dismissed merely on failure to enclose a copy of the impugned order when the original order is in the court — *Punjab and Haryana High Court Rules and Orders — Vol. V. Chapter I-A(b), Rules 3-A (as applicable to Delhi) (Per Krishna Iyer, J.). Raj Kapoor* v. *State*, (1980) 1 SCC 43: 1980 SCC (Cri) 72: AIR 1980 SC 258: 1980 MLJ (Cri) 439: (1980) 17 ACC 110.

Bench Strength **2**. Coram: **V.R. Krishna Iyer**[1] and **R.S. Pathak**[2], JJ. [Date of decision: 26-10-1979]

[5922] — Ss. 397, 399 and 401 — Both parties must be heard in proceedings before High Court — *On failure to give party or his counsel notice, order of High Court set aside and matter remanded — Criminal Procedure Code, 1898, Ss. 435 and 438. Makkapati Nagaswara Sastri* v. *S.S. Satyanarayan*, (1981) 1 SCC 62: 1981 SCC (Cri) 111: AIR 1981 SC 1156: 1981 Cri LJ 617.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *O. Chinnappa Reddy*, JJ. [Date of decision: 18-9-1980]

[5923] — Ss. 397, 399 and 401 — Ex parte disposal of revision — Permissibility — Persons to be heard. *Ram Naresh Prasad* v. *State of Jharkhand*, (2009) 11 SCC 299: (2009) 3 SCC (Cri) 1336: (2009) 77 AIC 221 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 12-2-2009]

Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117, impliedly followed

[5924] — Ss. 397, 401, 204 and 199(2) — Revision against issue of process — Scope of High Court's revisional jurisdiction — *High Court has only to see the complaint and accompanying papers — Where in revision petition accused joined names of persons who were not parties before the trial court, held, High Court justified in directing deletion of their names*

Process was issued by trial court against accused petitioners on the basis of a complaint filed by the State Government under S. 500, IPC with sanction under S. 199(2), CrPC as one of the persons alleged to be defamed was the Director General of Police. The accused preferred a revision petition before the High Court under Ss. 397 and 401, CrPC against this issue of process. In the revision petition, in addition to the State Government (respondent 1), the accused joined the Director General of Police (respondent 2) and the Chief Minister of the State (respondent 3) also as parties. The High Court admitted the petition and ordered issue of notices to the respondents but directed deletion of the names of respondents 2 and 3 holding that they were not necessary parties to the proceedings. The accused filed appeal by special leave before the Supreme Court questioning the propriety and correctness of the order of deletion of names of respondents 2 and 3.

Held :

When the trial court issued the process respondents 2 and 3 were not parties before it. Therefore, the High Court in revision while examining the propriety and correctness of the order of issue of process was justified in ordering deletion of names of those respondents by confining itself to looking into the complaint and the accompanying papers.

When the court calls for the record in exercising powers under S. 397, CrPC it is expected to examine the records for the purpose of satisfying itself about legality, propriety and correctness of the order passed and also about the regularity of the proceedings. When the issue of process is challenged in the revision petition before the High Court what the High Court is expected to see is as to whether the complaint and the papers accompanying the complaint prima facie indicate that an offence is made out. If the complaint and the papers accompanying the complaint, in the opinion of the High Court, are such which do not prima facie disclose an offence then it will be open to the High Court to entertain the revision and quash the proceedings. The question about anyone else being instrumental in getting the prosecution launched or questions which are foreign are not to be considered in a revision where the issue of process is being challenged and therefore the further question as to whether the party against whom the allegation is made is or is not a necessary party in the proceedings also is of no avail.

Section 401(2) contemplates a situation where a person may not be an accused person before the court below but one who might have been discharged and therefore if the revisional court after exercising jurisdiction under S. 401 wants to pass an order to the prejudice of such a person, it is necessary that person should be given an opportunity of hearing but it does not contemplate any contingency of hearing of any person who is neither party in the proceedings in the court below nor is expected at any stage even after the revision to be joined as party.

That the proceedings had been launched by the State Government on behalf of respondent 2 and therefore indirectly respondent 2 being the complainant is a party to the proceedings is a tall proposition. The prosecution was launched by the State Government and before the court below i.e. the trial court the only parties were the petitioners who were accused persons and the State Government which stood in the place of a complainant. There are prosecution witnesses and there may even be defence witnesses. But the witnesses are not parties to the proceedings. *A.K. Subbaiah* v. *State of Karnataka*, (1987) 4 SCC 557: 1987 SCC (Cri) 768.

Bench Strength **2**. Coram: *Sabyasachi Mukharji* and **G.L. Oza**, JJ. [Date of decision: 28-8-1987]

[5925] — Ss. 397, 377 & 401 — Provision of appeal against inadequacy of sentence does not take away High Court's power to enhance sentence suo motu in exercise of revision powers

The High Court's power of enhancement of sentence, in an appropriate case, by exercising suo motu power of revision is extant under S. 397 read with S. 401, Criminal Procedure Code, 1973, inasmuch as the High Court can by 'itself' call for the record of proceedings of any inferior criminal court under its jurisdiction. The provision of S. 401(4) is a bar to a party, who does not appeal when appeal lies but applies in revision. Such a legal bar under S. 401(4) does not stand in the way of the High Court's exercise of power of revision suo motu which continues as before in the 1973 Code also. *Eknath Shankarrao Mukkawar* v. *State of Maharashtra*, (1977) 3 SCC 25: 1977 SCC (Cri) 410: AIR 1977 SC 1177: (1977) 3 SCR 513: 1977 MLJ (Cri) 421: 1977 Cri LJ 964.

Bench Strength **3**. Coram: *Y.V. Chandrachud*, **P.K. Goswami** and *P.N. Shinghal*, JJ. [Date of decision: 12-4-1977]

[5926] — Ss. 397, 401, 374, 377 and 386 — High Court competent to enhance sentence in exercise of its suo motu revisional jurisdiction in an appeal against conviction even if no appeal against sentence filed by State — *However, notice and opportunity of hearing on question of sentence must be afforded to the convict*

In this case the appellants were convicted by the Additional Sessions Judge on three counts and sentenced to rigorous imprisonment for one year under S. 148, IPC; for six months under Ss. 323/149, IPC and imprisonment for life and a fine of Rs 200 under Ss. 302/149, IPC. The appellants preferred an appeal against the order of conviction and sentence passed by the trial Judge. No appeal was filed by the State against sentence awarded by the trial Judge on the ground of its inadequacy. The High Court while dismissing their appeal clarified that their conviction was on six counts and altered the fine awarded under Ss. 302/149, IPC from Rs 200 to Rs 5000 in respect of each appellant per count, i.e. Rs 30,000 per appellant. No notice of enhancement of fine or opportunity of hearing on question of inadequacy of sentence was given to the appellant. Aggrieved by this enhancement the appellants preferred appeal to the Supreme Court which was limited to the question of enhancement of sentence only.

Held :

From a conjoint reading of Ss. 377, 386, 397 and 401 it is clear that if the State Government is aggrieved about the inadequacy of the sentence it can prefer an appeal under S. 377(1). The failure on the part of the State Government to prefer an appeal does not, however, preclude the High Court from exercising suo motu power of revision under S. 97 read with S. 401 since the High Court itself is empowered to call for the record of the proceeding of any court subordinate to it. Sub-section (4) of S. 401 operates as a bar to the party which has a right to prefer an appeal but has failed to do so but that sub-section cannot stand in the way of the High Court exercising revisional jurisdiction suo motu. But before the High Court exercises its suo motu revisional jurisdiction to enhance the sentence, it is imperative that the convict is put on notice and is given an opportunity of being heard on the question of sentence either in person or through his advocate. The revisional jurisdiction cannot be exercised to the prejudice of the convict without putting him on guard that it is proposed to enhance the sentence imposed by the trial court.

In the present case the appeal was filed under S. 374(2) by the convicts against the order passed by the Additional Sessions Judge. No appeal was filed by the State under S. 377(1) of the Code against the sentence awarded by the trial court for the offence under Ss. 302/149, IPC on the ground of its inadequacy. Nor did the High Court exercise suo motu revisional powers under S. 397 read with S. 401. If the High Court was minded to enhance the sentence the proper course was to exercise suo motu powers under S. 397 read with S. 401 by issuing notice of enhancement and hearing the convicts on the question of inadequacy of sentence. Without following such procedure it was not open to the High Court in the appeal filed by the convicts to enhance the sentence by enhancing the fine. The High Court clearly acted without jurisdiction.

Sentence of trial court restored. Additional fine if paid, be refunded. *Sahab Singh* v. *State of Haryana*, (1990) 2 SCC 385: 1990 SCC (Cri) 323: AIR 1990 SC 1188: 1990 Cri LJ 1202: (1990) 2 Crimes 97.

Bench Strength **2**. Coram: *B.C. Ray* and **A.M. Ahmadi**, JJ. [Date of decision: 20-2-1990]

[5927] — Ss. 397, 401 and 321 — Order of Special Judge declining to grant consent for withdrawal of the prosecution — *Whether appeal at the instance of the State Government maintainable — Question not decided. V.S. Achuthanandan* v. *R. Balakrishna Pillai*, (1994) 4 SCC 299: 1994 SCC (Cri) 1185: AIR 1995 SC 436.

Bench Strength **3**. Coram: **J.S. Verma**, *B.P. Jeevan Reddy* and *S.P. Bharucha*, JJ. [Date of decision: 13-5-1994]

[5928] — Ss. 397, 401 and 378 — Revision application filed by the appellant in the High Court against order of acquittal — State's application for grant of leave to appeal filed thereafter, dismissed — *High Court, by impugned order, dismissing the revision on the ground that by dismissal of State's application, the revision petition has become not entertainable — Propriety — Held, High Court should have heard both the applications together — Directions to the High Court to hear both the applications together issued — Penal Code, 1860, Ss. 148 and 302 r/w S. 149 — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, S. 3(2)*

An appeal was filed by the informant questioning the correctness of the order of the Division Bench of the High Court, dismissing the revision application of the appellant under Section 397 read with Section 401 CrPC against the order of acquittal passed by the trial court in respect of the accused. The accused were tried for offences punishable under Sections 148 and 302 read with Section 149 IPC and Section 3(2) of the Scheduled

Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. By judgment dated 22-6-2004 the trial court held the accused persons to be not guilty and directed their acquittal. The State filed application under Section 378(3) CrPC before the High Court for grant of leave to appeal. By order dated 29-4-2005 the said application was rejected. Much before that date i.e. on 20-9-2004, the appellant had filed an application for revision of the order of acquittal, in the High Court. By the impugned order the High Court dismissed the revision application on the ground that the State's application for grant of leave having been dismissed the revision petition was not entertainable.

Allowing the appeal partly,

Held :

The ideal situation would have been to hear both the applications together. It would be appropriate to direct the High Court to hear both the applications for grant of leave as filed by the State and the revision application filed by the informant together in accordance with law. (Paras 10 and 11). *Suga Ram* v. *State of Rajasthan*, (2006) 8 SCC 641: AIR 2006 SC 3258.

Bench Strength 2. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 18-9-2006]

[5929] — Ss. 397 and 125 — Findings of Magistrate on disputed questions of fact recorded after full consideration of evidence — *Should not be disturbed by revisional court in absence of any error of law. Bakulabai* v. *Gangaram*, (1988) 1 SCC 537: 1988 SCC (Cri) 189: (1988) 1 KLT 413: 1988 Mah LJ 330.

Bench Strength 2. Coram: *Ranganath Misra* and **L.M. Sharma**, JJ. [Date of decision: 27-1-1988]

Pathumma v. Muhammad, (1986) 2 SCC 585: 1986 SCC (Cri) 212, relied on

[5930] — Ss. 397 and 125 — Revision — Scope of — High Court in exercise of revisional jurisdiction in a matter relating to S. 125 CrPC giving directions for initiation of departmental proceedings — Unsustainability of — *Issues involving appellant's marriage/double marriage pending adjudication in a title suit — High Court adjudicating that an offence under S. 494 IPC was made out — High Court's direction for departmental proceedings in exercise of its revisional jurisdiction while deciding a S. 125 CrPC matter, held, erroneous — Penal Code, 1860, S. 494 — Hindu Marriage Act, 1955, S. 5(i)*

The High Court was clearly in error in directing initiation of departmental proceedings while dealing with an application for revision in the matter relating to Section 125 CrPC. The High Court while dealing with the application under Section 125 CrPC has essentially adjudicated that an offence punishable under Section 494 IPC is made out. A title suit was pending where prayer was made for declaration that the respondent was not his wife. Whether there was a second marriage as contended and whether *L* (respondent) was his wife as claimed by her or *C* was the wife of the appellant as claimed by him has yet to be decided. (Para 8). *Taraknath Kar* v. *Lipika Kar*, (2008) 5 SCC 387: (2008) 2 SCC (Cri) 618: AIR 2008 SC 2310.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 7-5-2008]

[5931] — Ss. 397 & 156(3) — Proper mode for disposal of revision — Application (against direction for investigation by CBI by Magistrate) — *Order of Magistrate directing CBI to investigate the case relating to theft of muddamal property without affording opportunity to CBI to explain that the case being of routine nature did not require CBI investigation — Magistrate's order based on letter written by Nazir of District Court requesting therein to hand over the case to CBI — Application filed by CBI before the Magistrate praying for recalling of its order — Application rejected by order of Magistrate without giving any opportunity to CBI — CBI moved the High Court under S. 397 against both the orders of the Magistrate — High Court observed that CBI was a litigant like any other litigant and cannot be placed in a special or privileged category, that instead of approaching it directly, CBI could have moved Sessions Court and that approach of CBI deserved to be deprecated and with that view it imposed a costs of Rs 1000 holding that CBI had chosen a wrong path and was not respecting or adhering to the law — Held, High Court was not right in its approach*

In *CBI* v. *State of Rajasthan* the Supreme Court held that magisterial power cannot be stretched under Section 156(3) beyond directing the officer in charge of a police station to conduct the investigation and no such direction can be given to CBI. In the instant case, the first information report was already registered and in that sense Section 156(3) CrPC had no application. There is substance in the plea that routine matters should not be entrusted to CBI as the investigating agencies of various States can effectively investigate such matters. Of course, where it is shown that the investigating agency is not doing proper investigation and/or that there is reason to believe that there is laxity in the investigation, a direction may be given to CBI to investigate the matter in appropriate cases. This case is not one where any complexity was involved. It was a routine case of theft of muddamal property. The

Sessions Judge, therefore, rightly appears to have set aside the orders passed by the Chief Judicial Magistrate. The High Court had no basis to doubt the bona fides of CBI in moving the application before it under Section 397 CrPC. There was no bar for the High Court to entertain the said petition. The criticism levelled against CBI and its officers and costs imposed do not have any legal sanction. They are accordingly set aside. (Para 5). *CBI* v. *State of Gujarat*, (2007) 6 SCC 156: (2007) 3 SCC (Cri) 65: AIR 2007 SC 2522: (2007) 56 AIC 65 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *B.P. Singh*, JJ. [Date of decision: 21-6-2007]

CBI v. State of Rajasthan, (2001) 3 SCC 333: 2001 SCC (Cri) 524, relied on

[5932] — Ss. 397 and 173(8) — Revision — Interference in Magistrate's discretionary power under S. 173(8) — When permissible — Further investigation — When not warranted — Investigation being done by two independent agencies — *Magistrate not finding investigating officers biased, rather finding them as responsible police officers — Complainant not specifying the subjects and hidden truths warranting further investigation — Counsel, from the material on record, failing to show involvement of A-3 to A-10 — Investigating officer giving detailed statements for dropping A-3 to A-10 — Investigating officer even after a thorough investigation not finding any material to establish any connection between the complainant's money and A-3 to A-10 — Investigating officer finding that the alleged amount of Rs 4.65 crores was given to A-2 for both trading in gold and silver on the basis of orally agreed terms and all transactions and payments had been made through cheques only — Other litigations were pending by and between the parties inter se — Effect — Direction for further investigation by Magistrate, held, unwarranted — Revisional court, therefore, justified in interfering with the discretionary jurisdiction of Magistrate*

The appellant complainant lodged an FIR against A-1 to A-9 (later A-10 was added) alleging that they had connived and cheated him to the tune of Rs 4.65 crores by denying to return money which they had taken for the purchase of gold. Although the accused admitted the liability to the extent of Rs 4.95 crores, they neither returned any gold nor money to the complainant. Investigations made by two independent investigating agencies of the State did not reveal anything against A-3 to A-10 and therefore, the Magistrate, upon receipt of police report under Section 173(2) CrPC, took cognizance only against A-1 and A-2. The complainant approached the High Court under Section 482 CrPC against the Magistrate's order of not taking cognizance against A-3 to A-10. The High Court remanded the matter to the Magistrate to consider the option of further investigation under Section 173(8) CrPC. Further investigation was allowed by the Magistrate. A-2 filed revisional application thereagainst before the High Court. By reason of the impugned judgment, the revision was allowed.

Dismissing the appeal of the complainant,

Held :

There is no doubt that the Revisional Court should not interfere with the discretionary jurisdiction exercised by the Magistrate unless a jurisdictional error or an error of law is noticed. It is also not necessary nor desirable to notice the statements recorded by IO. The question, however, is as to whether in a case of this nature a direction for further investigation would be necessary. The Magistrate did not find that the investigating officer was in any way biased towards the complainant. Rather he found that the investigation had been carried out by two different agencies and by responsible police officers. The complainant did not specify the subjects and hidden truths requiring further investigation which had not been carried out. The counsel also could not show involvement of A-3 to A-10 from the material on record. (Paras 24 to 26, 16 and 17)

The investigating officer stated in great detail as to why A-3 to A-10 were dropped. After a thorough investigation he did not find any material to establish any connection between the complainant's money and A-3 to A-10. The amount of Rs 4.65 crores was given to A-2 for both trading in gold and silver on the basis of orally agreed terms and all transactions and payments had been made through cheques only. He also considered the dealings and litigations by and between the parties inter se. (Paras 23, 18 and 20). *Kishan Lal* v. *Dharmendra Bafna*, (2009) 7 SCC 685: (2009) 3 SCC (Cri) 611: 2009 Cri LJ 3721: (2009) 81 AIC 141 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 21-7-2009]

(2008) 1 Mad LW (Cri) 432, affirmed

[5933] — Ss. 397 and 401 — Revision — Concurrent findings of fact recorded by courts below — Interference with, by High Court on an erroneous assumption — Propriety — *Cow milk — Non-conformity with prescribed minimum standard — Sample taken found to be deficient in milk solid as well as solid fat — Concurrent findings of the trial court and the Sessions Court, based on evidence on record, indicating that the sample milk was properly stirred as required by law and the* *sample was made representative and homogeneous — High Court however granting benefit of doubt on erroneous assumption that though there was deficiency of solid fat contents in the seized sample, the sample may not have been properly stirred — Held, High Court erred in acquitting the accused on such erroneous assumption which had no foundation at all — High Court cannot substitute the factual foundation available on record, by an assumption, to give benefit of doubt — Conviction and sentence by the trial court, restored — Prevention of Food Adulteration Rules, 1955, R. 5 r/w Appendix B, Items 11.01.01 and 11.01.11 — Prevention of Food Adulteration Act, 1954, S. 16(1)(a)(i)*

Both the courts below on the material available on record have come to the conclusion that the sample milk in question was properly stirred as required by law and the sample was made representative and homogeneous. This finding is based on the evidence found on the record. In this background, the High Court rather casually came to an erroneous assumption that there was improper stirring for which there is no foundation at all, as could be seen from the finding noticed by this Court of the two courts below. The High Court could have substituted a factual foundation available on record, by an assumption, to give benefit of doubt to the respondent. (Para 15)

The High Court order acquitting the respondent is set aside and the conviction and sentence imposed on the respondent by the trial court as confirmed by the Sessions Court is restored and the respondent is directed to serve out the sentence awarded by the trial court. (Para 16). *State of Haryana* v. *Daya Nand*, (2004) 7 SCC 670: 2004 SCC (Cri) 2024: AIR 2004 SC 4358.

Bench Strength 3. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *A.K. Mathur*, JJ. [Date of decision: 25-8-2004]

Food Inspector, Municipal Corpn., Baroda v. Madanlal Ramlal Sharma, (1983) 1 SCC 135: 1983 SCC (Cri) 131, distinguished on facts

[5934] — Ss. 397 and 401 — High Court's power of revision in application filed by de facto complainant against acquittal order — Reappreciation of evidence — Impermissibility *— Where the acquittal order did not suffer from any procedural illegality or manifest error of law and the court passing that order had not overlooked the evidence clinching the issue, held, High Court could not reappreciate the entire evidence and take a view to the contrary for setting aside the acquittal order — Penal Code, 1860, Ss. 143, 147, 148, 307 and 149*

The trial court had convicted and sentenced the accused person under Sections 143, 147, 148 and 307 read with Section 149 IPC. The appellate court, after appreciating the evidence acquitted the accused persons. In a revision application filed by the de facto complainant, the High Court arrived at the conclusion that although the injured persons belonged to the rival party, that did not render their evidence interested and partisan and that there was no reason for not relying upon their testimony as in case of an attack by a large organised group armed with lethal weapons, local people, due to terror, might be unwilling to testify. The High Court, therefore, set aside the appellate court's order and remitted the matter to the trial court for deciding the case afresh.

Allowing the appeal against the High Court's order,

Held :

In a revision application filed by the de facto complainant against the acquittal order, the Court's jurisdiction under Section 397 read with Section 401 CrPC is limited. The law as enunciated by the Supreme Court does not empower the Court exercising the revisional jurisdiction to reappreciate the evidence. (Paras 6 and 7)

In the present case, the High Court has not found any procedural illegality or manifest error of law in the order passed by the appellate court. It is nobody's case that the appellate court has shut out or has overlooked the evidence which clinched the issue. The High Court has only reappreciated the entire evidence and has taken contrary view for setting aside the acquittal order. This is not permissible while exercising the revisional jurisdiction at the instance of the de facto complainant against the order of acquittal. (Para 10). *Thankappan Nadar* v. *Gopala Krishnan*, (2002) 9 SCC 393.

Bench Strength 3. Coram: *M.B. Shah*, *Bisheshwar Prasad Singh* and *H.K. Sema*, JJ. [Date of decision: 30-4-2002]

Akalu Ahir v. Ramdeo Ram, (1973) 2 SCC 583: 1973 SCC (Cri) 903; Vimal Singh v. Khuman Singh, (1998) 7 SCC 223: 1998 SCC (Cri) 1574; Logendranath Jha v. Polai Lal Biswas, AIR 1951 SC 316: 1951 SCR 676; K. Chinnaswamy Reddy v. State of A.P., AIR 1962 SC 1788: (1963) 1 Cri LJ 8; Mahendra Pratap Singh v. Sarju Singh, AIR 1968 SC 707: 1968 Cri LJ 865; Pakalapati Narayana Gajapathi Raju v. Bonapalli Peda Appadu, (1975) 4 SCC 477: 1975 SCC (Cri) 543; Ayodhya Dube v. Ram Sumer Singh, 1981 Supp SCC 83: 1982 SCC (Cri) 471, relied on

[5935] — Ss. 397 and 401 — Revision — Suo motu exercise of power by High Court *— Held, does not extend to converting the proceedings initiated in suo motu revision into an appeal against acquittal and convicting the appellants thereunder*

— High Court should have setting the acquittal aside, sent the matter back for retrial — Setting aside conviction passed by High Court, matter remitted to trial court for disposal in accordance with law — Appellant permitted to apply for bail — Penal Code, 1860, Ss. 376, 342 and 506 r/w S. 34. Naresh Kumar v. *Registrar, High Court of P&H*, (2001) 10 SCC 510.

Bench Strength **2**. Coram: *G.T. Nanavati* and *S. Rajendra Babu*, JJ. [Date of decision: 6-11-1998]

[5936] — Ss. 397 and 401 — Nature and extent of revisional jurisdiction — When may be exercised — *Criminal Procedure Code, 1898, Ss. 435 and 439*

The High Court in exercising its revisional powers should not lightly interfere with the order of the Sessions Judge. The revisional jurisdiction can be exercised only in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The jurisdiction is not ordinarily invoked or used merely because the lower court has taken a wrong view of the law or misappreciated the evidence on record. *Thakur Das* v. *State of M.P.*, (1978) 1 SCC 27: 1978 SCC (Cri) 21: AIR 1978 SC 1: 1978 Cri LJ 1: 1978 MLJ (Cri) 255: (1977) 3 ALR 720: (1978) 1 ALT 81.

Bench Strength **3**. Coram: *P.K. Goswami*, *N.L. Untwalia* and **D.A. Desai**, JJ. [Date of decision: 14-10-1977]

[5937] — S. 397 — Sessions Court finding that 'at the most' the accused-appellant had 'not performed his duties as Medical Officer properly or with due care', committing him for trial for offence under — *On facts, held, High Court in revision not justified in setting aside the Sessions Court's order — Penal Code, 1860, S. 201. Supdt. & Remembrancer of Legal Affairs* v. *S.K. Majumdar*, 1983 SCC (Cri) 187.

Bench Strength **2**. Coram: **A.C. Gupta** and *E.S. Venkataramiah*, JJ. [Date of decision: 22-8-1980]

[5938] — S. 397 — Revision — *Where a bus driver was convicted under S. 304-A IPC in connection with an accident which resulted in the death of one person, held, High Court erred in allowing respondent bus driver's revision petition and upsetting concurrent findings of fact of lower courts without considering evidence on record and without indicating how lower courts were wrong in reaching their conclusions and without giving any reasons as to why the revision was being allowed* (Para 4). *State of A.P.* v. *Rajagopala Rao*, (2000) 10 SCC 338.

Bench Strength **2**. Coram: *B.N. Kirpal* and *S. Rajendra Babu*, JJ. [Date of decision: 26-2-1999]

[5939] — S. 397 — Revision — Refusal by High Court to exercise revisional jurisdiction on ground that no question of law had arisen therein — Legality — *Held, was not justified as in terms of S. 397, the correctness, legality or propriety of any finding, sentence or order may fall for consideration of the revisional court — Hence, in revision filed by the appellant challenging his conviction under S. 354 IPC, the High Court should have tested the prosecution case from the angle that the trial Judge had acquitted all the three accused who were said to have shared a common intention with the appellant not only in relation to the offences under Ss. 323, 504 and 506 IPC but also in relation to offence under S. 354 — Penal Code, 1860, Ss. 354, 323, 504 and 506* (Para 22). *Pandurang Sitaram Bhagwat* v. *State of Maharashtra*, (2005) 9 SCC 44: 2005 SCC (Cri) 1198: AIR 2005 SC 643: 2005 Cri LJ 880.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **S.B. Sinha**, JJ. [Date of decision: 17-12-2004]

[5940] — S. 397 — Revision — Scope — Revision against order granting police remand, though not maintainable, even if assumed to be maintainable, held, its scope was limited to the legality of the order impugned — *High Court in revision could not have gone into the merits of the case — Hence, findings recorded by it that accused was illegally detained and ill-treated by police, investigation conducted was not bona fide and records were fabricated to implicate the accused, held, not proper — It was for trial court to record any finding in respect thereof — Any party aggrieved by the findings of the trial court will have a right of appeal before the High Court after the case is decided*

Per G.P. Mathur, J. (for Rajendra Babu, C.J. and himself)

The High Court was hearing a criminal revision petition filed under Section 397 CrPC against an order passed by a Metropolitan Magistrate granting police custody of the accused. The scope of the revision, even if it is assumed to be maintainable, was a limited one viz. whether the order granting police remand was legally correct or not having regard to the material placed before the learned Magistrate. The High Court at that stage could not have gone into the merits of the prosecution case as if hearing an appeal against an order of conviction or acquittal as the trial of the accused is yet to begin. The only material available before the High Court was the affidavit filed by the accused, copies of telegrams and the reply-affidavits filed by the police officials concerned. The affidavit of the accused has been accepted as a gospel truth and very disparaging and strong remarks have been made against the investigating officers and the investigation done by them. (Para 16)

Chapter XVIII CrPC contains detailed and exhaustive provisions for the trial of an accused before the Court of Session. The accused would get full and complete opportunity to defend herself in the trial. It is for the trial court to weigh the evidence adduced by the prosecution and then record a finding on its basis whether the investigation has been fair or not or whether any records have been fabricated. If any party feels aggrieved by the findings recorded and ultimate order passed by the learned Sessions Judge deciding the case, it will have a right of appeal before the High Court. The High Court has virtually scuttled the trial even before it has commenced and that too by a process wholly unknown to law. (Para 17)

Per Dr. Ar. Lakshmanan, J. (concurring)

What has got to be decided in a full-fledged trial, the High Court merely on the pleadings of the parties has given a finding that the order granting police custody and the consequent confession and the alleged recovery had no evidentiary value whatsoever in the case. The High Court has also given a finding that records were created to implicate the accused. Needless to state that any further investigation in the case permitted by the learned Judge would be an exercise in futility in the context of such finding which could be given only during the course of a full-fledged trial. (Para 24). *State* v. *N.M.T. Joy Immaculate*, (2004) 5 SCC 729: 2004 SCC (Cri) 1722: AIR 2004 SC 2282: 2004 Cri LJ 2515.

Bench Strength **3**. Coram: *S. Rajendra Babu, C.J.*[1] and **Dr. Ar. Lakshmanan** [2] and **G.P. Mathur**[1], JJ. [Date of decision: 5-5-2004]

2002 MLJ (Cri) 661, reversed

[5941] — Ss. 397 and 401 — Presumptions under Ss. 139 and 118, NI Act, 1881 — Rebuttal of — *Dishonour of cheque — Complaint — Uncertainty as to whether the cheque was issued prior to, or subsequent to, the closure of the account and difference of handwritings and ink on the cheque, held, did not rebut the statutory presumptions under Ss. 139 and 118 — Hence, could not sustain the revisional order of the High Court setting aside the order of conviction and sentence — Matter remanded for disposal in accordance with law after affording opportunity to both the parties — Negotiable Instruments Act, 1881, Ss. 139, 118 and 138* (Para 4). *P.K. Manmadhan Kartha* v. *Sanjeev Raj*, (2002) 7 SCC 150: 2002 SCC (Cri) 1626.

Bench Strength **2**. Coram: *S.S.M. Quadri* and *S.N. Variava*, JJ. [Date of decision: 3-5-2002]

[5942] — Ss. 397, 401 and 353 — Revisional jurisdiction of High Court should not be lightly exercised particularly when invoked by a private party — *Revision against acquittal filed by a private party — High Court without going into merits of the case reversing the acquittal on ground that lower appellate court dictated only operative portion of order — Held, High Court's order not sustainable — In view of long lapse of time instead of remanding the case the Supreme Court restored the order of acquittal passed by the lower appellate court. Ramu* v. *Jagannath*, 1995 SCC (Cri) 181: AIR 1994 SC 26: 1994 Cri LJ 66.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *R.C. Patnaik*, JJ. [Date of decision: 4-2-1992]

[5943] — Ss. 397 and 401 — Revision against acquittal by a private party — *Powers of Revisional Court in, held, are very limited — It can interfere only if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate court — Interference not permissible if upon reappraisal of evidence two views are possible — On facts, no procedural irregularity found by the High Court in the order of the Sessions Court acquitting the accused — Hence, High Court was not justified in interfering with that order in exercise of its revisional powers — Penal Code, 1860, S. 376* (Para 3). *Hydru* v. *State of Kerala*, (2004) 13 SCC 374.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 30-9-2004]

[5944] — Ss. 397 and 359 — Revision at the instance of private party — Scope — *Revisional court allowing the revision application and remitting the matter to trial court on two grounds viz. (i) examination of* **K**, *brother of the accused, as witness was erroneously refused by the trial court; and (ii) trial court was not justified in disbelieving the evidence adduced on behalf of the prosecution inasmuch as in its opinion two views were possible — Held, order of remand based upon extraneous considerations and not upon the grounds permissible under law since neither according to prosecution nor evidence,* **K** *was a witness to the alleged occurrence — Moreover, it is well settled that at the instance of a private prosecutor, the revisional court can grant relief only in exceptional circumstances when compelling grounds are made out — However in such cases it has no jurisdiction to reverse the acquittal, but is vested with only power of remand either for retrial or reconsideration as the necessities of the case may require — In the instant case, none of the grounds warranted remand and as such the order of remand suffers from serious legal infirmity and the High Court was* *not justified in refusing to interfere with it — Impugned orders of High Court as well as Sessions Court set aside and order of acquittal passed by trial court restored* (Paras 2 and 3). *Raj Kumar Khemka* v. *State of U.P.*, (2008) 17 SCC 662.

Bench Strength 2. Coram: *B.N. Agrawal* and *B.N. Srikrishna*, JJ. [Date of decision: 30-7-2003]

[5945] — Ss. 397 and 401 — Revision against acquittal preferred by a private party — Scope — Held, there is very little scope to interfere — *High Court by impugned judgment had allowed the revision and directed reconsideration of matter observing that appreciation of evidence by the trial court was not correct and it should not have taken the view it had taken — Held, it was not as if the trial court had ignored any important piece of evidence, or had chosen not to appreciate the same, or had illegally permitted any evidence to come on record, or there was some serious defect in the trial affecting merits of the matter, or the court trying him lacked the jurisdiction to do so — Hence, approach of the Revisional Court was not correct, because after all it was a revision against acquittal at the instance of a private party — Besides, the Revisional Court had directed not even retrial but reappraisal of evidence*

Appellant-accused was married to deceased in 1992. From the beginning their marital life was not smooth as he suspected her fidelity. It was alleged that he ill-treated her. The dead body of deceased was found in a well with injuries on her head, back and all over the body. Appellant-accused was charged under Sections 302 and 201 IPC for committing murder of his wife by hitting her with a wooden log on her head. The Sessions Judge acquitted the accused specifically holding that it was not proved that the appellant had hit the deceased with log. No appeal was filed thereagainst by the State. But father of the deceased filed a criminal revision which was admitted by the High Court. It was pending when the State filed an appeal against acquittal, which was delayed by 801 days. The Division Bench after considering application for condonation of delay dismissed the same and hence appeal against acquittal could not proceed. Strangely, however, it was not pointed out by the State counsel that a revision had already been filed and was pending against acquittal. Ultimately the revision came up for hearing before the Single Judge of the High Court who by impugned judgment allowed the same and directed reconsideration of the matter on basis of evidence already recorded. Hence, the present appeal.

Allowing the appeal,

Held :

The Division Bench in not allowing the condonation of delay has effectively dismissed the appeal in the sense that it has not allowed the State Government to proceed with the appeal for which there was a provision. This was a prosecution not based on a private complaint but on the police report. Therefore, the State Government had a right under Section 378(2) CrPC to file an appeal and very conspicuously the private party did not have that right. The private complainant, therefore, could only excite the general powers of revision by the High Court. (Para 20)

It is undoubtedly true that sub-section (3) of Section 378 CrPC specifically provides that the appeal under sub-sections (1) and (2) cannot be entertained except with the leave of the High Court and, therefore, an application for leave in such appeal filed by the State Government is a must. The limitation for filing the appeal is 90 days from the date of the order while the same article provides for 30 days of limitation from the date of grant of special leave. Therefore, what was before the High Court was the appeal itself and the petitioner prayed the condonation of delay of 801 days in filing the appeal against acquittal. When the High Court declined to grant that permission, it, in effect, refused to entertain the appeal against the order of the trial court, thus making it final. (Para 22)

Thus, if the judgment was rendered final by the Division Bench of the High Court then there could not be any subsequent order to the contrary by the Single Judge even if the effect of the pendency of the revision was not brought to the notice of the Division Bench. There is no review power under the Criminal Procedure Code to the criminal court including the High Court. Such a review power exists only in the Supreme Court. As such, once the High Court had passed the order refusing the condonation of delay of appeal and thereby awarding the finality to the trial court's judgment, that order could be considered and upset only by the Supreme Court on a proper appeal having been filed in the Supreme Court by the State Government. As against the State Government, the order of the trial court acquitting the appellant-accused had become final. Therefore, the only course left open then in law was to challenge that order refusing to condone the delay in filing appeal against acquittal. (Para 23)

Such appeal was never filed and the order of the Division Bench became final. Under such circumstances revision against the same order could not have been entertained, much less allowed upsetting the finality of the trial court's judgment, which finality was confirmed by the order of the High Court by refusing to condone the delay in filing the appeal against the same trial court judgment. That would be the true import of the appellate powers of the High Court. (Para 24)

In the instant case the revision was not only entertained but also allowed by the High Court because of the colossal callousness on part of the State Government counsel, appellant-accused as also the Registry of the High Court which failed to join the appeal filed along with the application for condonation of delay with the revision pending against the same judgment of acquittal. The revision could not have been proceeded and appellant-accused must succeed on that point alone. (Paras 36 and 38)

Now, considering the judgment of the learned Single Judge on merits of the matter. In a revision against acquittal preferred by a private party, there is a very little scope to interfere. It is not as if the trial court had ignored any important piece of evidence or it had chosen not to appreciate the same. It is again not as if there was any piece of evidence which was illegally not permitted to come on record. Again, it is also not a case where there was some serious defect in the trial affecting the merits of the matter. Further, the Court trying the appellant-accused did not lack the jurisdiction also to try and convict or acquit the appellant-accused. All that the High Court has observed is that the appreciation of evidence by the trial court was not correct and the trial court should not have taken the view that it has taken of the evidence. (Para 39). *K. Ramachandran* v. *V.N. Rajan*, (2009) 14 SCC 569: (2009) 82 AIC 119 (SC): 2009 Cri LJ 4413.

Bench Strength 2. Coram: **V.S. Sirpurkar** and *R.M. Lodha*, JJ. [Date of decision: 7-7-2009]

[5946] — Ss. 397 and 401 — Revision preferred by private complainant — When maintainable — Categories of cases, where such revision maintainable stated

Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of a private complainant

(*1*) where the trial court has wrongly shut out evidence which the prosecution wished to produce,

(*2*) where the admissible evidence is wrongly brushed aside as inadmissible,

(*3*) where the trial court has no jurisdiction to try the case and has still acquitted the accused,

(*4*) where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence, and

(*5*) where the acquittal is based on the compounding of the offence which is invalid under the law. (Para 12). *Sheetala Prasad* v. *Sri Kant*, (2010) 2 SCC 190.

Bench Strength 2. Coram: *R.V. Raveendran* and **J.M. Panchal**, JJ. [Date of decision: 17-12-2009]

[5947] — Ss. 397, 401 and 360 — Revisional power — Proper mode of exercise of, by High Court — Revision preferred by private complainant (State or accused not preferring appeal) — Scope of interference — *Sessions Court convicting appellants under Ss. 324/149 IPC and directing their release on probation of good conduct — High Court in revision after reappreciation of evidence holding that appellants not guilty under Ss. 324/149 IPC but under Ss. 308/149 IPC and directing Sessions Court to pass order of conviction accordingly — Legality — Held, High Court exercised its revisional jurisdiction illegally — When the said jurisdiction was invoked by a private complainant High Court should not have exercised it lightly — High Court should have considered that: (1) S. 401(3) CrPC prohibits conversion of a finding of acquittal into one of conviction, (2) that in such cases retrial or rehearing of the appeal might be ordered, and (3) that it could not have directed acquittal in respect of conviction under Ss. 324/149 IPC when the accused had not preferred an appeal — Judgment of Sessions Court restored — Penal Code, 1860, Ss. 308/149 and 324/149*

The Sessions Court held that the appellant-accused were guilty of offences under Sections 324/149 IPC and released the appellants on probation of good conduct. However, the High Court while entertaining a private complainant's appeal (State not having preferred appeal) directed conviction of the appellants under Section 308 and acquittal of the appellants under Section 324 IPC.

Allowing the appeal of the accused persons,

Held :

On the facts and in the circumstances of the case, the High Court exercised revisional jurisdiction with material illegality and irregularity resulting into miscarriage of justice to the appellants. The revisional jurisdiction under Section 401 CrPC, when invoked by a private complainant against an order of acquittal, cannot be exercised lightly and that it can be exercised only in exceptional cases where the interest of public justice requires interference for correction of manifest illegality or the prevention of gross miscarriage of justice. In these cases, or cases of similar nature, retrial or rehearing of the appeal may be ordered. Section 401(3) CrPC prohibits conversion of a finding of acquittal into one of conviction. (Paras 17, 13, 12 and 16)

After discussing the medical evidence and evidence of the injured witness in great detail the High Court prima facie came to the conclusion that a case under Section 308 IPC is made out against the appellants. Such a conclusion could have been recorded only in a properly constituted appeal, filed by the State Government. The High Court further concluded that no offence punishable under Section 324 IPC is committed by the appellants. This finding could have been recorded only in an appeal filed by the appellants. (Paras 14 and 15)

In the face of prohibition contained in Section 401(3) CrPC, it was all the more incumbent upon the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method. On remand the trial court was left with no judicial discretion but to convict the appellants under Section 308 read with Section 149 IPC and impose punishment on them as directed by the High Court in exercise of its power of revision under Section 401 CrPC. After recording guilt of an accused under a particular provision of IPC, the matter could not have been remitted to the Sessions Court for passing an appropriate order of conviction and punishment. (Paras 15 and 16)

The earlier judgment of the Sessions Judge is restored. (Para 19). *Sheetala Prasad* v. *Sri Kant*, (2010) 2 SCC 190.

Bench Strength **2**. Coram: *R.V. Raveendran* and **J.M. Panchal**, JJ. [Date of decision: 17-12-2009]

[5948] — Ss. 397 and 401 — Revision by private party against acquittal — *Case requiring a detailed scrutiny and evaluation of evidence particularly because no appeal against acquittal filed by the State — Summary dismissal of revision by the High Court not justified — Case remitted to the High Court for disposal of revision afresh after considering merits of the case* (Para 8). *Gurshinder Singh* v. *Joga Singh*, 1999 SCC (Cri) 1311: AIR 2000 SC 3418.

Bench Strength **2**. Coram: *K.T. Thomas* and *D.P. Mohapatra*, JJ. [Date of decision: 17-2-1999]

[5949] — S. 397 or S. 482 — Quashment of criminal proceedings — Grounds — Dishonour of cheque — *Revisional court, held, erred in quashing the complaint proceedings on the ground that the debt or liability was barred by limitation and therefore there was no legally enforceable debt or liability as against the drawer — The plea of non-existence of such a debt or liability could be agitated as a defence before the trial court — Negotiable Instruments Act, 1881, Ss. 138, 118 and 139 — Contract Act, 1872, S. 25(3) — Limitation Act, 1963, S. 18*

The appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the respondent, alleging that the cheque issued by the respondent in favour of the appellant in respect of a sum advanced to the respondent by the appellant four years ago was dishonoured by the bank for the reason "account closed". The Magistrate issued summons to the respondent. In a criminal revision filed by the respondent, the Sessions Court quashed the entire proceedings on the ground that since the alleged borrowing was barred by limitation at the time of issuance of the cheque, there was no legally enforceable debt or liability against the respondent under the Explanation to Section 138 and therefore the complaint was not maintainable. The High Court upheld that decision.

Allowing the appeal,

Held :

In view of Sections 118 and 139 of the Negotiable Instruments Act, Section 25(3) of the Contract Act, 1872 and in the presence of a documentary evidence which might amount to acknowledgment reviving the period of limitation, the present case was not one where the cheque was drawn in respect of a debt or liability, which was completely barred from being enforced under law. However, these are matters to be agitated before the Magistrate by way of defence of the respondent. But at this stage of the proceedings, to say that the cheque drawn by the respondent was in respect of a debt or liability which was not legally enforceable, was clearly illegal and erroneous. Therefore, it is held that the Sessions Court and the High Court erred in quashing the complaint proceedings. (Paras 6, 5 and 7). *A.V. Murthy* v. *B.S. Nagabasavanna*, (2002) 2 SCC 642: AIR 2002 SC 985: (2002) 108 Comp Cas 838: 2002 Cri LJ 1479.

Bench Strength **2**. Coram: *R.P. Sethi* and **K.G. Balakrishnan**, JJ. [Date of decision: 8-2-2002]

[5950] — Ss. 397, 401 and 482 — Quashing of charges on the basis of report filed by Central Vigilance Commission (CVC) — *Respondent, a Senior Bank Manager at the relevant time was charged with four other accused persons by Special Judge of defrauding/cheating Bank by resorting to cheating and forgery of documents in the nature of valuable securities and for using those documents for getting loan facilities — Charges were* *extremely serious and included also the charge of conspiracy with a view to defraud the Bank — Revision petition preferred by respondent before the High Court on the ground that respondent was in fact exonerated by CVC and in its report, he was found to be innocent — High Court allowed revision quashing proceedings — On facts it was found that CVC had not given clean chit to the respondent — Held, report of CVC may be a relevant factor but it cannot be held to be the "be all or end all" when accused is being prosecuted for serious offences — Order of High Court set aside — Penal Code, 1860, S. 120-B r/w Ss. 420/467/468/471 — Prevention of Corruption Act, 1988, S. 13(2) r/w S. 13(1)(d)*

After perusing the report of Central Vigilance Commission, it cannot be held that the Central Vigilance Commission had given a clean chit to the respondent-accused. Though the report of the Central Vigilance Commission may be a relevant factor, it cannot be held to be "be all or end all" of the matter for prosecuting the accused persons of such serious offences. The High Court has treated the said report to be "be all or end all" of the matter. The High Court was not correct in doing so. (Paras 7, 9 and 10)

The High Court did not bother to examine the charge-sheet and the allegations made therein nor did it examine the statement of the witnesses and/or the reports of the handwriting experts which were the part of the charge-sheet. (Paras 6 and 14). *CBI* v. *V.K. Bhutiani*, (2009) 10 SCC 674.

Bench Strength **2**. Coram: *V.S. Sirpurkar* and *Deepak Verma*, JJ. [Date of decision: 11-8-2009]

P.S. Rajya v. State of Bihar, (1996) 9 SCC 1: 1996 SCC (Cri) 897, distinguished

[5951] — Ss. 397 and 401 — Offence alleged under both the SC & ST Act and IPC — Proceedings under IPC if may continue if proceeding under 1989 Act vitiated — *Accused charged under Ss. 376 and 506 IPC and S. 3(1)(xii) of the Act — High Court in revision against framing of charges quashed the entire proceedings — Investigation was carried out by IO in absence of authorisation by competent authority — Held, investigation of an offence under S. 3 of the Act by an officer not appointed in terms of R. 7 is illegal and invalid — But when the offence complained is also under IPC the investigation by a competent police officer in accordance with CrPC cannot be quashed — The proceedings shall proceed for the offences punishable under IPC notwithstanding investigation and the charge-sheet being not liable to be accepted for cognizance of offence under S. 3 of the Act — Penal Code, 1860 — Ss. 376 and 506 — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Ss. 9 & 3 r/w R. 7* (Paras 5 and 7 to 9). *State of M.P.* v. *Chunnilal*, (2009) 12 SCC 649: (2009) 77 AIC 33 (SC): (2009) 2 KLT 335.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 15-4-2009]

[5952] — Ss. 397 and 401 — Revision — Quashing of criminal complaint by High Court without giving reasons as to why the Special Judge erred in taking cognizance of the offence against the accused — *Held, not justified — High Court's order set aside* (Para 6). *Rajmata Vijaya Raje Scindia* v. *State of M.P.*, (2003) 12 SCC 429.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 28-10-2003]

[5953] — S. 397 r/w S. 401 — Reasoned order/Speaking order — Necessity of — High Court summarily dismissing revision petition by a non-speaking order — Unsustainability — *Held, reasons introduce clarity in an order — On plainest consideration of justice, High Court ought to have set forth its reasons, howsoever brief, in its order, indicative of an application of its mind — Absence of reasons rendered High Court's judgment unsustainable — Penal Code, 1860, Ss. 332, 353, 504 and 506* (Paras 2, 9 and 11). *Jagtamba Devi* v. *Hem Ram*, (2008) 3 SCC 509: (2008) 2 SCC (Cri) 103: 2008 Cri LJ 1623.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 4-2-2008]

State of Punjab v. Bhag Singh, (2004) 1 SCC 547, followed

[5954] — S. 397 r/w S. 401 — Revision — Reasoned order/speaking order necessity — *High Court by impugned order dismissing appellant's revision petition without indicating any reasons therefor and without analysing his stands — It was not a case that no arguable point was involved — As a matter of fact, the relevance of the dying declaration and its effect on the prosecution case has not been considered by the High Court at all — Impugned order set aside and matter remitted to High Court for fresh expeditious disposal — In the meantime, appellant granted liberty to move High Court for bail — Penal Code, 1860, S. 304-B and S. 304 Pt. II — Dowry Prohibition Act, 1961, Ss. 3 and 4* (Paras 1 and 7 to 11). *Mohd. Shakeel* v. *State Police*, (2008) 15 SCC 378: (2009) 3 SCC (Cri) 1006: AIR 2009 SC 680: (2009) 73 AIC 196 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-11-2008]

[5955] — S. 397 r/w S. 401 and S. 156(3) — Revision against order under S. 156(3) disposed of by learned Single Judge without issuing notice to appellants — *Impugned order set aside and matter* *remitted to High Court for reconsideration — Parties directed to appear without further notice* (Paras 1 and 6). *Rameshan P.O.* v. *Rakesh Kumar Yadav*, (2009) 13 SCC 546: (2009) 5 All LJ 505: (2009) 2 APLJ 62 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 17-4-2009]

[5956] — S. 397 r/w S. 401 and S. 377 r/w S. 386(c) — High Court's power of enhancing sentence under — Nature and scope of — *Held, High Court can even suo motu enhance the sentence but must provide predecisional opportunity of showing cause and hearing to the accused*

The High Court enjoys the power of enhancing the sentence either in exercise of its revisional jurisdiction under S. 397 read with S. 401 or in its appellate jurisdiction under S. 377 read with S. 386(*c*) of the Criminal Procedure Code where the sentence awarded by the subordinate courts is grossly inadequate or unconscionably lenient or 'flea-bite' or is not commensurate with the gravity of the offence. It is permissible for the High Court while exercising its revisional jurisdiction under S. 397 read with S. 401, IPC to exercise the power of a court of appeal under S. 386(*c*) for enhancement of sentence. The High Court notwithstanding the exercise of its appellate jurisdiction under S. 377 has powers to act suo motu to enhance the sentence in appropriate cases while exercising its revisional jurisdiction even in the absence of an appeal against the inadequacy of the sentence as provided under S. 377.

However, the High Court both in exercise of its revisional jurisdiction under S. 397 read with S. 401, CrPC and its appellate jurisdiction under S. 377 read with S. 386(*c*) of CrPC in matters of enhancement of sentence should give the accused a reasonable opportunity of showing cause against such enhancement as contemplated under the first proviso to S. 386 as well under sub-section (3) of S. 377 of the Code. The rules of natural justice as also the prescribed procedure require issuing of notice to the appellant and affording an opportunity to be heard on the proposed action for enhancement of sentence.

In the present case the High Court has enhanced the sentence unmindful of the relevant provisions of the Code of Criminal Procedure and also the rules of natural justice and by overstepping its jurisdiction adopted a leeway in enhancing the sentence from 3 years to 7 years for the conviction under S. 201, IPC which exercise of powers in violation of the prescribed procedure, is impermissible. Therefore, the High Court's order enhancing the sentence is set aside and the order of the trial court inflicting the sentence of 3 years' rigorous imprisonment and the fine of Rs 2500 with the default clause is restored. *Govind Ramji Jadhav* v. *State of Maharashtra*, (1990) 4 SCC 718: 1991 SCC (Cri) 33: (1990) 2 Crimes 256.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 7-3-1990]

Surjit Singh v. State of Punjab, 1984 Supp SCC 518: 1985 SCC (Cri) 90; Sahab Singh v. State of Haryana, (1990) 2 SCC 385, followed

[**Ed.**: In *Allauddin Mian* v. *State of Bihar*, (1989) 3 SCC 5, the Supreme Court has also held that the requirement under S. 235(2), CrPC of affording opportunity of hearing before passing an order of sentence is mandatory and that the sentence imposed without substantial compliance with S. 235(2) is liable to be replaced by an appropriate order of sentence.]

[5957] — S. 397 r/w Ss. 401 and 482 — Dismissal of criminal revision — Non-appearance of counsel of accused — Propriety — *Appellant-accused convicted and sentenced for offence under S. 409 IPC for alleged misappropriation of cash — Appeal dismissed upholding the conviction and sentence — In criminal revision in terms of S. 397 r/w Ss. 401 and 482 CrPC, as none appeared for appellant-accused, High Court dismissed revision petition after hearing counsel for the State — Submissions that as counsel for appellant-accused in High Court was appointed as counsel for the State, therefore, he could not have appeared for appellant — Also, as the position was not brought to the notice of appellant, therefore, he should not be made to suffer — Held, it is not in dispute that counsel appearing for appellant in criminal revision was appointed counsel for the State and so could not have appeared for appellant — Also, no material to show that appellant after having knowledge of such appointment of his counsel failed to appoint another lawyer — In the facts of the case, held, impugned order of High Court set aside and matter remitted to High Court for hearing afresh — Counsel for appellant undertaking to engage another counsel for appellant before High Court — Since matter was pending before High Court for nearly seven years, hence, High Court requested to dispose of criminal revision expeditiously if possible — Penal Code, 1860, S. 409* (Paras 3, 4, 6 and 7). *Satin Chandra Pegu* v. *State of Assam*, (2006) 12 SCC 446: (2007) 2 SCC (Cri) 92: AIR 2007 SC 457: 2007 Cri LJ 309: (2007) 49 AIC 432 (SC): (2006) 204 ELT 517.

Bench Strength 2. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 15-11-2006]

[5958] — S. 397(1) — High Court's jurisdiction under — *Where Sessions Judge is the appellate court, held, revision against its final order would lie to High Court alone under sub-section (1) and sub-sections (2) and (3) would be inapplicable*

The trial court imposed a sentence below seven years on the appellant. Sessions Judge, to which an appeal lay under S. 374(2) of the Code, dismissed the appeal by a final order. Question for determination was whether the Sessions Judge could entertain a revision application or only the High Court had revisional jurisdiction under S. 397(1).

Held :

The Sessions Judge, being the appellate court, could not exercise the power of revision. The Sessions Judge, having dismissed the appeal, revision would only lie under S. 397(1) to the High Court. A second revision would not be competent under S. 397(3) as it applies only in a case where an application in a revision has been filed either before the Sessions Judge or the High Court and either of them has exercised the power, so that no further revision would lie to the High Court. In the instant case, sub-section (3) has no application. The bar under S. 397(2) against exercise of revisional power, being in relation to an inter-locutory order, is also not applicable in this case as here the order passed by the Sessions Judge was a final one. *Asghar Khan* v. *State of U.P.*, 1981 Supp SCC 78: 1982 SCC (Cri) 146: AIR 1981 SC 1697: 1981 ALJ 965.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *R.B. Misra*, JJ. [Date of decision: 1-5-1981]

— S. 397(2) *See* Ss. 482, 341 and 397(2)
See also Ss. 482 and 397(2)

[5959] — S. 397(2) — "Interlocutory order" — Meaning of

Per Fazal Ali and Sen JJ.

If an order is not a final order, it would be an interlocutory order. An interlocutory order merely decides some points or matter essential to the progress of the suit or collateral to the issues sought but is not a final decision or judgment on the matter in issue. So that in ordinary sense of the term, an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial but which does not, however, conclude the trial at all. One of the tests is to see if the order is decided in one way, it may terminate the proceedings but if decided in another way, then the proceedings would continue. A final order finally disposes of the rights of the parties.

Per Singhal, J.

The expression "interlocutory order" has been used in S. 397(2) of the Code in a restricted sense. It 'denotes' orders of a purely interim or temporary nature which do not decide or touch the important rights or liabilities of the parties and any order which substantially affects the rights of the accused is not an interlocutory order. On that reasoning an order for the framing of a charge against the accused in this case cannot be said to be an interlocutory order. *V.C. Shukla* v. *State through CBI*, 1980 Supp SCC 92: 1980 SCC (Cri) 695: AIR 1980 SC 962: 1980 Cri LJ 690: 1980 MLJ (Cri) 664.

Bench Strength **4**. Coram: **S. Murtaza Fazal Ali**[1], **P.N. Shinghal**[2], **D.A. Desai**[3] and *A.P. Sen*[1], JJ. [Date of decision: 7-12-1979]

[5960] — S. 397(2) — "Interlocutory order" — Whether the order is final or interlocutory must be judged from the point of view of the person seeking revision

The appellant was asked under S. 94, Criminal Procedure Code, 1898 to appear in court and make her denial of possession of the document on oath and be subject to questions by the court. Revision against this order was refused on the ground that it was "interlocutory".

Held :

If the order is directed against a person who is not a party to the enquiry or trial, and he will have no opportunity to challenge it after a final order is made affecting the parties concerned, then for such a person the order could not be said to be interlocutory. An order may be conclusive with reference to the stage at which it is made, and it may also be conclusive as to a person who is not a party to the enquiry or trial, against whom it is directed. *Parmeshwari Devi* v. *State*, (1977) 1 SCC 169: 1977 SCC (Cri) 74: AIR 1977 SC 403: (1977) 2 SCR 160.

Bench Strength **3**. Coram: *P.N. Bhagwati*, *A.C. Gupta* and **P.N. Shinghal**, JJ. [Date of decision: 23-11-1976]

[5961] — S. 397(2) — Revision — Interlocutory order — *Magistrate's order of discharge of accused on the basis of police report, held, not interlocutory order and hence revision before High Court open. Haryana Land Reclamation and Development Corpn. Ltd.* v. *State of Haryana*, (1990) 3 SCC 588: 1990 SCC (Cri) 515.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *M. Fathima Beevi*, JJ. [Date of decision: 4-5-1990]

[5962] — S. 397(2) — Revision — "Interlocutory order" — Test to determine — *Whether revisional power was exercised by High Court in relation to an interlocutory order and hence revision was not maintainable — Question not raised before High Court — Need not be decided by Supreme Court*

The interdict contained in Section 397(2) is that the powers of revision shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test is this: if the contention of the petitioner who moves the superior court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate? If they would, then the order is not interlocutory in spite of the fact that it was passed during any interlocutory stage. (Para 8)

However, the objection regarding maintainability of the revision petition should have been raised before the court which invoked such a revisional jurisdiction. Inasmuch as the same was not done, that question is left undecided. (Para 11). *Bhaskar Industries Ltd.* v. *Bhiwani Denim & Apparels Ltd.*, (2001) 7 SCC 401: 2001 SCC (Cri) 1254: AIR 2001 SC 3625.

Bench Strength **2**. Coram: **K.T. Thomas** and *K.G. Balakrishnan*, JJ. [Date of decision: 27-8-2001]

Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10: AIR 1978 SC 47; V.C. Shukla v. State through CBI, 1980 Supp SCC 92: 1980 SCC (Cri) 695: AIR 1980 SC 962; Rajendra Kumar Sitaram Pande v. Uttam, (1999) 3 SCC 134: 1999 SCC (Cri) 393; K.K. Patel v. State of Gujarat, (2000) 6 SCC 195: 2001 SCC (Cri) 200, relied on

[5963] — S. 397(2) — Revision — Maintainability — Order directing issuance of process against accused — *Nature of, whether "interlocutory" — Revision against it, if maintainable — Held, said question was academic as the High Court did not interfere with the order passed by the Sessions Judge in revision on the ground that the said revision was not maintainable in view of the prescription in S. 397(2) — But, since High Court had not considered the legality of the order directing issuance of process in second complaint, keeping in view the law laid down by the Supreme Court, matter remitted to High Court to record positive findings on the relevant issues* (Paras 13 and 14). *Poonam Chand Jain* v. *Fazru*, (2004) 13 SCC 269: 2005 SCC (Cri) 190: AIR 2005 SC 38: 2005 Cri LJ 100.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 15-10-2004]

Subramanium Sethuraman v. State of Maharashtra, 2005 SCC (Cri) 242; Rajendra Kumar Sitaram Pande v. Uttam, (1999) 3 SCC 134: 1999 SCC (Cri) 393; K.K. Patel v. State of Gujarat, (2000) 6 SCC 195: 2001 SCC (Cri) 200; V.C. Shukla v. State through CBI, 1980 Supp SCC 92: 1980 SCC (Cri) 695; Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, AIR 1962 SC 876: 1962 Supp (2) SCR 297: (1962) 1 Cri LJ 770, relied on

[5964] — S. 397(2) — Revision — Maintainability — Order directing issuance of process against accused — *Nature of, whether "interlocutory" — Revision against it, if maintainable — Held, said question was academic as the High Court did not interfere with the order passed by the Sessions Judge in revision on the ground that the said revision was not maintainable in view of the prescription in S. 397(2) — But, since High Court had not considered the legality of the order directing issuance of process in second complaint, keeping in view the law laid down by the Supreme Court, matter remitted to High Court to record positive findings on the relevant issues* (Paras 13 and 14). *Poonam Chand Jain* v. *Fazru*, 2005 SCC (Cri) 190.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 15-10-2004]

Subramanium Sethuraman v. State of Maharashtra, 2005 SCC (Cri) 242; Rajendra Kumar Sitaram Pande v. Uttam, (1999) 3 SCC 134: 1999 SCC (Cri) 393; K.K. Patel v. State of Gujarat, (2000) 6 SCC 195: 2001 SCC (Cri) 200; V.C. Shukla v. State through CBI, 1980 Supp SCC 92: 1980 SCC (Cri) 695; Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, AIR 1962 SC 876: 1962 Supp (2) SCR 297: (1962) 1 Cri LJ 770, relied on

[5965] — S. 397(2) — Abetment of suicide — *Quashment of charge in revision — Held, on facts, High Court in revision was not justified in quashing the charge under S. 306 holding that the suicide was not the result of abetment by accused-respondent merely because suicide was committed 20 days after deceased was accused of stealing 10 gm of gold — Whether or not the allegation was based on truth would have to be decided on basis of evidence presented by prosecution before the Court — Penal Code, 1860, S. 306* (Para 4). *State of Haryana* v. *Surinder Kumar*, (2000) 10 SCC 337.

Bench Strength **2**. Coram: *G.T. Nanavati* and *S.N. Phukan*, JJ. [Date of decision: 15-10-1999]

[5966] — S. 397(2) — Revision not exercisable in relation to interlocutory order — Interlocutory order — Test to determine — Order passed during interim stage is not the sole test — *If the objection raised by a party is such that it would result in culminating the proceedings, then order passed on such objection would not amount to interlocutory order — Where in revision filed by appellant against Magistrate's order taking cognizance of offences alleged in respondent's complaint appellant raising an objection that the complaint was barred by limitation under S. 161 of Bombay Police Act, the objection if upheld would have the effect of terminating the entire prosecution proceedings against the appellant and hence the Magistrate's order cannot be treated as interlocutory and would not be hit by S. 397(2)*

In deciding whether an order challenged is interlocutory or not as for Section 397(2) CrPC, the sole test is not whether such order was passed during the interim stage. The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) CrPC. In the present case, if the objection raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable. (Para 11). *K.K. Patel* v. *State of Gujarat*, (2000) 6 SCC 195: 2001 SCC (Cri) 200: AIR 2000 SC 3346.

Bench Strength 2. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 12-5-2000]

Amar Nath v. State of Haryana, (1977) 4 SCC 137: 1977 SCC (Cri) 585; Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10; V.C. Shukla v. State through CBI, 1980 Supp SCC 92: 1980 SCC (Cri) 695; Rajendra Kumar Sitaram Pande v. Uttam, (1999) 3 SCC 134: 1999 SCC (Cri) 393, relied on

[5967] — S. 397(2) — Order granting police remand — Revision against — Maintainability of — *Held, said order being a purely interlocutory order, revision against it not maintainable — "Interlocutory order" — Meaning, taken note of*

In relation to a murder case, one Ms *J* surrendered herself before the court. *J* was remanded to judicial custody. On application moved by IO for grant of police remand of *J*, she was given in police custody for one day by the Magistrate concerned. During the said police custody, *J* made some confessional statements and at her instance a wristwatch and shirt of the deceased and also the nylon rope used in the commission of murder were recovered. Two weeks thereafter, *J* filed a revision petition before the High Court wherein it was prayed that the order of the Magistrate granting police custody be set aside as the same was against the principles laid down in Section 167 CrPC. Prayer was also made to pass such other and further orders as the court may deem fit and proper. In affidavit filed therein, serious allegations against the police personnel were made. The High Court disposed of the revision petition by issuing several directions. The High Court directed (*a*) that the order granting police custody in respect of *J* was ex facie illegal and, consequently, it was non est and had to be erased from the records, (*b*) that since the said order became non est, the consequent so-called confession and alleged recovery had no evidentiary value, (*c*) that the investigation conducted by the police concerned was not bona fide and false records had been created to implicate *J*, (*d*) that *J* had been wrongfully and illegally detained by the police for four days and was harassed and tortured by the police personnel, (*e*) that the Commissioner of Police must take departmental action against the police personnel who were responsible for the illegal detention and other obscene acts committed on *J*, and (*f*) that the Government of State concerned will pay a compensation of Rs 1,00,000 to *J*. A direction was also issued to the State Government to issue circulars to all the police stations that women accused/witnesses should not be brought to the police station and they must be inquired only by the women police at the place where they reside.

Allowing the appeals and setting aside the impugned judgment and order of the High Court, *Held* :

The order of remand has no bearing on the proceedings of the trial itself nor can it have any effect on the ultimate decision of the case. If an order of remand is found to be illegal, it cannot result in acquittal of the accused or in termination of proceedings. A remand order cannot affect the progress of the trial or its decision in any manner. Therefore, applying the test laid down in *Madhu Limaye case*, (1977) 4 SCC 551, it cannot be categorised even as an "intermediate order". The order is, therefore, a pure and simple interlocutory order and in view of the bar created by sub-section (2) of Section 397 CrPC, a revision against the said order is not maintainable. The High Court, therefore, erred in entertaining the revision against the order of the Metropolitan Magistrate granting police custody of the accused. (Para 13). *State* v. *N.M.T. Joy Immaculate*, (2004) 5 SCC 729: 2004 SCC (Cri) 1722: AIR 2004 SC 2282: 2004 Cri LJ 2515.

Bench Strength 3. Coram: *S. Rajendra Babu, C.J.*[1] and **Dr. Ar. Lakshmanan**[2] and **G.P. Mathur**[1], JJ. [Date of decision: 5-5-2004]

K.K. Patel v. State of Gujarat, (2000) 6 SCC 195: 2001 SCC (Cri) 200; Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10, relied on

S. Kuppuswami Rao v. R., AIR 1949 FC 1: 49 Cri LJ 625; Salaman v. Warner, (1891) 1 QB 734: 60 LJQB 624 (CA), considered

2002 MLJ (Cri) 661, reversed

[5968] — S. 397(2) — Criminal revision petition against order granting police remand — Said order already acted upon — *Held, petition to set aside that order became infructuous — High Court erred in allowing the same* (Paras 24 and 7). *State* v. *N.M.T. Joy Immaculate*, (2004) 5 SCC 729: 2004 SCC (Cri) 1722: AIR 2004 SC 2282: 2004 Cri LJ 2515.

Bench Strength 3. Coram: *S. Rajendra Babu, C.J.*[1] and **Dr. Ar. Lakshmanan**[2] and **G.P. Mathur**[1], JJ. [Date of decision: 5-5-2004]

[5969] — Ss. 397(2), 190 and 204 — Revision against an interlocutory order — Bar of — *Order taking cognizance of offence and summoning accused — Nature of, whether interlocutory — Revision against it, if maintainable — Supreme Court not expressing any opinion in this regard* (Paras 3 and 2). *S.K. Bhatt* v. *State of U.P.*, (2005) 3 SCC 634: 2005 SCC (Cri) 1183: 2005 Cri LJ 1747.

Bench Strength **2**. Coram: *R.C. Lahoti, C.J.* and *G.P. Mathur*, J. [Date of decision: 11-3-2005]

[**Ed.**: *See also* 2005 SCC (Cri) 190; 2005 SCC (Cri) 242; (2004) 7 SCC 338; (2000) 6 SCC 195; (1998) 3 SCC 594; (1992) 1 SCC 217]

[5970] — Ss. 397(2) and 204 — Revision — Interlocutory order — What is not — Order of Magistrate directing issuance of — *Process is not an interlocutory order and, therefore, is amenable to revisional jurisdiction*

It would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same. *Rajendra Kumar Sitaram Pande* v. *Uttam*, (1999) 3 SCC 134: 1999 SCC (Cri) 393: AIR 1999 SC 1028: 1999 Cri LJ 1620.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *S. Rajendra Babu*, JJ. [Date of decision: 11-2-1999]

K.M. Mathew v. State of Kerala, (1992) 1 SCC 217: 1992 SCC (Cri) 88; Amar Nath v. State of Haryana, (1977) 4 SCC 137: 1977 SCC (Cri) 585; Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10; V.C. Shukla v. State, 1980 Supp SCC 92: 1980 SCC (Cri) 695, followed

[5971] — Ss. 397(2), 401, 91 and 311 — Orders issued by trial court on application filed under Ss. 91 and 311 — Nature of — *Held, orders are interlocutory in nature — Revision of such orders by High Court, further held, is barred under S. 397(2)* (Para 5). *Sethuraman* v. *Rajamanickam*, (2009) 5 SCC 153.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 18-3-2009]

[5972] — Ss. 397(2) & 482 — Expression "interlocutory order" — Object and meaning of — *Magistrate accepting police report and discharging accused — Dismissal thereafter by Magistrate of private complaint against the same accused — Sessions Judge ordering further inquiry in revision — Magistrate issuing summons to accused automatically — Not an interlocutory order — Can be revised by High Court either under S. 397 or S. 482*

The concept of interlocutory order *qua* the revisional jurisdiction of the High Court was completely foreign to the earlier 1898 Code and the 1955 Amendment to that Code. Under the 1955 Amendment widest possible powers of revision had been given to the High Court under Ss. 435 and 439 of the 1898 Code and the High Court could examine the propriety of any order, whether final or interlocutory, passed by any subordinate court in any matter. In the 1973 Code S. 397(2) was incorporated with the avowed purpose of cutting out delays and ensuring that the accused persons got a fair trial without much delay and the procedure was not made complicated. Section 397(2) provided that the powers of revision shall not be exercised in relation to any interlocutory order. The paramount object in inserting this new provision was to safeguard the interests of the accused.

The term "interlocutory order" in S. 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in S. 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under S. 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused on a particular aspect of the trial cannot be said to be interlocutory so as to be outside the purview of the revisional jurisdiction of the High Court.

In the present case, a complaint was made to the police that the appellants had taken part in a murder. The police after investigation had submitted their final report under S. 173 of the Code stating that no case was at all made out against them. The report was accepted by the judicial Magistrate, who set the appellants at liberty, and a revision against that order to the Sessions Judge by the complainant had also failed. Thus, the appellants by virtue of the order of the Judicial Magistrate as affirmed by the Sessions Judge acquired a valuable right of not being put on trial unless a proper order was made against them. At that stage, the complainant made a private complaint before the Judicial Magistrate which was also dismissed on merits. The Sessions Judge in revision, however, set aside that order dismissing the complaint and ordered further inquiry. The Magistrate on receiving the order of the Sessions Judge summoned the appellants straightaway, which meant that the appellants were to be put on trial. The order of the Magistrate summoning the appellants was undoubtedly a matter of moment to the appellants and a valuable right of the appellants had been taken away by the Magistrate passing an order in a mechanical fashion without applying his mind. It is difficult to hold that such an order summoning the appellants was merely an interlocutory order, and the High Court erred in holding that it could not be revised under S. 397 or S. 482. A revision against that order was fully competent under S. 397(1) or under S. 482 of the 1973 Code because the scope of these two sections in a matter of this kind is more or less the same. *Amar Nath* v. *State of Haryana*, (1977) 4 SCC 137: 1977 SCC (Cri) 585: AIR 1977 SC 2185: 1977 Cri LJ 1891: 1977 MLJ (Cri) 561.

Bench Strength **2**. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 29-7-1977]

[5973] — Ss. 397(2) and 482 — No power in High Court to revise "interlocutory" order — *Inherent powers cannot be exercised when there is an express bar in a provision of the Code*

A harmonious construction of Ss. 397 and 482, Criminal Procedure Code, would lead to the irresistible conclusion that where a particular order is expressly barred under S. 397(2) and cannot be subject to revision by the High Court then, to such a case, the provisions of S. 482 dealing with the inherent powers of the High Court would not apply.

The inherent powers of the Court can ordinarily be exercised when there is no express provision on the subject-matter. Where, however, there is an express provision barring a particular remedy the Court cannot resort to the exercise of inherent powers. *Amar Nath* v. *State of Haryana*, (1977) 4 SCC 137: 1977 SCC (Cri) 585: AIR 1977 SC 2185: 1977 Cri LJ 1891: 1977 MLJ (Cri) 561.

Bench Strength **2**. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 29-7-1977]

See also (1977) 4 SCC 551

[5974] — Ss. 397(2) and 482 — Revisional power and inherent power — *Inherent power may be invoked for quashing interlocutory order even though revision is prohibited — "Interlocutory order" — Meaning of — Criminal Procedure Code, 1898, Ss. 435 & 561-A*

The 1973 Code puts a bar on the power of revision in order to facilitate expeditious disposal of cases. But in S. 482 it was provided that nothing in the Code, which would include S. 397(2) also, shall be deemed to limit or affect the inherent powers of the High Court. On a harmonious construction it should be held that the bar provided in S. 397(2) operates only in exercise of the revisional power of the High Court, meaning thereby, that the High Court will have no power of revision in relation to any interlocutory order. But in such a case, the inherent power will come into play there being no other provision in the Code for the redress of the grievance of the aggrieved party. In case the impugned order clearly brings out a situation which is an abuse of the process of the court, or for the purpose of securing the ends of justice interference of the High Court is absolutely necessary, then nothing contained in S. 397(2) can limit or affect the exercise of the inherent power of the High Court. Such cases would necessarily be few and far between. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. The present case would undoubtedly fall for exercise of the power of the High Court in accordance with S. 482 of the 1973 Code even assuming that the invoking of the revisional power of the High Court is impermissible.

The order of the Sessions Court in the present case is, however, not an interlocutory order pure and simple. The test laid down in *S. Kuppuswami Rao* v. *The King*, (1947 FCR 180: AIR 1949 FC 1) was that if the objection of the accused succeeded the proceeding could have ended but not vice-versa and that the order can be said to be a final order only if in either event the action will be determined. On this test an order taking cognizance of an offence by a court whether it was done illegally or without jurisdiction will not be a final order and hence would be an interlocutory order. The High Court in such a case can certainly exercise its inherent power but it is wrong to hold that the test in *Kuppuswami Rao's case*, that what is not a final order must always be an interlocutory order, is neither warranted nor justified. It is not the intention of the Legislature when it retains the revisional powers of the High Court that only those orders would be revisable which are passed on the final determination of the action but which are not appealable under the Code. The Legislature on the one hand has kept intact the revisional power of the High Court and on the other put a bar on the exercise of that power in relation to an interlocutory order. The real intention of the Legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of the proceeding which may not be final but yet it may not be an interlocutory order pure and simple. But a rule of harmonious construction of sub-sections (1) and (2) of S. 397 it must be held that the bar in sub-section (2) is not meant to be attracted to such kinds of intermediate orders. It is neither advisable nor possible to make a catalogue of orders to demonstrate which kinds of orders would be interlocutory and which would be final and then prepare an exhaustive list of those types of orders which would fall between the two. *Madhu Limaye* v. *State of Maharashtra*, (1977) 4 SCC 551: 1978 SCC (Cri) 10: AIR 1978 SC 47: 1978 Cri LJ 165.

Bench Strength **3**. Coram: *P.K. Goswami*, **N.L. Untwalia** and *D.A. Desai*, JJ. [Date of decision: 31-10-1977]

Amar Nath v. State of Haryana, (1977) 4 SCC 137: 1977 SCC (Cri) 585, explained

— S. 397(3) *See also* Ss. 482 and 397(3)

[5975] — S. 397(3) — Revision application against order of Magistrate cannot be heard both by Sessions Court and the High Court — *Sessions Judge rejecting revision — Further revision to High Court, held, barred — Such revision application cannot also be sustained under Art. 227 of the Constitution more so after the 42nd Amendment*

The object of S. 397(3) is clear. It is to prevent a multiple exercise of revisional powers and to secure early finality to orders. Any person aggrieved by an order of an inferior Criminal Court is given the option to approach either the Sessions Judge or the High Court and once he exercises the option he is precluded from invoking the revisional jurisdiction of the other authority. The language of S. 397(3) is clear and peremptory and it does not admit of any other interpretation. It is not permissible to regard the revision application before the High Court as one directed against the order of the Sessions Judge instead of that of the Magistrate. What cannot be done directly cannot be done indirectly. *Jagir Singh* v. *Ranbir Singh*, (1979) 1 SCC 560: 1979 SCC (Cri) 348: AIR 1979 SC 381: 1979 Cri LJ 318: (1979) 16 ACC 74.

Bench Strength **2**. Coram: *Jaswant Singh* and **O. Chinnappa Reddy**, JJ. [Date of decision: 8-11-1978]

[5976] — Ss. 397(3), 399 & 482 — Second revision application, after dismissal of the first one by Sessions Court — *Held, cannot be entertained by High Court in exercise of its inherent power under S. 482. Dharampal* v. *Ramshri*, (1993) 1 SCC 435: 1993 SCC (Cri) 333: AIR 1993 SC 1361: (1993) 1 Crimes 304: (1993) 1 An WR 60 (SC): (1993) 1 BLJR 361.

Bench Strength **2**. Coram: **P.B. Sawant** and *R.M. Sahai*, JJ. [Date of decision: 7-1-1993]

Overruled in (1997) 4 SCC 241

[5977] — Ss. 397(3) and 482 — Relative scope — Prohibition of second revision under S. 397(3), held, does not completely bar High Court's power to entertain a revision petition under S. 482 — *Said power under S. 482 can be invoked in appropriate cases as bar under S. 397(3) can be lifted in special cases*

The object of the introduction of Section 397(3) is to prevent a second revision so as to avoid frivolous litigation, but, at the same time, the doors to the High Court to a litigant who had lost before the Sessions Judge are not completely closed and in special cases the bar under Section 397(3) can be lifted. The power of the High Court to entertain a petition under Section 482 is not subject to the prohibition under Section 397(3) and is capable of being invoked in appropriate cases. The contention that there is a complete bar under Section 397(3) debarring the High Court from entertaining an application under Section 482 thereof is rejected. (Para 24). *Shakuntala Devi* v. *Chamru Mahto*, (2009) 3 SCC 310.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 10-2-2009]

Krishnan v. Krishnaveni, (1997) 4 SCC 241: 1997 SCC (Cri) 544, followed

[5978] — Ss. 397(3), 401, 482 and 125 & 126(2) — Second revision invoking inherent powers of High Court under S. 482 after the dismissal of first one by Sessions Court — *Sessions Court dismissing appellant's revision petition filed against the dismissal by the Magistrate of application under S. 126(2) against ex parte maintenance order — Further revision invoking inherent powers of High Court — Held, the instant case was such where the High Court ought not to have dismissed the said revision solely on the technical ground of non-maintainability but should have gone into the merits so as to find out if it was a fit case calling for interference of the High Court under S. 401 r/w S. 482 — Revision application restored to file* (Para 5). *Prasanta Kumar Dey* v. *State of W.B.*, (2002) 9 SCC 630: 2003 SCC (Cri) 1242: AIR 2003 SC 4412.

Bench Strength **2**. Coram: *R.C. Lahoti* and *Brijesh Kumar*, JJ. [Date of decision: 4-12-2000]

Krishnan v. Krishnaveni, (1997) 4 SCC 241: 1997 SCC (Cri) 544, followed

[5979] — Ss. 397(3), 401, 482 and 483 — Second revision before the High Court after dismissal of first one by the Court of Sessions is barred under S. 397(3) — *However, inherent power of the High Court is still available under S. 482 — But such inherent power must be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings — Object and scope of S. 483*

Though second revision before the High Court under sub-section (1) of Section 397 is prohibited by sub-section (3) thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below.

Section 483 enjoins upon every High Court to so exercise its continuous superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an *expeditious and proper disposal of cases* by such Magistrates. The power of the High Court of continuous supervisory jurisdiction is of paramount importance to examine the correctness, legality, or propriety of any finding, sentence or order, recorded or passed as also regularity of the proceedings of all inferior criminal courts.

Ordinarily, when revision has been barred by Section 397(3) of the Code, a person — accused/complainant — cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. The High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. It may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when trial is conducted expeditiously. *Krishnan* v. *Krishnaveni*, (1997) 4 SCC 241: 1997 SCC (Cri) 544: AIR 1997 SC 987: 1997 Cri LJ 1519: (1997) 1 Mah LJ 509.

Bench Strength 3. Coram: **K. Ramaswamy**, *S. Saghir Ahmad* and *G.B. Pattanaik*, JJ. [Date of decision: 24-1-1997]

Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10; V.C. Shukla v. State through CBI, 1980 Supp SCC 92: 1980 SCC (Cri) 695, followed

Dharampal v. Ramshri, (1993) 1 SCC 435: 1993 SCC (Cri) 333, overruled

Rajan Kumar Machananda v. State of Karnataka, 1990 Supp SCC 132: 1990 SCC (Cri) 537; Simrikhia v. Dolley Mukherjee, (1990) 2 SCC 437: 1990 SCC (Cri) 327; Deepti v. Akhil Rai, (1995) 5 SCC 751: 1995 SCC (Cri) 1020, distinguished

See also Asghar Khan v. State of U.P., 1981 Supp SCC 78; Ganesh Narayan Hegde v. S. Bangarappa, (1995) 4 SCC 41

[5980] — Ss. 397(3) and 401 — Bar on simultaneous revisional application to the High Court and Court of Session — *Held, not applicable when the State seeks revision under S. 401 — Expression "any person" in S. 397(3) includes juridical persons but does not include State — Penal Code, 1860, S. 11*

Under sub-section (3) of Section 397, revisional jurisdiction can be invoked by "any person" but the Code has not defined the word "person". However, under Section 11 of the IPC, "person" includes any company or association or body of persons, whether incorporated or not. The word "person" would, therefore, include not only natural person but also juridical person in whatever form designated and whether incorporated or not. By implication, the State stands excluded from the purview of the word "person" for the purpose of limiting its right to avail the revisional power of the High Court under Section 397(1) of the Code for the reason that the State, being the prosecutor of the offender, is enjoined to conduct prosecution on behalf of the society and to take such remedial steps as it deems proper. Besides, in view of the principle laid down in the maxim *ex debito justitiae*, i.e., in accordance with the requirements of justice, the prohibition under Section 397(3) on revisional power given to the High Court would not apply when the State seeks revision under Section 401. So the State is not prohibited to avail the revisional power of the High Court under Section 397(1) read with Section 401 of the Code. *Krishnan* v. *Krishnaveni*, (1997) 4 SCC 241: 1997 SCC (Cri) 544: AIR 1997 SC 987: 1997 Cri LJ 1519: (1997) 1 Mah LJ 509.

Bench Strength 3. Coram: **K. Ramaswamy**, *S. Saghir Ahmad* and *G.B. Pattanaik*, JJ. [Date of decision: 24-1-1997]

[5981] — Ss. 397(3) and 482 — Bar of second revision after dismissal of first one by the Sessions Court — Inherent powers of High Court cannot be utilised as a substitute for second revision

In the present case, the High Court minutely examined the evidence and came to the conclusion that the wife was living separately without any reasonable cause and that she was able to maintain herself. All this the High Court did in exercise of its powers under Section 482 of the Code which powers are not a substitute for a second revision under sub-section (3) of Section 397 of the Code. The very fact that the inherent powers conferred on the High Court are vast would mean that these are circumscribed and could be invoked only on certain set principles. (Para 11). *Rajathi* v. *C. Ganesan*, (1999) 6 SCC 326: 1999 SCC (Cri) 1118: AIR 1999 SC 2374: 1999 Cri LJ 3668.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **D.P. Wadhwa**, JJ. [Date of decision: 22-7-1999]

[5982] — Ss. 397(3) and 482 — Bar of S. 397(3) cannot be circumvented by invoking inherent jurisdiction of the High Court

Where a revision petition is dismissed by the Sessions Court, a second revision would not lie to the High Court. Merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked the statutory bar could not have been overcome. If that was to be permitted every revision application facing the bar of S. 397(3) of the Code could be labelled as one under S. 482. *Rajan Kumar Machananda* v. *State of Karnataka*, 1990 Supp SCC 132: 1990 SCC (Cri) 537.

Bench Strength **2**. Coram: *Ranganath Misra* and *S. Ranganathan*, JJ. [Date of decision: 23-11-1987]

[5983] — Ss. 397(3) and 482 — Second revision before High Court after the dismissal of first one by Sessions Court — Bar in respect of — Remedy under S. 482 — Availability of — Grounds for — If on facts, S. 482 rightly invoked — *Held, in view of the prohibition under S. 397(3), the complainant or the accused cannot be allowed to take recourse to a second revision, but High Court can entertain a petition under S. 482 when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court — Sessions Court in first revision confirming the discharge of accused by Magistrate — High Court in further revision however exercising power under S. 482 and setting aside the said order — Allegation in complaint was of a civil nature and no criminal case was made out — Complainant had also initiated arbitration proceedings — Considering the facts, held, High Court was not justified in exercising its inherent power under S. 482 — There was no miscarriage of justice warranting interference by High Court*

The appellant and the co-accused Z were partners in a firm. They were running a rice mill. Under the policy of the State Govt., the respondent Corporation entrusted paddy to the said firm for dehusking. There was an agreement between the firm and the Corporation in terms whereof the firm was to supply advance rice to the Corporation. As per the complaint of the Corporation, the firm failed to supply the advance paddy due to the Corporation. According to the Corporation, about 1440 tons of rice was outstanding against the firm. Based on the complaint of the Corporation, a case was registered and a report was filed before the Judicial Magistrate. The appellant filed an application for discharge alleging that he was only a sleeping partner and the entire business of the firm was being conducted by Z. The Judicial Magistrate was of the view that the allegation contained in the complaint was of a civil nature and no criminal case was made out. It also observed that there was no *prima facie* case to show that the paddy was supplied to the accused and that there was shortage of rice supplied to the Corporation. The order of the Judicial Magistrate was challenged by the Corporation in a revision filed before the Court of Sessions Judge. The Sessions Judge, after elaborately considering the question raised, upheld the order passed by the Judicial Magistrate. The Sessions Judge noticed the fact that the Corporation had initiated arbitration proceedings against the firm and had also filed a complaint under Section 138 of the Negotiable Instruments Act and that the filing of the present complaint alleging commission of offences punishable under Sections 406 and 428 IPC was an abuse of the process of the court. The Corporation filed a further revision before the High Court and by the impugned order the learned Single Judge set aside the orders passed by the Judicial Magistrate and the Sessions Judge. Hence, the present appeals by the accused.

Allowing the appeals, the Supreme Court held as above. *Kailash Verma* v. *Punjab State Civil Supplies Corpn.*, (2005) 2 SCC 571: 2005 SCC (Cri) 538.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 18-1-2005]

Krishnan v. Krishnaveni, (1997) 4 SCC 241: 1997 SCC (Cri) 544; Rajathi v. C. Ganesan, (1999) 6 SCC 326: 1999 SCC (Cri) 1118; State v. Navjot Sandhu, (2003) 6 SCC 641: 2003 SCC (Cri) 1545; Bal Kishan Das v. P.C. Nayar, 1991 Supp (2) SCC 412: 1991 SCC (Cri) 1055, followed

[5984] — Ss. 397(3) and 125 — Maintainability of revision petition before High Court — *Husband filing revision petition against Judicial Magistrate's order for grant of maintenance under S. 125 to wife while wife filing revision petition challenging only quantum of maintenance — Sessions Judge allowing husband's petition and dismissing that of wife — Held, excepting the question of quantum of maintenance, wife's revision petition before High Court against order of Sessions Judge not barred under S. 397(3). Bakulabai* v. *Gangaram*, (1988) 1 SCC 537: 1988 SCC (Cri) 189: (1988) 1 KLT 413: 1988 Mah LJ 330.

Bench Strength **2**. Coram: *Ranganath Misra* and **L.M. Sharma**, JJ. [Date of decision: 27-1-1988]

— Ss. 397/401 *See* Ss. 227, 228(1)(b) and 397/401

See also Ss. 482 and 397/401

— S. 398 *See also* S. 436, Criminal Procedure Code, 1898, p. 1236 in Vol. 2

— S. 398 *See* Ss. 319, 245 and 398

See also Ss. 401, 397 and 398

See also Ss. 403, 397 to 399 and 401

[5985] — S. 398 — Inquiry directed by Supreme Court — Procedure to be followed — *Scope for cross-examination — CPC, 1908, Or. 26 Rr. 10 and 16 to 18 — Evidence Act, 1872, S. 137 — Constitution of India — Art. 136*

Zahira Habibullah Sheikh, who was projected as the star witness in the *Best Bakery case* made a grievance that she was intimidated, threatened and coerced to depart from the truth and to make a statement in the court which did not reflect the reality. The trial court on the basis of the statements made by the witnesses in the court directed acquittal of the accused persons. An application under Section 391, CrPC highlighting the necessity for accepting additional evidence was filed before the Gujarat High Court. The foundation was the statement made by Zahira. The High Court did not accept the prayer and that is why appeals came to be filed in the Supreme Court. By its judgment in *Zahira (1) case*, (2004) 4 SCC 158, the Supreme Court in the exceptional circumstances of the case directed re-trial of the case outside the State of Gujarat, in the State of Maharashtra. While the said re-trial was on before a court in Maharashtra pursuant to the Supreme Court's direction, Zahira gave a press statement in the presence of some government officials that what she had stated before the trial court in Gujarat earlier was correct. A petition was filed before the Supreme Court alleging that Zahira's statement was nothing but contempt of the Supreme Court. At a press conference held on 3-11-2004, a few days before the scheduled appearance of the witnesses in the said re-trial she disowned the statements made in the Supreme Court, and before various bodies like the National Human Rights Commission. While considering the said petition filed, by orders passed in *Zahira (3) case*, (2005) 4 SCC 292 and *Zahira (4) case*, (2005) 4 SCC 294, the Supreme Court inter alia directed the Registrar General of the Supreme Court to conduct an inquiry into the matter and submit a report to the Supreme Court within three months. The Registrar General inter alia was to indicate in the report (*a*) if Zahira Habibullah Sheikh was in any manner threatened, coerced, induced and/or in any manner pressurised to depose/make statement(s) in any particular way, by any person to persons, and (*b*) if the answer to (*a*) was in the affirmative, who the person/persons was (or) were. The Court further directed Zahira inter alia to file an affidavit indicating details and sources of her own and her family members' bank accounts, advances, other deposits, amounts invested in movable or immovable properties and advances or security deposits, along with the affidavit to be filed before the Registrar General of the Supreme Court.

Disposing of the applications in the terms below,

Held:

Much has been made by Zahira about some observations made by the inquiry officer in his report. A bare reading of the observations makes it clear that what is being submitted by Zahira is by reading observations out of context. On a bare perusal of the proceedings of the enquiry it is clear that the procedure adopted was quite transparent. The proceedings were conducted in the presence of counsel for the parties and/or the parties themselves. After the questions were asked by the inquiry officer, the counsel and the parties were asked if any further questions were to be asked, and as the records reveal, whenever any question was suggested it was asked by the inquiry officer. It is alleged that scope for "cross-examination" was not given. That is really of no consequence. What questions in the "cross-examination" could have been put by counsel were asked by the inquiry officer whenever any suggestion was made in that regard. If a party did not suggest any question to be put to a witness by the inquiry officer, it is not open for him or her to say that the opportunity for "cross-examination" was not given. (Paras 14 and 15). *Zahira Habibullah Sheikh (5)* v. *State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367: (2006) 2 KLT 350: 2006 Cri LJ 1694: (2006) 2 Guj LR 1493.

Bench Strength **2**. Coram: **Arijit Pasayat** and *H.K. Sema*, JJ. [Date of decision: 8-3-2006]

[5986] — S. 398 — 'Discharge' — Meaning of — Discharge has to be in substance and effect though there is no formal order — *Besides, here it does not mean absolute discharge*

The word "discharge" in S. 398 means discharge of an offence relating to the charge within the meaning of Ss. 227, 239, 245 and 249. Refusing to proceed further after issue of process is discharge. The discharge has to be in substance and effect though there is no formal order. The language of the section does not indicate that the word "discharge" should be given a restricted meaning in the sense of absolute discharge where the accused is set at liberty after examination of the whole case. *Sohan Lal* v. *State of Rajasthan*, (1990) 4 SCC 580: 1990 SCC (Cri) 650: AIR 1990 SC 2158: (1990) 3 Crimes 120.

Bench Strength **2**. Coram: **K.N. Saikia** and *K. Ramaswamy*, JJ. [Date of decision: 21-8-1990]

[5987] — Ss. 398 and 397 — Delay — Inordinate delay of 1233 days in filing the SLP — *SLP dismissed in absence of any satisfactory explanation therefor — Negotiable Instruments Act, 1881, S. 138 — Constitution of India — Art. 136. Baldev Raj Taneja* v. *Bimal Kumar Kejriwal (HUF)*, (2001) 9 SCC 67.

Bench Strength **2**. Coram: *D.P. Mohapatra* and *K.G. Balakrishnan*, JJ. [Date of decision: 14-9-2001]

— S. 399 *See also* Ss. 437 and 438, Criminal Procedure Code, 1898, pp. 1236, 1238 et seq. in Vol. 2

— S. 399 *See* Ss. 227, 239, 399 and 401

See also Ss. 229, 241, Ch. XX-A (Ss. 265-A to 265-L) and 368, 399 and 401

See also Ss. 245, 397, 399 and 482

See also Ss. 386, 401 and 399

See also S. 397, above

See also Ss. 397, 399 and 401

See also Ss. 397(3), 399 & 482

See also Ss. 401 and 399

See also Ss. 401 & 399 and 354 & 235

See also Ss. 401, 399 & 397

See also Ss. 401(3), 397, 399 and 386

See also Ss. 403, 397 to 399 and 401

See also Ss. 464 & 215, 386, 399 and 401

See also Ss. 464, 386, 401 and 399

See also Ss. 482, 245, 397 and 399

See also Ss. 482, 397 and 399

[5988] — Ss. 399 and 125 — Revision — Estoppel — If on facts applicable — *Trial court directing payment of a certain amount on account of meher — Revision petition filed for enhancing the amount — Revisionist's counsel having already accepted the amount awarded by the trial court but the revisionist not having received the same — In such circumstances, the revisionist, held, not estopped from challenging the trial court's order — Evidence Act, 1872, S. 115 — Dissolution of Muslim Marriages Act, 1939, S. 5 — Muslim Women (Protection of Rights on Divorce) Act, 1986, S. 3* (Paras 4 and 3). *Selina Akhtar* v. *Matiur Rahaman*, (2006) 12 SCC 281: (2007) 1 SCC (Cri) 575.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 13-7-2005]

[5989] — Ss. 399 and 204 — Sessions Judge's power of revision — Scope of, at the stage of issuance of summons by Magistrate — *On the evidence Judicial Magistrate making out a prima facie case and issuing summons — Sessions Court entering into the correctness or otherwise of the evidence recorded by the Magistrate, held, was not justified* (Paras 57 and 58). *Bholu Ram* v. *State of Punjab*, (2008) 9 SCC 140: (2008) 3 SCC (Cri) 710.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 29-8-2008]

[5990] — Ss. 399 to 401 — Revision — Reasoned order/Speaking order — Necessity of — *In a case pertaining to allegation of harassment for dowry, High Court partly allowing revision by complainant under S. 401 on presumptuous conclusions — Impropriety — On facts, revisional court below passing a well-reasoned order — High Court while interfering with such conclusions arrived at on facts, held, ought to have indicated reasons necessitating interference — That was not done and on the contrary on presumptuous conclusions order of revisional court below was partly set aside — Reasons, held, introduce clarity in an order — On plainest consideration of justice, High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind — Absence of reasons rendered High Court's judgment unsustainable — Penal Code, 1860, Ss. 498-A, 406, 323, 506, 148 and 149 — Dowry Prohi-*

bition Act, 1961, S. 2 (Paras 2 to 4, 9 and 10). *Ran Singh* v. *State of Haryana*, (2008) 4 SCC 70: (2008) 2 SCC (Cri) 182: AIR 2008 SC 1294: 2008 Cri LJ 1941: (2008) 1 KLT 803.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 30-1-2008]

State of Punjab v. Bhag Singh, (2004) 1 SCC 547, relied on

[5991] — S. 399 — Interlocutory proceedings before Sessions Court in revision — *Observations regarding appreciation of evidence made by Sessions Court must be considered to be for limited purpose of those proceedings only — Trial court must decide the case on its own assessments. Rajbir Singh* v. *Rajbir Singh*, 1986 Supp SCC 736: 1987 SCC (Cri) 226.

Bench Strength **2**. Coram: *M.P. Thakkar* and *K.N. Singh*, JJ. [Date of decision: 15-10-1986]

[5992] — S. 399 — Revision before Sessions Court — New plea — Additional ground when can be raised in revision — *When revision petitioners (appellants) were challenging the very issuance of process against them, they can raise the additional ground that the complaint against them was barred under S. 161(1) of Bombay Police Act having been filed after the period prescribed therein, even if they had not raised that ground before the trial court*

Merely because the appellants did not raise the legal points based on Section 161 of the Bombay Police Act before the Metropolitan Magistrate, they are not estopped from canvassing on that additional ground also before the Sessions Court in revision as they were challenging therein the very issuance of process against them. The position may be different if the Sessions Judge had avoided dealing with the contention based on Section 161(1) of the said Act on the premise that it could be raised before the trial court. But when the Sessions Judge had opted to go into that question and rendered a decision on it on merits it is difficult to concur with the reasoning of the High Court that the said aspect would not be gone into by the High Court as the same was not raised before the trial court. (Para 10). *K.K. Patel* v. *State of Gujarat*, (2000) 6 SCC 195: 2001 SCC (Cri) 200: AIR 2000 SC 3346.

Bench Strength **2**. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 12-5-2000]

[5993] — Ss. 399, 401 and 354 — Need for findings on/examination of all issues raised — Need for findings on all contentions raised — *High Court not dealing with all contentions raised by appellants in writ petition and not considering grounds raised in review petition — Unsustainability — Held, High Court ought to have disposed of writ petition dealing with all contentions raised in view of reliefs sought for in writ petition — Matter remitted for disposal afresh — CPC, 1908, Or. 20 Rr. 5 and 4(2), Or. 41 R. 31, Or. 6 R. 1 and Or. 14 R. 2. Mota Mandir Trust* v. *State of Maharashtra*, (2006) 9 SCC 379.

Bench Strength **2**. Coram: *Shivaraj V. Patil* and *B.N. Srikrishna*, JJ. [Date of decision: 20-9-2004]

[**Ed.**: *See also* Art. 136, '(g)(7)(ix)3. Remand — Issues/contentions of fact or law left undecided or erroneously decided', and '(g)(7)(ix)2. Remand — Non-application of mind', pp. 816 et seq. in **Vol. 8** and Art. 226, '(f)(2)(vi) Pleas — Consideration of — Findings on', pp. 842 et seq. in **Vol. 9**, *Complete Digest of Supreme Court Cases*, 2nd Edn.]

[5994] — Ss. 399, 401 and 354 — Need for findings on/examination of all issues raised — Need for findings on/examination of all issues raised — *High Court instead of examining questions involved, by cryptic order dismissing revision petition — Impermissibility — Held, matter required deeper consideration — Hence matter remitted for disposal afresh — Constitution of India — Art.136 — CPC, 1908, Or. 20 Rr. 5 and 4(2), Or. 41 R. 31, Or. 6 R. 1 and Or. 14 R. 2. Rajender Saini* v. *State of NCT of Delhi*, (2006) 9 SCC 380.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 17-9-2004]

[5995] — Ss. 399, 401 and 354 — Need for findings on/examination of all issues raised — Findings — Need for findings on all contentions raised — *Points of law raised by appellant not considered by High Court, and interim order passed without even expressing a prima facie view thereon — Unsustainability — Matter remitted for disposal afresh — CPC, 1908, Or. 20 Rr. 5 and 4(2), Or. 41 R. 31, Or. 6 R. 1 and Or. 14 R. 2. Jawahar Novodaya Vidyalaya* v. *D.C. Pant*, (2004) 13 SCC 39.

Bench Strength **2**. Coram: *Ruma Pal* and *Arun Kumar*, JJ. [Date of decision: 13-8-2004]

[**Ed.**: *See also* Art. 136, '(g)(7)(ix)3. Remand — Issues/contentions of fact or law left undecided or erroneously decided', '(g)(7)(ix)2. Remand — Non-application of mind', pp. 816 et seq. in **Vol. 8**, *Complete Digest of Supreme Court Cases*, 2nd Edn.]

— S. 399(3) *See* Ss. 482 & 399(3) and 245(1) & 246(1)

See also Ss. 484(2)(a) and 399(3)\

— S. 400 *See also* S. 438, Criminal Procedure Code, 1898, p. 1238 in Vol. 2

— S. 400 *See also* Ss. 399 to 401

[5996] — S. 400 — Land sold by bhumidhars/landholders to appellants after its acquisition by Govt. under Land Acquisition Act — *Complaint filed by appellant under Ss. 420/448/34 IPC — Cognisance taken and charges framed under those* *sections by trial court — But revision preferred by the landholders allowed by Addl. Sessions Judge and his decision upheld by High Court without giving any reasons — Held, it was not a fit case for exercising the revisional jurisdiction to quash the charges which had been framed — Prima facie a case was made out for filing the complaint since what was material was that at the time when the land was sold the landholders had no right, title or interest to sell the land in view of the acquisition and whether the sellers were bhumidhars or not was not material — Hence judgments of Addl. Sessions Judge and High Court set aside and the order of trial court restored — Penal Code, 1860, Ss. 420/448/34.* Mohan Singh v. *State of Delhi*, (2000) 10 SCC 239.

Bench Strength **2**. Coram: *B.N. Kirpal* and *S. Rajendra Babu*, JJ. [Date of decision: 29-10-1999]

— S. 401 *See also* S. 439, Criminal Procedure Code, 1898, pp. 1238 et seq. in Vol. 2

— S. 401 *See* Ss. 125, 397 and 401
See also Ss. 145, 146 and 397 & 401
See also Ss. 156, 157, 465, 401 and 397
See also Ss. 173(8) and 401
See also Ss. 190(1)(b) & 204, 200, 156(3), 468 and 401
See also Ss. 227, 228 and 401
See also Ss. 227 & 228, 401 & 397 and 482
See also Ss. 227, 239, 399 and 401
See also Ss. 228, 227 and 401
See also Ss. 229, 241, Ch. XX-A (Ss. 265-A to 265-L) and 368, 399 and 401
See also Ss. 239 to 249 and 401 & 300
See also Ss. 246(1) and 401
See also Ss. 313, 374, 386 and 401
See also Ss. 319 and 401
See also Ss. 321, 397 and 401
See also Ss. 374, 384, 386, 401 & 397
See also Ss. 374, 386 and 401
See also Ss. 374, 393 & 401
See also Ss. 377(2), 24(8) and 401
See also Ss. 378(1) & (4) and 401
See also Ss. 386, 401 and 247
See also Ss. 386, 401 and 399
See also Ss. 389, 397 and 401
See also Ss. 397, 377 & 401
See also Ss. 397, 399 and 401
See also Ss. 397 & 401
See also Ss. 397, 401, 91, 311 and 200
See also Ss. 397 & 401 and Ss. 156(3) & 200
See also Ss. 397, 401, 204 and 199(2)
See also Ss. 397, 401 and 321
See also Ss. 397, 401 and 353
See also Ss. 397, 401, 374, 377 and 386
See also Ss. 397, 401 and 378
See also Ss. 397 & 401, 386 and 313
See also Ss. 397(2), 401, 91 and 311
See also Ss. 397(3) and 401
See also Ss. 397(3), 401, 482 and 125 & 126(2)
See also Ss. 397(3), 401, 482 and 483
See also Ss. 399 to 401
See also Ss. 399, 401 and 354
See also Ss. 403, 397 to 399 and 401
See also Ss. 406, 407, 401 and 386
See also Ss. 437(1) first proviso and 401
See also Ss. 464 & 215, 386, 399 and 401
See also Ss. 464, 386, 401 and 399
See also Ss. 465 and 401
See also Ss. 473 and 401
See also Ss. 482, 397, 166-A and 401
See also Ss. 482, 397 and 401
See also Ss. 482, 397, 401, 239, 240 and 173
See also Ss. 482 & 401

[5997] — S. 401 — Revisional jurisdiction of High Court — Object and scope

The object of the revisional jurisdiction under S. 401 is to confer power upon superior criminal courts — a kind of paternal or supervisory jurisdiction — in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted, on the one hand, or on the other hand in some undeserved hardship to individuals. The controlling power of the High Court is discretionary and it must be exercised in the interest of justice with regard to all facts and circumstances of each particular case, anxious attention being given to the said facts and circumstances which vary greatly from case to case. *Janata Dal* v. *H.S. Chowdhary*, (1992) 4 SCC 305: 1993 SCC (Cri) 36: AIR 1993 SC 892.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 28-8-1992]

Followed in Johar v. Mangal Prasad, (2008) 3 SCC 423

[5998] — S. 401 — Revisional jurisdiction of High Court — Nature and scope of — Cannot be equated with appellate jurisdiction — Reappreciation of evidence not permissible unless it has resulted in gross miscarriage of justice — *On facts, High Court exceeded its* *jurisdiction in interfering with the conviction by reappreciating the evidence and by not examining several items of evidence relied upon by Sessions Judge in confirming the conviction — Penal Code, 1860, Ss. 408, 468 and 477-A*

In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

In the instant case the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter, the impugned judgment of the High Court is wholly unsustainable in law. *State of Kerala* v. *Puttumana Illath Jathavedan Namboodiri*, (1999) 2 SCC 452: 1999 SCC (Cri) 275: AIR 1999 SC 981: 1999 Cri LJ 1443.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *S. Rajendra Babu*, JJ. [Date of decision: 11-2-1999]

[5999] — Ss. 401 and 397 — Scope of revisional power of High Court restated — *CrPC, 1898, Ss. 439, 435 and 423*

Although the revisional power of the High Court under S. 439 read with S. 435 of the Criminal Procedure Code, 1898, is as wide as the power of a court of appeal under S. 423 of the Code, it is now well settled that normally the jurisdiction of the High Court under S. 439 is to be exercised only in exceptional cases when there is a glaring defect in the procedure or there is a manifest error on a point of law which has consequently resulted in flagrant miscarriage of justice. The High Court is not expected to act under S. 435 or S. 439 as if it is hearing an appeal. The power being discretionary, it has to be exercised judiciously and not arbitrarily or lightly. Judicial discretion means a discretion which is informed by tradition, methodised by analogy and disciplined system.

In the present case, there is nothing to indicate that there was any glaring defect in the procedure adopted by the lower courts or that there was a manifest error on a point of law in the judgments or orders passed by them which had resulted in flagrant miscarriage of justice which needed to be set right by the High Court. A scrutiny of the evidence shows that there is not even any misappreciation of the evidence on the record by the lower courts which could be said to have resulted in gross failure of justice warranting interference by the High Court. Neither the trial Court nor the Sessions Judge committed any error of fact or law in arriving at their conclusions and the High Court misdirected itself in upsetting their concurrent findings ignoring the well-recognised principles for the exercise of revisional jurisdiction.

Therefore, the order of the High Court acquitting the accused must be set aside and accused must be convicted for the offences with which they were charged and held guilty by the trial Court. *State of Orissa* v. *Nakula Sahu*, (1979) 1 SCC 328: 1979 SCC (Cri) 283: AIR 1979 SC 663: 1979 Cri LJ 594: 1979 MLJ (Cri) 456: (1979) 47 CLT 624.

Bench Strength **2**. Coram: **Jaswant Singh** and *P.S. Kailasam*, JJ. [Date of decision: 30-11-1978]

[6000] — Ss. 401 and 311 — Revisional power of High Court — It is a discretionary power which has to be exercised to correct miscarriage of justice — *Justification for exercise of the power would depend upon facts and circumstances of each particular case — Where trial court acquitted the appellant of offence under S. 307 IPC in absence of any evidence and order of acquittal was not suffering from any perversity or unreasonableness, held on facts and in the circumstances of the case, there was no justification for the High Court to interfere with the trial court's order in exercise of its revisional jurisdiction under S. 401 and order a retrial for the purpose of examining the victims under S. 311 who had not been examined either under S. 161 CrPC or in the trial — CrPC, 1898, Ss. 432 and 540*

A telephonic message was received at the police station from PW 2 that "two unknown persons" came to the house of the two victims and fired shots at them who were lying in an injured condition. On the basis of that information an FIR was registered. The victims were admitted to hospital where they were medically examined but they left the hospital of their own and made themselves scarce without informing the police. The investigating officer did not get any clue about the identity of the assailants and he arrested the appellant, as admitted by him, under directions of the SP and the DM. A charge-sheet was filed against the appellant for offences under Sections 450/307 IPC. However, the trial court framed charge against the appellant under Section 307 IPC only. At the trial neither the prosecution produced the victims as their whereabouts were not known, nor the SP and the DM appeared as witnesses to disclose as to how and why they had directed arrest of the appellant. On appreciation of evidence, the trial court recorded that there was no indication in the FIR about the identity of the assailants, nor was there any circumstance in the prosecution evidence against the appellant which could implicate him in the commission of the alleged crime. Accordingly, the trial court acquitted the appellant. Respondent 1 filed a petition in the High Court, which was treated as criminal revision petition, in which he asserted that no efforts were made, either by the prosecuting agency or the court to examine the victims and that those two witnesses should be examined and case reopened and a fresh trial conducted. It was asserted that the appellant had been wrongly acquitted on account of the "deliberate" default of the prosecuting agency. The High Court accepted the revision petition and directed examination of the victims under Section 311 CrPC. Hence this appeal by special leave against the order of the High Court.

Allowing the appeal,

Held :

Though the High Court has revisional jurisdiction under Section 401 CrPC and can exercise its discretionary jurisdiction to correct miscarriage of justice, but whether or not, there is *justification* for the exercise of that discretionary jurisdiction would depend upon the facts and circumstances of each case. The controlling power of the High Court under Section 401 CrPC being discretionary, it is required to be exercised only in the interest of justice, having regard to all the facts and circumstances of each particular case and not mechanically. (Para 9)

So the question arose: Was there any *justification*, in the facts and circumstances of the present case, for the High Court to exercise its discretionary jurisdiction on a petition filed by a *third party* and *not* the State? (Para 10)

In this case the submission that the appellant was arrested on a misguided suspicion and for "ulterior motives", in the facts and circumstances of the case, assumes some significance. There was no evidence before the trial court on the basis of which the appellant could have been linked with the alleged offence. The trial court was, thus, justified on the basis of the material before it, to record an order of acquittal. The High Court in its order did not find the order of the trial court to be suffering from any perversity or unreasonableness. Under the circumstances, the High Court ought not to have interfered with the order of acquittal and ordered a retrial for the purpose of examining the two victims under Section 311 CrPC, even though their statements had not been recorded even under Section 161 CrPC by the investigating officer to fill in the lacuna in the prosecution case. In the counter-affidavit filed by the State of Sikkim before the Supreme Court it has been specifically asserted that: "The State did not file an appeal against the order of acquittal, *because the acquittal is unassailable*." Therefore, the interference by the High Court, in the established facts and circumstances of the case, in a revision petition filed by a third party, with the order of acquittal was not justified. (Paras 11 and 12). *T.N. Dhakkal* v. *James Basnett*, (2001) 10 SCC 419.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and *N. Santosh Hegde* and *Shivaraj V. Patil*, JJ. [Date of decision: 21-9-2000]

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36, relied on

[6001] — Ss. 401, 397 and 378 — High Court's power of revision — Nature and scope — Held, the said power is of exceptional nature and therefore is to be exercised sparingly — *Powers of Revisional Court are limited — A Revisional Court cannot convert itself into a regular court of appeal — Further held, rejection of revision application of another party does not affect State's right under S. 378 to apply for leave to appeal*

The complainant filed a written complaint with the police that the respondent had inflicted knife injuries on him whereas the respondent's version was that the complainant was flirting with the respondent's wife at the railway station, for which the complainant was beaten by his wife and other persons at the railway station. On the basis of a complaint, a police case was registered against the respondent. Trial was held against him but the trial court acquitted the respondent on the ground that prosecution failed to establish its case beyond reasonable doubt. The complainant filed revision petition and the State filed an application for leave to appeal in the High Court but the High Court dismissed both the petition as well as the application. Application for leave to appeal was dismissed on the ground that judgment of trial court could not be considered as perverse and therefore no interference was called for. The State challenged this order in the Supreme Court.

Allowing the appeal,

Held :

The case was instituted on the basis of first information report. It was thus a police case. The de facto complainant, therefore, has no right to file an appeal. He preferred revision. Revisional jurisdiction can however be exercised sparingly and only in exceptional cases. A Revisional Court cannot convert itself into a regular court of appeal. Powers of Revisional Court are limited. Rejection of revision application cannot affect powers of the State in invoking statutory remedy available under Section 378 CrPC. (Paras 16 and 17). *State of Maharashtra* v. *Sujay Mangesh Poyarekar*, (2008) 9 SCC 475: (2008) 3 SCC (Cri) 793: (2008) 70 AIC 15 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 19-9-2008]

K. Chinnaswamy Reddy v. State of A.P., AIR 1962 SC 1788: (1963) 3 SCR 412, relied on

[6002] — S. 401 — Revision — Held, High Court erred in dismissing revision without giving any reason — *Case remanded. Jaswinder Singh* v. *State of Punjab*, 1990 Supp SCC 55(1): 1990 SCC (Cri) 610.

Bench Strength **2**. Coram: *M.H. Kania* and *L.M. Sharma*, JJ. [Date of decision: 20-2-1989]

[6003] — S. 401 — Revision — Findings of fact of trial court — Reversal of, by High Court — Propriety — *High Court not applying mind to the evidence on record or to the findings recorded by the trial court — Hence said reversal, held, not proper*

The judgment and order of the High Court does not disclose application of mind to the evidence on record, or to the findings recorded by the trial court, which were sought to be set aside by the impugned judgment and order. The finding of the High Court is as vague as it can be and it is not possible to cull out the reasons which persuaded the learned Judge to set aside the findings recorded by the trial court. It is well settled that the appellate or revisional court while setting aside the findings recorded by the court below must notice those findings, and if the appellate or revisional court comes to the conclusion that the findings recorded by the trial court are untenable, record its reasons for coming to the said conclusion. Where the findings are findings of fact it must discuss the evidence on record which justify the reversal of the findings recorded by the court below. This is particularly so when findings recorded by the trial court are sought to be set aside by an appellate or revisional court. One cannot take exception to a judgment merely on the ground of its brevity, but if the judgment appears to be cryptic and conclusions are reached without even referring to the evidence on record or noticing the findings of the trial court, the party aggrieved is entitled to ask for setting aside of such a judgment. (Para 11)

Thus, the High Court was not justified in setting aside the findings recorded by the learned Judicial Magistrate. (Para 20). *Deb Narayan Halder* v. *Anushree Halder*, (2003) 11 SCC 303: 2004 SCC (Cri) 164: AIR 2003 SC 3174.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 26-8-2003]

[6004] — S. 401 — High Court acted improperly in setting aside concurrent findings of fact where the prosecution evidence was not challenged in cross-examination — *Penal Code, 1860, S. 408 — Conviction restored and sentence reduced to that already undergone. State of Karnataka* v. *Marigowda*, (1981) 4 SCC 429: 1981 SCC (Cri) 849: AIR 1982 SC 1171.

Bench Strength **3**. Coram: *O. Chinnappa Reddy*, *A.P. Sen* and *Baharul Islam*, JJ. [Date of decision: 19-8-1981]

[6005] — S. 401 — High Court's power of revision — Interference with concurrent findings of fact by a cryptic order without adverting to reasons — *Held, not justified*

The respondents were convicted and sentenced under Sections 467 and 468 IPC. They filed appeal before the Sessions Court where the conviction and sentence were confirmed by a detailed and reasoned judgment. When the respondents preferred a revision before the High Court, a Single Judge set aside the conviction and sentence by a cryptic order, observing: "The sole ground on which the conviction is ordered by the courts below is the confession. In such cases, the prosecution is expected to conduct the investigation with all seriousness, which the present case lacks, as the offence alleged is serious in nature namely Sections 467 and 468 IPC and as the accused are bank employees and should have furnished correct information before the courts, in the absence of which the courts below cannot take into consideration the confession as the basis for convicting the accused. In my view the said approach is incorrect. Time and again it is held that confession is not a substantial and conclusive piece of evidence." Remanding the matter to the High Court for disposal of the revision afresh,

Held :

The approach of the High Court is unfortunately very unsatisfactory and is not the way in which a revisional jurisdiction has to be exercised. Exercise of revisional jurisdiction as against concurrent findings on facts should not have been as laconic and supercilious as the impugned judgment. The judicial power of revision has not been exercised in accordance with law in the case. When the Single Judge said that the prosecution is expected to conduct the investigation with all seriousness, he did not advert to any reason to hold that seriousness has not been shown by the investigating officer in this case. Even if there were laches on the part of the investigation, the Single Judge has not stated as to why the oral evidence in support of the prosecution should be discarded. The entire discussion made by the Single Judge is confined to the passage extracted above, which is reflective of the non-exercise of revisional power. (Paras 6 and 5). *State of A.P.* v. *M. Satyanarayana*, (2000) 10 SCC 288.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 17-9-1999]

[6006] — S. 401 — High Court's power of revision — Reappreciation of evidence, held, not permissible. *Vimal Singh* v. *Khuman Singh*, (1998) 7 SCC 223: 1998 SCC (Cri) 1574: AIR 1998 SC 3380.

Bench Strength **2**. Coram: *M.M. Punchhi, C.J.* and **V.N. Khare**, J. [Date of decision: 8-10-1998]

[6007] — S. 401 — High Court's power of revision is severely restricted — It cannot embark upon a reappreciation of evidence. *Duli Chand* v. *Delhi Admn.*, (1975) 4 SCC 649: 1975 SCC (Cri) 663: AIR 1975 SC 1960: 1975 Cri LJ 1732: 1976 MLJ (Cri) 345.

Bench Strength **3**. Coram: *Y.V. Chandrachud*, **P.N. Bhagwati** and *R.S. Sarkaria*, JJ. [Date of decision: 6-8-1975]

[6008] — Ss. 401 and 374(2) — Revision — Manner of disposal of revision when appeal is preferred — *Revision petition disposed of by a cryptic and practically non-reasoned order, on the day the appeal was admitted — Held, unwarranted even if appeal admitted*

A criminal revision petition against conviction for the offences punishable under Sections 7 and 16 of the Food Adulteration Act, 1954, filed before the High Court, was admitted. But on the same day it was disposed of by a cryptic and practically non-reasoned order.

Disposing of the appeal,

Held :

That is not the way to dispose of a revision petition which has been admitted. If there was no substance, it should not have been admitted. Since it was admitted, the High Court obviously felt that there was some arguable point. Thereafter to dismiss it without indicating any reason or basis is certainly not the proper way of disposal. Accordingly, the impugned order of the High Court is set aside and the matter remitted back to the High Court for fresh disposal in accordance with law. (Paras 4 and 5). *Goverdhan Dass Bansal* v. *State (Delhi Admn.)*, (2008) 14 SCC 499.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 22-10-2008]

[6009] — S. 401 — Reappraisal of evidence under — Permissibility — *Gang rape — Corroboration of evidence of victim not essential — Uncontroverted testimony of the prosecutrix accepted by courts below — Evidence showing that the victim had protested and struggled while she was subjected to forcible sexual assault by accused persons — Held, this evinces absence of consent on the part of the victim in sexual intercourse, apart from the legal presumption under S. 114-A of Evidence Act — Courts below rightly held that the victim was gang raped by the accused-appellants in the absence of her consent and that the defence case was not substantiated by any cogent evidence — Neither High Court in revision nor Supreme Court in appeal by special leave justified in reappraisal of the evidence in the face of the concurrent findings — Hence conviction under S. 376 and sentence of 3 years' RI upheld — Penal Code, 1860, S. 376(2)(g)*. *Gagan Bihari Samal* v. *State of Orissa*, (1991) 3 SCC 562: 1991 SCC (Cri) 893: (1991) 2 GLH 30: (1991) 72 CLT 322: (1991) 28 ACC 435.

Bench Strength **2**. Coram: **B.C. Ray** and *S.C. Agrawal*, JJ. [Date of decision: 9-7-1991]

[6010] — S. 401 — Revision — Summary disposal of, by High Court — On facts, not justified — *Accused, by a revision petition, challenging the merits of his conviction and also the quantum of sentence under S. 138, Negotiable Instruments Act — High Court deciding the legality and propriety of the sentence but not adverting to the legality of the conviction — Such a summary disposal of the revision, held, not justified — Hence, Supreme Court remitting the matter back to High Court for disposal after taking into consideration the merit of the accused's challenge to the legality and propriety of the conviction — Consequently, Supreme Court expressing no opinion on the plea raised by the complainant in his cross-appeal on the question of sentence as the same could now be raised before High Court* (Paras 2, 3 and 5). *J.L. Prasad* v. *Sri Rama Krishna Constructions*, (2002) 10 SCC 267.

Bench Strength **2**. Coram: *R.C. Lahoti* and *Brijesh Kumar*, JJ. [Date of decision: 1-2-2002]

[6011] — Ss. 401 and 397 — Revisional powers of High Court — High Court interfering with concurrent findings on facts entered by the trial court and the appellate court — *Held, the powers under revisional jurisdiction of the High Court must be exercised more seriously and objectively and the High Court must record reasons in the order while interfering with such concurrent findings — Use of general statement that "courts below erred in convicting the accused", held, not sufficient to justify judicial interference with the concurrent findings — Andhra Pradesh Excise Act, 1968 (17 of 1968), S. 34(a)* (Para 5). *State of A.P.* v. *M. Poshetty*, (2001) 10 SCC 629.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 16-12-1999]

[6012] — Ss. 401 and 397 — Revisional jurisdiction of High Court — Scope — Interference with factual finding — *Trial court holding that accused was not juvenile and thus rejecting his prayer for bail — High Court reversing the said finding and holding the accused to be a juvenile directing his release on bail — Propriety — Held, if the High Court had entertained doubt about the finding arrived at by the trial court, as according to it the documents produced before the trial court called for further verification, it should have remanded the matter to trial court for an inquiry afresh — It should not have reversed trial court's order — Hence, High Court's order set aside — Trial court directed to hold fresh inquiry and then form an opinion in the said matter — However, directed that accused would continue to remain on bail, if released in compliance with High Court's order, but subject to conclusion of inquiry by trial court — Juvenile Justice Act, 1986, Ss. 32 and 18 — Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 49 and 12* (Paras 4 to 6). *Jagan Singh* v. *State of U.P.*, (2005) 12 SCC 307.

Bench Strength **2**. Coram: *R.C. Lahoti, C.J.* and *G.P. Mathur*, J. [Date of decision: 11-2-2005]

[6013] — Ss. 401 and 374 — Revision — Powers of High Court under — Concurrent findings of fact — Interference with by High Court without giving any reason, held, was not appropriate — *High Court, without any reference to the evidence on record or findings of the subordinate courts in respect of the evidence, upsetting the concurrent findings of the courts below — Revisional jurisdiction being supervisory in nature, High Court's interference with the concurrent findings of the courts below, without assigning any reason for such an interference, held, was not proper — Penal Code, 1860, S. 304-A. State of A.P.* v. *Pituhuk Sreeinvanasa Rao*, (2000) 9 SCC 537: 2001 SCC (Cri) 642: AIR 2000 SC 3515 (2).

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 6-3-2000]

[6014] — Ss. 401, 399 and 397 — Dismissal of criminal revision for default or non-prosecution without going into the merits of the case — Permissibility of — *Held, not permissible — Rule laid down by Supreme Court that a criminal appeal cannot be dismissed for default also applies to criminal revision* (Paras 4 to 8). *Madan Lal Kapoor* v. *Rajiv Thapar*, (2007) 7 SCC 623: (2007) 3 SCC (Cri) 437: (2007) 58 AIC 71 (SC).

Bench Strength **2**. Coram: *C.K. Thakker* and *Markandey Katju*, JJ. [Date of decision: 31-8-2007]

Bani Singh v. State of U.P., (1996) 4 SCC 720: 1996 SCC (Cri) 848; Parasuram Patel v. State of Orissa, (1994) 4 SCC 664: 1994 SCC (Cri) 1320, applied

Ram Naresh Yadav v. State of Bihar, AIR 1987 SC 1500: 1987 Cri LJ 1856, held, overruled

[6015] — Ss. 401 and 125 — Revision — Summary dismissal of, when not justified — *Constitution of India — Art. 226*

The appellant-wife moved an application before the Metropolitan Magistrate for execution of the order for maintenance of herself and her minor son in order to recover the arrears of maintenance. The Metropolitan Magistrate rejected her prayer on the ground that the claim for arrears stood satisfied upon the husband having been sent to jail. The wife then approached the High Court by way of a revisional application. The High Court rejected the revisional application summarily without a speaking order.

Held :

The High Court cannot, by a non-speaking order summarily reject such an important question arising in the context of the petition preferred by a helpless woman. To say the least of it, it betrays total lack of sensitivity on the part of the High Court to the plight of a helpless woman. Were it not so, the High Court would have at least passed a speaking order unfolding the rational process which made the High Court feel helpless in helping a helpless woman and a helpless child. The legal position may now be examined. *Kuldip Kaur* v. *Surinder Singh*, (1989) 1 SCC 405: 1989 SCC (Cri) 171: AIR 1989 SC 232: 1989 Cri LJ 794.

Bench Strength **2**. Coram: **M.P. Thakkar** and *S. Natarajan*, JJ. [Date of decision: 3-11-1988]

[6016] — S. 401 — Summary dismissal of revision involving important question of law not justified. *Attiq-Ur-Rehman* v. *MCD*, (1996) 3 SCC 37: 1996 SCC (Cri) 457: AIR 1996 SC 956.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *S. Saghir Ahmad*, JJ. [Date of decision: 29-2-1996]

[6017] — Ss. 401, 378 and 386 — Revision — Proper mode of disposal — Reasoned order necessary — *High Court setting aside acquittal of appellant-accused by allowing revision petition filed by Respondent 1 (informant) without indicating any reasons therefor and neither analysing the evidence recorded — Impugned order set aside and matter remitted to High Court for fresh disposal — Practice and Procedure — Reasoned order/speaking order necessity — Penal Code, 1860, Ss. 364, 366-A, 368 and 120-B* (Paras 1, 2, and 5 to 8). *Sunil* v. *Rajesh Das*, (2008) 13 SCC 246: (2008) 64 AIC 271 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 21-2-2008]

[6018] — S. 401 — Revision — Proper mode of disposal — Interference with conviction — Reasoned order necessary — *Revision against conviction recorded by trial court and first appellate court — Allowed by High Court acquitting the accused by a non-reasoned judgment — Matter remitted to High Court for fresh disposal by a reasoned judgment — Pondicherry Excise Act, 1970 (12 of 1970), Ss. 31, 33, 37(a) and 38(1)*

The respondents were convicted by trial court under Sections 31, 33, 37(*a*) and 38(1) of the Pondicherry Excise Act and sentenced each of them to 6 months' RI with fine of Rs 10,000. The first appellate court affirmed the conviction but modified the sentence. The accused filed revision petition before the High Court. The High Court allowed the revision without referring to the factual scenario or the evidence of the witnesses and conclusions of the trial court and the first appellate court. It merely referred to certain judgments of the High Court and the Supreme Court without even indicating as to how they were relevant for the purpose of the case.

Held :

When two courts had found the accused persons guilty, the High Court has not even indicated as to how the conclusions of the trial court and the appellate court were without any basis or not sustainable. The manner of disposal of the revision petitions leaves much to be desired. Therefore, the impugned judgment of the High Court is set aside, the matter is remitted to the High Court for a fresh consideration and disposal by a reasoned order. The factual scenario and the evidence has to be analysed by the High Court while deciding the revision petitions afresh. (Paras 6 and 7). *State* v. *M. Janakiraman*, (2009) 4 SCC 504.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 9-2-2009]

[6019] — Ss. 401, 374 and 386 — Revision against remand of case for fresh trial by first appellate court in appeal against conviction — Proper mode of disposal — Need for examination of case on merits — *First appellate court remanding case for fresh trial and re-examination to fill lacunae in prosecution version — High Court in revision against said remand order holding that remand is impermissible in law and setting aside the remand order but confirming conviction by trial court but without any examination on merits — Unsustainability — Held, if remand for fresh trial is not permissible, High Court ought to have examined case on merits since first appellate court did not examine case on merits — Matter remitted to High Court for decision on merits — Penal Code, 1860, Ss. 408 and 462* (Para 8). *Rameshwar Prasad* v. *State of Rajasthan*, (2009) 4 SCC 471.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *V.S. Sirpurkar* and *A.K. Ganguly*, JJ. [Date of decision: 5-3-2009]

[6020] — S. 401 — Concurrent findings of fact — Interference with, under — *Enforcing social disability of Harijan community — Charge against respondents of restraining the complainant party by show of force (threatening to use a gun) from taking water from a newly dug-up borewell on ground that they were untouchables — Conviction under S. 4, Protection of Civil Rights Act, 1955 and sentence of one month's simple imprisonment and fine of Rs 100 each recorded by trial court and appellate court upset in revision by High Court finding discrepancy and inconsistency in the evidence of PWs regarding actual manner in which the accused obstructed the complainant party and the words they uttered — Held, charge proved beyond reasonable doubt — High Court erred in interfering with concurrent findings of fact in exercise of revisional jurisdiction without having regard to sense and effect of the prosecution evidence — Not an essential element in social disability legislation like Protection of Civil Rights Act, 1955 — Protection of Civil Rights Act, 1955, Ss. 4 and 7*

The complainant (PW 1) deposed that a borewell was being drilled at a distance of about 15 feet from Harijan colony and water sprouted from the well on the date of the incident at about 9.30 p.m. At that time many persons including the accused persons and some Harijans including PWs 1 to 4 were present there. Two young girls of the Hindu community performed pooja. Thereafter 10/15 Hindus took water from the well for performing pooja at the temple. He further stated that he along with five other persons including PWs, who were all Harijans, also brought pots for taking water from the well. At that time the three respondents told the Harijans not to take water from the well as they were "mahars" and that there was a separate well for them. According to the complainant the three respondents further obstructed the Harijans from taking water saying that if the Harijans insist on taking water the result would be unhappy. Respondent 1 told his men to bring a gun from his house and threatened the Harijans with dire consequences. The complainant further stated that he told the accused persons that the Harijans have also right to take water from the well. On that the respondents-accused told the Harijans not to persist on taking water from the well otherwise the consequences would be serious. The Harijans thereafter left the well without taking water and went to their colony. PWs 2, 3 and 4 also repeated the occurrence in similar words as stated by PW 1. The trial court convicted the five accused under S. 4 of the Act and sentenced them to undergo simple imprisonment for one month and a fine of Rs 100 each and in default to suffer simple imprisonment for further five days. One of the accused viz. Respondent 1 (who later died during pendency of appeal), was further convicted under S. 7 of the Act but no separate sentence was awarded to him for the said offence. The Additional Sessions Judge, on appeal, upheld the conviction and sentence of three accused persons but acquitted two accused. The revision preferred by the three convicted accused was allowed by a Single Judge of High Court and consequently they were acquitted. The High Court disbelieved evidence of all the four witnesses as according to it their evidence was not uniform in regard to actual words uttered by the accused persons and the manner in which they prevented the complainant party from taking water from the well. Allowing the appeal

Held :

Per Kuldip Singh, J.

The charge against the respondents has been proved beyond doubt. The High Court fell into patent error in rejecting the prosecution evidence. There was no infirmity in the evidence of the prosecution witnesses. Ordinarily it is not open for the High Court to interfere with the concurrent findings of the courts below specially by reappreciating the evidence in its revisional jurisdiction. The social disability of the Harijan community was enforced on a threat of using a gun. It is proved beyond doubt that the complainants were stopped from taking water from the well on the ground that they were untouchables.

Accordingly the judgment of the High Court is set aside and that of the Additional Sessions Judge is restored.

Per K. Ramaswamy, J. (concurring)

The High Court in appreciating the evidence of PWs 1 to 4 appears to have fallen into the trap of traditional mould and found doubt when none exists. It concentrated more on sequence or absence of parrot-like repetition of ocular words spoken by illiterate persons or play upon words and sought consistence forsaking the sense it conveyed and the effect it produced in preventing PWs 1 to 4 and other Dalits to exercise the right to draw water from public borewell. The High Court gave the benefit of doubt when in fact no such benefit does arise from evidence if considered in proper perspective nor exists to reach the finding of guilty.

While the court is to adopt the psychological approach, reasonable doubt does not mean the mind of a doubting Thomas, nor vacillation, nor pusillanimity, nor deep-seated prejudices or predilections covertly found in other walks of life. The application of the test of a reasonable man acting in similar circumstances and reasonable doubt of a reasonable man is the rule.

The criminal law primarily concerns with social protection, prescribes rules of behaviour to be observed by all persons and punishes them for deviance, transgression or omission. Mens rea is not an essential ingredient in social legislations. *State of Karnataka* v. *Appa Balu Ingale*, 1995 Supp (4) SCC 469: 1994 SCC (Cri) 1762: AIR 1993 SC 1126.

Bench Strength **2**. Coram: **Kuldip Singh**[1] and **K. Ramaswamy**[1&2], JJ. [Date of decision: 1-12-1992]

[6021] — S. 401 — Driving car in rash and negligent manner causing accident resulting in death of two — High Court on reappraisal of evidence acquitting the accused — *It exceeded its revisional power. Shakila Khader* v. *Nausheer Cama*, (1975) 4 SCC 122: 1975 SCC (Cri) 379: AIR 1975 SC 1324: 1975 Cri LJ 1105.

Bench Strength **2**. Coram: **A. Alagiriswami** and *N.L. Untwalia*, JJ. [Date of decision: 10-3-1975]

[6022] — S. 401 — Government servant convicted under Ss. 466 and 468 IPC and granted benefit of S. 4 of U.P. First Offenders Act — Revision against — *Direction by the High Court that the accused must be deemed to have been in continuous service without break and, therefore, entitled to full pay and DA during the period of his suspension, held, was without jurisdiction. State of U.P.* v. *Ranjit Singh*, (1999) 2 SCC 617: 1999 SCC (Cri) 293: AIR 1999 SC 1201: 1999 All LJ 970: 1999 Cri LJ 1830.

Bench Strength **3**. Coram: **G.B. Pattanaik**, *M.B. Shah* and *R.C. Lahoti*, JJ. [Date of decision: 19-2-1999]

[6023] — S. 401 — Revision before High Court — Pleading — *When an additional ground was considered and decided on merits by Sessions Court in revision, held, High Court in further revision erred in refusing to go into that question merely because the same was not raised before the trial court*

Merely because the appellants did not raise the legal points based on Section 161 of the Bombay Police Act before the Metropolitan Magistrate, they are not estopped from canvassing on that additional ground also before the Sessions Court in revision as they were challenging therein the very issuance of process against them. The position may be different if the Sessions Judge had avoided dealing with the contention based on Section 161(1) of the said Act on the premise that it could be raised before the trial court. But when the Sessions Judge had opted to go into that question and rendered a decision on it on merits it is difficult to concur with the reasoning of the High Court that the said aspect would not be gone into by the High Court as the same was not raised before the trial court. (Para 10). *K.K. Patel* v. *State of Gujarat*, (2000) 6 SCC 195: 2001 SCC (Cri) 200: AIR 2000 SC 3346.

Bench Strength **2**. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 12-5-2000]

[6024] — S. 401 — Revision — High Court not justified in refusing to look into evidence on ground that no such specific contention was raised in the memo of the revision petition — *Matter remitted back for fresh consideration. Mohd. Sharif* v. *State of Orissa*, 1995 Supp (3) SCC 663: 1995 SCC (Cri) 1111.

Bench Strength **3**. Coram: *A.M. Ahmadi, C.J.* and *M.K. Mukherjee* and *S.C. Sen*, JJ. [Date of decision: 6-1-1995]

[6025] — S. 401 — Revision — High Court's power to suo motu enhance sentence (from life imprisonment to death sentence in this case) — Scope — *Penal Code, 1860 — S. 302*

The High Court, *suo motu* in exercise of revisional jurisdiction, can enhance the sentence of an accused awarded by the trial court and the same is not affected merely because an appeal has been provided under Section 377 of the Code for enhancement of sentence and no such appeal has been preferred. But the *suo motu* powers of enhancement under revisional jurisdiction can be exercised only after giving opportunity of hearing to the accused. In this case no such opportunity of hearing was given to the accused-appellant. Therefore, the High Court was not justified in enhancing the sentence of life imprisonment awarded under Section 302 of the Penal Code to death penalty. (Paras 8 and 9). *Surendra Singh Rautela* v. *State of Bihar*, (2002) 1 SCC 266: 2002 SCC (Cri) 165: AIR 2002 SC 260: 2002 Cri LJ 555.

Bench Strength **2**. Coram: *M.B. Shah* and **B.N. Agrawal**, JJ. [Date of decision: 27-11-2001]

Nadir Khan v. State (Delhi Admn.), (1976) 2 SCC 406: 1976 SCC (Cri) 622; Eknath Shankarrao Mukkawar v. State of Maharashtra, (1977) 3 SCC 25: 1977 SCC (Cri) 410; Jayaram Vithoba v. State of Bombay, AIR 1956 SC 146: 1956 Cri LJ 318; Bachan Singh v. State of Punjab, (1979) 4 SCC 754: 1980 SCC (Cri) 174, relied on

[6026] — S. 401 — Revision — Reduction of sentence by High Court without issuing notice to State or original complainant improper — *Order of High Court set aside and respondents directed to surrender to custody — Case remanded for fresh disposal in accordance with law. Niranjan Lal* v. *Attar Singh*, 1990 Supp SCC 57: 1990 SCC (Cri) 607.

Bench Strength **2**. Coram: *M.P. Thakkar* and *B.C. Ray*, JJ. [Date of decision: 9-8-1988]

[6027] — S. 401 — High Court's power of revision — Held, does not include the authority to refuse to hear or entertain a matter on the ground that accused had not surrendered — *There is no such requirement under Criminal Procedure Code — High Court was not justified in dismissing the application for revision on the sole ground that accused had not surrendered — In particular where the relevant High Court Rules (Patna in this case) contained no such rule* (Para 3). *Bihari Prasad Singh* v. *State of Bihar*, (2000) 10 SCC 346.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 2-8-1999]

[6028] — S. 401 — Power of High Court to enhance sentence — Must be sparingly exercised — *It can enhance the sentence if reasons given by the trial court for awarding lesser sentence are wholly unsatisfactory, irrelevant, unreasonable or perverse — Merely because the High Court looked at the case from a different angle, enhancement of sentence is not justified — Penal Code, 1860, S. 304 Pt I. George Thomas* v. *State of Kerala*, 1995 Cri LJ 3645.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *M.K. Mukherjee*, JJ. [Date of decision: 2-12-1994]

[6029] — S. 401 — Suo motu show-cause notice issued by High Court for enhancement of the sentence — *Revision application filed by appellants before High Court against their conviction under Ss. 143, 147, 447 and 448 read with S. 149 IPC and sentence of fine of Rs 250 under each count — Notice neither properly served on the appellants* *nor were the appellants represented through their counsel when the notice was heard by High Court — On facts held, High Court was not justified in taking the suo motu action — Hence instead of remitting the matter to the High Court, its order set aside. V. Sasi* v. *State of Kerala*, 1992 Supp (2) SCC 499: 1992 SCC (Cri) 763: AIR 1992 SC 122: 1992 Cri LJ 106: (1992) 2 BLJR 714.

Bench Strength **2**. Coram: *A.M. Ahmadi* and *S.C. Agrawal*, JJ. [Date of decision: 12-8-1991]

[6030] — S. 401 — Sentence — Reduction of in revisional jurisdiction, when not justified — *Merely because in revision before High Court, accused persons had not challenged their conviction and had argued only on the question of their sentence, held, High Court was not justified in reducing the sentence to the period accused had been in jail, without even verifying whether they had undergone any sentence at all and without applying its mind to the facts to ascertain whether it was a fit case for exercise of revisional jurisdiction and modifying the sentence — Penal Code, 1860, S. 498-A*

The Additional Chief Judicial Magistrate convicted the respondents (husband and mother-in-law of the victim) for the offence punishable under Section 498-A IPC each and sentenced them to suffer RI for one year and to pay a fine of Rs 1000 and in default in payment of fine to further undergo RI for 3 months each, by holding that the accused persons asked the victim to bring money from her father's house and when she could not arrange for money, all the accused mercilessly beat her and planned to burn her with a burning wooden stick. Appeal preferred by the respondents was dismissed by the Additional Sessions Judge. The respondents then filed revision petition before the High Court. A Single Judge allowed the revision by a cryptic order holding that the counsel for the accused had not challenged the conviction and had argued only on the question of sentence and that in the circumstances, "by maintaining the conviction for the offence under Section 498-A IPC, I modify the sentence and they are sentenced to undergo RI for the period for which they had been in jail and a fine of Rs 1000 each. They shall be released forthwith on deposit of fine". Allowing the appeal, the Supreme Court

Held :

The High Court has modified the sentence without recording any reasons and without considering the crime prevalent in the society for unjustified demand of dowry. In any case, before exercising its revisional jurisdiction, the Court ought to have considered the facts and applied its mind as to whether it was a fit case for exercise of its revisional jurisdiction and for reducing the sentence. It has also been pointed out that without verifying the fact that the respondents have not undergone any sentence, the High Court had passed the order of reducing the sentence for the period for which they had been in jail. It is the duty of the court to pass appropriate order of sentence and not raising of any argument by counsel for the accused for acquittal is hardly any ground for reduction of sentence. (Para 7). *Narsingh Prasad Singh* v. *Raj Kumar*, (2001) 4 SCC 522: 2001 SCC (Cri) 757: AIR 2001 SC 1828: 2001 Cri LJ 2039.

Bench Strength **2**. Coram: **M.B. Shah** and *S.N. Variava*, JJ. [Date of decision: 4-4-2001]

[6031] — Ss. 401 and 397 — Revision — Scope — Adequacy of sentence — *Conviction under S. 306 IPC for abetment of suicide of wife and sentence of 5 years' RI awarded — In revision High Court reducing sentence to 2 months only — Held, no justification for High Court's order which seems a mockery of law — In the circumstances 3 years' RI plus fine of Rs 5000 adequate for meeting ends of justice — Penal Code, 1860, S. 306. State of A.P.* v. *Kuna Satyanarayana*, (1998) 8 SCC 268.

Bench Strength **2**. Coram: *B.N. Kirpal* and *S.S.M. Quadri*, JJ. [Date of decision: 14-9-1998]

[6032] — Ss. 401, 377(3), 397 and 386 — Enhancement of sentence on a revision petition filed by the State under S. 401 — *Opportunity to show cause under S. 377(3), held, need not be afforded — Besides, on facts, since the appeal of the accused was heard along with they had obtained such opportunity — Enhancement of sentence also, on facts held, justified*

Five accused, shouting that the deceased should be taught a lesson, started beating him with their respective weapons such as datar, kirpan etc. as a result of which his left leg was completely severed from his body. One of the accused then took away the chopped off leg after wrapping it in his turban. The deceased succumbed to his injuries. The trial Court convicted the accused under S. 304, Part I read with S. 149 Indian Penal Code but sentenced three of them to RI for 10 years and a fine of Rs 1000 and two of them to RI for 5 years and a fine of Rs 500. The first three accused were also convicted under S. 148 Indian Penal Code and sentenced to RI for 2 years and the other two were convicted under S. 147 Indian Penal Code and sentenced to RI for 1 year. While the accused filed an appeal against their conviction and sentence, the State filed an appeal against their acquittal for offence under S. 302

Penal Code as also a revision petition under S. 401 Criminal Procedure Code for enhancement of the sentence. The High Court making an express order for taking up the revision petition only along with the accuseds' appeal, dismissed the appeal and enhanced the sentence of the three accused to RI for life and of the other two to RI for 10 years. The High Court stated that the State appeal "was partly accepted" but inadvertently omitted to refer to the revision petition in the operative part of its order. On that basis the accused contended that the High Court committed an error of law in enhancing the sentence of the accused without giving them a reasonable opportunity of showing cause under S. 377(3), Criminal Procedure Code. Dismissing the petition for special leave.

Held :

As the State had not filed an appeal against the sentence under S. 377(1) Criminal Procedure Code, there was no illegality in not complying with the requirement of S. 377(3). The revision petition filed under S. 401 Criminal Procedure Code for enhancement of the sentence was clearly maintainable as it was not permissible for the revision petitioner to file an appeal under S. 377. Also the High Court under S. 397 can call for and examine records of proceedings before the trial Court to exercise its revisional power. The High Court's power of revision under S. 401 in the case of any proceeding the record of which has been called for by it or which otherwise comes to its knowledge, includes, the power conferred on a court of appeal under S. 386 to enhance or reduce the sentence. So when the record of the case was before the High Court in connection with the two appeals and the revision petition, there was nothing to prevent the High Court from invoking its powers under S. 397 read with S. 401 Criminal Procedure Code and to make an order for the enhancement of the sentence.

Moreover, the opportunity of showing cause against the enhancement of the sentence or to plead for their acquittal or for reduction of the sentence was amply furnished in the appeal which was heard along with the revision petition.

Besides, the established facts and circumstances of the case on which the courts below placed reliance, justify the view taken by the High Court that the accused deserved the sentence awarded to them by it. Therefore, the argument that as the accused had undergone a portion of the sentence and as the offence was committed in 1972, the High Court was not justified in enhancing the sentence, is untenable and inconsequential. *Bachan Singh* v. *State of Punjab*, (1979) 4 SCC 754: 1980 SCC (Cri) 174: AIR 1980 SC 267.

Bench Strength **2**. Coram: *V.R. Krishna Iyer* and **P.N. Shinghal**, JJ. [Date of decision: 14-9-1979]

[6033] — S. 401 — Revision — Notice — Need for — *Complaint alleging offence punishable under S. 420 IPC having been dismissed by Judicial Magistrate, revision petition filed by the complainant before High Court — High Court without issuing notice to the respondent before it (appellant before the Supreme Court) and without considering the defence available to him, proceeding to consider the material produced by the revision petitioner and directing the Magistrate to proceed with the complaint in accordance with law — Held, order unsustainable as it violated principles of natural justice as also requirements of law of hearing a party before passing an adverse order* (Paras 3, 4 and 5). *P. Sundarrajan* v. *R. Vidhya Sekar*, (2004) 13 SCC 472.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *S.B. Sinha*, JJ. [Date of decision: 23-7-2004]

[6034] — S. 401 — Revisional jurisdiction — *On facts, High Court erred in quashing the General Diary entry, the investigation undertaken on the basis thereof and the FIR recorded subsequent to the said General Diary entry* (Para 24). *Supdt. of Police, CBI* v. *Tapan Kumar Singh*, (2003) 6 SCC 175: 2003 SCC (Cri) 1305: AIR 2003 SC 4140: 2003 Cri LJ 2322.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 10-4-2003]

[6035] — S. 401 — Scope of invoking jurisdiction of High Court in criminal revision, restated — On facts, death of two children due to rash and negligent driving of appellant — *Appellant convicted under Ss. 279 and 304-A IPC — Appeal dismissed by first appellate court — High Court dismissing criminal revision — Held, trial court and Revisional Court had analysed the evidence in detail to conclude about the guilt of accused — There was no manifest error in the conclusions or in analysing the evidence — Hence, High Court was justified in law in not exercising its revisional jurisdiction — Penal Code, 1860, Ss. 279 and 304-A* (Paras 9 to 11, 1, 6 and 12). *Raj Kumar* v. *State of H.P.*, (2008) 11 SCC 76.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Dr. M.K. Sharma*, JJ. [Date of decision: 14-7-2008]

Duli Chand v. Delhi Admn., (1975) 4 SCC 649: 1975 SCC (Cri) 663; State of Orissa v. Nakula Sahu, (1979) 1 SCC 328: 1979 SCC (Cri) 283; State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275, relied on

[6036] — S. 401 — Unwarranted remarks while disposing of revision petition — Propriety — *Revision petition against order of acquittal of appellant for offences under Ss. 381 and 411 IPC — While dismissing the revision, High Court observing that departmental proceedings, pending against the accused, should be disposed of on merits without being influenced by the order of acquittal in the criminal case — Held, such observation was unwarranted while dismissing the revision petition — Question regarding effect of the order of acquittal on the departmental proceedings or any civil case has to be decided at the appropriate stage by appropriate forum. D. Paul* v. *Nawab Ali Akhtar*, (2001) 10 SCC 501.

Bench Strength **2**. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti*, J. [Date of decision: 15-1-2001]

[6037] — Ss. 401 and 319 — Summoning person not named as accused in charge-sheet, to appear as accused in sessions trial — High Court's power in revision to direct trial court to issue such summons — Scope of — *Trial court dismissing complainant's application under S. 319 twice, once even against High Court's direction to issue summons — Held, where appellants were named in FIR as accused and were also named so by complainant in his evidence during trial, High Court committed no error in issuing impugned directions — If appellants' complicity appeared clear to the court, power under S. 319, held, could be invoked — Court has the discretion in such a matter*

An FIR was lodged by PW 1 that the accused persons had attacked his brother and brother-in-law causing the death of the brother on the spot and injuries to the latter. Accused persons were challaned under Sections 307, 302 read with Section 120-B IPC. On the day when the deposition of PW 1 was recorded by the Sessions Judge, PW 1 filed an application under Section 319 CrPC before the Sessions Judge for summoning the appellants to face trial in respect of the said incident. The application was dismissed by the Additional Sessions Judge. PW 1 filed a criminal revision which was disposed of by the High Court setting aside the impugned order and directing the trial court to pass a fresh order. The Sessions Judge reheard the application and once again dismissed the same.

The dismissal was followed by a second criminal revision petition by Respondent 2 (PW 1). The High Court sought for an explanation from the trial Judge for not complying with its earlier order, and quashing the second dismissal order issued by the trial court, further directed it to issue summons against the appellants for their appearance as accused in sessions trial under Sections 302, 307 and 120-B IPC. This order of the High Court had been impugned in the instant appeal.

Dismissing the appeal,

Held :

All that is required by the court for invoking its powers under Section 319 CrPC is to be satisfied that from the evidence adduced before it, a person against whom no charge had been framed but whose complicity appears to be clear, should be tried together with the accused. The discretion is left to the court to take a decision on the matter. (Paras 8, 9, 16 and 18)

Though the appellants were named in the FIR they were not named as accused in the charge-sheet during the trial. However, PW 1 in his evidence, has named the appellants as persons who were involved in the incident causing the death of the brother and injuries to the brother-in-law. Despite this the trial court, on two separate occasions, rejected the prayer made by Respondent 2 for summoning the appellants under Section 319 CrPC. The High Court, after considering the evidence of PW 1 thought it necessary for the appellants to be summoned. Although certain observations made by the High Court regarding the orders passed by the trial court could and should have been avoided, in view of the evidence of PW 1 during the trial itself, the High Court has not committed any error in directing that the appellants be summoned to stand trial along with the co-accused. (Paras 19 to 21). *Ram Pal Singh* v. *State of U.P.*, (2009) 4 SCC 423.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 13-2-2009]

Kamlesh Singh v. State of U.P., (2008) 60 All Cri C 959, affirmed

[6038] — Ss. 401 and 319 — Revision of order under S. 319 — Grounds for — *Held, where a judicious discretion exercised by trial court had led it to pass order under S. 319, High Court exercising revisional jurisdiction could interfere therewith, inter alia, only where legal principles laid down by Supreme Court have been violated* (Para 17). *Harbhajan Singh* v. *State of Punjab*, (2009) 13 SCC 608: (2009) 82 AIC 29 (SC): 2009 Cri LJ 4429.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 29-7-2009]

[6039] — S. 401 — Where even though the second revision by High Court was not maintainable, Supreme Court would not interfere under Art. 136 if the order of the High Court is meant to promote the ends of justice

A revision petition filed against an order of a Special Judge framing charges against the respondent was dismissed by the High Court and the order of the Special Judge was upheld. Meanwhile the Supreme Court decided *P. Sirajuddin case* [(1970) 1 SCC 595], on the basis of which the respondent raised a question of law before the Special Judge that as the charges were mainly based on the statement of witnesses who had given signed statements earlier under duress or inducement, the charges should be quashed. The Special Judge, however, rejected the contention and framed the charges. A second revision petition was thereupon filed against this order by the respondent and the High Court allowing the same ordered that the Special Judge would exclude from consideration all the statements which had been recorded in violation of Ss. 162 and 163, Criminal Procedure Code and which were self-exculpatory and confessional in character and then decide the matter afresh. An appeal was then filed before the Supreme Court under Art. 136 questioning the maintainability of the second revision. Dismissing the appeal,

Held :

Since the previous judgment in the first revision had already been declared and signed by the Court, the second judgment in revision was clearly not maintainable as it amounted to a review of the previous judgment.

However, although the order of the High Court may be wrong or even without jurisdiction, it has passed a correct and just order which is in consonance with the decision of the Supreme Court and is calculated to promote the ends of justice. Therefore, in the peculiar facts and circumstances of this case, and particularly when the High Court has itself sent back the case to the Special Judge, the Supreme Court would in exercise of its discretionary special level jurisdiction refrain from interfering with the order of the High Court. *State of Rajasthan* v. *Gurcharandas Chadha*, (1980) 1 SCC 250: 1980 SCC (Cri) 208: AIR 1979 SC 1895: 1979 Cri LJ 1416.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 6-4-1979]

[6040] — Ss. 401, 397, 235, 248 and 255 — Conviction of government employee — Direction by High Court that conviction will not affect the service career of that employee — Validity of — *Held, was without jurisdiction and, therefore, must be treated as invalid and non est — High Court in exercising its criminal jurisdiction has no authority to prevent the legal consequences which follow the conviction of a government servant — Those are matters governed by the Service Rules — The Service Rules must be allowed to operate in such cases* (Para 4). *Union of India* v. *State of Bihar*, (2006) 10 SCC 509: (2007) 1 SCC (Cri) 122.

Bench Strength 2. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 15-7-2005]

[6041] — S. 401 — Revision — Maintainability — Conviction recorded by Special Tribunal and appeal heard by Special Court — *In such a case revision under S. 401 CrPC, held, would lie to High Court — Electricity Act, 1910, Ss. 49-C(2), (1) and 49-F (as ins. by A.P. Act 35 of 2000)*

In a case where conviction has been recorded by the Special Tribunal and the appeal has been heard by the Special Court under Section 49-C(2), a revision would lie to the High Court under Section 401 CrPC. (Para 16). *Transmission Corpn. of A.P.* v. *Ch. Prabhakar*, (2004) 5 SCC 551: 2004 SCC (Cri) 1681.

Bench Strength 2. Coram: *S. Rajendra Babu, C.J.* and **G.P. Mathur**, J. [Date of decision: 26-5-2004]

[6042] — Ss. 401 and 397 — Order passed by Sessions Judge in appeal under S. 59(2), Forest Act, 1927 — Revision against, before High Court under Ss. 401 and 397 CrPC — Maintainability — *High Court's view that revision not maintainable, held, correct — Forest Act, 1927, Ss. 59(2) & (3) and 59-B [inserted by H.P. Act 15 of 1991]* (Para 3). *State of H.P.* v. *Dhanwant Singh*, (2004) 13 SCC 331: 2005 SCC (Cri) 248: AIR 2004 SC 1636: 2004 Cri LJ 1431.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-2-2004]

[6043] — Ss. 401, 397 and 398 — Revision — Disposal of by High Court on the basis of observations made earlier by a coordinate bench — Held, not proper — High Court in revision must go into the merits of the case — *When the trial court, having regard to the High Court's order, took the cognizance of the offence under Ss. 420/120-B IPC against the accused-appellant, dismissal of revision petition, which was filed against the trial court's aforesaid action, by another Single Judge merely on the basis of the observations made earlier by the High Court, held, was not proper — Impugned order resulted in avoidance of the function of judicial determination of the question of acceptability or otherwise of the plea raised by the accused persons for setting aside the cognizance order and for quashing the criminal proceedings — Negotiable Instruments Act, 1881, Ss. 138/141 — Penal Code, 1860, Ss. 420/120-B*

On a perusal of the order under challenge it is clear that the learned Single Judge disposed of the revision petition filed by the appellant Company for setting aside the cognizance order and for quashing the criminal proceedings without entering into the merits of the case. The learned Single Judge did not consider the nature of the contract between the parties and the arrangement for payment of dues by the accused persons to the complainant. Further, there is no finding to the effect that the ingredients of the offence of cheating defined under Section 415 IPC were prima facie made out from the averments in the complaint petition and the statement on oath by the complainant before the learned Magistrate. The learned Single Judge felt bound by the observations made in the order passed on 21-3-1997 in which another Single Judge while accepting the position that the Magistrate rightly did not take cognizance of the offence under Sections 138/141 of the Negotiable Instruments Act, had observed that the learned Magistrate should have taken cognizance of the offence punishable under Section 420 IPC. From the order under challenge it is manifest that the learned Single Judge did not pay due attention to the part of the order in which the learned Magistrate was directed to hold further enquiry into the complaint. While judging the question whether the cognizance order passed by the learned Magistrate was sustainable in law it was incumbent for the learned Single Judge to go into the question whether the complainant has been able to make out a prima facie case for the offence of cheating on the averments in the complaint petition and his statement on oath. The matter should have been examined in the light of the contentions raised by the accused applicant in the revision petition and finding recorded. The learned Single Judge also did not try to find out if the learned Magistrate held any further enquiry before passing the cognizance order and whether the dispute raised in the case is of a civil nature and continuing the criminal proceedings will give rise to abuse of process of court. (Para 8)

Thus, the impugned order reveals that there has been an avoidance of the function of judicial determination of the question of acceptability or otherwise of the plea raised by the accused persons for setting aside the cognizance order and for quashing the criminal proceedings. Hence, the order under challenge being unsustainable in law is set aside and the matter is remitted to the High Court for disposal afresh in accordance with law. (Paras 9 and 10). *Indseam Services Ltd.* v. *Bimal Kumar Kejriwal (HUF)*, (2001) 8 SCC 15: 2001 SCC (Cri) 1402: AIR 2001 SC 3512.

Bench Strength **2**. Coram: **D.P. Mohapatra** and *K.G. Balakrishnan*, **JJ**. [Date of decision: 14-9-2001]

[6044] — Ss. 401 and 125 — Magistrate's findings of fact under S. 125 based on evidence not open to interference by High Court in exercise of its revisional jurisdiction under S. 401

Appellant 1 filed an application under S. 125 for maintenance of her own and her minor daughter. The Magistrate after considering evidence adduced by the parties held that appellant 1 was not the wife of the respondent but appellant 2 was the illegitimate daughter of the respondent and was therefore, entitled to maintenance at the rate of Rs 25 per month. The appellants preferred revision petitions before the High Court against Magistrate's orders. The High Court upheld the Magistrate's findings against appellant 1 but as regards those against appellant 2, the Court on a re-assessment of the evidence held that she was not even the illegitimate child of the respondent. Accordingly, the Magistrate's order allowing maintenance to appellant 2 was set aside and the entire application under S. 125 stood dismissed.

Held:

The questions whether appellant 1 was the married wife of the respondent and whether appellant 2 was the legitimate or illegitimate child of the respondent, are pre-eminently questions of fact. Therefore, the High Court in its revisional jurisdiction was not justified in making a re-assessment of the evidence and substituting its own views for those of the Magistrate on the question of fact. *Pathumma* v. *Muhammad*, (1986) 2 SCC 585: 1986 SCC (Cri) 212: AIR 1986 SC 1436: 1986 Cri LJ 1070.

Bench Strength **2**. Coram: *V. Khalid* and **M.M. Dutt**, **JJ**. [Date of decision: 17-4-1986]

[6045] — Ss. 401 and 397 — Exercise of revisional jurisdiction at the instance of third party and not the State — *Propriety — Question not gone into*. *T.N. Dhakkal* v. *James Basnett*, (2001) 10 SCC 419.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *N. Santosh Hegde* and *Shivaraj V. Patil*, **JJ**. [Date of decision: 21-9-2000]

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36, relied on

[6046] — Ss. 401 and 397 — Revision — Maintainability — *Revision petition filed by a third party (complainant in this case) — Held, nonetheless maintainable* (Para 6). *K. Pandurangan* v. *S.S.R. Velusamy*, (2003) 8 SCC 625: AIR 2003 SC 3318.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, **JJ**. [Date of decision: 18-9-2003]

Nadir Khan v. State (Delhi Admn.), (1975) 2 SCC 406: 1975 SCC (Cri) 622, followed

[6047] — Ss. 401 and 397 — Revisional powers of High Court — Abdication of — High Court setting aside the order of conviction on the ground of contradictions and discrepancies in evidence without pointing to a single discrepancy or contradiction therein — *Conclusion arrived at by High Court in such a manner without stating any reasons therefor, held, resulted in improper exercise of revisional jurisdiction — Constitution of India — Art. 136*

Apart from indicating in an omnibus narrative that the evidence is full of contradictions and material discrepancies, learned Judge did not even point to a single discrepancy or contradiction worth the name in the impugned order. It is the nature and dimension of such contradiction which can have any bearing on the conclusions. But the High Court had said that there were discrepancies and contradictions in the evidence. After mentioning so, learned Single Judge jumped to the conclusion that in view of the contradictions the revision is allowed and the conviction and sentence are set aside. There was abdication of judicial function in exercising revisional jurisdiction of the High Court which is reflected in the impugned order. It is virtually an unreasoned order which is antithesis to judicial function. (Paras 4 and 5). *State of A.P.* v. *Yelamati Venkaataraju*, (2001) 10 SCC 728.

Bench Strength 2. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 29-11-1999]

[6048] — Ss. 401 and 354 — Revisional jurisdiction of High Court — Scope — Direction to trial court to rewrite the judgment not in accordance with the normal norm — Propriety — *Revision application filed by a private complainant against judgment and order of acquittal of accused passed by trial court — Interference by High Court with the judgment and order called for only in exceptional cases of gross miscarriage of justice, manifest illegality or perversity and not merely because another view was possible — High Court on perusal of trial court's judgment finding the reasons given therein for recording acquittal to be not proper and justifiable and hence setting aside that judgment and sending the matter back to the trial court for "writing a fresh judgment by giving proper judicial mind to the evidence on record" — Going through the judgment of the trial court, held, High Court exceeded its revisional jurisdiction in setting aside that judgment — Further the direction to re-write the judgment is a significant departure from the normal form of court order and was not justified*

The object of the revisional jurisdiction as envisaged under Section 401 is to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some undeserved hardship to individuals. The main question which the High Court has to consider in an application in revision is whether substantial justice has been done. If however, the same has been an appeal, the applicant would be entitled to demand an adjudication upon all questions of fact or law which he wishes to raise, but in revision the only question is whether the court should interfere in the interests of justice. Where the court concerned does not appear to have committed any illegality or material irregularity or impropriety in passing the impugned judgment and order, the revision cannot succeed. If the impugned order apparently is presentable, without any such infirmity which may render it completely perverse or unacceptable and when there is no failure of justice, interference cannot be had in exercise of revisional jurisdiction. While it is true and now well settled that exercise of power under Section 401 cannot but be ascribed to be discretionary — this discretion, however, as is popularly informed has to be a judicious exercise of discretion and not an arbitrary one. Judicial discretion cannot but be a discretion which stands "informed by tradition, methodised by analogy and disciplined by system" — resultantly only in the event of a glaring defect in the procedural aspect or there being a manifest error on a point of law and thus a flagrant miscarriage of justice, exercise of revisional jurisdiction under this statute ought not to be called for. It is not to be lightly exercised but only in exceptional situations where the justice delivery system requires interference for correction of a manifest illegality or prevention of a gross miscarriage of justice. It is not an appellate forum wherein scrutiny of evidence is possible; neither is the revisional jurisdiction open for being exercised simply by reason of the factum of another view being otherwise possible. It is restrictive in its application though in the event of there being a failure of justice there can be said to be no limitation as regards the applicability of the revisional power. (Paras 9 and 10)

The High Court possesses a general power of superintendence over the actions of courts subordinate to it. On its administrative side, the power is known as the power of superintendence. On the judicial side, it is known as the duty of revision. The High Court can at any stage even on its own motion, if it so desires, and certainly when illegalities or irregularities resulting in injustice are brought to its notice, call for the records and examine them. This right of the High Court is as much a part of the administration of justice as its duty to hear appeals and revisions and interlocutory applications — so also its right to exercise its powers of administrative superintendence. However, the jurisdictional sweep of the process of the High Court under the provisions of Section 401 is very much circumscribed, as noticed above. (Para 11)

In the contextual facts presently under consideration, the High Court cannot but be said to have exceeded its revisional jurisdiction in setting aside the order of acquittal. (Para 12)

In any event, writing of a fresh judgment as directed by the Court is rather a significant departure in the normal disposal of revisional applications or normal form of court orders. Neither the judgment of the trial court would justify the comments of the High Court, nor can it be said to be within the jurisdiction of the High Court to pass the impugned order in exercise of revisional jurisdiction under Section 401 CrPC. (Paras 13 and 14)

Therefore, the High Court's order impugned cannot be sustained and is set aside and the order of the learned Sessions Judge stands restored. The bail bonds, if any, stand discharged. (Para 15). *Jagannath Choudhary* v. *Ramayan Singh*, (2002) 5 SCC 659: 2002 SCC (Cri) 1181: AIR 2002 SC 2229: 2002 Cri LJ 2945.

Bench Strength **2**. Coram: **U.C. Banerjee** and *Y.K. Sabharwal*, JJ. [Date of decision: 9-5-2002]

K. Chinnaswamy Reddy v. State of A.P., AIR 1962 SC 1788: (1963) 1 Cri LJ 8; D. Stephens v. Nosibolla, AIR 1951 SC 196: 1951 SCR 284: 52 Cri LJ 510; Logendranath Jha v. Polai Lal Biswas, AIR 1951 SC 316: 1951 SCR 676: 52 Cri LJ 1248; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Thakur Das v. State of M.P., (1978) 1 SCC 27: 1978 SCC (Cri) 21, relied on

[6049] — S. 401 — Revision — Duty of High Court to examine infirmities in prosecution case while upholding conviction by courts below — Remand — *Important witnesses like IO, doctor and informant not examined, three out of five eyewitnesses did not support the prosecution story and post-mortem report not exhibited — PW 3 whose evidence was relied on and who claimed to be the son of the deceased was neither the informant nor was named in the FIR as an eyewitness — Sessions Court affirmed the conviction under Ss. 279 and 304-A IPC and revision filed thereagainst dismissed by High Court — Infirmities of prosecution not considered by High Court — Matter remanded for fresh consideration — Penal Code, 1860, Ss. 279 and 304-A* (Paras 3 to 5). *Shivnath Prasad* v. *State of Bihar*, (2008) 15 SCC 735: (2009) 3 SCC (Cri) 1184: (2008) 72 AIC 112 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 28-11-2008]

[6050] — Ss. 401, 397, 404, 378 and 386 — Effect of dismissal of statutory appeal against acquittal on pending revision — *Single Judge of High Court by impugned judgment allowing the revision and directing reconsideration of matter on basis of evidence already recorded — However, fact that appeal against acquittal had been dismissed by Division Bench of High Court on grounds of delay not brought to its notice — Similarly, fact that revision was pending at the instance of the father of the deceased was not brought to the notice of the Division Bench then considering application for condonation of delay in filing statutory appeal against acquittal — Strongly deprecating callous casualness on the part of the State counsel, appellant-accused as well as the Registry of the High Court in not pointing out proper facts to both, the Division Bench as well as the Revisional Court, held, awkward situation has arisen wherein appeal had failed, though only on question of limitation, yet, revision against the same judgment continued and was allowed — Division Bench in not allowing the condonation had effectively dismissed the appeal — Thus, there could be no subsequent order to the contrary by the Single Judge even if the pendency of appeal was not brought to its notice — Revision against the same order could not be entertained, much less allowed, upsetting the finality of trial court's judgment* (Paras 15 to 20). *K. Ramachandran* v. *V.N. Rajan*, (2009) 14 SCC 569: (2009) 82 AIC 119 (SC): 2009 Cri LJ 4413.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *R.M. Lodha*, JJ. [Date of decision: 7-7-2009]

Akalu Ahir v. Ramdeo Ram, (1973) 2 SCC 583: 1973 SCC (Cri) 903, considered and relied on

[6051] — Ss. 401 and 399 — Revision — Scope — Directions that may be passed at interlocutory stage — *Pending investigation in a case under S. 468 r/w 34 IPC, Magistrate handing over custody of certain cars, for purposes of investigation relating to theft of said cars, to police station conducting investigation — High Court, in revision directing that custody of said car(s) be handed over to R-1 at interlocutory stage, also without deciding on maintainability of revision, which was in question — If proper — Held, High Court ought not to have further handed over possession of vehicle(s) in question to R-1 until ownership of said vehicles was* *duly established in a proper manner, and that too at the interlocutory stage — Appeal allowed, order of Magistrate restored, and High Court directed to consider question of maintainability of revision, and decide it in accordance with law* (Para 3). *United India Insurance Co. Ltd.* v. *Arwish C. Marak*, (2005) 10 SCC 458: 2005 SCC (Cri) 1584.

Bench Strength **3**. Coram: *N. Santosh Hegde, B.P. Singh* and *S.B. Sinha*, JJ. [Date of decision: 7-12-2004]

[6052] — Ss. 401 & 399 and 354 & 235 — Criminal Revision — Disposal of by non-speaking and non-reasoned order — *Impermissibility — Matter remanded for rehearing — Constitution of India — Art. 136* (Para 2). *State of A.P.* v. *B. Satya Rao*, (2004) 11 SCC 332.

Bench Strength **2**. Coram: *Arijit Pasayat* and *C.K. Thakker*, JJ. [Date of decision: 13-10-2004]

[6053] — S. 401 — Dismissal by ex parte order of revision petition by High Court — Application for recall dismissed on ground that impugned order was passed on merits — *Reasons for appellant's non-appearance on the day when revision petition was taken up by High Court, explained — Matter remitted to High Court for fresh consideration on merits. Santosh* v. *State of U.P.*, (2009) 16 SCC 400.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 16-3-2009]

[6054] — Ss. 401 and 227 — Revision by High Court — Reasoned order/Speaking order — Necessity — *High Court allowing revision petition and discharging accused of alleged commission of offences under Ss. 493 and 376 IPC, by a practically unreasoned order — Order merely stating that FIR did not disclose commission of offence — No basis for the decision or discussion found — Impugned order set aside and matter remitted to High Court — Penal Code, 1860, Ss. 493 and 376* (Paras 6 to 8)

Accused alleged to have entered the house of informant and raped her, consequent to which she became pregnant. She pressurised the accused for marriage, but when he and his family members refused, FIR was lodged and charge-sheet submitted under Ss. 493 and 376 IPC. Accused filed an application for discharge under S. 227 CrPC primarily on ground that age of informant was not as shown, and therefore no offence under either S. 376 or S. 493 IPC was made out. Trial court declined the prayer for discharge. The High Court by impugned judgment allowed revision petition filed thereagainst by a practically unreasoned order. Hence, the present appeal.

Allowing the appeal, the Supreme Court held as above. *Tutul Kumari Sen* v. *State of Jharkhand*, (2009) 13 SCC 495: AIR 2009 SC 2547: (2009) 3 CTC 408 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 28-4-2009]

Cyril Lasrado v. Juliana Maria Lasrado, (2004) 7 SCC 431; State of Rajasthan v. Sohan Lal, (2004) 5 SCC 573: (2008) 2 SCC (Cri) 53, applied

[6055] — Ss. 401 and 403 — Non-appearance of revision petitioner — Effect — *Revision petition filed before High Court by appellant (deceased's brother) against acquittal of accused by trial court on charges under Ss. 498-A/302 r/w S. 34 IPC — On the day the matter was fixed before High Court, counsel for appellant failed to appear and only State's counsel appeared and therefore High Court appointed a counsel as amicus curiae and the State's counsel perused the records and held that there was no case for interference — Appellant submitted that his counsel could not appear because of an accident that took place on the date fixed, and since the amicus curiae had no records with him he could not have rendered any assistance to High Court — Held, since appellant had indicated reason for non-appearance of his counsel, impugned order of High Court is set aside and matter remitted to High Court for fresh disposal in accordance with law. Naresh Kumar* v. *Kala Wati*, (2009) 11 SCC 511: (2009) 3 SCC (Cri) 1470: (2009) 76 AIC 73 (SC).

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *V.S. Sirpurkar* and *A.K. Ganguly*, JJ. [Date of decision: 25-2-2009]

[6056] — S. 401 — Revisional powers of High Court — Scope — High Court quashing charges framed against the accused — *Held, revisional powers cannot be exercised in a routine and casual manner — Recourse to such powers for quashing the charges can be taken only if there is a legal bar against the continuance of the criminal proceedings or the framing of charge or where no offence is being made out against the accused considering the entire facts stated in the FIR — In revision, the High Court cannot appreciate the evidence in the manner the trial court and the appellate court are required to do — On facts, it was premature for the High Court to have exercised its revisional powers — Trial court to conduct trial and dispose of the matter on merits — Penal Code, 1860, Ss. 376, 511, 451 and 354. Munna Devi* v. *State of Rajasthan*, (2001) 9 SCC 631: AIR 2002 SC 107.

Bench Strength **2**. Coram: *M.B. Shah* and **R.P. Sethi**, JJ. [Date of decision: 6-11-2001]

[6057] — Ss. 401 & 397 and 228 — Exercise of revisional powers by High Court for quashing charges — Maintainability — Charges of corruption against cooperative bank officials — *Charge-sheet under Ss. 409, 420 and 120-B IPC together with S. 13(1)(d) r/w S. 13(2), PC Act, 1988, filed against respondent-accused, Chairman and Directors of Cooperative Bank, who were also members of the Loan Committee, for sanctioning loans without verifying eligibility of borrowers to receive such loans or the end-use of such loans and intentionally acting in an illegal manner to enable borrowers to avail of the loans — Trial court directing framing of charges — In revision thereagainst, High Court quashing the charges framed on the ground that respondents were members of the Loan Committee and as such members they were only required to consider loan cases which were put up to them by Bank Manager concerned for the grant of loan and it was for the Branch Managers of various branches to verify the facts regarding entitlement for grant of loan before submitting the same to the Loan Committee and hence, it could not be said that respondents had acted illegally and had wrongly sanctioned loans to the borrowers concerned — Sustainability — Appellant, inter alia, contending that in going into factual aspects of the matter, High Court travelled beyond its revisional powers in coming to findings of fact, which were yet to be established on evidence — Tenability — Held, undoubtedly, in the inquiry report of District Vigilance Committee, role attributed to respondents in sanctioning loans was shown to be purely managerial where the groundwork had been completed by Branch Managers, but as members of Loan Sanctioning Committee, they had acted inefficiently — It was also suggested that Chairman and Chief Executive Officer of the Bank had connived with other accused in defrauding the Bank — Hence, held, High Court erroneously quashed charges framed against respondents — Consequently, orders impugned set aside and charges framed by trial court restored — Trial court directed to proceed with trial — Penal Code, 1860, Ss. 409, 420 and 120-B — Prevention of Corruption Act, 1988, S. 13(1)(d) r/w S. 13(2)* (Paras 5, 10, 43, 44 and 50 to 52). *State of M.P.* v. *Rameshwar*, (2009) 11 SCC 424: (2009) 3 SCC (Cri) 1421: (2009) 77 AIC 102 (SC): 2009 Cri LJ 2415.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 6-4-2009]

Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Nikhil Merchant v. CBI, (2008) 9 SCC 677: (2008) 3 SCC (Cri) 859, distinguished

[6058] — Ss. 401 & 397 and 227 & 228 — Quashing the charge — Would be justified if even on accepting the entire prosecution case the charged offence would not be made out. *State of M.P.* v. *S.B. Johari*, (2000) 2 SCC 57: 2000 SCC (Cri) 311: AIR 2000 SC 665: 2000 Cri LJ 944.

Bench Strength **2**. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 17-1-2000]

Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjayya, (1990) 4 SCC 76: 1991 SCC (Cri) 47, relied on

[6059] — Ss. 401 and 397 — Revision filed by State against discharge of accused — Application made by accused for declaring charges framed by Sessions Court to be null and void being vitiated by fraud practised by State — Fraud — Proof of — *Charges framed under Official Secrets Act on the basis of documents seized from the possession of accused and interrogation of accused and examination of prosecution witnesses — Allegations made in the application relating to merits of the case — Held on facts, fraud not proved — High Court erred in entertaining and allowing the application thereby ignoring the earlier judgments — Evidence Act, 1872, S. 44 — Official Secrets Act, 1923, Ss. 3 and 5*

In the application for declaration of the charge-sheet as null and void the accused stated that the charges were vitiated by fraud as the Panchnama was fabricated as it did not contain his signature and it was ante-dated. It was further averred that for three months even the copies of the remand application filed by the police were denied to the applicant and the orders thereon were not supplied to him. It was also claimed that the complaint was in contradiction with the statement of witnesses. It was stated in the application that if honest and fair answer to the question, if any charge was made out, was given by the State it would have exonerated the applicant but the State committed fraud by keeping the trial Judge in the dark of real facts and induced him to entertain erroneous opinion and pass order framing charges against him. Various sentences from one or the other judgment rendered for or against the accused by different courts at one or the other stage were extracted and it was claimed that the State either knowingly did not place correct facts to substantiate those observations or deliberately concealed the truth and made fraudulent submissions inducing the trial Judge thereby to frame the charges. Emphasis was laid on the submissions advanced by the State and it was stated that it was result of fraudulent submissions that the trial court was induced to frame charges against the accused. Question was did the averments in the application make out a case of fraud and were the statements of fact capable of giving rise to an inference in law that the State was guilty of misleading the court? Answering in the negative and allowing the State's appeal

Held :

From the charge-sheet it is clear that it complied with the requirements of law and mentions not only the offence and the section but the particulars as to time, place and person. Whether prosecution was possessed of sufficient evidence to prove each of the charges is a different matter, but they were framed on basis of documents seized from possession of the accused at the airport, search of his residence, on the next day, interrogations of the accused and examination of prosecution witnesses. The allegations made in the application may or may not be so but that could be relevant when the merits were gone into. It certainly, could not be taken as a ground for claiming that the framing of charge was fraudulent, especially, when these aspects had been thrashed out once before the Single Judge of the High Court who by his order had held that the charges against the accused were made out not only under S. 3 but under S. 5 of the Official Secrets Act. Various sentences extracted from different judgments between the accused and State in various proceedings could not give rise to an inference either in law or fact that the State was guilty of fraud. It is thus not possible to appreciate the worth of such averments to establish fraud. Legal submissions cannot be equated to misrepresentation. The pleadings fell short of legal requirements to establish fraud in this case.

It was complete misapprehension under which the accused was labouring and the High Court not only entertained such application but adopted a course which amounted to reviewing and setting aside orders of his predecessor without sufficient material and accepted the claim that all earlier judgments were liable to be ignored under S. 44 of the Evidence Act as the proceedings were vitiated by fraud. The Judge not only committed an error of procedure but misapplied the law.

'Fraud' is false representation by one who is aware that it was untrue with an intention to mislead the other who may act upon it to his prejudice and to the advantage of the representer. Effect of fraud on any proceeding, or transaction is that it becomes a nullity. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Such being the nature and consequence of it the law requires not only strict pleading of it but strict proof as well. *State of Maharashtra* v. *Dr. Budhikota Subbarao*, (1993) 2 SCC 567: 1993 SCC (Cri) 650.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **R.M. Sahai**, JJ. [Date of decision: 16-3-1993]

[6060] — Ss. 401 and 237 — Revision — Petitions for discharge of accused-respondent — *High Court should not have expressed final opinion on merits of legal interpretation regarding points raised, when trial court had reached almost the final stage of prosecution evidence — Criminal revision petitions, on facts, permitted to be withdrawn — Respondent permitted to raise all contentions which she thinks necessary before trial court at the final stage. State of T.N.* v. *Selvi J. Jayalalitha*, (2000) 9 SCC 444: 2001 SCC (Cri) 415.

Bench Strength **2**. Coram: *K.T. Thomas* and *Ruma Pal*, JJ. [Date of decision: 25-4-2000]

[6061] — Ss. 401, 397 & 482 and 197 — High Court in revision finding that Sessions Court (at Jabalpur) lacked territorial jurisdiction to try the case, held, erred in quashing the entire criminal proceedings — High Court should have transferred the case to the court which it considered to have jurisdiction

When the High Court found that the courts at Jabalpur had no jurisdiction the course adopted by the High Court by quashing the entire criminal proceedings is not permissible in law. The High Court should have transferred the case to the court which the High Court found to be vested with jurisdiction. (Para 7). *State of M.P.* v. *Suresh Kaushal*, (2003) 11 SCC 126.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 1-5-2001]

[6062] — Ss. 401, 397 and 204 — Revision against order summoning accused — Dropping of proceedings after examining defence on merits — Propriety — *Held, was clearly erroneous — It was no stage to examine defence of the respondents — Whether respondents paid certain amount by way of bank drafts after the issue of some of the cheques or that payment was towards some of the amounts covered by the cheques, were all questions which could be decided only at the trial — High Court erred in holding that by making the said payment the respondents had discharged their liability — Negotiable Instruments Act, 1881, S. 138* (Para 3). *State Farm Corpn. of India Ltd.* v. *Nijjer Agro Foods Ltd.*, (2005) 12 SCC 502.

Bench Strength **3**. Coram: *Y.K. Sabharwal, B.N. Srikrishna* and *S.H. Kapadia*, JJ. [Date of decision: 21-7-2005]

[6063] — Ss. 401, 397 and 228 — Revision — Power to quash charges and substitute new charge — *Charges framed by trial court in relation to offences under Ss. 304-B and 498-A IPC — High Court in revision quashing the said charges and directing framing of charge under S. 306 IPC —*

Held, High Court was not justified in doing so — Crucial question was whether suicide of deceased was in any way connected with the demand for dowry — That matter required consideration by the Court by proper appreciation of evidence — At the stage of framing charges, the High Court should not have considered the whole evidence and then concluded that there were no materials to frame charges under Ss. 304-B and 498-A IPC — High Court's order set aside — Trial court directed to proceed on the basis of the charges framed under Ss. 304-B and 498-A IPC — Penal Code, 1860, Ss. 304-B, 498-A and 306 (Paras 3 and 4). *Nemichand Jain* v. *Roshanlal*, (2004) 13 SCC 461.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 21-9-2004]

[6064] — Ss. 401, 397 and 239 — Discharge of accused by High Court in exercise of its revisionary power — Discharge based on scrutiny and scanning of evidence and materials produced by prosecution — Propriety of — *Respondent, a public servant and another person being tried in a corruption case — Charge-sheet filed against them under Ss. 8, 10, 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 read with S. 120-B IPC — Their application for discharge under S. 239 rejected by trial court but High Court in exercise of its revisionary power discharging them — While doing so, the High Court scrutinising the evidence and advancing elaborate arguments — Held, the High Court exceeded its jurisdiction — It acted as if it were considering an appeal against conviction — Discharge therefore set aside — Prevention of Corruption Act, 1988, S. 22* (Para 6). *State of U.P.* v. *Udai Narayan*, (1999) 8 SCC 741: AIR 1999 SC 3845: (1999) 114 ELT 374.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision: 1-11-1999]

[6065] — S. 401 — Charges were framed under S. 302 and alternatively under Ss. 304, 325 and 323 IPC — Criminal revision filed by appellant questioning correctness of charges framed, dismissed — *Appellant contending that S. 302 IPC had no application herein as he had no intention to kill passengers and at the most it may be S. 304-A — Held, in the instant case, S. 302 IPC prima facie has no application — Accordingly, charges stand altered to S. 304-A along with Ss. 279 and 337 IPC. Naresh Giri* v. *State of M.P.*, (2008) 1 SCC 791: (2008) 1 SCC (Cri) 324: (2007) 60 AIC 15 (SC): (2007) 4 KLT 1115.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 12-11-2007]

Director of Public Prosecutions v. Camplin, 1978 AC 705: (1978) 2 WLR 679: (1978) 2 All ER 168 (HL); Syad Akbar v. State of Karnataka, (1980) 1 SCC 30: 1980 SCC (Cri) 59; R. v. Briggs, (1977) 1 WLR 605: (1977) 1 All ER 475 (CA); R. v. Caldwell, 1982 AC 341: (1981) 2 WLR 509: (1981) 1 All ER 961 (HL); R. v. Lawrence, 1982 AC 510: (1981) 2 WLR 524: (1981) 1 All ER 974 (HL), relied on

[6066] — Ss. 401 and 482 — Quashing of criminal proceedings — Considerations in — *Normal rule is not to interfere with the investigations and criminal proceedings, except when the complaint or FIR broadly read does not disclose any offence and can be termed as abuse of process of law — Complaint filed by Factories Inspector, alleging non-compliance with S. 63 of Factories Act by a company, sought to be quashed by High Court in exercise of its criminal revisional jurisdiction — Having regard to the complaint and relevant provisions and legislative intent of the Factories Act, which is a beneficial piece of legislation, held, High Court was justified in refusing to quash the complaint at the initial stage — Gujarat Factories Rules, 1963, Rr. 87 and 110*

The Factories Inspector, on the basis of his visit and inspection of the factory of a company, filed a complaint before the Magistrate alleging therein that on the date and at the time he visited the factory it was running and he found among the adult workers one named worker in Group C working after the prescribed working hours and that the factory had thus violated Section 63 of the Factories Act by allowing the said worker/ordering him to work without putting a note against his name in the attendance register of the adult workers and against the working hours shown in Notice Form 14 displayed in the factory which constituted an offence under Section 92 of the Factories Act. The Vice-President of the Company, who at the material time was the "occupier" under the Factories Act invoked criminal revisional jurisdiction of the High Court for quashing the complaint and process issued in the criminal case pending before the Magistrate. The High Court dismissed the revision.

Dismissing the appeal,

Held :

The Factories Act is a welfare legislation and a complete code in itself. The Act also provides for punishment for violation of any of the provisions. Appointment of Inspectors by the State Government in terms of the provisions of State Rules (in the instant case the Gujarat Factories Rules, 1963) has been effected only for the purposes of giving effect to the beneficial piece of legislation and as such both the Rules and forms introduced thereunder by the State Government and the provisions of the statute shall have to be read in consonance with the intent of the legislature and not dehors the same. The mandate of the Act ought to be interpreted in a manner as to give efficacy to the legislative intent. The requirement of Section 61, in particular, sub-sections (1) and (2) thereof can be easily deciphered since the intent stands clear enough to indicate that an adult worker must know his daily placement and daily workings beforehand — this placement beforehand is the requirement of the statute in Section 63 and in the event of non-compliance, there is a liability for being prosecuted. In the complaint it was alleged that the requirements of Form 14 had not been fulfilled. Compliance with Form 14 and entries to be made therein "beforehand" needs a further scrutiny of facts which at this stage of the proceeding cannot be gone into. User of the expression "beforehand" appears in Section 61 which envisages a specific state of facts, which the complainant alleges as not being complied with — criminal complaints ought not to be scuttled at the initial stages and quashing of complaint at the initial stages is rather an exception than a rule. Beneficial legislations have been engrafted in the statute-book for the benefit of the socially downtrodden and in the wake of such a situation, it would neither be fair nor be reasonable at this stage to nullify the efforts of an Inspector under the Rules. The matter needs further enquiry and investigation as to the factum of entry being made beforehand in the register maintained in terms of Section 61 of the Factories Act. It is too early in the day to say that there would not be even a possibility of non-compliance with Section 63 which in turn envisages non-compliance with Section 61 and Section 62 of the Factories Act. (Paras 14, 16, 19 and 20)

Now, criminal proceedings, in the normal course of events ought not to be scuttled at the initial stage, unless the same amount to an abuse of the process of law. In the normal course of events thus, quashing of a complaint should rather be an exception and a rarity than an ordinary rule. The genuineness of the averments in the FIR cannot possibly be gone into and the document shall have to be read as a whole so as to decipher the intent of the maker thereof. It is not a document which requires decision with exactitude, neither is it a document which requires mathematical accuracy and nicety, but the same should be able to communicate or be indicative of disclosure of an offence broadly and in the event the said test stands satisfied, the question relating to the quashing of a complaint would not arise. However, there cannot possibly be any guiding factor as to which investigation ought to be scuttled at the initial stages and investigations which ought not to be so scuttled. The first information report needs to be considered and if the answer is found on a perusal thereof which leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere. (Paras 9 and 21)

In the event of commission of a cognizable offence and an offence standing disclosed in the first information report, interest of justice requires further investigation by the investigating agency. Investigation of an offence is within the exclusive domain of the police department and not the law courts. In the event of disclosure of an offence, it is a duty incumbent to investigate into the offence and bring the offender to book in order to serve the cause of justice and it is only thereafter the investigating officer submits the report to the court with a prayer to take cognizance of the offence under Section 190 CrPC and it is on submission of the report that the duty of the police ends, subject however to the provisions as contained in Section 173(8) of the Code. There is thus a clear and well-defined area of operation and demarcated function in the field of investigation of crimes and its subsequent adjudication. (Para 5). *S.M. Datta* v. *State of Gujarat*, (2001) 7 SCC 659: 2001 SCC (L&S) 1201: 2001 SCC (Cri) 1361: AIR 2001 SC 3253.

Bench Strength 2. Coram: *A.P. Misra* and **U.C. Banerjee**, JJ. [Date of decision: 24-8-2001]

Bhikusa Yamasa Kshatriya (P) Ltd. v. Union of India, AIR 1963 SC 1591; King Emperor v. Khwaja Nazir Ahmad, (1944) 71 IA 203: AIR 1945 PC 18; State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561: 1982 SCC (Cri) 283; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272, relied on

Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401: 1999 Cri LJ 1833; S.M. Datta v. State of Gujarat, (2000) 2 Guj LH 735, affirmed

— S. 401(1) *See* Ss. 401(3) and (1)

[6067] — S. 401(2) — When applies

Apparently, sub-section (2) of S. 401 contemplates a situation where a person may not be an accused person before the court below but one who might have been discharged and therefore if the revisional court after exercising jurisdiction under S. 401 wants to pass an order to the prejudice of such a person, it is necessary that the person should be given an opportunity of hearing but it does not contemplate any contingency of hearing of any person who is neither party in the proceedings in the court below nor is expected at any stage even after the revision to be joined as party. *A.K. Subbaiah* v. *State of Karnataka*, (1987) 4 SCC 557: 1987 SCC (Cri) 768.

Bench Strength 2. Coram: *Sabyasachi Mukharji* and **G.L. Oza**, JJ. [Date of decision: 28-8-1987]

[6068] — S. 401(2) — Court adjourning cases of a particular advocate for a certain fixed period — Hearing ex parte of any matter posted by mistake during that period, held, not justified — *Revision application to be restored and decided on merits. Chakreshwar Nath Jain* v. *State of U.P.*, 1981 Supp SCC 11: 1981 SCC (Cri) 609: AIR 1981 SC 2009(2).

Bench Strength **2**. Coram: *P.N. Bhagwati* and *Baharul Islam*, JJ. [Date of decision: 9-1-1981]

[6069] — S. 401(2) — Notice of enhancement of sentence — *Trial Court awarding sentence of fine only — Sessions Court making reference to High Court for passing appropriate sentence — High Court issuing show-cause notice against enhancement of sentence and imposing sentence of imprisonment — Held, view that notice was only to show cause why the sentence should not be regularised by enhancement of fine and not to a term of imprisonment not borne out by the record — CrPC, 1898, Ss. 439(2) & 6. State of Orissa* v. *Ram Chander Agarwala*, (1979) 2 SCC 305: 1979 SCC (Cri) 462: AIR 1979 SC 87: 1979 Cri LJ 33.

Bench Strength **2**. Coram: *Jaswant Singh* and **P.S. Kailasam**, JJ. [Date of decision: 5-10-1978]

[6070] — Ss. 401(2), 402, 204 and 482 — Revision petition — Opportunity of hearing to accused — Revision petition filed by complainant — *Petition styled as a revision petition which was clear from its cause title and by impleadment of the appellants as parties — High Court however treating it as a petition under S. 482 and without hearing the accused/appellant proceeded to direct the issuance of process — Propriety of — Held, there can be no quarrel with the proposition that at the time of issuance of process and taking cognizance, the accused has no right to be heard — But in the facts of the instant case before the Revisional Court the appellants were heard — Further, their names were indicated in the cause-title, which at the request of Respondent 1 were deleted — Above being the position the High Court ought to have heard the appellants before deciding the matter* (Paras 8 and 9). *Subha Raj* v. *Sankar Sarkar*, (2007) 11 SCC 85: 2007 Cri LJ 4293.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 24-7-2007]

[6071] — Ss. 401(2) and 357 — Revision filed by complainant claiming compensation under S. 357 — No notice issued to accused — *High Court tagged the revision petition along with death sentence reference case as well as criminal appeal filed by accused against conviction and sentence — Parties were aware of this position as arguments were addressed on this question — Held, technical objection regarding non-issuance of notice cannot be entertained because no prejudice was caused to the accused on this count — Likewise contention of the complainant caveator that the accused having not preferred any separate appeal before Supreme Court against High Court's judgment in the revision petition, there was no challenge to that part of the judgment at all, was also too technical and as none of the parties were prejudiced thereby, held, the same cannot also be entertained — Hence accused's objection as regards grant of compensation has to be considered on merits* (Para 11). *Rachhpal Singh* v. *State of Punjab*, (2002) 6 SCC 462: 2002 SCC (Cri) 1362: AIR 2002 SC 2710.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *D.M. Dharmadhikari*, JJ. [Date of decision: 23-7-2002]

[6072] — S. 401(2) r/w S. 482 — Criminal revision challenging confirmation of judgment of conviction and sentence dismissed ex parte by High Court — Sustainability — *Appellant highlighting several difficulties which stood in the way of counsel for the appellant in appearing before High Court when matter was taken up — Held, it is true that lawyers are expected to be vigilant once they accept a brief — But taking into consideration peculiar circumstances of the case, matter remitted to the High Court for a fresh consideration on merits — Negotiable Instruments Act, 1881, S. 138. Jagdish Bagri* v. *Rajendra Kumar Luhariwala*, (2009) 4 SCC 218.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 21-1-2009]

— **S. 401(3)** *See also* Ss. 154 & 173 and 401(3)

[6073] — S. 401(3) — Revision — Conversion of acquittal to conviction — Prohibition contained in S. 401(3) — Invocation of — Substance and effect of directions of High Court on finding of trial court — Relevance of — *In present case, trial court acquitting the accused persons in respect of offence under S. 302 IPC, but convicting them for causing simple injuries to deceased — Trial court disbelieving eyewitnesses and arriving at the said conclusion having regard to evidence of autopsy surgeon and certain other factors — In revision filed by complainant, High Court criticising testimony of autopsy surgeon for deliberately suppressing injuries on deceased — Consequently, it remanding the matter to trial court for consideration afresh with direction that in the instant case the evidence of doctor would not prevail over the eyewitness account and that the present one was a* *case under S. 302 IPC — Held, the judgment of the High Court clearly demonstrated that in effect and substance the finding of the trial Judge had been reversed — Hence, contention of the State that Supreme Court should not interfere in present case as the same was not a case where the High Court converted a judgment of acquittal to a judgment of conviction but merely remitted the matter to the trial court for consideration afresh, not sustainable*

The prohibition contained in Section 401(3) CrPC refers to a finding and not the conclusion. A bare perusal of the judgment of the High Court clearly demonstrates that in effect and substance the finding of the trial Judge (of acquittal) has been reversed. While hearing the matter afresh in terms of the direction of the High Court, the trial Judge would be bound by the observations made therein and thus, would have no option but to convict the appellants. (Paras 28, 29 and 8). *Johar* v. *Mangal Prasad*, (2008) 3 SCC 423: (2008) 2 SCC (Cri) 89: AIR 2008 SC 1165: 2008 Cri LJ 1627: (2008) 64 AIC 246 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 30-1-2008]

[6074] — S. 401(3) — Revision — Interference with acquittal — Power of revisional court — *Held, it can set aside an order of acquittal and remit the case for retrial where material evidence is overlooked by the trial court — Penal Code, 1860, Ss. 302/34*

The revisional court can set aside an order of acquittal and remit the case for retrial where the trial court overlooking material evidence has passed the order. In the instant murder case (based on circumstantial evidence), the material evidence seems to have been overlooked by the trial court in relation to four circumstances, namely: (*1*) the dragging of the deceased to the house of accused *R* which was joint house of the deceased; (*2*) the house having been found locked by the police on visit; (*3*) the breaking open of the door of the house; and (*4*) the recovery of the dead body in a mutilated condition in the courtyard of the house. The overlooking of evidence in relation to these circumstances warrants the remand of the case to the trial court for retrial which has been directed in terms of the impugned judgment. It cannot be said that the High Court has reappreciated the evidence. The High Court has only demonstrated as to how the material evidence has been overlooked leading to manifest illegality resulting in gross miscarriage of justice. The impugned judgment of the High Court does not call for any interference. (Paras 10 and 12). *Ram Briksh Singh* v. *Ambika Yadav*, (2004) 7 SCC 665: 2004 SCC (Cri) 2009.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *Arijit Pasayat*, JJ. [Date of decision: 9-3-2004]

D. Stephens v. Nosibolla, AIR 1951 SC 196: 1951 SCR 284: 52 Cri LJ 510; K. Chinnaswamy Reddy v. State of A.P., AIR 1962 SC 1788: (1963) 3 SCR 412: (1963) 1 Cri LJ 8; Bindeshwari Prasad Singh v. State of Bihar (now Jharkhand), (2002) 6 SCC 650: 2002 SCC (Cri) 1448, considered

***Followed** in Johar v. Mangal Prasad, (2008) 3 SCC 423*

[6075] — Ss. 401(3) and 374 — Revision against acquittal and appeal against acquittal — Comparative scope of High Court's jurisdiction — *Dismissal of State's appeal against acquittal even on ground of limitation, gives finality to the judgment of trial court and in such a case exercise of revisional jurisdiction by High Court against the order of acquittal at the instance of a private party would not be proper*

The High Court has noticed the fact that the State had preferred an appeal against the acquittal of the appellants. That appeal was dismissed by the High Court on the ground of limitation. In principle that makes no difference, because the dismissal of the appeal even on the ground of limitation is a dismissal for all purposes. The jurisdiction of the High Court in dealing with an appeal against acquittal preferred under Section 374 CrPC is much wider than the jurisdiction of the revisional court exercising jurisdiction under Section 401 CrPC against an order of acquittal at the instance of a private party. All grounds that may be urged in support of the revision petition may be urged in the appeal, but not vice versa. The dismissal of an appeal preferred by the State against the order of acquittal puts a seal of finality on the judgment of the trial court. In such a case it may not be a proper exercise of discretion to exercise revisional jurisdiction under Section 401 CrPC against the order of acquittal at the instance of a private party. Exercise of revisional jurisdiction in such a case may give rise to an incongruous situation where an accused tried and acquitted of an offence, and the order of acquittal upheld in appeal by its dismissal, may have to face a second trial for the same offence of which he was acquitted. (Para 15). *Bindeshwari Prasad Singh* v. *State of Bihar*, (2002) 6 SCC 650: 2002 SCC (Cri) 1448: AIR 2002 SC 2907.

Bench Strength **2**. Coram: *M.B. Shah* and **B.P. Singh**, JJ. [Date of decision: 13-8-2002]

[6076] — S. 401(3) — Revisional jurisdiction of the High Court invoked by a private complainant against an order of acquittal — Scope and extent of — *High Court should not interfere with order of acquittal unless there is manifest illegality* *or grave miscarriage of justice — Trial Judge placing undue reliance on result of investigation to base his finding of acquittal — Held, the High Court was justified in setting aside the order of acquittal*

The revisional power of the High Court while sitting in judgment over an order of acquittal should not be exercised unless there exists a manifest illegality in the judgment or order of acquittal or there is grave miscarriage of justice. In the instant case one of the grounds that largely weighed with the trial court for acquitting the appellants was that an Inspector of CID who had taken up the investigation of the case and was examined by the defence testified that during his investigation he found that the story as made out by the prosecution was not true and on the contrary the plea of the appellants that the dacoity with murder was committed by some unknown criminals and they were falsely implicated was true. The High Court was, therefore, fully justified in commenting upon the trial court's impermissible and undue reliance on the evidence of the defence witness i.e. the I.O. and, for that matter, the result of his investigation. *Kaptan Singh* v. *State of M.P.*, (1997) 6 SCC 185: 1997 SCC (Cri) 870: AIR 1997 SC 2485: 1997 Cri LJ 2987.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.P. Kurdukar*, JJ. [Date of decision: 24-4-1997]

[**Ed.**: In this case ignoring the report of investigation submitted by the Inspector of CID (the I.O.) the Magistrate took cognizance of the offences against the appellants and committed the case to the Court of Session. Therefore, the appellant produced the Inspector in his defence.]

[6077] — S. 401(3) — Scope of High Court's revisional jurisdiction — Concurrent finding of acquittal — Reappreciation of evidence — *In absence of any manifest illegality, perversity and miscarriage of justice, High Court would not be justified in interfering with the concurrent finding of acquittal of the accused merely because on reappreciation of evidence it found the testimony of the PWs to be reliable whereas trial court had taken an opposite view — Penal Code, 1860, Ss. 302 and 302/114*

According to the prosecution, there was an altercation between the informant and the appellants who were residing in the same building. When the altercation took an ugly turn and abuses were being exchanged the informant's son *K* came down and questioned the appellants, whereupon *K* was hit on the head with an iron rod as a result of which he died. The prosecution relied upon the testimony of the eyewitnesses viz. PWs 1, 3 and 4, being the mother, sister and father respectively of the deceased as also the medical evidence and after consideration of the evidence on record, acquitted the appellants of charges of offence under Sections 302 and 302/114 IPC. The State's appeal having been dismissed, a revision under Section 401 CrPC was filed before the High Court. In the revision it was sought to be urged on behalf of the informant that there was no reason to discard the testimony of PWs 1, 3 and 4 which was corroborated by the medical evidence. On the other hand it was highlighted on behalf of the appellants that in the FIR a clear allegation was made against Appellant 1 of having assaulted *K* whereas the other witnesses in the course of their deposition attributed the assault on *K* to Appellant 2. However, the High Court found that the evidence of the eyewitnesses was consistent and that though in the FIR the informant had attributed the fatal injury to Appellant 1 and later changed his version attributing the injury to Appellant 2, the FIR not being a substantive piece of evidence, at best the evidence of the informant was not corroborated by the first information report and set aside the order of acquittal.

Allowing the appeal,

Held :

When in view of sub-section (3) of Section 401 CrPC the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a retrial. The High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of the Supreme Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 CrPC in an appeal against acquittal by a private party. (Para 12). *Bindeshwari Prasad Singh* v. *State of Bihar*, (2002) 6 SCC 650: 2002 SCC (Cri) 1448: AIR 2002 SC 2907.

Bench Strength **2**. Coram: *M.B. Shah* and **B.P. Singh**, JJ. [Date of decision: 13-8-2002]

D. Stephens v. Nosibolla, AIR 1951 SC 196: 1951 Cri LJ 510; K. Chinnaswamy Reddy v. State of A.P., AIR 1962 SC 1788: (1963) 1 Cri LJ 8; Akalu Ahir v. Ramdeo Ram, (1973) 2 SCC 583: 1973 SCC (Cri) 903; Pakalapati Narayana Gajapathi Raju v. Bonapalli Peda Appadu, (1975) 4 SCC 477: 1975 SCC (Cri) 543; Mahendra Pratap Singh v. Sarju Singh, AIR 1968 SC 707: 1968 Cri LJ 665, followed

[6078] — S. 401(3) — Revision against acquittal — High Court's jurisdiction to interfere with order of acquittal — *Non-application of mind, non-consideration or improper consideration of material evidence, inconsistencies, faulty reasoning and lack of judicial approach etc. on the part of the lower court (Sessions Judge in this case) resulting in grave miscarriage of justice, held, constitute valid grounds for High Court's interference with order of acquittal and to order retrial — Instances mentioned in Chinnaswamy v. State of A.P. justifying interference are illustrative and not exhaustive. Ayodhya Dube* v. *Ram Sumer Singh*, 1981 Supp SCC 83: 1982 SCC (Cri) 471: AIR 1981 SC 1415: 1981 Cri LJ 1016.

Bench Strength **3**. Coram: **O. Chinnappa Reddy**, *A.P. Sen* and *Baharul Islam*, JJ. [Date of decision: 28-4-1981]

K. Chinnaswamy Reddy v. State of A.P., AIR 1962 SC 1788, explained.

[6079] — S. 401(3) — Scope of revisional jurisdiction under against acquittal — Unless view of the trial court is illegal or perverse, High Court cannot interfere with that view merely because it prefers a different view — *On facts held, High Court exceeded its revisional jurisdiction in re-examining the evidence and reversing order of acquittal passed by trial court — CrPC, 1898, S. 439 — Penal Code, 1860 — Ss. 302 and 34*

The trial court, finding that there were serious discrepancies and glaring inconsistencies between the versions of the eyewitnesses and that the medical evidence also did not support their version of the incident, considered it unsafe to rely upon the testimony of those eyewitnesses and accordingly held that the prosecution had failed to prove its case beyond reasonable doubt. From the record of the case it appears that the view of the trial court was a possible view and it cannot be characterised as illegal or perverse. It may be that the High Court was not inclined to agree with the said view on the basis of his independent scrutiny and appreciation of the evidence adduced in the case but that would not furnish any justification for interference in revision with the order of acquittal passed by the trial court. Even in an appeal the appellate court would not have been justified in interfering with an acquittal merely because it was inclined to differ from the findings of fact reached by the trial court on the appreciation of the evidence. The revisional power of the High Court is much more restricted in its scope. Thus the High Court transgressed the limits of its revisional jurisdiction to setting aside the order of acquittal passed by the trial court. *Bansi Lal* v. *Laxman Singh*, (1986) 3 SCC 444: 1986 SCC (Cri) 342: AIR 1986 SC 1721: 1986 Cri LJ 1603.

Bench Strength **2**. Coram: **V. Balakrishna Eradi** and *M.M. Dutt*, JJ. [Date of decision: 15-7-1986]

[6080] — Ss. 401(3), 378 and 210 — Locus standi — Private party — Revision against order of acquittal passed in a case instituted on a police report is entertainable even at the instance of a private party in exceptional cases — *High Court erred in dismissing the revision petition filed by the appellant private party on the ground that no formal permission of Public Prosecutor was obtained for filing such a petition — Permission of Public Prosecutor could not have vested the appellant with a right if he did not have it under the Criminal Procedure Code. Kishan Swaroop* v. *Govt. (NCT of Delhi)*, (1998) 8 SCC 451: 1998 SCC (Cri) 1587: AIR 1998 SC 990.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *K.T. Thomas*, JJ. [Date of decision: 22-9-1997]

[6081] — Ss. 401(3), 397, 399 and 386 — Revisional jurisdiction against acquittal invoked at instance of complainant — Scope of — Ordering of retrial — Directions that may not be given on remand for retrial — *Held, said revisional jurisdiction is to be exercised in very exceptional cases, where there is a defect of procedure or manifest error of law resulting in flagrant miscarriage of justice — Further held, High Court ought not to have directed trial court to "take a fresh decision from stage one" and on the basis of the "suggested formula" — Accused justified in his apprehension that said observations would bias the trial court — Approach and observations of High Court disapproved*

The appellants were accused of the commission of the offence of cruel treatment meted out to the deceased punishable under Section 498-A of the Penal Code and abetting her suicidal death, punishable under Section 306 IPC. On the evidence produced by the prosecution the trial court acquitted them. But in revision, preferred by the mother of the deceased, the High Court by the impugned order set aside the acquittal and directed a *de novo* trial. The High Court did take note of the various infirmities in the prosecution case but even then it observed that the "trial court ought to have been more, without meaning any disrespect, dynamic and to have taken active truth instead of resigning to the fate as ordained by the prosecution". The High Court then went on to observe that where the prosecution is remiss in bringing necessary evidence, the trial court ought to invoke its powers under Section 311 CrPC and summon additional witnesses whom it considered necessary. The High Court directed remand of the case "*for fresh decision from stage one*". In the concluding part of its judgment, the High Court made certain other observations [set out in para 13 herein].

Disposing of the appeal in the terms below, *Held*:

The High Court ought not to have directed the trial court to hold a *de novo* trial and take a decision on the basis of the so-called "*suggested formula*". The High Court in its concluding part of the judgment does state that any observation in its judgment should not influence the mind of the trial court but, at the same time, the High Court directs the trial court to take "*a fresh decision from stage one*" and on the basis of the "*suggested formula*". The accused is justified in his grievance and apprehension that the aforesaid observations and directions are likely to be mistaken by the trial court as if there is a mandate to it to record the verdict of conviction against the accused, regardless of the worth and weight of the evidence before it. (Para 24). *Satyajit Banerjee* v. *State of W.B.*, (2005) 1 SCC 115: 2005 SCC (Cri) 276: 2005 Cri LJ 648: (2004) 3 KLT 1098.

Bench Strength 2. Coram: *Y.K. Sabharwal* and **D.M. Dharmadhikari**, JJ. [Date of decision: 23-11-2004]

Followed in Johar v. Mangal Prasad, (2008) 3 SCC 423

[6082] — Ss. 401(3) and 378 — Revision against acquittal — Filed by a private party — *Held, could not result in conviction of accused* (Para 2). *Shingara Singh* v. *State of Haryana*, (2003) 12 SCC 758: AIR 2004 SC 124: 2004 Cri LJ 828.

Bench Strength 2. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 4-11-2003]

[6083] — Ss. 401(3) and (1) — Whether on facts, the High Court acting in exercise of its revisional powers was justified in interfering with the order of acquittal and in ordering a retrial — *Murder case — Case not instituted upon a complaint — Revision application by private party — High Court upsetting the acquittal on ground of wrongful appreciation of evidence — CrPC, 1898, S. 439*

Revisional power under S. 439(1) has to be exercised subject to S. 439(4). It is settled law that the revisional jurisdiction, when invoked by a private complainant against an order of acquittal, ought not to be exercised lightly and that it can be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice. *Pakalapati Narayana Gajapathi Raju* v. *Bonapalli Peda Appadu*, (1975) 4 SCC 477: 1975 SCC (Cri) 543: AIR 1975 SC 1854: 1975 Cri LJ 1646.

Bench Strength 3. Coram: **Y.V. Chandrachud**, *P.N. Bhagwati* and *R.S. Sarkaria*, JJ. [Date of decision: 25-7-1975]

[6084] — S. 401(3) — Complainant's application under, against Sessions Court's order of acquittal — Sessions trial vitiated being unfair and heavily loaded in favour of accused-appellant — *Held, High Court erred in rejecting the application — Trial being vitiated from serious infirmity, acquittal as a result of such trial must be set aside — Suitable directions given for retrial after transferring the case to another court*

It is imperative that in order that people may not lose faith in the administration of criminal justice, no one should be allowed to subvert the legal process. No citizen should go away with the feeling that he could not get justice from the court because the other side was socially, economically or politically powerful and could manipulate the legal process. That would be subversive of the rule of law. In this view of the matter and in the facts and circumstances of the case the judgment and order of the Additional Sessions Judge acquitting the respondents as also the order passed by the High Court rejecting the application of the appellant under S. 401 must be set aside and a retrial must be done on the selfsame charges. *Sunil Kumar Pal* v. *Phota Sk.*, (1984) 4 SCC 533: 1985 SCC (Cri) 18: AIR 1984 SC 1591.

Bench Strength 2. Coram: **P.N. Bhagwati** and *V. Balakrishna Eradi*, JJ. [Date of decision: 13-8-1984]

[6085] — Ss. 401(3) and 397 — Revision — Reversal of acquittal — Suo motu exercise of power by High Court — Held, not justified when, on facts, two views are reasonably possible and the lower court has taken a view in favour of the accused — *Accused prosecuted for selling adulterated "ghee" taking defence that he was selling vanaspati ghee only — Public Analyst's report establishing the ghee to be vanaspati ghee — In view of the fact that vanaspati oil is also referred to as "dalda" and "ghee" in different localities, Sessions Judge acquitting the accused — Setting aside High Court's order, held, it was not a situation where the case for the prosecution was so strong to say that the decision of Sessions Judge was thoroughly perverse and against the weight of evidence — Prevention of Food Adulteration Act, 1954, Ss. 16 & 7 — Prevention of Food Adulteration Rules, 1955, Rr. 44, 44-B and A.11.02.21. M. Sainuddin* v. *Food Inspector*, (2001) 9 SCC 216: 2001 SCC (Cri) 1567.

Bench Strength 2. Coram: *A.M. Ahmadi, C.J.* and *Sujata V. Manohar*, J. [Date of decision: 12-4-1996]

[6086] — Ss. 401(3) and 397 — Revisional jurisdiction of High Court — Scope of — Interference with judgment of acquittal which is not perverse — Impermissibility of — Remand of

case for trial afresh with certain directions — When warranted — *Held, the scope of revisional jurisdiction is severely restricted, particularly while dealing with revision arising from judgment of acquittal — In present case, trial court disbelieving evidence of eyewitnesses and having regard to evidence of autopsy surgeon and certain other factors, acquitting the appellant-accused under S. 302 IPC but convicting them under S. 323 IPC — No appeal filed thereagainst by State — In revision filed before High Court by complainant, High Court criticising testimony of autopsy surgeon for deliberately suppressing injuries on deceased — Consequently, it remanding matter to trial court for consideration afresh with direction that in the present case the evidence of doctor would not prevail over the eyewitness account and that the present one was a case under S. 302 IPC — It also directing initiation of proceedings against the autopsy surgeon — While passing said judgment, High Court not opining that order of trial court was passed by considering irrelevant evidence or by ignoring relevant evidence — That apart, High Court failing to meet reasonings of trial court — One possible view sought to be substituted by another — Held, trial court's judgment being not a perverse one, High Court exceeded its revisional jurisdiction in passing the impugned judgment — It also failed to take into consideration the effect of order passed by High Court in an appeal confirming conviction of one of the accused in relation to offence under S. 323 IPC and which order had also attained finality — In this view, High Court's judgment not sustainable — Hence, set aside*

The appellants were charged for commission of offences under Sections 148 and 302 IPC and in the alternative under Sections 302/149 and Section 120-B IPC. They were, however, convicted for commission of an offence under Section 323 read with Section 34 IPC recording that they had only caused simple injuries to the deceased. The State did not prefer any appeal thereagainst. The respondent complainant, however, filed a revision application before the High Court. The High Court went into the evidence adduced on behalf of the prosecution. The High Court observed that the trial court committed a grave error in ignoring the relevant materials brought on record to pronounce a judgment of acquittal in favour of the appellant-accused. It held that the autopsy surgeon had wilfully suppressed the head injury in the post-mortem report and thus he was guilty of dereliction of duty. The High Court opined that the post-mortem report was an incomplete report prepared by the doctor to give an undue advantage to the accused. Thus the High Court allowed the revision application and remanded the matter to the trial court to pass the judgment on the basis of evidence on record keeping in mind the evidence of the eyewitnesses wherein it was stated that the deceased had suffered injuries on the whole body. The High Court also directed that the evidence of the doctor would not prevail over the eyewitness account in the present case. It observed that the present one was a case under Section 302 IPC as the intention of all the accused was to cause death of the deceased. The High Court further directed to pass necessary orders against the doctor concerned for preparing document in order to give an undue benefit to the accused. Hence, the present appeal.

The appellants submitted that the High Court committed a manifest illegality in passing the impugned judgment which was in the teeth of Section 401(3) CrPC, 1973. On the other hand, the State contended that it was not a case where the High Court converted a judgment of acquittal to a judgment of conviction in exercise of its revisional jurisdiction but merely remitted the matter to the trial court for consideration afresh. Thus, the State urged that the Supreme Court should not interfere in the present appeal.

Allowing the appeal,

Held :

The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under Sections 397 and 401 CrPC it exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severely restricted, particularly when it arises from a judgment of acquittal. (Paras 19 and 10)

In the instant case the High Court not only entered into the merit of the matter but also analysed the depositions of all the witnesses examined on behalf of the prosecution. It, in particular, went to the extent of criticising the testimony of autopsy surgeon. It relied upon the evidence of the so-called eyewitnesses to hold that although the appellants had inflicted injuries on the head of the deceased, the autopsy surgeon deliberately suppressed the same. The surgeon was, for all intent and purport, found guilty of the offence under Sections 193 and 196 IPC. (Para 15)

Thus, the High Court sought to reappreciate the whole evidence. One possible view was sought to be substituted by another possible view. The High Court did not point out any error of law on the part of the trial Judge. It was not opined that any relevant evidence has been left out of its consideration by the court below or irrelevant material has been taken into consideration. The trial court might be wrong as regards analysing the prosecution evidence but then it had not relied upon the evidence of the eyewitnesses only having regard to the opinion of medical expert. The trial Judge considered the plea of alibi on the part of some of the accused and accepted the same. The High Court did not bestow any consideration in this behalf. It also failed to take into consideration that even bystanders have been implicated in the matter. Unfortunately, the High Court did not meet the reasonings of the trial Judge which was its bounden duty. (Paras 10, 32 and 33)

Hence, in view of the fact that the judgment of the trial Judge could not be termed to be a perverse one, it is unhesitatingly held that the High Court exceeded its jurisdiction while passing the impugned judgment. Further, it did not take into consideration the effect of the order dated 18-11-2003 passed by the High Court in the appeal preferred by one of the accused persons whereby his conviction under Section 323 IPC had been confirmed and that order had also attained finality. In this view, the impugned judgment cannot be sustained, which is set aside accordingly. (Paras 31, 34 to 36). *Johar* v. *Mangal Prasad*, (2008) 3 SCC 423: (2008) 2 SCC (Cri) 89: AIR 2008 SC 1165: 2008 Cri LJ 1627: (2008) 64 AIC 246 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 30-1-2008]

D. Stephens v. Nosibolla, AIR 1951 SC 196: 1951 SCR 284; Logendranath Jha v. Polai Lal Biswas, AIR 1951 SC 316: 1951 SCR 676; K. Chinnaswamy Reddy v. State of A.P., AIR 1962 SC 1788: (1963) 3 SCR 412; Mahendra Pratap Singh v. Sarju Singh, AIR 1968 SC 707: (1968) 2 SCR 287; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand, (2004) 7 SCC 659: 2004 SCC (Cri) 2003; Ram Briksh Singh v. Ambika Yadav, (2004) 7 SCC 665: 2004 SCC (Cri) 2009; Satyajit Banerjee v. State of W.B., (2005) 1 SCC 115: 2005 SCC (Cri) 276, followed

Mangal Prasad v. Johar, 2007 Cri LR 605 (MP), reversed

[6087] — Ss. 401(3) and (1) — High Court's power of revision — Interference with order of acquittal — Scope — Restated — Reappreciation of evidence — Legality — *Held, High Court cannot substitute an order of acquittal by one of conviction — Albeit in exceptional cases it can set aside acquittal and direct retrial — On facts, held, High Court went palpably wrong in holding the appellant to be guilty of offence under S. 304 Part I IPC by reappreciating the evidence on an assumption that the evidence of the eyewitnesses was wrongfully discarded by the trial court — Penal Code, 1860, S. 304 Pt. I*

On assessment of the evidence, the trial court found that the prosecution had failed to prove the charge under Section 302 IPC against the appellant and, therefore, acquitted him. One of the eyewitnesses, who was also brother of the deceased, sent a letter to the High Court against the acquittal of the appellant. The High Court treated the letter as a revision petition. The High Court, taking the view that the finding of the trial court discarding the prosecution evidence was totally perverse and had resulted in miscarriage of justice, entered into the domain of reappraisal of evidence. The High Court set aside the order of acquittal and convicted the appellant. The appellant contended before the Supreme Court that in view of Section 401(3) CrPC the High Court could not convict the appellant after setting aside his acquittal nor could it reappraise the evidence. Allowing the appeal,

Held :

The High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial court unless there has been a manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. In view of Section 401(3) CrPC, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of the said exceptional cases but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial. In the present case, the High Court committed manifest illegality in convicting the appellant under Section 304 Part I and sentencing him to seven years' rigorous imprisonment after setting aside the order of acquittal.

Taking the view that the trial court had discarded of all the five witnesses, the High Court reassessed the evidence and came to the conclusion that the appellant was guilty of offence under Section 304 Part I IPC. This view of the High Court is palpably wrong. The judgment of the trial court shows that the trial court did not shut out or discard the evidence led by the prosecution. On the contrary, the trial court assessed the entire evidence on record and came to the conclusion that the prosecution had failed to prove its case beyond reasonable doubt and as such acquitted the accused-appellant. In fact, the High Court has entered into the domain of reappraisal of evidence which it was not authorized to do in exercise of its revisional power. *Vimal Singh* v. *Khuman Singh*, (1998) 7 SCC 223: 1998 SCC (Cri) 1574: AIR 1998 SC 3380.

Bench Strength 2. Coram: *M.M. Punchhi, C.J.* and **V.N. Khare**, J. [Date of decision: 8-10-1998]

— **S. 402** *See* Ss. 401(2), 402, 204 and 482
See also Ss. 482 and 402

[6088] — Ss. 403, 397 to 399 and 401 — Standing to question conduct of criminal proceedings — Fodder Scam cases — Fodder Scam cases — Locus standi/Standing — Criminal matters — Standing to question conduct of criminal proceedings — *Held (per majority: per Balakrishnan, J.), it is for the prosecution to prove its case and for the accused (Respondents 4 and 5) to prove that they did not have disproportionate income as alleged by the prosecution — It is a criminal litigation exclusively between Respondents 4 and 5 and the State — Nobody else has got any right to interfere, especially by way of PIL or else such PIL would only hamper the course of justice and may cause prejudice to accused denying them a fair trial, and may even damage prosecution case — Moreover, on facts, though petitioners have alleged a series of irregularities, they are not supported by basic facts having a solid foundation — Held (per majority: per Lakshmanan, J.), PIL is totally foreign to pending criminal proceedings — Petitioners are waging a political battle against Respondents 4 and 5 through medium of PIL, which is impermissible — Per Kapadia, J. (dissenting), the question of sufficient interest of the petitioner cannot be considered in the abstract — It must be taken together with the legal and factual context — Constitution of India — Art. 32 — Prevention of Corruption Act, 1988, Ss. 27, 5 and 13(1)(e)*

These writ petitions were filed as public interest litigation by the two petitioners who were Members of Parliament at the time of filing of the petitions. Respondents 4 and 5 were formerly Chief Ministers of the State of Bihar. It was alleged by the petitioners that they had filed writ petitions before the High Court alleging large-scale defalcation of public funds and falsification of accounts involving hundreds of crores of rupees in the Department of Animal Husbandry in the State of Bihar and pursuant to these allegations, several cases were registered by the police and investigation of these cases was later handed over to CBI. The petitioners alleged that consequent upon change of the Government at the Centre, attempts had been made to delay and interfere with the judicial process. It was alleged that the Public Prosecutors who were handling the cases were removed, and to protect the interests of Respondents 4 and 5, Rabri Devi and Lalu Prasad Yadav, respectively, a convenient prosecutor was appointed.

Respondent 5 was an accused in a case registered under the Prevention of Corruption Act, 1988. The allegation in that case was that Respondent 5 as Chief Minister of Bihar between 1990 to 1996 had acquired assets disproportionate to his known sources of income. Charge-sheet was filed in the Court of the Special Judge, CBI, Patna on 4-4-2000 under Section 13(1)(*e*) of the Prevention of Corruption Act, 1988. Respondent 4 was also charge-sheeted in the same case for abetment under Section 109 IPC read with Section 13(2) and Section 13(1)(*e*) of the Prevention of Corruption Act, 1988. This case was renumbered as Special Case No. 5 of 1998 and was pending trial in the Court of the Special Judge, CBI, Patna. The petitioners alleged that certain income tax cases of Respondents 4 and 5 were also pending before the Income Tax Appellate Tribunal (ITAT) and one D.K. Tyagi who was a member of ITAT had been hearing those cases and that Respondents 4 and 5 found it difficult to pursue the hearings before the said ITAT member and hence under their influence Mr Tyagi was sent on deputation and he was replaced by one Mr Mohanarajan who was on the verge of retirement. It was further alleged that the new member along with another member heard these cases within two weeks and orders were pronounced in favour of Respondents 4 and 5. It was also alleged that Respondent 3, namely, the Central Board of Direct Taxes did not prefer an appeal in these cases though the decision went against the Revenue. This, according to the petitioners, was to help Respondents 4 and 5 in the cases filed against them.

The petitioners also alleged that Special Case No. 5 of 1998 pending before the Special Judge, CBI was at the final stage of hearing and that the Director, CBI, presumably under pressure from the accused changed the prosecutor and appointed one Oma Shankar Singh who was only a retired Deputy Superintendent of Delhi Police and had no experience of conducting the prosecution. According to the petitioners, this was done at the fag end of the prosecution case to help the accused. The petitioners also made allegations against Respondents 1 to 3 that they were acting arbitrarily and interfering in the judicial process to benefit Respondents 4 and 5. The petitioners alleged that Respondents 4 and 5 obtained stay of proceedings of the case pending before the Special Judge from the Supreme Court, suppressing some material facts. It was alleged that Respondents 4 and 5 still wielded influence and power and, therefore, the Supreme Court should monitor the trial of the case pending before the Special Judge, CBI, at Patna.

In these writ petitions, the petitioners prayed mainly for four reliefs. The first relief prayed for was to issue an appropriate writ, order or direction monitoring the conduct of the trials relating to Fodder Scam cases' proceedings against Respondents 4 and 5 in the State of Bihar and the State of Jharkhand. The second prayer was to appoint the very same prosecutor who had been conducting the prosecution earlier and to direct the High Court to see that no prosecutor or CBI officer attached with the investigation and trial of the case was removed, harassed or victimised for discharging their duties. The petitioners also prayed that at least one inspector be provided for each Fodder case. The petitioners also prayed for cancellation of bail granted to Respondents 4 and 5. The petitioners further prayed for a direction to Respondents 1 to 3 to file an appeal against the orders passed by ITAT.

During the pendency of these writ petitions, the petitioners further alleged that the Special Judge who was trying Special Case No. 5 of 1998 involving Respondents 4 and 5, had been replaced by another Special Judge. The allegation was that one Yogender Prasad was the CBI Special Judge and he had been replaced by one Munni Lal Paswan and this according to the petitioners was deliberately done to help Respondents 4 and 5. Therefore, it was prayed that the said Special Judge be replaced by another judicial officer.

Dismissing the writ petitions and vacating all interim orders,

Held :

Per majority:

Per Balakrishnan, J.

Special Case No. 5 of 1998 has been filed against Respondents 4 and 5 alleging that they had amassed wealth disproportionate to their known sources of income while holding the post of Chief Minister of the State of Bihar. Both the petitioners are not in any way connected with this case. They are not de facto complainants in this case. They are absolutely strangers as regards the criminal cases against Respondents 4 and 5 which were pending before the Special Judge. It is for the prosecution to prove its case and Respondents 4 and 5 to deny that the allegations are not true and they did not have the disproportionate income as alleged by the prosecution. It is a criminal litigation exclusively between Respondents 4 and 5 and the State. It is also important to note that in a case of this nature nobody else has got any right to interfere especially by way of public interest litigation or else such public interest litigation would only hamper the course of justice and may cause prejudice to the accused by denying them a fair trial. This unnecessary interference in the criminal case may cause, sometimes, damage to the prosecution case also. In any view of the matter, this sort of interference in the criminal prosecution would only deny a fair trial to the accused. In this case, as early as 2004, 132 witnesses were examined on the side of the prosecution and 93 witnesses were examined on the defence side. Arguments of the prosecution were over as early as on 14-7-2004 and the defence arguments continued up to 19-7-2004. Because of the present public interest litigation, the trial could not be conducted. It is equally important to note that though the petitioners have alleged a series of irregularities, they are not supported by basic facts having solid foundation. (Paras 21 and 25)

Per Lakshmanan, J.

Public interest litigation is meant for the benefit of the lost and lonely and it is meant for the benefit of those whose social backwardness is the reason for no access to the court. PILs are not meant to advance the political gain and also settle scores under the guise of a public interest litigation and to fight a legal battle. PIL is totally foreign to pending criminal proceedings. (Para 58)

The petitioners are waging a political battle against Respondents 4 and 5 through the medium of public interest litigation. The venue for political battle can never be the Supreme Court by filing a writ petition under Article 32 of the Constitution. (Para 60)

Per Kapadia, J. (dissenting)

The test which one has to apply to decide the maintainability of the PIL concerns sufficiency of the petitioner's interest. Under this test it is necessary to consider the subject-matter to which the PIL relates. It is wrong in law for the court to judge the applicant's interest without looking at the subject-matter of his complaint. If the petitioner shows failure of public duty, the court would be in error in dismissing his PIL. The question of sufficient interest of the petitioner cannot be considered in the abstract. It must be taken together with the legal and factual context. (Paras 77 and 78). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength 3. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Ashok Kumar Pandey v. State of W.B., (2004) 3 SCC 349; Union of India v. Sushil Kumar Modi, (1998) 8 SCC 661: 1999 SCC (Cri) 84; T.N. Godavarman Thirumulpad (98) v. Union of India, (2006) 5 SCC 28; Dattaraj Nathuji Thaware v. State of Maharashtra, (2005) 1 SCC 590; S.P. Gupta v. Union of India, 1981 Supp SCC 87, relied on

— Ch. XXXI *See* Ss. 11, 13, 14, 18, 177 to 181, 190 and Ch. XXXI

Section 406 — Powers of transfer of Supreme Court

— S. 406 *See also* S. 527, Criminal Procedure Code, 1898, pp. 1285 et seq. in Vol. 2

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(1) Nature and Scope of power under

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[6089] — S. 406 — Power of Supreme Court to transfer cases and appeals — Purpose of — Held, is to ensure fair trial to the accused — *In the instant case transfer of the sessions case was ordered from the Sessions Court of Chinglepet in Tamil Nadu to the Principal District and Sessions Judge, Pondicherry, because the action of the prosecution agency had created a reasonable apprehension in the mind of the appellant-accused that he would not get justice if the trial was held in the State of Tamil Nadu* (Para 15). *Jayendra Saraswati Swamigal (3)* v. *State of T.N.*, (2008) 10 SCC 180: AIR 2008 SC 2997: (2008) 3 KLT 669: 2008 Cri LJ 3877.

Bench Strength 3. Coram: **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *M.K. Sharma*, JJ. [Date of decision: 22-7-2008]

Jayendra Saraswathy Swamigal (2) v. State of T.N., (2005) 8 SCC 771: (2006) 1 SCC (Cri) 1, followed

[6090] — Ss. 406 and 407 — Transfer petition — Matters that may be considered by court — Scope and extent of inquiry permissible

Criminal prosecution, if otherwise, justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political mandate of the informant or the complainant. However, if justifiable and reasonable apprehension of miscarriage of justice and likelihood of bias is established, the proceeding has to be transferred elsewhere by exercise of power under Section 406 CrPC. For transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that justice will not be done. Justice should not only be done but it should be seen to be done. Mere allegations that there is apprehension that justice will not be done in a given case does not suffice. The court has further to see whether the apprehension alleged is reasonable or not. The apprehension must not only be entertained but must appear to the court to be a reasonable apprehension. (Paras 17 and 18)

When it is shown that the public confidence in the fairness of a trial would be seriously undermined, aggrieved party can seek transfer of a case within the State under Section 407 and anywhere in the country under Section 406 CrPC. However, the apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary. The apprehension must appear to the court to be a reasonable one. (Paras 19 and 20)

Mere allegation that there is an apprehension that justice will not be done in a given case alone does not suffice. Considering the totality of all the circumstances, a secular, democratic Government, governed by the rule of law, in the State of Punjab is responsible for ensuring free, fair and impartial trial to the accused, notwithstanding the nature of the accusations made against them. Apprehension entertained by the petitioners cannot be construed as reasonable and the case cannot be transferred on a mere allegation that there is apprehension that justice will not be done. (Para 51)

Though, in a transfer petition the court is not expected to go into the veracity of the statement of the witnesses and their evidential value, since both sides cited several instances, the same have been considered. Ultimately, it is upon the Presiding Officer/Special Judge and not the court hearing the transfer petition to evaluate the testimonies of the witnesses and arrive at a conclusion one way or other depending on the charges levelled against the accused. It would not be fair on the part of the court either to assess and arrive at an opinion about the same. On analysis of all the material, the transfer of the case as sought for, at this stage, is not only against the interest of prosecution but also against the interest of the other accused persons, the prosecution witnesses and the convenience of all concerned in the matter. (Paras 48, 46 and 24). *Amarinder Singh* v. *Parkash Singh Badal*, (2009) 6 SCC 260.

Bench Strength **3**. Coram: *K.G. Balakrishnan*, *C.J.* and **P. Sathasivam** and *J.M. Panchal*, JJ. [Date of decision: 14-5-2009]

[6091] — Ss. 406 and 407 — Scope of Supreme Court's power to determine extent of its jurisdiction — *Whether a Bench can recall and set aside order of another Bench of the Court on the ground of order being without jurisdiction — Constitution of India, Arts. 134, 136, 142 and 32 — Criminal Law (Amendment) Act, 1952, Ss. 6 and 7*

Per Mukharji, Oza and Natarajan, JJ.

The want of jurisdiction can be established solely by a superior court and, in practice, no decision can be impeached collaterally by any inferior court. But the superior court can always correct its own error brought to its notice either by way of petition or ex debito justitiae. No rule of res judicata applies in such situation.

The distinction between an error which entails absence of jurisdiction and an error made within the jurisdiction is so fine that it is rapidly being eroded.

The impugned directions were void because the power was not there for the Supreme Court to transfer a proceeding under the Act of 1952 from one Special Judge to the High Court. This is not a case of collateral attack on judicial proceeding; it is a case where the Court having no court superior to it rectifies its own order.

Per Ranganath Misra, J.

Though the question of want of jurisdiction of the High Court to deal with the special cases transferred to it was reagitated by the appellant after an inordinate delay and during the intervening period a lot of evidence was collected by examining the prosecution witnesses and exhibiting documents, the fact remains that the Constitution Bench of the Supreme Court did not possess the power to transfer the proceedings to the High Court.

Per Oza & Ray, JJ.

Supreme Court cannot confer a jurisdiction on itself which is not provided in law.

Per Venkatachaliah, J. (dissenting)

Before a superior court there is no distinction in the quality of the decision-making process respecting jurisdictional questions on one the hand and adjudicatory issues or issues pertaining to merits, on the other.

The existence of jurisdiction does not depend on the correctness of its exercise. The authority to decide embodies a privilege to bind despite error, a privilege which is inherent in and indispensable to every judicial function. The characteristic attribute of a judicial act is that it binds whether it be right or it be wrong.

A finding of a superior court even on a question of its own jurisdiction, however grossly erroneous it may otherwise be, is not a nullity; nor one which could at all be said to have been reached without jurisdiction, susceptible to be ignored or to admit of any collateral attack. Otherwise, the adjudications of superior courts would be held up to ridicule and the remedies generally arising from and considered concomitants of such classification of judicial errors would be so seriously abused and expanded as to make a mockery of those foundational principles essential to the stability of administration of justice. The superior court has jurisdiction to determine its own jurisdiction and an error in that determination does not make an error of jurisdiction.

Per Ranganathan, J. (dissenting)

Superior courts of unlimited jurisdiction are always presumed to act with jurisdiction and unless it is clearly shown that any particular order is patently one which could not, on any conceivable view of its jurisdiction, have been passed by such court, such an order can neither be ignored nor even recalled, annulled, revoked or set aside in subsequent proceedings by the same court. In the present case, the order passed is not one of patent lack of jurisdiction. *A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602: 1988 SCC (Cri) 372: AIR 1988 SC 1531.

Bench Strength **7**. Coram: **Sabyasachi Mukharji**[1], **Ranganath Misra**[2], **G.L. Oza**[1&3], **B.C. Ray**[4], *S. Natarajan*[1], **M.N. Venkatachaliah**[5] and **S. Ranganathan**[6], JJ. [Date of decision: 29-4-1988]

(1) Nature and Scope of power under *(contd.)*

[6092] — Ss. 406, 407, 401 and 386 — Nature and scope of Supreme Court's power under — Held, Supreme Court has no power to withdraw a case from Special Judge and transfer it to High Court in view of S. 7(1) of Criminal Law Amendment Act, 1952 — *Constitution of India, Arts. 139-A, 136, 134, 140 and 142*

Per Mukharji, Oza and Natarajan, JJ. (Ranganath Misra and Ray JJ., concurring)

In the facts of the instant case, the criminal revision application which was pending before the High Court even if it was deemed to be transferred to the Supreme Court under Art. 139-A of the Constitution it would not have vested the Supreme Court with power larger than what is contained in S. 407 of CrPC. Under S. 407 r/w the Criminal Law Amendment Act, the High Court could not transfer to itself proceedings under Ss. 6 and 7 of the said Act. The Supreme Court, by transferring the proceedings to itself, could not have acquired larger jurisdiction. The fact that the objection was not raised before the Supreme Court giving directions on Feb. 16, 1984 [(1984) 2 SCC 183)] cannot amount to any waiver.

Parliament did not grant to the High Court the jurisdiction to transfer a case to itself. No presumption can be drawn that the superior court is deemed to have a general jurisdiction and it acted within it, because: firstly, the question of jurisdiction was not agitated before the Court, secondly, these directions were given per incuriam and thirdly, the superior Court alone can set aside an error in its directions when attention is drawn to that error. This view is warranted only because of peculiar facts and circumstances of the present case. Here the trial of a citizen in a Special Court under special jurisdiction is involved, hence, the liberty of the subject is involved.

Per Ranganathan, J. (concurring)

The appellant, in consequence of the impugned direction, is being tried by a court which has no jurisdiction — and which cannot be empowered by the Supreme Court — to try him.

Article 139-A envisages either inter-State transfers of cases i.e. from a court in one State to a court in another State or the withdrawal of a case by the Supreme Court itself. Inter-State transfer among courts subordinate to a High Court inter se or from a court subordinate to a High Court to the High Court is within the jurisdiction of the appropriate High Court.

The powers of the Supreme Court, in disposing of an appeal or revision, are circumscribed by the scope of the proceedings before it. In this case, it is common ground that the question of transfer was not put in issue before the Supreme Court.

In the circumstances of the case it cannot be said that the Supreme Court can issue the impugned direction in exercise of the powers under Art. 142 of the Constitution or under S. 407 of CrPC available to it as an appellate court. Article 140 is only a provision enabling Parliament to confer supplementary powers on the Supreme Court to enable it to deal more effectively to exercise the jurisdiction conferred on it by or under the Constitution. The Supreme Court was hearing an appeal from the order of discharge and connected matters. There was no issue or controversy or discussion before it as to the comparative merits of a trial before a Special Judge vis-à-vis one before the High Court. There was only an oral request said to have been made, admittedly, after the judgment was announced. Wide as the powers under Art. 141 are, they do not envisage an order of the type presently in question. Secondly, it is one of the contentions of the appellant that an order of this type, far from being necessary for doing complete justice in the cause or matter pending before the court, has actually resulted in injustice. Thirdly, however wide and plenary the language of the article, the directions given by the court should not be inconsistent with, repugnant to or in violation of the specific provisions of any statute. If the provisions of the 1952 Act r/w Art. 139-A and Ss. 406-407 of the CrPC do not permit the transfer of the case from a Special Judge to the High Court, that effect cannot be achieved indirectly.

No support can be sought from the order of transfer by reference to Ss. 386 and 401 of the 1973 CrPC. The direction that the trial should be shifted to the High Court can hardly be described as a consequential or incidental order. Such a direction did not flow as a necessary consequence of the conclusion of the court on the issues and points debated before it.

Hence the continued trial before the High Court or transfer infringes Art. 21.

Per Venkatachaliah, J. (dissenting)

The superior court has jurisdiction to determine its own jurisdiction and an error in that determination does not make it an error of jurisdiction. *A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602: 1988 SCC (Cri) 372: AIR 1988 SC 1531.

Bench Strength 7. Coram: **Sabyasachi Mukharji**[1], **Ranganath Misra**[2], **G.L. Oza**[1&3], **B.C. Ray**[4], *S. Natarajan*[1], **M.N. Venkatachaliah**[5] and **S. Ranganathan**[6], JJ. [Date of decision: 29-4-1988]

(2) Section 406 and Article 139-A

[6093] — S. 406 — Vacation Judge of Supreme Court is not empowered under, to entertain an application for transfer of writ petitions challenging validity of certain Acts to some other High Court — *He can deal with transfer applications which are under S. 406, Criminal Procedure Code and not under Art. 139-A(1) or (2) — But the writ petitions in question not being purely criminal in nature, the application was one under Art. 139-A(2) and hence the Vacation Judge was not competent to entertain it — But pending disposal of the application, he can grant stay of proceedings before the High Court considering the facts of the particular case — Constitution of India, Arts. 139-A(2) & 226 — Supreme Court Rules, 1966, Or. VII, R. 4*

Under R. 4 of Or. 7 the Vacation Judge has only limited power to dispose of appeals. He has been specifically empowered under Rule 4(3) to entertain application for transfer of cases under S. 406, Criminal Procedure Code but no such power is conferred on him under Rule 4 to entertain application for transfer under Arts. 139-A(1) and 139-A(2). From this it is proper to construe that the Vacation Judge is not empowered to exercise powers relating to transfer applications under Arts. 139-A(1) and 139-A(2). There is no force in the contention that S. 406, Criminal Procedure Code is wide enough to include all criminal cases and therefore, it is unnecessary to provide separately for transfer of cases under Art. 139-A(1) and (2). Article 139-A(2) not only covers criminal cases but also other cases including writs pending in the High Courts. All the writs are not in the nature of criminal proceedings and could not be transferred under S. 406, Criminal Procedure Code. Even a writ of habeas corpus, after coming into force of the Constitution, is a much larger and wider remedy which is enshrined as a fundamental right and could be enforced in the High Courts and Supreme Court.

In the present case the Union of India seeks to transfer four writ petitions wherein the notification of the President, the validity of S. 3 and S. 4 of the Assam Disturbed Areas Act and S. 4*(a)* of the Armed Forces (Assam and Manipur) Special Powers Act, the notification issued therein, the validity of Assam Preventive Detention Ordinance, 1980 are sought to be challenged. The proceedings in these writ petitions before the High Court cannot be said to be criminal in nature, falling under S. 406, Criminal Procedure Code. Even proceedings for issue of a writ of habeas corpus may not be said to be purely criminal in nature. The application for transfer of these writ petitions pending before the High Court would more appropriately fall under Art. 139-A(2) of the Constitution and not under S. 406, Criminal Procedure Code. Thus the Vacation Court has no power to deal with the application.

However, though the Vacation Judge is not competent to dispose of finally a transfer application under Art. 139-A(2), he is empowered under sub-rules (2) and (4) of R. 4 to grant stay of proceedings before the High Court pending disposal of the transfer application. The question whether an order of stay of proceedings should be granted in a particular case would depend upon the facts of the case. The court must be satisfied that there is sufficient cause for granting stay of proceedings, and that taking into account the balance of convenience such an order is expedient.

In the present case, save in the case of one writ appeal, no sufficient grounds were made out for stay of the writ petitions filed before the High Court pending the transfer applications. *Union of India* v. *Inderjit Barua*, 1980 Supp SCC 696.

Bench Strength **1**. Coram: *P.S. Kailasam*, J. [Date of decision: 30-5-1980]

(3) Maintainability — Standing/ Delay/Laches

[6094] — S. 406 — Transfer of appeals — Delay in raising grievance by the person seeking transfer — Effect — *Former Minister in State Government prosecuted and convicted under Ss. 5(1)(d) & (2) of Prevention of Corruption Act — During pendency of appeal before High Court, he approaching Supreme Court for transfer of the appeal to another High Court contending inter alia, that he apprehended denial of a fair trial due to adverse publicity by the State Government and by the press in the State which might consciously or subconsciously influence the Judges — Objection raised four long years after the filing of the appeal and no objection taken when the appeal was heard by a Single Judge who later referred the matter to a larger Bench — In view of such delay the petitioner's contention rejected — Moreover, in view of complete separation of judiciary from executive, held, Judges are not influenced by propaganda or adverse publicity — Constitution of India, Arts. 139-A, 50 and 217 — Prevention of Corruption Act, 1947, Ss. 5(1)(d) & (2)*

The petitioner was a former Minister in the Government of Kerala. He was convicted under Section 5(1)(*d*) read with Section 5(2) of the Prevention of Corruption Act, 1947 on the charge of abusing his office to supply large quantities of Kerala electricity

(3) Maintainability — Standing/Delay/Laches *(contd.)*

to a private company of Karnataka through the Government of that State and thus enabling that company to make huge profits. Cross-appeals were filed before the Kerala High Court. A Single Judge heard the appeals and referred the matter to a Division Bench. The Chief Justice directed the appeals to be posted before the two Judges specified by him. The petitioner filed an application before the Chief Justice of the Kerala High Court for transfer of the appeals to a different Bench on the ground that one of the said two Judges was against the petitioner. As no orders were passed on that application, the petitioner filed a transfer petition before the Supreme Court seeking transfer of the appeals to the Karnataka High Court on the ground that a fair trial was not possible in the State of Kerala because:

(*i*) the Government and the press in the State of Kerala had by their vicious campaign created an impression among the public that the petitioner had committed irregularities, illegalities and crimes in the sale of electricity;

(*ii*) one of the Judges seized of the appeals had effectively worked against the petitioner as an advocate before an Inquiry Commission which was appointed to inquire into some of the malpractices in the execution of the rectification work in a hydroelectric project;

(*iii*) Chief Justice of the Kerala High Court had not passed any order on the representation made by the petitioner; and

(*iv*) when adjournment of hearing of the appeal was not granted and consequently the counsel for the petitioner refused to argue the appeal by stating that he was not appearing for the appellant-petitioner, the Court had issued a bailable warrant.

Dismissing the transfer petition,

Held :

The contention as to alleged adverse publicity in Kerala is apparently raised at a belated stage i.e. after a lapse of four years from the date of filing of the appeal in the High Court. The petitioner had not raised any objection with regard to hearing of the appeal by the Kerala High Court when the matter was heard by the Single Judge in 1998, who subsequently referred it to a larger Bench. Even in the representation before the Chief Justice, he did not raise the said contention. Therefore, elaborate submissions made in the transfer petition that a fair trial will not be possible in the State of Kerala and that any person can be influenced consciously or subconsciously by the adverse publicity against the petitioner, are required to be rejected. Moreover, in India there is complete separation of the judiciary from the executive and Judges are not influenced in any manner either by propaganda or adverse publicity. Cases are decided on the basis of the evidence available on record and the law applicable. Granting such application and transferring the appeal from the High Court of Kerala to the High Court of Karnataka would result in casting unjustified aspersion on the Court having jurisdiction to decide the appeal on the assumption that its judicial verdict is consciously or subconsciously affected by the popular frenzy, official wrath or adverse publicity, which is not the position qua the judicial administration in this country. (Para 9)

The instant transfer petition requires to be rejected firstly because the petitioner was not convicted on the basis of the inquiry report referred to by the petitioner. The charges against him are altogether for a different case not connected with the rectification work of the hydroelectric project. Secondly, a Judge while practising as an advocate might have appeared in a number of cases, but that would not mean that he would have any personal interest or connection with the said matters or with persons involved therein and would be biased towards them. (Para 11)

The third contention also deserves to be rejected because in a criminal appeal pending for trial, there is no question of passing of any order by the Chief Justice of the High Court. (Para 12)

The practice of filing an application by an advocate that he withdraws his appearance on the date of hearing, only for getting the matter adjourned, requires to be strongly discouraged. In such a situation, for seeking the appearance of the petitioner, who was released on bail, there was no alternative for the Court but to issue bailable warrant. Therefore, the course adopted by the Court was justified. Hence, there is not the remotest chance or justification for entertaining apprehension that the petitioner would not get justice if the appeal is decided by the Bench to whom it was assigned. (Para 13). *R. Balakrishna Pillai* v. *State of Kerala*, (2000) 7 SCC 129: 2000 SCC (Cri) 1293: AIR 2000 SC 2778: (2000) 3 KLT 425.

Bench Strength **2**. Coram: **M.B. Shah** and *S.N. Phukan*, JJ. [Date of decision: 30-8-2000]

Maneka Sanjay Gandhi v. Rani Jethmalani, (1979) 4 SCC 167: 1979 SCC (Cri) 934, followed

[6095] — S. 406 — Transfer petition — Maintainability — Grounds — Delay and laches — *Sequence of events leading to filing of transfer petitions started on 7-11-2002 — Present petitions filed on 5-2-2003 — Held, there was no delay in filing the said petitions* (Para 33). *K. Anbazhagan* v. *Supdt. of Police*, (2004) 3 SCC 767: 2004 SCC (Cri) 882: AIR 2004 SC 524: 2004 Cri LJ 583.

Bench Strength **2**. Coram: *S.N. Variava* and **H.K. Sema**, JJ. [Date of decision: 18-11-2003]

R. Balakrishna Pillai v. State of Kerala, (2000) 7 SCC 129: 2000 SCC (Cri) 1293, distinguished

[6096] — S. 406 — Transfer petition — Maintainability of — Challenge to, on the ground of suppression of fact — *Transfer petitions filed without disclosing the fact that the writ petitions involving grievances and facts raised herein were already pending before the High Court which had reserved its judgment in those writ petitions — Held, reliefs sought before the High Court and the Supreme Court, were different — Transfer petitions are not parallel proceedings — Though the Supreme Court might otherwise have viewed the conduct of non-disclosure seriously, held, where the course of justice was being subverted, the said non-disclosure did not prove fatal — Practice and Procedure — Pleadings/New plea/Additional plea — Suppression of fact in transfer petition filed under S. 406 CrPC before the Supreme Court — Not fatal where the course of justice was being subverted*

It would have been advisable for the petitioner to have informed the Supreme Court about the proceedings in the Madras High Court. However, on facts, it appears that justice is not being done. In fact it appears that the course of justice is being subverted. Thus, even though the Supreme Court might otherwise have viewed the conduct, in not disclosing, seriously, it is not felt that in this matter, on this ground, the course of justice can be allowed to be subverted. (Para 7)

Further, even though some statements of facts made before the High Court are in pari materia with the facts stated before the Supreme Court, these petitions are not parallel proceedings. The petitions pending before the High Court are under Article 226 of the Constitution and the transfer petitions have been filed under Section 406 CrPC. The jurisdiction of the High Court under Article 226 of the Constitution and the jurisdiction of the Supreme Court under Section 406 CrPC are quite distinct and different. It is also to be noticed that the prayers made before the High Court and before the Supreme Court are also different. (Paras 7 and 8)

Thus, it is true, that it was incumbent on the part of the petitioner, to have disclosed the fact that the writ petitions are also pending before the High Court, in which the judgment has been reserved. But non-disclosure of this fact would not, for reasons set out above, non-suit the petitioner to approach the Supreme Court with an application under Section 406 CrPC. (Para 11). *K. Anbazhagan v. Supdt. of Police*, (2004) 3 SCC 767: 2004 SCC (Cri) 882: AIR 2004 SC 524: 2004 Cri LJ 583.

Bench Strength **2**. Coram: *S.N. Variava* and **H.K. Sema**, JJ. [Date of decision: 18-11-2003]

S.B. Mathur v. Matti Ullah, 1995 Supp (2) SCC 650; G. Narayanaswamy Reddy v. Govt. of Karnataka, (1991) 3 SCC 261, distinguished

[6097] — S. 406(2) — Transfer petition — Locus standi to file — Petitioner not a party to the proceedings — Words "party interested" used in S. 406 — Meaning and scope — *Held, are of wide import — Hence, to be given wider meaning — Purposive construction applied — Wording of Art. 139-A of the Constitution of India also taken note of — One of the accused being the Chief Minister of the State, on facts, there was reasonable apprehension of likelihood of bias in the conduct of prosecution — Hence, transfer of cases (pending against CM and others) sought by political opponent of CM to some other State — Held, petitioner was a vitally interested person — Hence, had locus standi to file the transfer petitions*

It is contended that in view of the provision of sub-section (2) of Section 406 CrPC the transfer petition is maintainable only when motion is moved by the Attorney General or by the "party interested". According to the counsel, it is the "party interested" and not a "person interested" and, therefore, only the Attorney General or the "party interested" has *locus standi* to file application and the petitioner not being a party to the proceeding is not a "party interested", and has no *locus standi* to file the present petition. (Para 12)

The said submission is not acceptable. The words "party interested" are of a wide import and, therefore, they have to be given a wider meaning. If it was the intendment of the legislature to give restricted meaning then it would have used words to the effect "party to the proceedings". In this behalf the wording of Article 139-A of the Constitution of India may be looked at. Under Article 139-A the transfer can be if "the Supreme Court is satisfied on its own motion or on an application made by the Attorney General of India or by a *party to any such case*". Also if the provisions of Chapter XXIX of the Criminal Procedure Code are looked at, it is seen that when the legislature intended a "party to the proceedings" to have a right of appeal it specifically so stated. The legislature, therefore, keeping in view the larger public interest involved in a criminal justice system, purposely used words of a wider import in Section 406. (Para 12)

It is a well-settled principle of law that statutes must be interpreted to advance the cause of statute and not to defeat it. (Para 12)

The petitioner being a political opponent, is vitally interested in the administration of justice in the State and is a "party interested" within the meaning of sub-section (2) of Section 406 CrPC.

(3) Maintainability — Standing/Delay/Laches *(contd.)*

(Para 12). *K. Anbazhagan* v. *Supdt. of Police*, (2004) 3 SCC 767: 2004 SCC (Cri) 882: AIR 2004 SC 524: 2004 Cri LJ 583.

Bench Strength 2. Coram: *S.N. Variava* and **H.K. Sema**, JJ. [Date of decision: 18-11-2003]

[6098] — Ss. 406(2), 156 and 157 — Application for transfer of case — Locus standi of CBI — "Person interested" — *Held, once a notification has been issued by State Government under S. 6 of DSPE Act transferring investigation to CBI, CBI assumes role of investigating agency and is also prosecuting agency in relation to that particular case — Thus, it is entitled to move an application under S. 406(2) CrPC — Further held, given pivotal role accorded to prosecuting agency in a criminal trial, it cannot be held that CBI is not an interested party for purposes of S. 406(2) — Delhi Special Police Establishment Act, 1946 (25 of 1946), S. 6* (Paras 16 to 20). *Nahar Singh Yadav* v. *Union of India*, (2011) 1 SCC 307.

Bench Strength 3. Coram: **D.K. Jain**, *V.S. Sirpurkar* and *G.S. Singhvi*, JJ. [Date of decision: 19-11-2010]

Abdul Nazar Madani v. State of T.N., (2000) 6 SCC 204: 2000 SCC (Cri) 1048; K. Anbazhagan v. Supdt. of Police, (2004) 3 SCC 767: 2004 SCC (Cri) 882; Amarinder Singh v. Parkash Singh Badal, (2009) 6 SCC 260: (2009) 2 SCC (Cri) 971; R. Balakrishna Pillai v. State of Kerala, (2000) 7 SCC 129: 2000 SCC (Cri) 1293, considered

A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602: 1988 SCC (Cri) 372, referred to

(4) Stage of proceedings, for exercise of power under

[6099] — S. 406 — Applicability of — Held, S. 406 relates to a case where either the trial or the appeal is pending before a trial court or the High Court — *In the instant case, as the entire matter was in the hands of the Supreme Court on appeal, unless relegated back to the very Court, for which there was no compulsion to send it automatically, the power of the Supreme Court to send the matter to the appropriate court to ensure complete justice, could not be questioned — Therefore, S. 406 being inapplicable, there was no question of a petition having been filed in terms thereof* — Best Bakery case (Para 10). *Zahira Habibullah Sheikh* v. *State of Gujarat*, (2004) 5 SCC 353: 2004 SCC (Cri) 1613: AIR 2004 SC 3467.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 7-5-2004]

[6100] — S. 406 — Prosecution case against petitioner at investigation stage — *Prayer for transfer rejected at present — Liberty given to the petitioner to renew the prayer at the stage of filing charge-sheet. Major S.J. Dubey* v. *State of Punjab*, 1986 Supp SCC 675: 1987 SCC (Cri) 221.

Bench Strength 2. Coram: *Ranganath Misra* and *G.L. Oza*, JJ. [Date of decision: 8-12-1986]

[6101] — Ss. 406, 177, 178 and 156 — Scope of — No power in Supreme Court to transfer case during investigation stage — *Redress should be sought from the Court seized with the matter. Ram Chander Singh Sagar (Dr.)* v. *State of T.N.*, (1978) 2 SCC 35: 1978 SCC (Cri) 171: AIR 1978 SC 475: 1978 Cri LJ 640: 1978 MLJ (Cri) 341: (1978) 2 MLJ 11 (1) (SC).

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *Jaswant Singh*, JJ. [Date of decision: 23-1-1978]

[6102] — S. 406 — Transfer petition — Refusal to entertain considering the stage of proceeding — Case under Prevention of Corruption Act — *Transfer of, sought on ground of absence of territorial jurisdiction of Special Judge concerned — Matter pending for a long time before the said court and charges already framed — Though many of the prosecution witnesses did not hail from the place where trial going on and accused was resident of another State, in view of the fact that the offence was committed in the year 2002 i.e. five years ago and charge-sheet had also been submitted in the said year, Supreme Court declining to entertain the transfer petition at this stage* (Paras 25 and 26). *V.K. Puri* v. *CBI*, (2007) 6 SCC 91: (2007) 3 SCC (Cri) 57: 2007 Cri LJ 2929.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 27-4-2007]

(5) Considerations/Grounds for transfer

See also S. 406, '(1) Nature and Scope of power under', above

[6103] — S. 406 — Transfer of case — When warranted — Expedient for the ends of justice — Ends of justice — Principle that justice should not only be done but should be seen to be done — When attracted — *If the Supreme Court "deems it expedient so to do for the ends of justice" — On facts, on basis of the ample evidence on record, glaringly demonstrating a subversion of the justice-delivery system with no congenial atmosphere still prevailing in the State of Gujarat, retrial directed in adjoining State of Maharashtra — Maxims — Justice should not only be done but should seen to be done — Application of — Constitution of India, Art. 139-A(2)*

It is one of the salutary principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case or that there are general allegations of a surcharged atmosphere against a particular community alone does not suffice. The court has to see whether the apprehension is reasonable or not. The state of mind of the person who entertains the apprehension no doubt is a relevant factor but not the only determinative or concluding factor. But the court must be fully satisfied about the existence of such conditions which would render inevitably impossible the holding of a fair and impartial trial, uninfluenced by extraneous considerations that may ultimately undermine the confidence of a reasonable and right-thinking citizen, in the justice-delivery system. The apprehension must appear to the court to be a reasonable one. (Para 74)

Keeping in view the peculiar circumstances of the case, and the ample evidence on record, glaringly demonstrating a subversion of the justice-delivery system with no congenial and conducive atmosphere still prevailing in the State of Gujarat, it is directed that the retrial shall be done by a court under the jurisdiction of the Bombay High Court. The Chief Justice of the said High Court is requested to fix up a court of competent jurisdiction. (Para 75). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

Maneka Sanjay Gandhi v. Rani Jethmalani, (1979) 4 SCC 167: 1979 SCC (Cri) 934; G.X. Francis v. Banke Bihari Singh, AIR 1958 SC 309: 1958 Cri LJ 569, relied on

Clarified in Satyajit Banerjee v. State of W.B., (2005) 1 SCC 115

[6104] — S. 406 — Transfer of criminal case — Relief of — Grounds — Held, there must be "reasonable apprehension" on the part of the party to a case that justice may not be done — Mere allegation that there is apprehension that justice will not be done, cannot be the basis of transfer — *Accused Shankaracharya of a Mutt, involved in a murder case pending in State of T.N., seeking transfer of the said case to any other State — Attempt made by prosecution machinery to demoralise and scare the petitioner's Senior Counsel by scandalising his reputation and casting a slur on his character and conduct — False criminal cases lodged against other lawyers appearing for defence — Freezing of all bank accounts of Mutt — Detention orders passed against co-accused under various Acts so that even after grant of bail in the present case they may remain in custody — Launching of prosecution against prominent persons holding high political offices and prominent journalists merely because they expressed some dissent against the arrest of the petitioner — Considering entire facts and circumstances, held, actions of the prosecuting agency and the State machinery created a reasonable apprehension in the mind of the petitioner and other co-accused that they will not get justice in the State of T.N. — Hence, case transferred to Pondicherry*

The petitioner, a famous Shankaracharya of a mutt, was involved in a murder case. He filed a petition under Section 406 CrPC seeking transfer of the said case from the State of T.N. to any other State. The said transfer was sought on the grounds: (*i*) that the State machinery in T.N. had shown great zeal and had made extraordinary efforts, much beyond what was required under the law to anyhow secure the conviction of the accused and to achieve that object had procured and fabricated false evidence, (*ii*) that the Chief Minister of the State of T.N. made statements on the floor of the House that the petitioner and the other co-accused were actually involved in the murder in question and had also given some press statements in this regard and thus the accused stood condemned even before the commencement of the trial, (*iii*) that a solatium of Rs 5 lakhs was paid by the Chief Minister to the widow of the deceased long before completion of investigation and submission of charge-sheet, and this was given wide publicity in the electronic media and newspapers, etc., which showed that the State Government was taking special interest in the case and was too keen to secure conviction of the accused in order to justify the stand taken by it, (*iv*) that before the bail applications of the co-accused in the present case could be heard, detention orders were passed against them under the various Acts so that even after grant of bail by the Court they may remain in custody, (*v*) that the advocates appearing for the petitioner and other co-accused had been put under great threat on account of lodging of false and fabricated criminal cases against them and a situation had been created wherein they may not be in a position to defend the accused properly, (*vi*) that the Mutt and other associated and connected trusts had 183 accounts in banks, which were all frozen by Special Investigation Team (SIT) resulting in paralysing the religious and other activities of the Mutt and other connected bodies, (*vii*) that criminal cases had been lodged against some leading journalists of the country and other prominent personalities who had criticised the arrest of the petitioner, which not

(5) Considerations/Grounds for transfer *(contd.)*

only violated right of free speech but also created an atmosphere of threat against anyone daring to speak or write in favour of the accused and thus the accused seriously apprehended that they would not get a fair trial in the State of T.N., and (*viii*) that the head of SIT was not a fair and upright officer and the superior courts had passed strictures against him several times in the past for his uncalled-for actions in going out of the way to implicate innocent persons in criminal cases.

Held :

If there is reasonable apprehension on the part of a party to a case that justice may not be done, he may seek transfer of the case. The apprehension entertained by the party must be a reasonable one and the case cannot be transferred on a mere allegation that there is apprehension that justice will not be done. (Para 22)

The contention raised on the basis of the statements made by the Chief Minister on the floor of the House is not sustainable. The arrest of the petitioner had generated a lot of publicity and in such circumstances no exception can be taken to the statement made by the Chief Minister on the floor of the House. Therefore, the petitioner or other co-accused cannot raise any grievance on the basis of the aforesaid statement of the Chief Minister and it cannot be a ground for transferring the case to another State. (Para 8)

However, launching of prosecution against prominent persons who have held high political offices and prominent journalists merely because they expressed some dissent against the arrest of the petitioner shows the attitude of the State that it cannot tolerate any kind of dissent, which is the most cherished right in a democracy guaranteed by Article 19 of the Constitution. This shows that the State machinery in T.N. is not only taking an undue interest but is going to any extent in securing the conviction of the accused by any means and to stifle even publication of any article or expression of dissent in the media or press, interview by journalists or persons who have held high positions in public life and are wholly unconnected with the criminal case. (Para 23)

The affidavits and the documents placed on record conclusively establish that a serious attempt has been made by the State machinery to launch criminal prosecution against lawyers, who may be even remotely connected with the defence of the accused. The police submitted charge-sheet against two lady lawyers (juniors of the counsel for the accused) under various sections of IPC including Section 201 IPC when even accepting every word in the FIR lodged, no offence under the said provision is made out. The Superintendent of Police, SIT and the Police Inspector connected with the investigation even went to the extent of prompting the approver *R* to make insinuation against a very Senior Counsel *KD* who has been practising for over 43 years and is appearing as counsel for the petitioner. *R* during his cross-examination made a statement at the instance of the head of the Special Investigation Team (SIT) that *KD* met his wife at his house and had threatened her that *R* should not give any statement against the petitioner. (Paras 23 and 9)

Article 22(1) of the Constitution gives a guarantee to a person arrested and detained to be defended by a legal practitioner of his choice. Section 303 CrPC, 1973 says that any person accused of an offence before a criminal court or against whom proceedings are instituted under the Code, may of right be defended by a pleader of his choice. Even under the British rule when the Code of Criminal Procedure, 1898 was enacted, Section 340(1) thereof gave a similar right to an accused. It is elementary that if a lawyer whom the accused has engaged for his defence is put under a threat of criminal prosecution he can hardly discharge his professional duty of defending his client in a fearless manner. A senior and respected counsel is bound to get unnerved if an insinuation is made against him in court that he approached the wife of a witness for not giving evidence against the accused in the court. From the material placed the court is prima facie satisfied that a situation has arisen in the present case wherein the lawyers engaged by the petitioner and other co-accused cannot perform their professional duty in a proper and dignified manner on account of various hurdles created by the State machinery. No lawyer would like to get associated with a case where a slur is made on his character and conduct and the reputation, which he has earned by maintaining high professional standards for a long period, is sought to be damaged. Any dignified lawyer would not agree to conduct a case on behalf of the accused in such an atmosphere and even if he does so, he would not be able to discharge his duties properly on account of threat to his personal reputation. The lawyers would be more concerned with shielding their own reputation or their liberty rather than cross-examining the prosecution witnesses for eliciting the truth. The constant fear of not causing any annoyance to the prosecution witnesses specially those of the Police Department would loom large over their minds vitally affecting the defence of the accused. This is bound to result in miscarriage of justice for the accused. Institution of the criminal case against the junior lawyers, whose seniors are appearing as counsel for the accused, undoubtedly shows that in the prevailing conditions the accused will be seriously handicapped in defending themselves on account of threat and intimidation to their counsel. (Paras 23 and 12)

Further, passing of the detention order against 16 co-accused soon after grant of bail to the petitioner by the Supreme Court, which order could be of some support in seeking parity or otherwise for securing bail in the present murder case, is a clear pointer to the fact that the State wanted to deprive them of any chance to secure release from custody. (Para 23)

That apart, the order of the High Court allowing the writ petition and setting aside the direction issued regarding freezing of the accounts has attained finality as the same has not been challenged in any higher forum. The High Court rightly observed that an organisation (Mutt) cannot be paralysed or closed down by issuing a direction under Section 102 CrPC only for the reason that the head of the Mutt and a few office-bearers are alleged to be involved in some offence. The freezing of all the accounts of the Mutt and its associated trusts and endowments is a clear pointer to the fact that the State machinery anyhow wants to paralyse the entire working of the Mutt and the associated trusts and endowments in order to put pressure upon the petitioner and other co-accused who are in any manner connected with the Mutt so that they may not be able to defend themselves. It is indeed surprising that in spite of the clear language used in sub-section (1) of Section 102 CrPC to the effect — any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any office — all the 183 accounts were frozen merely on the ground that the head of the Mutt was involved in the murder case. The action of freezing the accounts demonstrates as to what extent the State machinery can go while prosecuting the petitioner in the present case. (Paras 23 and 15)

On facts, the petitioner and other co-accused of the case have a reasonable apprehension that they will not get justice in the State of T.N. It is clarified that the Court is casting no reflection on the district judiciary in the State of T.N. But it is the actions of the prosecuting agency and the State machinery, which are responsible for creating a reasonable apprehension in the mind of the petitioner and other co-accused that they will not get justice if the trial is held in any place inside the State of T.N. Therefore, the interest of justice requires that the trial may be transferred to a place outside the State of T.N. (Para 24)

Now the question which arises for consideration is as to where the sessions case should be transferred. While directing transfer of a criminal case the language spoken by the witnesses assumes great importance as translation of deposition of a witness apart from being a difficult job, often does not carry the same sense which the witness wants to convey. The convenience of the prosecuting agency, especially in a case where there are a large number of witnesses and documents has also an important bearing. Hence, the instant case is transferred from the State of T.N. to Pondicherry as the language spoken in Pondicherry is same i.e. Tamil and it is only at a short distance from the place where the trial is pending. (Para 25). *Sri Jayendra Saraswathy Swamigal (II)* v. *State of T.N.*, (2005) 8 SCC 771.

Bench Strength **2**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur**, J. [Date of decision: 26-10-2005]

K. Anbazhagan v. Supdt. of Police, (2004) 3 SCC 767: 2004 SCC (Cri) 882; Gurcharan Das Chadha v. State of Rajasthan, (1966) 2 SCR 678: AIR 1966 SC 1418: 1966 Cri LJ 1071; Abdul Nazar Madani v. State of T.N., (2000) 6 SCC 204: 2000 SCC (Cri) 1048, considered

***Followed in** Jayendra Saraswati Swamigal (3) v. State of T.N., (2008) 10 SCC 180*

[6105] — S. 406 — Grounds for transfer — Fairness of trial doubtful — *Held, when it is shown that public confidence in fairness of a particular trial is likely to be seriously undermined, for any reason whatsoever, S. 406 empowers Supreme Court to transfer any case or appeal to meet ends of justice*

A criminal trial is a judicial examination of evidence with the object of punishing the offenders on a proper proof of relevant facts, the core question being the guilt or innocence of the accused. Hence, a criminal trial, which may result in depriving a person of not only his personal liberty but also his life has to be unbiased, and without any prejudice for or against the accused. An impartial and uninfluenced trial is the fundamental requirement of a fair trial, the first and the foremost imperative of the criminal justice delivery system. If a criminal trial is not free and fair, the criminal justice system would undoubtedly be at stake, eroding the confidence of a common man in the system, which would not augur well for the society at large. Therefore, as and when it is shown that the public confidence in the fairness of a particular trial is likely to be seriously undermined, for

(5) Considerations/Grounds for transfer *(contd.)*

any reason whatsoever, Section 406 CrPC empowers the Supreme Court to transfer any case or appeal to meet the ends of justice. (Paras 19 and 21). *Nahar Singh Yadav* v. *Union of India*, (2011) 1 SCC 307.

Bench Strength 3. Coram: **D.K. Jain,** *V.S. Sirpurkar* and *G.S. Singhvi*, JJ. [Date of decision: 19-11-2010]

Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158: 2004 SCC (Cri) 999; Maneka Sanjay Gandhi v. Rani Jethmalani, (1979) 4 SCC 167: 1979 SCC (Cri) 934, relied on

[6106] — S. 406 — Transfer of cases — Factors to be considered — Directions that may be passed — Large number of cases filed by parties against each other which were pending in different courts of Punjab and Haryana and Chandigarh — *Petitioner seeking transfer of multiple cases by and against him to the Delhi High Court or any other High Court or courts subordinate to such High Court from Punjab and Haryana High Court and/or courts subordinate thereto, apprehending that justice would not be done; and since all cases arose out of the same transaction, contending that interest of justice would be subserved if all matters were clubbed together to avoid multiplicity of proceedings — Held, in exercising power under S. 406, indisputably convenience of parties, including witnesses to be produced at the trial is a relevant consideration therefor — On facts, apprehension expressed by petitioner did not appear to be well founded and it was undoubted that courts concerned would act impartially and petitioner Company, its Directors and officers facing trial would be dealt with very fairly — However, District Judges of Chandigarh and Ludhiana directed to consider desirability of transferring all criminal matters (as far as practicable and legally permissible) to one court so as to enable them to be disposed of one after the other — Penal Code, 1860, Ss. 406, 420, 468, 471, 504, 506, 382 and 120-B* (Paras 1, 9, 10 and 14 to 16). *Shree Baidyanath Ayurved Bhawan (P) Ltd.* v. *State of Punjab*, (2009) 8 SCC 389: (2009) 3 SCC (Cri) 884: 2009 Cri LJ 4107: (2009) 81 AIC 40 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 4-8-2009]

Abdul Nazar Madani v. State of T.N., (2000) 6 SCC 204: 2000 SCC (Cri) 1048, followed

[6107] — S. 406 — Transfer — Relevant considerations for allowing — Dispensation of justice — Case law discussed — *Reiterated, there must be reasonable apprehension on part of a party that justice may not be done — Mere allegation that there is apprehension that justice will not be done, cannot be basis for transfer*

It is true that there must be reasonable apprehension on the part of the party to a case that justice may not be done and mere allegation that there is apprehension that justice will not be done cannot be the basis for transfer. However, there is no manner of doubt that the reasonable apprehension that there would be failure of justice and acquittal of the accused only because the witnesses are threatened is made out by the petitioner. (Paras 23 and 24). *Vikas Kumar Roorkewal* v. *State of Uttarakhand*, (2011) 2 SCC 178.

Bench Strength 2. Coram: **J.M. Panchal** and *H.L. Gokhale*, JJ. [Date of decision: 11-1-2011]

Abdul Nazar Madani v. State of T.N., (2000) 6 SCC 204: 2000 SCC (Cri) 1048; Gurcharan Dass Chadha v. State of Rajasthan, AIR 1966 SC 1418: 1966 Cri LJ 1071; Maneka Sanjay Gandhi v. Rani Jethmalani, (1979) 4 SCC 167: 1979 SCC (Cri) 934; K. Anbazhagan v. Supdt. of Police, (2004) 3 SCC 767: 2004 SCC (Cri) 882, relied on

[6108] — S. 406 — Power of Supreme Court to transfer case — Scope — Circumstances in which such power may be exercised, restated — Provident Fund Scam involving Judges and judicial officers — *Held, power under S. 406 is to be exercised sparingly and with great circumspection — Prayer for transfer should be allowed only when there is a well-substantiated apprehension that justice will not be dispensed impartially, objectively and without any bias or where it is necessary to provide credibility to trial — On facts held, apprehension entertained by CBI that trial of case at Ghaziabad may not be fair, resulting in miscarriage of justice, is misplaced and cannot be accepted — Apprehension based on a bald allegation that since trial Judge and some of the named accused had been close associates at some point of time and that some of witnesses were judicial officers, trial at Ghaziabad would be biased and not fair, cannot be accepted — If such bald allegations are accepted without something more substantial it would seriously undermine credibility and independence of entire judiciary of a State* (Paras 22 and 25 to 30). *Nahar Singh Yadav* v. *Union of India*, (2011) 1 SCC 307.

Bench Strength 3. Coram: **D.K. Jain**, *V.S. Sirpurkar* and *G.S. Singhvi*, JJ. [Date of decision: 19-11-2010]

Abdul Nazar Madani v. State of T.N., (2000) 6 SCC 204: 2000 SCC (Cri) 1048; K. Anbazhagan v. Supdt. of Police, (2004) 3 SCC 767: 2004 SCC (Cri) 882; Amarinder Singh v. Parkash Singh Badal, (2009) 6 SCC 260: (2009) 2 SCC (Cri) 971; R. Balakrishna Pillai v. State of Kerala, (2000) 7 SCC 129: 2000 SCC (Cri) 1293, considered

A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602: 1988 SCC (Cri) 372, referred to

[6109] — S. 406 — Transfer of criminal case — *Parties submitting that they had no objection if the case pending in court of Special Judge, Ambala, is transferred to Special Court at Shimla (H.P.) — Accordingly transfer directed* (Paras 1 and 2). *CBI* v. *Brijinder Rai*, (2008) 17 SCC 758: 2008 Cri LJ 4596: (2009) 1 ECrN 54 (SC).

Bench Strength 2. Coram: *Tarun Chatterjee* and *Aftab Alam*, JJ. [Date of decision: 3-9-2008]

[6110] — S. 406 — Transfer of criminal proceedings — On facts, validity of — Deceased allegedly committed suicide at her matrimonial house — *Appellant 2, father-in-law of deceased, informed police of* **C** *about the unnatural death, pursuant whereto, case under S. 174 CrPC registered — However, father of deceased lodged a complaint with police of* **K**, *on the basis of which an FIR under S. 304-B r/w S. 34 IPC lodged, because of which, Appellant 1, husband of deceased, arrested — Appellants' application under S. 482 CrPC, inter alia, contending that police station of* **K** *had no jurisdiction to conduct an investigation in view of S. 177 CrPC and that FIR having already been lodged by Appellant 2, the second FIR not maintainable, dismissed by High Court — Sustainability — In view of the fact that police at* **C** *had already been informed, although stricto sensu, the same cannot be construed to be an FIR within the meaning of provisions of S. 154 CrPC, and thus, FIR lodged at police station of* **K** *was maintainable — Held, in the peculiarity of instant case, on specific defence of appellant-accused about mental illness of deceased, the interest of justice would be subserved if investigation and consequent trial is transferred to police officer-in-charge, police station of* **C** *— All materials collected by police station of* **K**, *shall be transferred to officer-in-charge, police station of* **C** *— Officer-in-charge, police station of* **K**, *to ensure that in the event a charge-sheet is filed and cognizance of offence under S. 304-B IPC is taken, witnesses available within his jurisdiction shall be produced — Penal Code, 1860, S. 304-B r/w S. 34* (Paras 1, 5 to 7, 20 and 21). *Premkumar* v. *State of Kerala*, (2008) 17 SCC 264: (2009) 75 AIC 12 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 19-12-2008]

Y. Abraham Ajith v. Inspector of Police, (2004) 8 SCC 100: 2004 SCC (Cri) 2134; Asit Bhattacharjee v. Hanuman Prasad Ojha, (2007) 5 SCC 786: (2007) 3 SCC (Cri) 31; Naresh Kavarchand Khatri v. State of Gujarat, (2008) 8 SCC 300: (2008) 3 SCC (Cri) 614, relied on

Vidhya Devi v. State of Haryana, (2004) 9 SCC 476: 2004 SCC (Cri) 1473, considered

[6111] — S. 406 — Transfer of divorce petition — Convenience of wife should be looked into — *Transfer of suits pending in courts in Ghaziabad (U.P.) and Shahdara (Delhi) to court in Ludhiana (Punjab) sought on grounds of she being unable to bear litigation and travelling expenses, she having two minor school going children whom she cannot leave behind alone and she suffering from hyperthyroid and incisional hernia and advised surgery — Husband willing to pay the travelling expenses — Held, grounds set out by wife sufficient for transfer — Directed accordingly. Lalita* v. *Kulwinder Kumar*, (2007) 15 SCC 667.

Bench Strength 2. Coram: *S.N. Variava* and *D.M. Dharmadhikari*, JJ. [Date of decision: 31-1-2005]

[6112] — S. 406 — Transfer petitions — Validity of — Criteria for transferring cases, discussed — *On facts, petitioner seeking transfer of criminal cases pending before trial court at Rampur to trial court at Delhi or Chandigarh — Sustainability — Held, petitioner making vague and unfounded allegations in transfer applications against Respondent 2 — Hence, prayer for transfer not accepted — Accordingly, transfer petitions dismissed*

The first ground urged by the petitioner is that if the petitioner has to go to Rampur to attend the proceedings in the trial court, her safety would be in danger or she apprehends physical harm to herself from Respondent 2 or anti-social elements. This is too nebulous a ground for transferring the cases from the trial court, Rampur to the court of competent jurisdiction at Delhi or Chandigarh. The petitioner has not substantiated her apprehension of threat or bodily harm or intimidation from Respondent 2 or other anti-social elements as alleged by her. She has been going to Rampur in the past and attended the court proceedings before the Magistrate and the Collector but no untoward incident was ever brought to the notice of the police or the CJM by her against Respondent 2. If the petitioner fears any sort of threat to her life, she can report the matter to the police or the court which, in its turn, can after considering the needs of the situation, pass orders according to law including appropriate directions for police protection. (Para 18)

The next plea of illness of the petitioner is not supported by medical evidence. The petitioner has been travelling all the way from USA to India and going to Rampur to look after the landed property of her husband and daughter as their attorney. She has been going and attending the cases in the High Court, Allahabad and in the civil court at Delhi pending inter se the petitioner and Respondent 2. The petitioner and Respondent 2, both practically

(5) Considerations/Grounds for transfer *(contd.)*

seem to be of the same age group. The petitioner has also filed criminal case against Respondent 2 at Chandigarh and he has been attending the proceedings of the said case going all the way from Rampur and covering a distance of about 500 km as averred by him in his counter-affidavit. (Para 19)

The petitioner is a person of means and it will not be difficult for her to attend the hearing of the criminal cases pending in the trial court, Rampur. The comparative inconvenience of the litigant parties are not the only criterion for transferring the cases from one State to another State, but the court has to visualise the comparative inconvenience and hardships likely to be caused to the witnesses besides the burden to be borne by the State exchequer in making payment of travelling and other expenses of the official and non-official witnesses who will have to travel by train from Rampur to Delhi or Chandigarh, as the case may be, for attending the court proceedings if the cases are ordered to be transferred to the transferee court. The distance between Rampur and Delhi is about 400-500 km. There is one more factor viz. that the criminal courts situated at Delhi or Chandigarh are already overburdened with the pendency of the cases and it would not be in the interest of the litigating parties as well as in the interest of justice to add more cases to the dockets of the transferee courts to keep the trial of those cases pending for decades. (Para 20)

In the circumstances, on the basis of vague and unfounded allegations made by the petitioner in the transfer applications against the respondent, the prayer of the petitioner for transferring the trial of cases pending in the trial court, Rampur, either to the trial court, Delhi, or to Chandigarh, is not accepted. (Para 20)

In the result, for the abovesaid reasons, these transfer petitions are dismissed accordingly. (Para 21). *Parminder Kaur* v. *State of U.P.*, (2007) 15 SCC 307.

Bench Strength **2**. Coram: *C.K. Thakker* and **L.S. Panta**, JJ. [Date of decision: 14-3-2007]

[6113] — S. 406 — Transfer — Considerations — Impleadment of all parties — Right of accused to fair trial and opportunity to defend — Paramount consideration — Convenience of party — Irrelevant — *Proceedings under S. 498-A IPC against husband and five others — Only husband impleaded as respondent in transfer petition while others not made parties thereto — Held, transfer petition liable to be dismissed on that ground alone — Further held, in matrimonial proceedings indulgence is shown to wife and ordinarily proceedings may be transferred to suit her convenience — But a criminal case stands on different footing — Accused may not be able to attend court proceedings at transferred court for various reasons and consequences of non-appearance of accused would be drastic — In criminal proceedings, right of accused to fair trial and proper opportunity to defend himself cannot be ignored for convenience of complainant simply because she happens to be the estranged wife — Penal Code, 1860, S. 498-A* (Paras 4 to 7). *Jyoti Mishra* v. *Dhananjaya Mishra*, (2010) 8 SCC 803.

Bench Strength **2**. Coram: *Aftab Alam* and *R.M. Lodha*, JJ. [Date of decision: 27-8-2010]

[6114] — S. 406 — Criminal cases pending against CM of State of T.N. (Respondent 2) and her close relatives/associates — Likelihood of bias in the conduct of prosecution — Petitions filed by political opponent of Respondent 2 for transfer of said cases to other State making allegation of — *During trial, defence recalling 76 PWs for cross-examination — Public Prosecutor (PP) appointed by Government of Respondent 2 neither objecting nor giving consent to it — 64 PWs resiling from their previous statement-in-chief — No attempt by PP to declare them hostile and/or to take any step under S. 154, Evidence Act — Facts indicating that PP acted hand in glove with the accused — Reasonable apprehension of likelihood of failure of justice in the minds of public at large — Strong indication that the process of justice was being subverted — Held, transfer petitions liable to be allowed — Cases transferred to State of Karnataka with necessary directions required in that regard*

The present two petitions under Section 406 CrPC were filed before the Supreme Court for transfer of CC No. 7 of 1997 and CC No. 2 of 2001 pending on the file of the XIth Additional Sessions Judge (Special Court No. 1), Chennai in the State of Tamil Nadu to a court of equal and competent jurisdiction in any other State.

The said two cases were filed against the second respondent (Chief Minister of Tamil Nadu) and others (who were her close relatives or associates) in respect of the offences under Section 120 IPC and Section 13(2) read with Section 13(1)(*e*) of the Prevention of Corruption Act, 1988. The transfer of the said cases was sought on the ground that the second respondent being the Chief Minister of Tamil Nadu, there was prevalent apprehension in the mind of the public at large that the trial in those cases was neither free nor fair with the new Public Prosecutor appointed by the Government of the second respondent. The petitioner submitted that as many as 76

PWs had been recalled for cross-examination on the ground that counsel appearing for the respondents or some of them had earlier been busy in some other case filed against them. Thus, it was alleged (*i*) that the Public Prosecutor did not object and/or give consent to the witnesses being recalled, (*ii*) that out of total of 76 PWs, 64 PWs resiled from their previous statement-in-chief, (*iii*) that the Public Prosecutor had not made any attempt to declare them hostile and/or to cross-examine them by resorting to Section 154 of the Evidence Act, (*iv*) that no attempt had been made to see that court takes action against them for perjury, (*v*) that the presence of the second respondent had been dispensed with during her examination under Section 313 CrPC and instead a questionnaire was sent to her for reply, and (*vi*) that the procedure so adopted was unknown to law and the Public Prosecutor had not objected to the application of Respondent 2 for dispensing with her presence at the time of examination under Section 313 CrPC.

Allowing the transfer petitions,

Held :

It is undisputed that 76 witnesses have been recalled. Many of them had earlier been cross-examined. The witnesses were recalled as Senior Counsel for the second respondent had been busy attending to some other case filed against her when they were first examined. This could hardly have been a ground for recall of witnesses. The fact that it is done after the second respondent assumed power as the Chief Minister of the State and the Public Prosecutor appointed by her Government did not oppose and/or give consent to the application for recall of witnesses is indicative of how judicial process is being subverted. This gets *reinforced* by the fact that even when witness after witness have resiled from what they had stated in the evidence-in-chief, yet no steps have been taken by the Public Prosecutor to resort to Section 154 of the Evidence Act. That apart, no application had been made by the Public Prosecutor for taking action against the said witnesses for perjury. The said facts indicate that the trial is not proceeding fairly. It was the duty of the Public Prosecutor to have first strenuously opposed any application for recall and in any event to have confronted the witnesses with their statements recorded under Section 161 CrPC and their examination-in-chief. It does appear that the new Public Prosecutor is hand in glove with the accused thereby creating a reasonable apprehension of likelihood of failure of justice in the minds of the public at large. There is strong indication that the process of justice is being subverted. (Paras 20 and 29)

In the present case, the circumstances are such as to create reasonable apprehension in the minds of the public at large in general and the petitioner in particular that there is every likelihood of failure of justice. Hence, it is expedient in the ends of justice to allow these petitions. (Paras 30 and 34)

So far as the State to which these cases should be transferred is concerned, considering the convenience of the parties, the State of Karnataka would be most convenient due to its proximity to Tamil Nadu. (Para 34). *K. Anbazhagan* v. *Supdt. of Police*, (2004) 3 SCC 767: 2004 SCC (Cri) 882: AIR 2004 SC 524: 2004 Cri LJ 583.

Bench Strength **2**. Coram: *S.N. Variava* and **H.K. Sema**, JJ. [Date of decision: 18-11-2003]

Gurcharan Dass Chadha v. State of Rajasthan, AIR 1966 SC 1418: (1966) 2 SCR 678: 1966 Cri LJ 1071; Maneka Sanjay Gandhi v. Rani Jethmalani, (1979) 4 SCC 167: 1979 SCC (Cri) 934; Abdul Nazar Madani v. State of T.N., (2000) 6 SCC 204: 2000 SCC (Cri) 1048, relied on

[6115] — Ss. 406, 407 and 177 — Transfer of case from one place to another — Apprehension of miscarriage of justice or bias, due to which trial would not be conducted fairly at the existing place, and public confidence would be seriously undermined — Transfer on ground of — When available — *Held, the apprehension should not be imaginary — It should be real and reasonable — Trial against incumbent Chief Minister, his son who was Deputy Chief Minister and other relatives/close associates of the Chief Minister, on the charge of corruption — Petition for transfer filed by a political rival, pointing out certain set-backs in the trial and perceived anomalies in conducting the trial after incumbent Chief Minister assumed office — On appreciation of relevant facts (without going into merits), Supreme Court finding that apprehension was not real — On the contrary, many of the prosecution witnesses, including the complainant, were disowning the statements already made by them during the period political rival was the Chief Minister — Shifting of trial from a State of Punjab court to a court in Delhi therefore not granted*

Respondent 1 was the Chief Minister of Punjab from 1997 to sometime in February 2002, and thereafter the petitioner became the Chief Minister of the said State, and then again sometime in February 2007, Respondent 1 became the Chief Minister. Petitioner and Respondent 1 belonged to different political parties, namely, Indian National Congress and Shiromani Akali Dal respectively. When Respondent 1 was the Chief Minister during the period 1997-2002, petitioner wrote a letter to Respondent 1 alleging that Respondent 1 had indulged in corruption and

(5) Considerations/Grounds for transfer *(contd.)*

possessed assets disproportionate to his known sources of income. Respondent 1's son, who was also a political leader, filed defamation case against petitioner.

When the petitioner became the Chief Minister in February 2002, an FIR dated 24-6-2003 was lodged against Respondent 1, his son (Respondent 2 herein), some close relatives and associates of Respondent 1. FIR was more or less a repetition of allegations which the petitioner had made earlier in his letter addressed to Respondent 1. On the basis of this FIR, charge-sheet was filed on 22-11-2003 citing 138 witnesses. A supplementary charge-sheet was filed on 4-1-2004.

However, when Respondent 1 again became the Chief Minister in February 2007, it was alleged that the trial against him and his relatives/associates started suffering set-back due to Respondent 1's influence. 35 out of 59 witnesses were declared hostile. It was also alleged that the Public Prosecutor was also not conducting the case properly. The petitioner and one more person therefore filed two petitions under Section 406 CrPC, seeking an order from the Supreme Court for transfer of the case from Punjab to Delhi. Earlier, similar petition for transfer had been dismissed by the High Court.

The Supreme Court considered all relevant facts and found that a number of witnesses had disowned their earlier statements. Even the complainant who was examined as PW 56, disowned his complaint and asserted that the complaint was not filed by him though he admitted his signature found therein. All important witnesses, particularly government officials, stated that they were forced to make false statements at the time of registering the case during petitioner's time as Chief Minister. Only the statements given by them before the court were true.

Dismissing the transfer petitions,

Held :

Criminal prosecution, if otherwise, justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political mandate of the informant or the complainant. However, if justifiable and reasonable apprehension of miscarriage of justice and likelihood of bias is established, the proceeding has to be transferred elsewhere by exercise of power under Section 406 CrPC. For transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that justice will not be done. Justice should not only be done but it should be seen to be done. Mere allegations that there is apprehension that justice will not be done in a given case does not suffice. The court has further to see whether the apprehension alleged is reasonable or not. The apprehension must not only be entertained but must appear to the court to be a reasonable apprehension. (Paras 17 and 18)

When it is shown that the public confidence in the fairness of a trial would be seriously undermined, aggrieved party can seek transfer of a case within the State under Section 407 and anywhere in the country under Section 406 CrPC. However, the apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary. The apprehension must appear to the court to be a reasonable one. (Paras 19 and 20)

Mere allegation that there is an apprehension that justice will not be done in a given case alone does not suffice. Considering the totality of all the circumstances, a secular, democratic Government, governed by the rule of law, in the State of Punjab is responsible for ensuring free, fair and impartial trial to the accused, notwithstanding the nature of the accusations made against them. Apprehension entertained by the petitioners cannot be construed as reasonable and the case cannot be transferred on a mere allegation that there is apprehension that justice will not be done. (Para 51)

Though, in a transfer petition the court is not expected to go into the veracity of the statement of the witnesses and their evidential value, since both sides cited several instances, the same have been considered. Ultimately, it is upon the Presiding Officer/Special Judge and not the court hearing the transfer petition to evaluate the testimonies of the witnesses and arrive at a conclusion one way or other depending on the charges levelled against the accused. It would not be fair on the part of the court either to assess and arrive at an opinion about the same. On analysis of all the material, the transfer of the case as sought for, at this stage, is not only against the interest of prosecution but also against the interest of the other accused persons, the prosecution witnesses and the convenience of all concerned in the matter. (Paras 48, 46 and 24)

The Presiding Officer of the Special Court in the present case is conscious of his power and knows how to conduct a fair trial at the same place. (Para 50)

Taking into consideration the entire facts and circumstances of the case and the materials on record, the petitioners have not made out a case that they have reasonable apprehension of not availing justice in the State of Punjab. (Para 52). *Amarinder Singh* v. *Parkash Singh Badal*, (2009) 6 SCC 260. Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and **P. Sathasivam** and *J.M. Panchal*, JJ. [Date of decision: 14-5-2009]

Abdul Nazar Madani v. State of T.N., (2000) 6 SCC 204: 2000 SCC (Cri) 1048; Jayendra Saraswathy Swamigal (II) v. State of T.N., (2005) 8 SCC 771: (2006) 1 SCC (Cri) 1, relied on

Prakash Singh Badal v. State of Punjab, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193, referred to

K. Anbazhagan v. Supdt. of Police, (2004) 3 SCC 767: 2004 SCC (Cri) 882; S.K. Shukla v. State of U.P., (2006) 1 SCC 314: (2006) 1 SCC (Cri) 366; Jayendra Saraswati Swamigal v. State of T.N., (2008) 10 SCC 180: (2009) 1 SCC (Cri) 27, distinguished

[6116] — S. 406 — Transfer — Grounds for and factors to be considered — Corruption case — Situs of alleged acts of corruption — Inconvenience of parties — Power of accused to influence trial at place to which transfer sought — Main accused not seeking transfer to another alternative place, nor such latter transfer beneficial to anyone — Relevance — *Petitioners contending that they hail from Rajasthan and most of the witnesses also from Rajasthan, thus, for convenience, case pending before Special Judge, CBI, Greater Mumbai be transferred to Jaipur, Rajasthan — Respondents submitting that main accused a very influential person in Rajasthan — Strong apprehension of no fair trial in Rajasthan — Various movable properties found in Mumbai — Main accused posted in Mumbai from 2001 to end of check period i.e. 4-10-2005, period during which most of the properties were allegedly acquired — Witnesses to be examined also from Mumbai — Held, inconvenience is insufficient as a ground for transfer — There must be "reasonable apprehension" on part of a party to a case that justice may not be done — Mere allegation that there is apprehension that justice will not be done, cannot be the basis of transfer — It must be shown that trial in forum concerned will result in failure of justice — Penal Code, 1860, S. 109 r/w S. 193 — Prevention of Corruption Act, 1988, S. 13(2) r/w S. 13(1)(e) — CPC, 1908, S. 25*

Dismissing the transfer petition,

Held:

In the case on hand, except convenience, the petitioners have not pressed into service any other ground for transfer. (Para 10)

Respondents 1 and 2 (CBI), submit, that the main accused Shri B.R. Meena is a very influential person in the State of Rajasthan and there is strong apprehension that due to influence of Shri B.R. Meena, there would be no fair trial at Jaipur or any other place in the State of Rajasthan. Various movable properties have been found in Mumbai and the main accused, Shri B.R. Meena, was posted in Mumbai from 2001 to the end of the check period i.e. 4-10-2005 and this is the period during which most of the properties were allegedly acquired by him and his family members. Witnesses to be examined are not only from Jaipur, Rajasthan, but also from various other places including Mumbai. Though the petitioners may have a little inconvenience, the mere inconvenience may not be sufficient ground for the exercise of power of transfer but it must be shown that the trial in the chosen forum will result in failure of justice. (Paras 11 and 14)

Except the plea of inconvenience on the ground that they have to come all the way from Rajasthan no other reason was pressed into service. Even, the request for transfer to Delhi cannot be accepted since it would not be beneficial either to the petitioners or to the prosecution. In fact, the main accused, Respondents 3 and 4 have not filed any petition seeking transfer. In such circumstances, the plea of the petitioners for transfer of the case from the Court of Special Judge, CBI, Greater Mumbai to Special Judge, CBI, Jaipur on the ground of inconvenience cannot be accepted. Transfer petition is dismissed. (Para 15). *Bhiaru Ram* v. *CBI*, (2010) 7 SCC 799.

Bench Strength 2. Coram: **P. Sathasivam** and *A.K. Ganguly*, JJ. [Date of decision: 3-8-2010]

D.A.V. Boys Sr. Sec. School v. D.A.V. College Managing Committee, (2010) 8 SCC 401, relied on

[6117] — Ss. 406 and 407 — Transfer of criminal case — When can be allowed — Relevant considerations — Public confidence in fair trial should be shown to be seriously undermined in case of non-transfer — Convenience of the parties, witnesses and larger interest of the society are also relevant considerations — *Wild allegation of existence of communally surcharged atmosphere by itself not enough — It has to be considered in the light of accusations made and nature of crime committed by the person seeking the transfer — Allegation of the accused in Coimbatore serial bomb blast case that atmosphere in the State of T.N. in general and in Coimbatore in particular being so communally surcharged that his fair and impartial trial there would be seriously impaired, held on facts, not acceptable, more so having regard to the huge amount spent by the State Government for conducting a smooth, speedy, fair and impartial trial at Coimbatore — Submission that accused would not get any assistance of lawyers of his choice due to rivalry of fundamentalists also not acceptable — Hence accused's prayer for transfer of the criminal case from Coimbatore Court to any Sessions Court in State of Kerala or at least to some other place in the State of T.N. cannot be allowed*

(5) Considerations/Grounds for transfer *(contd.)*

The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 CrPC. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. (Para 7)

Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society. (Para 7)

The mere existence of a surcharged atmosphere without there being proof of inability for holding fair and impartial trial cannot be made a ground for transfer of a case. The alleged communally surcharged atmosphere has to be considered in the light of the accusations made and the nature of the crime committed by the accused seeking transfer of his case. It will be unsafe to hold that as and when accusations are made regarding the existence of a surcharged communal atmosphere, the case should be transferred from the area where existence of such surcharged atmosphere is alleged. The Supreme Court had not concluded so generally in *Francis case*. (Para 8)

The petitioners in the instant case have made wild and general allegations of the surcharged atmosphere against a particular community of the society in the whole of the State of Tamil Nadu. In a secular, democratic country governed by the rule of law, the appropriate State Government is responsible for ensuring free, fair and impartial trial to the accused notwithstanding the nature of accusations made against them. Nothing has been placed on record nor was it possible to allege that the whole of the State of Tamil Nadu has become a communal State which cannot ensure a free, fair and impartial trial against the petitioners. If such a situation is shown to be existing, the State Government has no constitutional and moral right to rule the State as it would amount to perpetuating the continuance of a Government against the provisions of the Constitution which ensures and guarantees a secular, democratic system of governance. The respondents have very emphatically submitted and there is no reason to doubt that the atmosphere in the State is not communally surcharged to the extent that holding of a criminal trial against the petitioners and others is not possible in any part of the State. Even if some communal tension is shown to be in existence as perhaps is likely to be in view of the nature of the offence committed and the accusations made against the petitioner and other accused persons, it is the obligation of the State Government to ensure the safety and security of the accused persons to stand a free and impartial trial. It is true that in the detention order dated 7-7-1998 against the petitioner, the Commissioner of Police had mentioned that on account of the communal riots Coimbatore city had become communally hypersensitive but those averments cannot be stretched to hold firstly that the whole State of Tamil Nadu has become communally surcharged and secondly that Coimbatore city itself continues to be so communally hypersensitive till date that the trial against the petitioners and other accused persons is not likely to be free, fair and impartial. (Para 9)

There is no substance in the submission that there existed feelings in Tamil Nadu in general or in Chennai and Coimbatore in particular, that no patriotic lawyer would appear and plead for any of the accused persons in the bomb blast cases, in view of the names of advocates who are stated to have already appeared for the accused in the courts at Coimbatore and also before the High Court of Judicature at Chennai, annexed by the respondents. The petitioners and other accused are adequately represented in the Court and even if not, they can get the legal services from Palghat in Kerala where they want the case to be transferred. It may be noticed that Palghat is approximately 40 kilometres from Coimbatore and it is not difficult for any number of advocates to travel or stay at Coimbatore during the conduct of the trial. If any advocate from outside the State of Tamil Nadu appears for any of the accused, the State Government shall provide him appropriate security to ensure him the discharge of his professional obligation towards the accused persons facing the trial in the case filed against them. (Paras 3 and 10)

It is also not possible to accept the submission that at least the trial of the case be ordered to be conducted at some other place in the State of Tamil Nadu preferably at Chennai, Thirunalveli or Salem. At present there exists conducive atmosphere at Coimbatore where a free, fair and impartial trial is possible to be conducted against the accused persons. The Court cannot lose sight of the fact that despite the petitioners there are 152 other accused persons out of which more than 150 are from Coimbatore and the State Government have made elaborate arrangements for their stay in Central Prison, Coimbatore by making provision of having specified cells for the accused persons. The State Government has incurred expenses of Rs. 22.40 lakhs for remodelling the building adjacent to Central Prison to accommodate the Special Court for which even a judicial officer has been appointed who is stated to have taken charge on 7-4-2000. Lakhs of rupees are shown to have been spent for the conduct of a smooth, speedy, fair and impartial trial. The statement made on behalf of the respondents that in Coimbatore Central Prison separate cells have been renovated for accommodation of 168 accused persons in the instant case and such a facility is not available elsewhere in any other prison in that State cannot also be lost sight of. The transfer of the case, at this stage, is not only against the interests of the prosecution but also against the interests of the other accused persons, the prosecution witnesses and the convenience of all concerned in the matter. A fair and speedy trial of the case is possible at Coimbatore and the accused persons including the petitioners need not have any cause for apprehension. (Paras 11 and 12). *Abdul Nazar Madani* v. *State of T.N.*, (2000) 6 SCC 204: 2000 SCC (Cri) 1048: AIR 2000 SC 2293: 2000 Cri LJ 3480.

Bench Strength **2**. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 5-5-2000]

G.X. Francis v. Banke Bihari Singh, AIR 1958 SC 309: 1958 Cri LJ 569, explained and distinguished

[6118] — S. 406 — Transfer of CBI case from Manipur to Delhi — Considerations for — Killings on abduction by militants — Ethnic tension — Ease of participation by victims' near relatives in trial — Relevance — *Held, in order to ensure that fair trial takes place, interests of all stakeholders, namely, the accused, witnesses, prosecutors, near relatives of victim, as well as society at large need to be accounted for — In instant case, certain degree of divergence in interests of respective stakeholders discernible — However, considering the fact that there existed a real possibility of physical attack on respondent-accused as long as he was in Manipur, and killings had taken place allegedly based on ethnicity and where opinions were sharply divided on justness of causes espoused by NSCN(IM) to which respondent-accused belonged which created risk of intimidation of witnesses and undue prejudice seeping into minds of those involved in legal proceedings in different capacities, trial directed to be conducted in Delhi — As far as near relatives of deceased were concerned, CBI as well as Government of Manipur directed to render full assistance to victims' legal heirs for legal representation by engaging advocates of their choice — Further, to-and-fro journey, stay, etc. for the cited witnesses and one member of deceased's family directed to be arranged on dates of hearing — Criminal Procedure Code (Amendment) Bill, 2008, Ss. 2 and 3* (Paras 15 to 23)

On 13-2-2009, one Dr. *T* (SDO, Kasom Khullen, District Ukhrul) along with five staff members were abducted by militants. The next day, three of the abducted persons were released, while dead bodies of *T* and two others were recovered on 17-2-2009. Having regard to seriousness of the crime, investigation was transferred to CBI. The respondent, who was an activist of NSCN(IM), a militant organisation, was arrested.

Among the government employees abducted, three persons released belonged to Naga ethnicity, while the deceased were of Metei ethnicity. In addition to social unrest created in wake of killings, there was also an apprehension of conflict between these communities since alleged killers were of Naga ethnicity. Hence, CBI urged for transfer of trial to Delhi in view of specific threat to the life of the respondent-accused which could frustrate conduction of fair trial. However, near relatives of the deceased objected to transfer on the ground that it would be difficult for them to participate in trial proceedings, either by way of legal representation or any other conceivable method.

Allowing the transfer petition, the Supreme Court held as above. *CBI* v. *Hopeson Ningshen*, (2010) 5 SCC 115.

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and *Deepak Verma* and *Dr. B.S. Chauhan*, JJ. [Date of decision: 3-5-2010]

Maneka Sanjay Gandhi v. Rani Jethmalani, (1979) 4 SCC 167: 1979 SCC (Cri) 934; Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158: 2004 SCC (Cri) 999, relied on

[6119] — S. 406 — Appellant's application for transfer of criminal case, pending in the Court of District Judge, on ground of apprehension of unfair trial by that Judge — *Held, the apprehension not unfounded where the same Judge granted*

(5) **Considerations/Grounds for transfer** *(contd.)*

huge costs as lawyer's fee in a civil suit involving the appellant as a party — Hence, the transfer application allowed. Govind Sharan Aggarwal v. *Hardeo Sharma Trivedi*, (1983) 2 SCC 268: 1983 SCC (Cri) 395.

Bench Strength 3. Coram: *S. Murtaza Fazal Ali, A. Varadarajan* and *A.N. Sen*, JJ. [Date of decision: 5-5-1981]

[6120] — S. 406 — Transfer of case — Considerations involved — *Complaint filed by respondent against petitioner under Ss. 499 and 500 IPC in Mumbai — Petitioner staying in Delhi, contending that she would suffer both financial and personal hardship being made to travel to Mumbai for appearance in the case — Prayer for transfer of case to Delhi — On facts and circumstances, held, the case deserves to be transferred to Delhi — Constitution of India, Art. 139-A(2)*

The respondent filed a civil suit against the petitioner, her brothers and other relatives; and as alleged by the petitioner he also forged a letter dated 19-12-2006 purporting to have been authored by the petitioner addressed to his friends at Mumbai, making defamatory imputations against him, and on that basis filed a complaint before the Metropolitan Magistrate, Mumbai, praying that the petitioner be summoned, tried and penalised for the offence of defamation. The Magistrate has issued summons to the petitioner in the said case. The petitioner has filed this petition for transfer of the said criminal proceedings to any court in Delhi. The petitioner contends that though the respondent resides in Delhi, he has filed the complaint in Mumbai to put her to hardship, both financially and otherwise as she will be required to travel all the way to Mumbai and appear in the case on several hearings; that the respondent may resort to third-degree methods in Mumbai; and that he may harass her by seeking unnecessary adjournments.

Allowing the petition,

Held :

The case is not being examined on merits. (Para 4)

The petitioner will be put to considerable hardship if she is required to contest the matter in Mumbai. On the facts and circumstances, the case deserves to be transferred to Delhi, as requested by the petitioner. (Paras 5 and 6). *Gurpreet Kaur* v. *Vipin Kumar Gupta*, (2008) 1 SCC 231: (2008) 1 SCC (Cri) 186: (2007) 60 AIC 39 (SC): (2008) 2 Mah LJ 484: (2008) 2 MPLJ 210.

Bench Strength 3. Coram: **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *V.S. Sirpurkar*, JJ. [Date of decision: 2-11-2007]

[6121] — Ss. 406 and 479 — Prosecution launched in Sessions Court against close relations of a High Court Judge — *Without accepting the contention regarding possibility of the concerned Judges being biased and without meaning to cause any aspersions on the conduct of the Judges, case transferred to a court outside the State in the interest of all the parties. Hanwant Das* v. *Vinay Kumar*, (1982) 1 SCC 475: 1982 SCC (Cri) 257.

Bench Strength 2. Coram: *Y.V. Chandrachud, C.J.* and *N.L. Untwalia*, J. [Date of decision: 17-3-1980]

[6122] — Ss. 406 and 127 — Transfer of case — *Application under S. 127 CrPC directed to be transferred from Faridkot to District Judge, Delhi, since at the instance of the respondent, a related case involving the same parties had already been transferred to District Judge, Delhi by the Supreme Court* (Para 2). *Neeraj Kumar* v. *Sonu (Minor)*, (2005) 12 SCC 345.

Bench Strength 2. Coram: *S.N. Variava* and *S.B. Sinha*, JJ. [Date of decision: 28-1-2005]

[6123] — S. 406 — Transfer of cases of politically influential persons, to area outside their political influence, to ensure fair trial — *In background stated by the petitioner, case transferred from State of U.P. to State of M.P. — Rule of Law — Preservation of — Transfer of criminal cases of politically influential persons, to area outside their political influence, to ensure fair trial*

The petitioner has stated that there will be no chance of fair trial in the State of U.P. as most of the witnesses are afraid to speak against the respondents and one witness was even killed as he deposed against these persons. It was also mentioned that the State Government is not serious. The State Government has already withdrawn the POTA cases against the accused persons and directed the Public Prosecutor to withdraw these cases.

Held :

There is likelihood of miscarriage of justice in the above background. Therefore, in the interest of justice both these cases be transferred to any other court where, in a proper atmosphere, the matter can be dealt with fairly. Hence the cases are transferred to a Special Judge in the State of M.P. (Para 35). *S.K. Shukla* v. *State of U.P.*, (2006) 1 SCC 314: (2006) 1 SCC (Cri) 366: AIR 2006 SC 413: (2006) 37 AIC 523 (SC): 2006 Cri LJ 148.

Bench Strength 2. Coram: *B.N. Agrawal* and **A.K. Mathur**, JJ. [Date of decision: 10-11-2005]

[6124] — S. 406 — Transfer petition — Political clout of accused — Apprehension that free and fair trial would be impeded due to political clout of accused, R-2, MLA of party in power in the

State — *Hence, petitioner complainant (brother of murdered deceased) seeking transfer of murder trial to another State — Petitioner's submission that investigating agencies, in connivance with State Government, wanted to shield R-2 from prosecution — Held, circumstances present justify apprehension of petitioner that perspective of prosecution may become polluted — There is no getting away from fact that R-2 is an MLA and that too belonging to present dispensation — Since justice must not only be done but must also be seen to be done, hence, in order to do fair justice to all parties, trial should be held outside present State — Accordingly, directions for transferring matter to High Court of different State issued, which shall decide place and court before which trial may be conducted — Penal Code, 1860, Ss. 302 and 307 — Constitution of India, Art. 139-A* (Paras 7, 15 and 16). *Surendra Pratap Singh* v. *State of U.P.*, (2010) 9 SCC 475.

Bench Strength 2. Coram: **Altamas Kabir** and *A.K. Patnaik*, JJ. [Date of decision: 15-9-2010]

[6125] — S. 406 — Transfer of case to place of residence of petitioner from another State — Petitioner aged with serious health problems/diseases — *Certificates issued by competent authorities produced by petitioner in support of his assertions — Hence, transfer petition allowed and directions given for expeditious disposal* (Paras 2, 4 and 5). *Harbans Lal & Sons* v. *Ramson Cycles (P) Ltd.*, (2009) 4 SCC 16.

Bench Strength 2. Coram: *Tarun Chatterjee* and *H.L. Dattu*, JJ. [Date of decision: 27-1-2009]

[6126] — S. 406 — Transfer petition — Disposed of in terms of settlement arrived at in between parties — *Penal Code, 1860, Ss. 406, 498-A r/w S. 34 — Hindu Marriage Act, 1955, S. 13. Rajesh* v. *State of Rajasthan*, (2009) 4 SCC 199.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 23-1-2009]

[6127] — Ss. 406, 257 and 320 — Petition filed for transfer of complaint cases — Compromise of disputes — *During course of litigation, parties compromised their disputes by agreeing that pending proceedings shall be withdrawn or quashed — In view of the undertaking of the parties, held, all the cases be deemed to be withdrawn and quashed in the interest of justice under Art. 142 — Constitution of India, Art. 142. Afroz Jahan* v. *State of Bihar*, (2008) 14 SCC 443.

Bench Strength 2. Coram: *Tarun Chatterjee* and *H.S. Bedi*, JJ. [Date of decision: 12-3-2008]

[6128] — S. 406 — Transfer of cases pending against Chief Minister and others sought by "political opponent" of CM — *Objection raised against, on the ground of "political vendetta" — Transfer petition raising reasonable apprehension of likelihood of bias in the dispensation of criminal justice system — Held, could not be rejected on such objection*

It has been urged that the petitioner being a political opponent of Respondent 2, these transfer petitions have been launched against Respondent 2 on ground of political vendetta. This submission has no force. In a democracy, the political opponents play an important role both inside and outside the House. They are the watchdogs of the Government in power. It will be their effective weapon to counter the misdeeds and mischiefs of the Government in power. They are the mouthpiece to ventilate the grievances of the public at large, if genuinely and unbiasedly projected. In that view of the matter, being a political opponent, the petitioner is a vitally interested party in the running of the Government or in the administration of criminal justice in the State. The petition lodged by such persons cannot be brushed aside on the allegation of a political vendetta, if otherwise, it is genuine and raises a reasonable apprehension of likelihood of bias in the dispensation of criminal justice system. The petitioner has raised many justifiable and reasonable apprehensions of miscarriage of justice and likelihood of bias, which would require the interference of the Supreme Court under Section 406 CrPC. (Paras 13 and 14). *K. Anbazhagan* v. *Supdt. of Police*, (2004) 3 SCC 767: 2004 SCC (Cri) 882: AIR 2004 SC 524: 2004 Cri LJ 583.

Bench Strength 2. Coram: *S.N. Variava* and **H.K. Sema**, JJ. [Date of decision: 18-11-2003]

Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288: 1987 SCC (Cri) 82; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

[6129] — S. 406 — Transfer of complaint case under S. 500 IPC — *Petitioner, expressing the inconvenience caused to her in defending the case, seeking transfer of the case from Chandigarh to Mumbai — First respondent, though having a permanent residence at Mumbai, opposing the petition — In view of the petitioner being a lady, transfer petition allowed in favour of the petitioner irrespective of the place of residence of first respondent. Neelam Kanwar* v. *Devinder Singh Kanwar*, (2000) 10 SCC 589: 2001 SCC (Cri) 1507.

Bench Strength 2. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 25-7-2000]

(5) Considerations/Grounds for transfer *(contd.)*

[6130] — S. 406 — Transfer of appeals — Grounds — *Appeal pending before High Court — Accused-appellant filing an application before CJ for transferring the appeal to another Bench — Omission on the part of CJ to pass an order on such application, held, could not lead to an inference that the accused-appellant would not get justice from the Bench before which the appeal was pending — Hence, could not constitute a ground for transfer of the appeal to another High Court — Constitution of India, Art. 139-A. R. Balakrishna Pillai* v. *State of Kerala*, (2000) 7 SCC 129: 2000 SCC (Cri) 1293: AIR 2000 SC 2778: (2000) 3 KLT 425.

Bench Strength 2. Coram: **M.B. Shah** and *S.N. Phukan*, JJ. [Date of decision: 30-8-2000]

[6131] — S. 406 — Transfer of appeals — Grounds — *Consequent to rejection of accused-appellant's application for adjournment by the High Court, his counsel withdrawing his appearance — In such circumstances, issuance of bailable warrant to the accused-appellant, who was then on bail, to remain present on the date of hearing, held, could not justify an apprehension of denial of justice to the accused-appellant from the Bench concerned — Hence, the issuance of warrant could not be a ground for seeking transfer of the appeal to another High Court — Constitution of India, Art. 139-A*

The practice of filing an application by an advocate that he withdraws his appearance on the date of hearing, only for getting the matter adjourned, requires to be strongly discouraged. In such a situation, for seeking the appearance of the petitioner, who was released on bail, there was no alternative for the Court but to issue bailable warrant. Therefore, the course adopted by the Court was justified. Hence, there is not the remotest chance or justification for entertaining apprehension that the petitioner would not get justice if the appeal is decided by the Bench to whom it was assigned. (Para 13). *R. Balakrishna Pillai* v. *State of Kerala*, (2000) 7 SCC 129: 2000 SCC (Cri) 1293: AIR 2000 SC 2778: (2000) 3 KLT 425.

Bench Strength 2. Coram: **M.B. Shah** and *S.N. Phukan*, JJ. [Date of decision: 30-8-2000]

[6132] — S. 406 — Transfer of appeals — Grounds — High Court Judge, before elevation to Bench, having acted as a prosecutor against the accused-appellant in a different matter — *Such circumstances, held, did not warrant the inference of such a Judge being biased against the accused-appellant — Hence, did not constitute a good ground for transfer of the appeal to another High Court — Constitution of India, Art. 139-A — CPC, 1908, S. 25*

A Judge while practising as an advocate might have appeared in a number of cases, but that would not mean that he would have any personal interest or connection with the said matters or with persons involved therein and would be biased towards them. (Para 11). *R. Balakrishna Pillai* v. *State of Kerala*, (2000) 7 SCC 129: 2000 SCC (Cri) 1293: AIR 2000 SC 2778: (2000) 3 KLT 425.

Bench Strength 2. Coram: **M.B. Shah** and *S.N. Phukan*, JJ. [Date of decision: 30-8-2000]

[6133] — S. 406 — Transfer of appeals — Grounds — Mere allegation by the accused, of apprehension of denial of justice, held, not sufficient — The apprehension must appear to the court to be reasonable, genuine and justifiable — The power of transfer cannot be exercised on hypersensitive grounds or mini-grievances — *Else the entire judicial system would be wrecked — Constitution of India, Art. 139-A — CPC, 1908, S. 25*

It is true that one of the principles of the administration of justice is that justice should not only be done but it should be seen to have been done. However, a mere allegation that there is apprehension that justice will not be done in a given case is not sufficient. Before transferring the case, the court has to find out whether the apprehension appears to be reasonable. To judge the reasonableness of the apprehension, the state of mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must appear to the court to be reasonable, genuine and justifiable. In the present-day scenario, if these types of applications are entertained, the entire judicial atmosphere would be polluted with such frivolous petitions for various reasons. (Para 10). *R. Balakrishna Pillai* v. *State of Kerala*, (2000) 7 SCC 129: 2000 SCC (Cri) 1293: AIR 2000 SC 2778: (2000) 3 KLT 425.

Bench Strength 2. Coram: **M.B. Shah** and *S.N. Phukan*, JJ. [Date of decision: 30-8-2000]

[6134] — S. 406 — Transfer of case — Consideration involved — *Complaint filed by respondent alleging offence under S. 498-A IPC and allied offences against petitioners — Petitioners staying at different places (Chennai, Saharanpur and Delhi) praying for transfer of the complaint case from Patna to Bhopal where respondent's daughter, wife of Petitioner 1 working — Respondent contending that his daughter's contract of service in a company at Bhopal would expire after nine months and she would face difficulty in case of transfer of* *the matter to Bhopal — Having regard to facts and circumstances of the case, held, it would be convenient for all the petitioners to have trial in one of the competent courts at Bhopal — Order passed accordingly. Sachin Dubey* v. *Shirish Kumar Bharadwaj*, (2005) 11 SCC 178.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *B.N. Srikrishna*, JJ. [Date of decision: 11-4-2005]

[6135] — S. 406 — Transfer of case — Criteria — Extraordinary situations or compelling reasons and not mere trivial causes prerequisites for transfer — *Trial Court asked to take adequate steps to ensure fair trial and on its failure the accused could re-invoke S. 406*

The Editor of a monthly journal, filed a petition for the transfer of the criminal case of defamation against her from Bombay to Delhi on three grounds; namely, (*i*) that the parties (complainant and petitioners) reside in Delhi and some formal witnesses also belong to Delhi; (*ii*) that the petitioner is not able to procure competent legal service in Bombay; and (*iii*) that the atmosphere in Bombay is not congenial to a fair and impartial trial of the case against her.

Held:

The assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of the parties or easy availability of legal service or like trivial grievances. Something more substantial, more compelling, more imperilling from the point of view of public justice and its attendant environment is necessitous if the Court is to exercise its power of transfer.

(*i*) The main witnesses in the instant case are those who speak to having read the offending matter in the petitioner's journal and other relevant circumstances flowing therefrom. They all belong to Bombay and the Delhi readers cannot be their substitute witnesses. Hence, the first ground alleged by the petitioner is of no substance.

(*ii*) If an accused person, for any particular reason is virtually deprived of the facility of competent legal service, an essential aid to fair trial fails. If in a certain court the whole Bar, for reasons of hostility or otherwise, refuses to defend an accused person — an extraordinary situation difficult to imagine, having regard to the ethics of the profession — it may well be put forward as a ground which merits the Court's attention. But in the present case, there is no evidence that the petitioner is unable to engage a competent lawyer to defend her.

(*iii*) Turbulent conditions putting the accused's life in danger or creating chaos inside the court hall may jettison public justice. If this vice is peculiar to a particular place and is persistent, the transfer of the case from that place may become necessary. Likewise, if there is general consternation or atmosphere of tension or raging masses of people in the entire region taking sides and polluting the climate vitiating the necessary neutrality to hold a detached judicial trial, the situation may be said to have deteriorated to such an extent as to warrant transfer.

The petitioner's case of great insecurity or molestation to the point of threat to life is not borne out by the record. The mere word of an interested party is insufficient to convince the court that she is in jeopardy or the court may not be able to conduct the case under conditions of detachment, neutrality or uninterrupted progress.

It is, however, possible that there may be a flare-up and a challenge to a fair trial, in the sense of a satisfactory participation by the accused in the proceedings against her. To avoid this the trial Court should readily consider the liberal exercise of its powers to grant to the accused exemption from personal appearance save on crucial occasions. The Magistrate will also take measures to enforce conditions where the court functions free and fair, and agitational or mob tactics do not prevail. The Magistrate is a master of orderly conduct of proceedings and all the officials whose duty it is to keep the public peace shall, on requisition, be at his command to help him run the process of the court smoothly. If that fails, the parties shall have freedom to renew their application for transfer under S. 406, Criminal Procedure Code. *Maneka Sanjay Gandhi* v. *Rani Jethmalani*, (1979) 4 SCC 167: 1979 SCC (Cri) 934: AIR 1979 SC 468: 1979 Cri LJ 458: 1979 MLJ (Cri) 541.

Bench Strength **3**. Coram: **V.R. Krishna Iyer**, *P.S. Kailasam* and *A.D. Koshal*, JJ. [Date of decision: 23-11-1978]

[6136] — S. 406 — Transfer of case — Grounds — Apprehension of danger to lives of petitioners — *Transfer of case pending before Magistrate, Phillour, Distt. Jalandhar (Punjab) to the Court of CJM, Barpeta (Assam), prayed for by the petitioners — Petitioner 2, resident of Phillour, and alleged to be a major, out of love for Petitioner 1, leaving the house of her parents without informing them, and reaching Barpeta (native place of Petitioner 1) and marrying him of her own free will and consent in presence of elders — Certificate of marriage issued by the Kazi — However, Respondent 2 (mother of Petitioner 2) filing FIR against Petitioner 1 and his two brothers under Ss. 363-A, 366 and 120-B IPC before Goraya*

(5) Considerations/Grounds for transfer *(contd.)*

police station, Mouza Phillour, Distt. Jalandhar — Petitioners apprehending danger to their lives from relatives and family members of Petitioner 2 even to the extent of killing them in the event of their arrest by police of PS Goraya and taking them outside Assam — Hence, in the interest of justice and fair play, transfer petition allowed (Paras 4, 5, 8 and 10). *Fajlor Rahman* v. *State of Punjab*, (2006) 9 SCC 714: (2006) 3 SCC (Cri) 374: 2006 Cri LJ 3281.

Bench Strength **2**. Coram: *Ashok Bhan* and *L.S. Panta*, JJ. [Date of decision: 10-4-2006]

[6137] — S. 406 — Transfer — Grounds — Coercion of and threat to witnesses and doubtful sincerity of investigating and prosecuting agencies — *Murder trial relating to brutal murder of Superintending Engineer in Irrigation Department of U.P. at his Camp Office at Roorkee (Uttarakhand) — Son of deceased seeking transfer of proceedings from Haridwar to Delhi — Accused belonging to a powerful gang operating in the State — Driver of deceased, an eyewitness due to threats, turned hostile — Despite several summons neither petitioner, his family members nor other witnesses able to go to Haridwar to depose before court because of threats by accomplices of accused — No action taken by SSP, Haridwar or Government of Uttarakhand to provide protection to petitioner and his family or to thwart such threats — Four accused already on bail but neither police nor State agency had taken steps for getting their bail order cancelled — Held, circumstances present justify reasonable apprehension of petitioner that there would be failure of justice and acquittal of accused only because witnesses are threatened — It has become difficult for witnesses to safely depose because of fear of being haunted by those against whom they have to depose — To remove incapacitation of eyewitnesses and in interests of justice it is necessary to grant relief claimed — Hence, case transferred from Haridwar to Delhi — Directions issued to investigating and prosecuting agencies, State of Delhi, State of Uttarakhand and Judge to whom trial of the case may be transferred, to take appropriate steps for protecting witnesses and to ensure trial concludes without any delay — Penal Code, 1860, S. 302 r/w S. 120-B — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, S. 3(2)(v)*

Allowing the petition,

Held :

This is a case of murder of a Superintending Engineer. There is no manner of doubt that brutal assault was mounted on him which resulted in his death. The son of the deceased is seeking transfer of proceedings on ground of coercion and threat to the witnesses as well as doubtful sincerity of the investigating agency and prosecuting agency. In effective cross-examination by Public Prosecutor of the driver who resiled from the statement made during the investigation speaks volumes about the sincerity/effectiveness of the prosecuting agency. (Para 21)

From the record of the case it is evident that several letters have been written and/or applications have been made by the petitioner making grievances about the threats administered to him and his family by the accomplices of the accused. However, no action, worth the name, is taken either by the SSP, Haridwar or by the Government of Uttarakhand either to afford protection to the petitioner and his family or to thwart such threats made by the accused and/or their accomplices. It was claimed by the prosecution that the driver of the deceased was an eyewitness and it is the case of the petitioner that due to threats, he turned hostile which is not in dispute. The fact that in spite of the receipt of several summons neither the petitioner nor his wife nor his family members nor other witnesses have been able to go to Haridwar to depose before the court is not denied by the State Government. Therefore, the Court is inclined to accept the case of the petitioner that he and the other witnesses have not been able to respond to the summons only because of fear to their lives due to the threats administered by the accomplices of the accused. There is no manner of doubt that because of chasing of the petitioner and his relatives by the accomplices of the accused, they have not been able to attend the court and tender evidence. If this situation continues then the prosecution would not be able to lead any evidence in such a brutal murder case and the accused will have to be acquitted. The record indicates that the four accused have been already enlarged on bail but neither the police nor the State agency has taken any steps for the purpose of getting their bail order cancelled. (Paras 17 to 19)

It is true that there must be reasonable apprehension on the part of the party to a case that justice may not be done and mere allegation that there is apprehension that justice will not be done cannot be the basis for transfer. However, there is no manner of doubt that the reasonable apprehension that there would be failure of justice and acquittal of the accused only because the witnesses are threatened is made out by the petitioner. (Paras 23 and 24)

From the averments made in the petition it is evident that the accused belong to a powerful gang operating in U.P. from which the State of Uttarakhand is carved out. The petitioner has been able to show the circumstances from which it can be reasonably inferred that it has become difficult for the witnesses to safely depose truth because of fear of being haunted by those against whom they have to depose. The reluctance of the witnesses to go to the court at Haridwar in spite of receipt of repeated summons is bound to hamper the course of justice. If such a situation is permitted to continue, it will pave way for anarchy, oppression, etc., resulting in breakdown of criminal justice system. In order to see that the incapacitation of the eyewitnesses is removed and justice triumphs, it has become necessary to grant the relief claimed in the instant petition. On the facts and in the circumstances of the case the interest of justice would be served if transfer of the case from Haridwar to Delhi is ordered. (Para 29)

The case titled as *State* v. *Akash Tyagi* pending in the First Fast Track Court/ADJ, Haridwar, Uttarakhand is hereby transferred to the court of competent jurisdiction at Delhi. The investigating agency, the prosecution agency, the State of Delhi as well as the State of Uttarakhand and the Judge to whom the trial of the case may be made over, are directed to take appropriate steps for protecting the witnesses and to ensure that the trial concludes as early as possible and without any avoidable delay. (Para 30). *Vikas Kumar Roorkewal* v. *State of Uttarakhand*, (2011) 2 SCC 178.

Bench Strength **2**. Coram: **J.M. Panchal** and *H.L. Gokhale*, JJ. [Date of decision: 11-1-2011]

Himanshu Singh Sabharwal v. State of M.P., (2008) 3 SCC 602: (2008) 2 SCC (Cri) 106, relied on

Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158, cited

Abdul Nazar Madani v. State of T.N., (2000) 6 SCC 204: 2000 SCC (Cri) 1048; Gurcharan Dass Chadha v. State of Rajasthan, AIR 1966 SC 1418: 1966 Cri LJ 1071; Maneka Sanjay Gandhi v. Rani Jethmalani, (1979) 4 SCC 167: 1979 SCC (Cri) 934; K. Anbazhagan v. Supdt. of Police, (2004) 3 SCC 767: 2004 SCC (Cri) 882, relied on

[6138] — S. 406 — Transfer of case — Grounds for — *Complaint case against Respondent 2, a police officer, pending in Court of CJM, Bulandshahar (U.P.), where Respondent 2 at relevant time was posted — Although order summoning the accused was passed by the Magistrate in 2002, he having not yet appeared before the Court — Without going into veracity of assertion of petitioner that accused having utmost influence over the local police in Bulandshahar, the case directed to be transferred from Bulandshahar to District and Sessions Judge, Delhi who shall assign the case to an appropriate court. Neeraj Pathak* v. *State of U.P.*, (2005) 11 SCC 595.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *P.P. Naolekar*, JJ. [Date of decision: 8-4-2005]

[6139] — S. 406 — Petition by complainant for transfer of case from Pune to Indore on ground of personal safety apprehending danger from the nine accused charged under Ss. 395, 341, 504 and 506, IPC — Petitioner a lawyer himself — *Directions passed to police to take security measures for his safety — Transfer petition rejected. Ranjit Singh* v. *Popat Rambhaji Sonavane*, (1983) 1 SCC 298: 1983 SCC (Cri) 196: AIR 1983 SC 292: 1983 Cri LJ 437.

Bench Strength **2**. Coram: *D.A. Desai* and *R.B. Misra*, JJ. [Date of decision: 4-1-1983]

[6140] — S. 406 — Transfer of case outside the State concerned — Prayer made for, by accused — Grounds for — *Accused facing danger to his life as rival gang attacking and causing him serious injuries thrice in State where trial going on — Gunman deputed for security of accused failed to do anything — In these facts and circumstances, held, case pending at Bhopal be transferred to Nasik* (Paras 3 and 4). *Ravir Godbole* v. *State of M.P.*, (2006) 9 SCC 786: (2006) 3 SCC (Cri) 400.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 13-2-2006]

[6141] — S. 406 — Transfer of criminal case outside the State concerned — Question as to where the case may be transferred — Relevant considerations — *Language spoken by witnesses and convenience of prosecuting agency in going to the place where the case may be transferred, held, assumes great importance in deciding the aforesaid question*

Now the question which arises for consideration is as to where the sessions case should be transferred. While directing transfer of a criminal case the language spoken by the witnesses assumes great importance as translation of deposition of a witness apart from being a difficult job, often does not carry the same sense which the witness wants to convey. The convenience of the prosecuting agency, especially in a case where there are a large number of witnesses and documents has also an important bearing. Hence, the instant case is transferred from the State of T.N. to Pondicherry as the language spoken in Pondicherry is same i.e. Tamil and it is only at a short distance from the place where the trial is pending. (Para 25). *Sri Jayendra Saraswathy Swamigal (II)* v. *State of T.N.*, (2005) 8 SCC 771.

Bench Strength **2**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur**, J. [Date of decision: 26-10-2005]

[6142] — S. 406 — Transfer petition — *In order to alleviate the hardships of all the parties, the case pending in the Court of CJM, Muzaffarnagar transferred to the Court of CJM, Sirsa (Haryana), where*

(5) Considerations/Grounds for transfer *(contd.)*

the other case was pending — Having regard to the difficulty of complainant in attending the court proceedings, permission granted to her for being present in the court through her counsel — Penal Code, 1860, Ss. 323, 506, 427, 354 and 452. Kanta Rani v. *Savitri Devi*, (2001) 10 SCC 32.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 7-8-2000]

[6143] — S. 406 — Transfer petition — Grounds for — Clubbing of similar cases — *Trial pending at Dharwar, Karnataka — Similar case against same accused pending at Hyderabad in which the petitioners are also co-accused — Having regard to the said fact, held, it would be in the interest of justice if the case presently being tried at Dharwar be transferred to Court of Special Judge (CBI), Hyderabad — Hence, transfer petition allowed accordingly* (Paras 2 and 3). *A. Naveen* v. *CBI*, (2006) 9 SCC 761: (2006) 3 SCC (Cri) 416.

Bench Strength **2**. Coram: *B.P. Singh* and *Arun Kumar*, JJ. [Date of decision: 2-5-2005]

[6144] — S. 406 — Transfer of case — Grounds for — Overburdened court — *Held, cannot be ground for transfer of trial — On facts held, if Court of Special Judge at Ghaziabad is overburdened, it will be open to High Court to request State Government to create another court of a Special Judge at Ghaziabad* (Para 31). *Nahar Singh Yadav* v. *Union of India*, (2011) 1 SCC 307.

Bench Strength **3**. Coram: **D.K. Jain**, *V.S. Sirpurkar* and *G.S. Singhvi*, JJ. [Date of decision: 19-11-2010]

[6145] — S. 406 — Transfer of case under Ss. 420/34 IPC pending in Court of Addl. Chief Metropolitan Magistrate, Bangalore to Court of Principal District and Sessions Judge at Bombay for assigning the case to a court of competent jurisdiction — *Directed by Supreme Court considering the fact that accused-petitioner is a widow aged 80 years suffering from cancer. Urvashi Govind Advani* v. *State of Karnataka*, (2004) 12 SCC 110.

Bench Strength **2**. Coram: *Ashok Bhan* and *S.H. Kapadia*, JJ. [Date of decision: 12-10-2004]

[6146] — S. 406 — Transfer of criminal case — Trial judge since retired and another judge taking over his place — Question of transfer of case to another bench does not arise — *Trial court directed to take up the case expeditiously and proceed day to day. Mir Mohd. Omar* v. *State of W.B.*, (1989) 4 SCC 436: 1989 SCC (Cri) 750: AIR 1989 SC 1785: 1989 Cri LJ 2070: (1989) 2 Crimes 698.

Bench Strength **2**. Coram: **K. Jagannatha Shetty** and *A.M. Ahmadi*, JJ. [Date of decision: 8-8-1989]

[6147] — S. 406 — Transfer of criminal case — Case pending in court in Rajasthan — *Prayer to transfer it to court at Delhi — Complainant and accused were permanent residents of Delhi — A civil suit between the parties pending at Delhi — State had no objection to transfer of the case — Transfer allowed* (Para 3). *Suman Gambhir* v. *State of Rajasthan*, (2004) 13 SCC 365.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *S.B. Sinha*, JJ. [Date of decision: 9-8-2004]

[6148] — S. 406 — Transfer of criminal case — Cesser of ground for — *Charge-sheet under Ss. 302, 201 and 34 IPC filed in Sessions Court in Faridabad (Haryana) — Complainant seeking transfer of the trial pending to a court in Delhi on the grounds that the nine-year-old girl child of the deceased, who was one of the eyewitnesses, was terribly afraid of deposing against her father and his relations at Faridabad and that there were threats to the complainant party from the accused party and thus there was no proper atmosphere at Faridabad for a free and fair trial — State assuring to provide, if required, necessary security and protection to the eyewitness to depose at Faridabad — On such assurance, held, there remained no ground to transfer the trial of the criminal case — Hence, transfer petition dismissed — Necessary directions for requisite protection directed to be obtained from the trial court — Penal Code, 1860 — Ss. 302, 201 and 34 — Constitution of India, Art. 139-A* (Para 3). *Leelawati* v. *Ramesh Chand*, (2004) 9 SCC 63: 2004 SCC (Cri) 1327: AIR 2004 SC 1488: 2004 Cri LJ 900: (2004) 109 DLT 348.

Bench Strength **2**. Coram: *Shivaraj V. Patil* and *D.M. Dharmadhikari*, JJ. [Date of decision: 13-1-2004]

[6149] — S. 406 — Transfer of criminal case — Grounds for — *Petitioner filed criminal cases against her husband and in-laws — Father-in-law jumped bail and an application for attachment of property he owned jointly with Respondents 1 and 2 at place J was filed — Trial court passed a direction — Respondent filed FIR against petitioner and her mother for forging stay order passed by trial court in criminal case instituted by petitioner against her husband and in-laws and pending at place D — Respondent 1 had nothing to do with criminal case pending at place D — Hence, held, as forgery was said to have taken place at J it is not a fit case where order of transfer should be passed as most of the witnesses are from place J only*

Transfer petition had been filed by the petitioner seeking transfer of criminal revision petition filed by Respondent 1 from the Court of Additional District Judge, Jaipur to the Court of Additional

District and Sessions Judge, Patiala House Courts, New Delhi and for transfer of execution proceedings under Section 83 CrPC in respect of property at Jaipur to the Deputy Commissioner of Police, South Zone, New Delhi. Transfer petitions have been filed by petitioner and her mother for transfer of criminal miscellaneous petition filed by them under Section 482 CrPC for quashing of FIR pending before the High Court of Rajasthan, Jaipur Bench, to the High Court of Delhi.

Dismissing the petition,

Held :

If the respondents concerned are in physical possession of the property, the question of dispossessing them by way of attachment for jumping of bail by the father-in-law of the petitioner did not arise. The petitioner need not attend the proceedings pending before the Additional Sessions Judge, or the High Court in person. It furthermore appears that the investigation is not yet complete. The respondents in their counter-affidavit have stated that the petitioners have not yet been examined by the investigating officer. As Respondent 1 and the other witnesses have nothing to do with the criminal case pending in the Court of Additional Chief Metropolitan Magistrate, New Delhi and as the act of commission of forgery is said to have taken place at Jaipur, it is not a fit case where the order of the transfer should be passed as most of the witnesses are from Jaipur only. The transfer petitions are dismissed accordingly. (Paras 8, 12, 13 and 15). *Monica* v. *Satish Sharma*, (2009) 17 SCC 458: AIR 2010 SC 103: 2009 Cri LJ 4458: (2010) 87 AIC 243.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 27-7-2009]

Abdul Nazar Madani v. State of T.N., (2000) 6 SCC 204: 2000 SCC (Cri) 1048, relied on

[6150] — S. 406 — Matrimonial disputes — Ending of all litigation — *Petition filed by husband for transfer of criminal cases from courts in Delhi to Mumbai — Meanwhile in terms of compromise arrived at between the parties all litigations pending in various courts inter se the parties agreed to be disposed of — Held, in view of the compromise all the litigations (except the matrimonial petition) directed to be withdrawn before the Supreme Court — Orders passed in terms of the compromise to end all litigations inter se — Parties directed to move an application under S. 13-B of the Hindu Marriage Act, 1955 before the appropriate court and further directing it to dispose of the same in terms of the compromise — Further directing, no further claims remaining to be settled inter se the parties — Hindu Marriage Act, 1955, S. 13-B — Constitution of India, Art. 142* (Para 3). *Commodore Vimal Kumar* v. *Ruchi Rastogi*, (2008) 12 SCC 62.

Bench Strength 2. Coram: *Tarun Chatterjee* and *H.S. Bedi*, JJ. [Date of decision: 29-4-2008]

[6151] — S. 406 — Transfer of case — Conduct of undertrial in prison entailing serious violations of Jail Manual — Proceedings in respect of — *Unauthorised entry of certain persons/serious violations of Jail Manual and misconduct of first respondent during visit of IG (Prisons) to jail (Berur Jail) where first respondent lodged — Supreme Court seized of proceedings in respect of — High Court entertaining some proceedings in regard thereto — In light of appropriateness of fact that monitoring be done by one court, and since the Supreme Court had already initiated proceedings, held, it would be appropriate that proceedings initiated in High Court be transferred to Supreme Court — Directions issued accordingly — Moreover, notices issued by High Court in said proceedings were to be treated as notices issued by Supreme Court — Prisons Act, 1894, Ss. 45 and 40 — Constitution of India — Arts. 136 and 139-A(1). Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2005) 1 SCC 801: 2005 SCC (Cri) 449.

Bench Strength 2. Coram: *N. Santosh Hegde* and *S.B. Sinha*, JJ. [Date of decision: 14-12-2004]

[6152] — S. 406 — Petitioners alleging that complaint was frivolous and meant to intimidate them — *Transfer of case from Orissa to Punjab justified where the accused belong to Punjab and the complainant himself is the only witness against them. Inder Singh* v. *Kartar Singh*, (1979) 4 SCC 192: 1979 SCC (Cri) 953: AIR 1979 SC 1720.

Bench Strength 2. Coram: *S. Murtaza Fazal Ali* and *D.A. Desai*, JJ. [Date of decision: 16-10-1978]

[6153] — S. 406 — Transfer of criminal case — When warranted — *From New Delhi to appropriate court at Trivandrum on ground of petitioner being unemployed, staying at Trivandrum and it being impossible for him to visit Delhi to defend the case — Respondent having various agencies throughout India — In view of facts and circumstances, criminal complaint transferred to CJM, Trivandrum. Venu Menon* v. *Hathway Investment (P) Ltd.*, (2005) 13 SCC 701: (2006) 2 SCC (Cri) 295.

Bench Strength 2. Coram: *K.G. Balakrishnan* and *B.P. Singh*, JJ. [Date of decision: 29-7-2005]

[6154] — S. 406 — Case transferred from Assam to Delhi at the instance of accused — *Part of the expenses of the prosecution must be borne by the Government of Assam. K.P.S. Gill* v. *Parthajoy Das*, (1982) 3 SCC 480: 1983 SCC (Cri) 106.

Bench Strength 2. Coram: *Y.V. Chandrachud, C.J.* and *E.S. Venkataramiah*, J. [Date of decision: 27-7-1981]

(5) Considerations/Grounds for transfer *(contd.)*

[6155] — S. 406 — Petitions directly before Supreme Court for transfer of criminal cases against police-officers on charge of murder of alleged extremists pending before Judicial Magistrate in State of Punjab to some other State except State of Haryana to avoid appeals before High Court of Punjab and Haryana at Chandigarh — *Having regard to volatile situation prevailing in Punjab and on facts and circumstances, the criminal cases directed to be transferred to Sessions Judge in State of H.P. — Transferee Magistrate and Sessions Judge directed to consider exemption from personal appearance to petitioners as well as Government servants opposing the petitions and also to pay travelling and daily allowances to the opposing Government servants on the days of their appearance before the court — Transferee court to issue appropriate orders for bail of the petitioners — Constitution of India, Arts. 139-A and 136. D.R. Bhatti* v. *State of Punjab*, 1986 Supp SCC 646: 1987 SCC (Cri) 175: AIR 1987 SC 660.

Bench Strength **3**. Coram: *R.S. Pathak*, **V. Khalid** and *B.C. Ray*, JJ. [Date of decision: 20-12-1986]

[6156] — S. 406 — Trial conducted by General Court Martial — *Offence taking place at Poona — Witnesses belonging to Poona — Records being at Poona — Held, there was no justification for shifting the trial to Delhi — Constitution of India, Art. 139-A. Union of India* v. *Maj. Gen. Madan Lal Yadav*, (1996) 4 SCC 127: 1996 SCC (Cri) 592: AIR 1996 SC 1340.

Bench Strength **3**. Coram: **K. Ramaswamy**, *S. Saghir Ahmad* and *G.B. Pattanaik*, JJ. [Date of decision: 22-3-1996]

[6157] — Ss. 406 and 177 — Transfer of case — *FIR registered, charge-sheet filed and cognizance of alleged offences under Ss. 498-A and 406 IPC and S. 4, Dowry Prohibition Act taken by Magistrate at Trichy — Acts, which were alleged to have constituted said offences, committed mostly in Mumbai and partly in Chennai but no acts constituting the alleged offences committed at Trichy — Informant also moved application for transfer of petition for dissolution of marriage filed by husband from Family Court, Mumbai, to Chennai — Having regard to relevant aspects, background facts and history of litigation, all cases, criminal and matrimonial, directed to be transferred from Trichy and Mumbai respectively to Chennai — Penal Code, 1860, Ss. 498-A and 406 — Dowry Prohibition Act, 1961, S. 4* (Paras 10 to 14). *Ramesh* v. *State of T.N.*, (2005) 3 SCC 507: 2005 SCC (Cri) 735: AIR 2005 SC 1989: 2005 Cri LJ 1732.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *A.K. Mathur*, JJ. [Date of decision: 3-3-2005]

[6158] — S. 406 — Transfer of case — When not warranted — Availability of defence counsel — *Applicant claiming that he would not be able to engage a counsel in the court concerned — District Bar Association submitting affidavit before court assuring to the contrary — Transfer applications declined — CPC, 1908, S. 25. Vishwanath Gupta* v. *State of Uttaranchal*, (2007) 11 SCC 640.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 24-4-2006]

[6159] — S. 406 — Transfer of case — Case registered under S. 420 IPC in Bulandshahar (U.P.) sought to be transferred to Delhi — *But dispute between the parties settled out of court and they have already filed a joint petition for compromise — Hence, transfer petition disposed of on compromise subject to directions of the Court. Bimla Agarwala* v. *State of U.P.*, (2008) 17 SCC 566: AIR 2009 SC 1657: 2009 Cri LJ 1533: (2009) 75 AIC 81 (SC).

Bench Strength **2**. Coram: *Tarun Chatterjee* and *V.S. Sirpurkar*, JJ. [Date of decision: 11-12-2008]

(6) Directions/orders that may be issued under S. 406

[6160] — Ss. 406, 24, 2(u) and 7, 8 & 9 — Transfer of case — State that has power to appoint Public Prosecutor — Directions that may be given by Supreme Court in respect of appointment of Public Prosecutor — Scope of — Right of transferee State to appoint Public Prosecutor to whom criminal proceedings transferred — *Sessions case pending before Sessions Judge, Chinglepet, in State of T.N. transferred to Principal District and Sessions Judge, Pondicherry — Home Department of State of T.N. appointing one Special Public Prosecutor and four Additional Special Public Prosecutors for conducting trial in Pondicherry — Appellant challenging the said appointments — Held, power of the State Government to appoint a Public Prosecutor and Additional Public Prosecutor would extend only for conducting any prosecution, appeal or other proceedings in the courts within its own State — Such powers cannot be exercised by the State Government to conduct cases in any other State — Once the case is transferred as per S. 406 CrPC to another State, the transferor State no longer has control over the prosecution to be conducted in a court situated in a different State to which the case has been transferred — However, Supreme Court while passing order of transfer can give an appropriate direction as to which State should appoint the Public Prosecutor to conduct that particular case having regard to the circumstances of the case and the grounds on* *which the transfer has been effected — Supreme Court can give such directions irrespective of the provisions contained in S. 24 CrPC — In the instant case nothing had been stated in the order of the transfer — Hence, provisions contained in S. 24 CrPC shall prevail and it is for the State of Pondicherry to appoint any counsel as Public Prosecutor having requisite qualifications as prescribed under S. 24(8) CrPC — State of T.N. directed to bear expenses* (Paras 4, 11, 12, 13, 18 and 19). *Jayendra Saraswati Swamigal (3)* v. *State of T.N.*, (2008) 10 SCC 180: AIR 2008 SC 2997: (2008) 3 KLT 669: 2008 Cri LJ 3877.

Bench Strength **3**. Coram: **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *M.K. Sharma*, JJ. [Date of decision: 22-7-2008]

Jayendra Saraswathy Swamigal (2) v. State of T.N., (2005) 8 SCC 771: (2006) 1 SCC (Cri) 1, followed

[6161] — Ss. 406 and 386(1), 24 and 225 — Retrial of case on transfer — Public Prosecutor — Appointment of — Say of affected parties/complainants in — Assistance of Public Prosecutor by one lawyer to be paid for by State *— Fees and expenses of Public Prosecutor and trial initially to be borne by State to which case transferred, subject to reimbursement by State from which case transferred — That State to provide all necessary assistance for conduct of re-trial — Witnesses to be given protection not only by that State, but in case any witness asks for protection transfer State also to provide such protection as deemed necessary — Retrial ordered on transfer of case — Directions issued for conduct of retrial — Affected parties/complainants given liberty to have a say in appointment of the Public Prosecutor — Public Prosecutor permitted assistance of one lawyer — Fees and expenses of Public Prosecutor and trial initially to be borne by State to which case transferred subject to reimbursement by State from which case transferred — That State to provide all necessary assistance for conduct of retrial — Witnesses to be given protection not only by that State, but in case any witness asks for protection transfer State also to provide such protection as deemed necessary — Constitution of India, Art. 139-A(2)*

The State Government is directed to appoint another Public Prosecutor and it shall be open to the affected persons to suggest any name which may also be taken into account in the decision to so appoint. Though the witnesses or the victims do not have any choice in the normal course to have a say in the matter of appointment of a Public Prosecutor, in view of the unusual factors noticed in this case, to accord such liberties to the complainant parties, would be appropriate. (Para 76)

The fees and all other expenses of the Public Prosecutor who shall be entitled to assistance of one lawyer of his choice shall initially be paid by the State of Maharashtra, which will thereafter be entitled to get the same reimbursed from the State of Gujarat. The State of Gujarat shall ensure that all the documents and records are forthwith transferred to the court nominated by the Chief Justice of the Bombay High Court. The State of Gujarat shall also ensure that the witnesses are produced before the court concerned whenever they are required to attend that court. Necessary protection shall be afforded to them so that they can depose freely without any apprehension of threat or coercion from any person. In case, if any witness asks for protection, the State of Maharashtra shall also provide such protection as deemed necessary, in addition to the protection to be provided for by the State of Gujarat. All expenses necessary for the trial shall be initially borne by the State of Maharashtra, to be reimbursed by the State of Gujarat. (Para 77). *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999: 2004 Cri LJ 2050.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-4-2004]

Clarified in Satyajit Banerjee v. State of W.B., (2005) 1 SCC 115

[6162] — S. 406 — Transfer petition — In terms of compromise arrived at between parties, petitioners agreeing to pay Rs 40 lakhs in full and final settlement of all claims of respondent — Consequently, cases pending between parties quashed — Decree of divorce by mutual consent also granted *— Hindu Marriage Act, 1955, Ss. 13 and 13-B* (Paras 1 to 3). *S.G. Rajgopalan Prabhu* v. *Veena*, (2010) 12 SCC 537.

Bench Strength **2**. Coram: *Dalveer Bhandari* and *Deepak Verma*, JJ. [Date of decision: 26-7-2010]

[6163] — S. 406 — Transfer petition — Petitioner permitted to go abroad subject to her having appropriate travel documents — Interim stay granted in respect of criminal proceedings pending against her in different courts *— Penal Code, 1860, Ss. 294 and 34*. *Shilpa Shetty* v. *Rikhab Raj Bhandari*, (2009) 17 SCC 388.

Bench Strength **3**. Coram: *K.G. Balakrishnan*, *C.J.* and *B.P. Singh* and *G.P. Mathur*, JJ. [Date of decision: 18-5-2007]

[6164] — Ss. 406, 432(7), 385(1), 225, 2(u), 24 and 378 — Offence committed in one State but case transferred to a court in another State *— Appeal against that court's order filed in its respective High Court — Held, the High Court required to*

(6) Directions/orders that may be issued under S. 406 *(contd.)*

give a notice to the Public Prosecutor (i.e. Advocate-General) of its own State only — Impleading the State where the cause of action arose or giving notice to the counsel of that State not required. Hanumant Dass v. *Vinay Kumar*, (1982) 2 SCC 177: 1982 SCC (Cri) 379(2): AIR 1982 SC 1052: 1982 Cri LJ 977.

Bench Strength **2**. Coram: *O. Chinnappa Reddy* and **R.B. Misra**, JJ. [Date of decision: 5-4-1982]

[6165] — Ss. 406 and 311 — Transfer of case — When warranted — Recall of witnesses who had allegedly resiled due to coercion — *Allegations casting aspersions on role of investigating officer/police, Public Prosecutor and trial court, and transfer of case to another State sought on that basis — In light of concessions made by State concerned and accused, case transferred from Sessions Court in Madhya Pradesh to Sessions Court in Maharashtra and liberty granted to recall such witnesses*

Late Prof. H.S. Sabharwal was a professor in Government College, Ujjain, M.P. He was brutally beaten up by certain persons for taking a rigid stand in the college union elections. Though the assaults were made in the presence of several police officials, media persons and members of the public, it was alleged that an attempt had been made to create the impression that his death was as a result of an accident. Initially, first information report was lodged and after investigation charge-sheet was filed and charges had been framed against several persons who were Respondents 2 to 7 in the transfer petition. The trial commenced in the Court of Sessions Judge, Ujjain. During examination of several witnesses who were stated to be eyewitnesses, such witnesses resiled from the statements made during investigation. There were even three police witnesses who also resiled from their earlier statements.

Grievance of the petitioner was that the witnesses had been coerced, threatened and ultimately justice was a casualty. That the role of the investigating officer gave ample scope to doubt impartiality and the sincerity of the investigating agency. Similar was the position of the Public Prosecutor. It was also highlighted that the trial court also did not make a serious effort to see that justice was done. In this connection it was pointed out that Public Prosecutor did not cross-examine the persons who had resiled from their statements made during investigation. This according to the petitioner also showed that the trial court did not act as was required under law.

The State of M.P. and the respondent-accused persons conceded before the Supreme Court that in the larger interest of justice and transparency they had no objection to the case being transferred to some other State.

Disposing of the transfer petition in the terms below,

Held :

In light of the concessions of the State of M.P. and the accused, without examining the correctness of the allegations made, it is directed that the case concerned pending in the Court of Sessions Judge, Ujjain be transferred to the Court of Sessions Judge, Nagpur, Maharashtra. It shall be open to the Sessions Judge to either deal with the case himself or to allot it to an appropriate court. The trial will commence from the stage at which it was when the order of stay was passed by the Supreme Court. The petitioner who is the son of the deceased in the peculiar facts of the case is permitted to suggest two names to function as Public Prosecutor. Similarly, two names shall be given by the respondent State. It shall be for the Sessions Judge, Nagpur to appoint a Public Prosecutor from the names to be suggested. The fees and other expenses of the Public Prosecutor shall be borne by the State of M.P. It shall be open to the Public Prosecutor to be appointed to seek recall of any witness already examined in terms of Section 311 CrPC. This shall be in addition to the three police witnesses who had resiled from their statements. (Para 6). *Himanshu Singh Sabharwal* v. *State of M.P.*, (2008) 3 SCC 602: (2008) 2 SCC (Cri) 106: AIR 2008 SC 1943.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 12-3-2008]

Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158: 2004 SCC (Cri) 999, relied on

[6166] — S. 406 — Scope of power under — Relief that may be granted — Orders to ensure that all possible proceedings relating to the same subject-matter are disposed of jointly — *Various proceedings (writ petitions, writ appeals and suits) involving the same or substantially the same subject-matter instituted before High Court and District Court — Transfer of all the proceedings to one Division Bench of High Court for disposal — When warranted — Allegation of all the proceedings concerned being an attempt to reagitate matters settled by earlier decision of Supreme Court — Effect — CPC, 1908, S. 25 — Constitution of India, Arts. 139-A, 136 and 142. Maruti Clean Coal & Power Ltd.* v. *B.L. Wadhera*, (2008) 2 SCC 585: (2008) 1 SCC (L&S) 515: (2008) 1 SCC (Cri) 514: (2008) 105 Cut LT 482.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 29-1-2008]

[6167] — S. 406 — Transfer petition — Granting divorce by mutual consent in terms of Ss. 13-B(1) and 13-B(2) Hindu Marriage Act — *SLPs and transfer petitions disposed of in terms of settlement arrived at between parties — Hindu Marriage Act, 1955, Ss. 13-B(1) and 13-B(2)* (Paras 2 to 4). *Aparna Goyal* v. *Rakesh Goyal*, (2009) 12 SCC 648: AIR 2009 SC 1836: (2009) 1 APLJ 71 (SC).

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *Dr. M.K. Sharma* and *H.L. Dattu*, JJ. [Date of decision: 27-1-2009]

[6168] — S. 406 — Transfer of case — No objection to transfer — Effect — *Case pending at Delhi — Transfer of, to District Court at Mainpuri (U.P.), where another case was pending — Prayer made in respect of — No objection by respondent State of Delhi — Transfer allowed* (Paras 2 and 3). *Amrit Singh* v. *State of Delhi*, (2005) 10 SCC 386: 2005 SCC (Cri) 1543.

Bench Strength **2**. Coram: *Ashok Bhan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 14-3-2005]

[6169] — S. 406 — While rejecting transfer application, prosecution directed to afford opportunity to the defence to cross-examine the prosecution witnesses and provide facility of a doctor for examining accused daily before beginning of the court proceedings. *S. Kamaljit Singh Sandhu* v. *UT, Chandigarh*, 1987 Supp SCC 195: 1988 SCC (Cri) 51(1).

Bench Strength **2**. Coram: *O. Chinnappa Reddy* and *V. Khalid*, JJ. [Date of decision: 20-1-1987]

[6170] — S. 406 [Per majority: Venkatachaliah, J. (contra)] — Supreme Court has no jurisdiction to suo motu direct withdrawal of case from Court of Special Judge and transfer thereof to High Court for speedier trial — *Criminal Law (Amendment) Act, 1952, S. 7(1). A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602: 1988 SCC (Cri) 372: AIR 1988 SC 1531.

Bench Strength **7**. Coram: **Sabyasachi Mukharji**[1], **Ranganath Misra**[2], **G.L. Oza**[1&3], **B.C. Ray**[4], *S. Natarajan*[1], **M.N. Venkatachaliah**[5] and **S. Ranganathan**[6], JJ. [Date of decision: 29-4-1988]

(7) Transfer of cases under Negotiable Instruments Act

[6171] — S. 406 — Power of Supreme Court to transfer cases — Cases pending under S. 138, Negotiable Instruments Act, 1881 — *One petition for transfer of case from Chennai to Delhi — The other petition for transfer of case from Ghaziabad to Delhi — The case was that in respect of the same transaction several cheques had been issued, but they were presented for encashment at different places, resulting in prosecutions at different places — In the facts and circumstances of the case, the first petition partly allowed but the other one dismissed — Thus, case pending in Chennai transferred to Ghaziabad where the complaint which was the subject-matter of the other petition was pending — Negotiable Instruments Act, 1881, S. 138. Vikram Tractors* v. *Escorts Ltd.*, (2005) 10 SCC 80: 2005 SCC (Cri) 1491.

Bench Strength **2**. Coram: *B.P. Singh* and *Arun Kumar*, JJ. [Date of decision: 25-4-2005]

[6172] — Ss. 406 and 313 — Transfer of cases — Grounds for — *A number of cases (10 in this case) under S. 138 Negotiable Instruments Act, 1881 pending before courts at Guwahati and posted on different dates — Petitioner seeking transfer of such cases on the grounds of hardship in attending and alleged danger posed to his life from the situation in Guwahati — Such grounds, held, not sufficient for transferring the cases — However, liberty granted to the petitioner to apply for exemption from personal appearance in cases where he had made first appearance — Conditions specified subject to which the Magistrate should grant exemption*

The Supreme Court specified the following conditions for grant of exemption from personal appearance in this case:

1. The petitioner's counsel would be present in the trial court on all days when the cases are taken up.

2. The petitioner will not dispute his identity.

3. The petitioner would be present in the Court when needed, such as examination under Section 313 CrPC. (Para 3). *Abhiram Veer* v. *North Eastern Regional Agricultural Marketing Corpn. Ltd.*, (2000) 10 SCC 433: 2001 SCC (Cri) 1491.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 10-9-1999]

[6173] — S. 406 — Several complaint cases filed under S. 138 of Negotiable Instruments Act pending in various courts at Mumbai, Pune and Sholapur — *Counsel for the parties agreeing that all the cases may be heard and decided by appropriate courts at Pune — Order of transfer made accordingly — Negotiable Instruments Act, 1881, S. 138* (Paras 3, 4 and 5). *Global Infrastructure & Technologies Ltd.* v. *G.K. Builders*, (2005) 12 SCC 427.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *P.P. Naolekar*, JJ. [Date of decision: 20-1-2005]

[6174] — S. 406 — Transfer of cases — Three cases filed under S. 138, Negotiable Instruments Act, 1881, at 3 different places — Complaint arising out of one single transaction — *Held, it*

(7) Transfer of cases under Negotiable Instruments Act *(contd.)*

would be appropriate and in the interest of justice that all cases be tried in one court — Hence, cases pending in Haryana and U.P. transferred to the Court of Additional Chief Metropolitan Magistrate, Patiala House, Delhi where one of the said three cases was already pending — Negotiable Instruments Act, 1881, S. 138 — Transfer of three cases filed in different locations in respect of same transaction (Paras 5 and 6). *A.E. Premanand* v. *Escorts Finance Ltd.*, (2004) 13 SCC 527.

Bench Strength 2. Coram: *N. Santosh Hegde* and *S.B. Sinha*, JJ. [Date of decision: 25-10-2004]

[6175] — S. 406 — Transfer of cases filed at numerous places to one common place — Consolidation of cases if envisaged thereby — *Complaint cases under S. 138, Negotiable Instruments Act, 1882 transferred to one place — High Court directing consolidation of all complaints — Sustainability — Held, High Court seems to have misinterpreted the transferring order — All complaints are to be heard in the common place, but not together — Negotiable Instruments Act, 1881, S. 138 — Transfer of cases filed at numerous places to one common place — Consolidation of cases if envisaged. Videocon International Ltd.* v. *Sujana Corpn. Ltd.*, (2005) 13 SCC 125: (2006) 2 SCC (Cri) 129.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 5-1-2005]

[6176] — S. 406 — Transfer of compliant case — Proceedings involving same parties and same offence — *5 complaints against petitioners pending before Metropolitan Magistrate, Chennai — Another complaint against same petitioners filed for the same offence same Act before Metropolitan Magistrate, Hyderabad — In view of the convenience in conducting the trial and disposal of all the cases, proceedings pending at Hyderabad Court transferred to Chennai court — Negotiable Instruments Act, 1881, S. 138 — Transfer of proceedings. Ayyannar Agencies* v. *Sri Vishnu Cement Ltd.*, (2000) 10 SCC 596: 2001 SCC (Cri) 1511: AIR 2000 SC 1639.

Bench Strength 2. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 10-1-2000]

[6177] — S. 406 — Transfer petition — Grant of relief — Convenience of parties and nature of respondent Company which filed the present cases — Consideration of — *Certain cheques were issued at place H in State of A.P. by petitioners in favour of respondent Company — Due to stop payment of the said cheques, five cases were filed against petitioners at place V in State of A.P. where the firm of the petitioners was located — Certain other cases were also filed against petitioners by respondent in different parts of country including State of J&K — Petitioners herein seeking transfer of these other cases to place V for joint trial with cases pending at V — Looking to the convenience of the parties and the fact that the respondent Company was a multinational company, Supreme Court transferring the cases pending at V and all the other cases except the one pending in State of J&K to District Court at H — Since the question as to whether the cases pending in J&K can be transferred to any other part of the country had been referred to a Constitution Bench, held, interim order dated 6-5-2005 will remain in force till the disposal of the said issue — Negotiable Instruments Act, 1881, S. 138* (Paras 5 to 8). *Sri Lakshmi Agencies* v. *Rallis India Ltd.*, (2006) 13 SCC 312: (2007) 3 SCC (Cri) 182.

Bench Strength 2. Coram: *Ashok Bhan* and *L.S. Panta*, JJ. [Date of decision: 3-3-2006]

[6178] — S. 406 — Transfer of criminal case — Consideration for — *On facts, cheque issued by respondent in favour of petitioner in connection with products sold to respondent by petitioner's company, having its registered office at Delhi, dishonoured — Criminal complaint under S. 138, Negotiable Instruments Act, filed therefor, pending before court at Delhi — Respondent subsequently filing a private complaint under Ss. 420/465/467/471/468 and 120-B IPC before court at Bhatinda against MD and GM (Marketing) of petitioner's company, because of which they were summoned by that court — Present transfer petition, therefore, filed by petitioner under S. 406 CrPC for transfer of case pending in court at Bhatinda to court at Delhi — In the facts and circumstances of the case, held, both the cases should be heard together at one place which would be the court at Delhi — Accordingly, case pending in court at Bhatinda transferred to court at Delhi for its disposal by itself or assigning it to any other competent court for disposal, as it may deem fit* (Paras 2 to 5). *B.R. Gupta* v. *Rohit Jain*, (2007) 7 SCC 454: (2007) 3 SCC (Cri) 425: 2007 Cri LJ 3724: (2007) 56 AIC 19 (SC).

Bench Strength 2. Coram: *Tarun Chatterjee* and *Markandey Katju*, JJ. [Date of decision: 16-7-2007]

[6179] — S. 406 — Transfer of cases — Grounds for — *Transfer of cases under S. 138 of Negotiable Instruments Act pending before courts at one place (Guwahati in this case), held, could not be allowed merely because of the allegation that cause of action arose at another place (Lucknow) and that only a court at that other place could exercise juris-*

diction — Question of jurisdiction, held, would have to be raised before the court seized of the case — Negotiable Instruments Act, 1881, S. 138 — Transfer of case under, to another place on request — Grounds. Abhiram Veer v. North Eastern Regional Agricultural Marketing Corpn. Ltd., (2000) 10 SCC 433: 2001 SCC (Cri) 1491.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 10-9-1999]

(8) Review of transfer order/Subsequent orders/directions

[6180] — S. 406 — Review of transfer order made under in (2004) 3 SCC 767 — Petitioner requesting modification of transfer order made by Supreme Court transferring trial from State of T.N. to State of Karnataka — *On the basis of allegation that relations between the two States were fraught with tension, inter alia due to the Cauvery water dispute, petitioner claiming that he feared for his security and that it would not be possible to afford him a free and fair trial — Given that UT of Pondicherry was closer to Chennai and moreover Tamil-speaking, obviating the need for translation of Tamil documents and depositions, petitioner requesting transfer of trial thereto — Held, Supreme Court not persuaded to reappreciate circumstances leading to filing of the transfer petition and the order sought to be modified — Security of petitioner and the freeness and fairness of trial in State of Karnataka was adequately taken care of by directions given in earlier transfer order of Supreme Court and undertakings by the State of Karnataka in this regard filed in its counter in the present proceedings — Other apprehensions enumerated by petitioner relating to the Cauvery dispute etc. had nothing to do with the judicial function of the court — In any case, S. 406 CrPC envisaged transfer of cases from one High Court to another, and since UT of Pondicherry did not have a High Court separate from the Madras High Court, that contention is not well founded — Sanguine remarks made and confidence reposed in independence and efficiency of judiciary manning the lower courts of the country — Art. 50 — Independence and efficiency of lower judiciary — Sanguine remarks made and confidence reposed in independence and efficiency of judiciary manning the lower courts of the country — Constitution of India, Arts. 137 & 139-A*

By these applications the applicant sought to modify the judgment dated 18-11-2003, (2004) 3 SCC 767, passed by the Supreme Court in Transfer Petitions (Criminal) Nos. 77-78 of 2003.

The applicant contended that in view of the surcharged and tense situation between the States of Tamil Nadu and Karnataka, the personal security of the applicant was prejudiced and free and fair trial in such an atmosphere would not be possible in the State of Karnataka as directed in the judgment sought to be modified, depriving the applicant of the right to have free and fair trial as enshrined in Article 21 of the Constitution. It was further argued that the Union Territory of Pondicherry, being closest to Chennai, was a more convenient place for the parties due to its proximity to Chennai and also the people in Pondicherry are Tamil-speaking people and the judges there are expected to know Tamil and in that view no translation of the Tamil documents and depositions would be necessary.

Dismissing the applications,

Held :

The Supreme Court has exercised its powers under Section 406 of the Code of Criminal Procedure, 1973 in the transfer order sought to be modified. Admittedly, the Union Territory of Pondicherry does not have a separate High Court, it is within the jurisdiction of the Madras High Court. If this submission is accepted, it would amount to transfer of case from the Madras High Court to the jurisdiction of the same High Court. This situation is not contemplated under Section 406 CrPC. This contention is not well founded. (Para 3)

The directions given in the order of the Supreme Court dated 18-11-2003 (especially at cl. (*h*) therein) have adequately taken care of the security of the witnesses and others. The Supreme Court is not persuaded to reappreciate the circumstances leading to the filing of the transfer petitions and order of the Supreme Court transferring the same to the State of Karnataka. In that order the Supreme Court was of the view that it is expedient for the ends of justice that the cases be transferred from Tamil Nadu to Karnataka for trial in accordance with law. Similarly, the lurking apprehension raised by the applicant is well-safeguarded by the undertaking of the Karnataka Government with regard to the personal security of the applicant and witnesses and others in its counter-affidavit. To say the least, the apprehensions with regard to the Cauvery water dispute and forest brigand Veerappan, have got nothing to do with the judicial function of the court. (Paras 4 and 5)

In a democratic country like ours, governed by the rule of law, an efficient and independent judiciary mans the subordinate courts, where justice is administered impartially, fearless of public glamour, regardless of public responses and indifferent

(8) Review of transfer order/Subsequent orders/ directions *(contd.)*

to private, political or partisan influences. There is no doubt that the Judge who has been assigned the job will do well in discharging his divine duty in accordance with law. (Para 7). *K. Anbazhagan* v. *Supdt. of Police*, (2004) 3 SCC 788: 2004 SCC (Cri) 859.

Bench Strength **2**. Coram: *S.N. Variava* and **H.K. Sema**, JJ. [Date of decision: 17-2-2004]

[6181] — S. 406 — Transfer of cases under — Order made in *Ranchi Zila Samta Party case* [(1996) 3 SCC 682] modified in respect of the cases transferred under the said section by substituting the words "High Court of Jharkhand" in place of the words "the High Court of Patna" — *Availability of Justice S.J. Mukhopadhyay in the High Court of Jharkhand, who was one of the Judges in Division Bench constituted by the CJ, Patna High Court, to be taken into account by the CJ, Jharkhand High Court while constituting a new Bench — Bihar Reorganisation Act, 2000, S. 89(1)* (Paras 6 and 7). *State of Bihar* v. *Ranchi Zila Samta Party*, (2003) 12 SCC 235.

Bench Strength **3**. Coram: *K.T. Thomas, S.S.M. Quadri* and *U. C. Banerjee*, JJ. [Date of decision: 13-12-2000]

(9) Practice and Procedure re disposal of transfer petition

[6182] — Ss. 406 and 407 — Transfer of case — Supreme Court issues notice and hear the parties before passing any order except where suo motu order is issued — *CPC, 1908, Ss. 24 and 25 — Constitution of India, Art. 139-A*

Per majority

The new S. 25 of the Civil Procedure Code substituted by an Amendment Act, 104 of 1976 provides for the transfer to the Supreme Court the existing power hitherto vested with the State Government and to confer on the Supreme Court such wide powers of transfer as it has in criminal cases under S. 406 of the Code. Section 25, in fact, is wider in scope than S. 406 of the Code of Criminal Procedure, 1973. Though, there is no express provision in Art. 139-A of the Constitution and in S. 406 of the Code of Criminal Procedure to the effect that the Supreme Court before passing any order on the application made or moved for transfer of cases should issue notice and hear the parties as required under Ss. 24 and 25 of the Code of Civil Procedure, on the principle of 'audi alteram partem', notice is given to the party/parties who are likely to be affected by any final order. But the question of issuing a notice and hearing the parties may not arise if the order is passed by the Supreme Court suo motu. *Kartar Singh* v. *State of Punjab*, (1994) 3 SCC 569: 1994 SCC (Cri) 899: 1994 Cri LJ 3139.

Bench Strength **5**. Coram: **S. Ratnavel Pandian**[1], *M.M. Punchhi*[1], **K. Ramaswamy**[2], *S.C. Agrawal*[1] and **R.M. Sahai**[3], JJ. [Date of decision: 11-3-1994]

— S. 407 *See also* S. 526, Criminal Procedure Code, 1898, pp. 1283 et seq. in Vol. 2

— S. 407 *See* Ss. 227, 228, 67 and 407
See also Ss. 406 & 407
See also Ss. 406, 407 and 177
See also Ss. 406, 407, 401 and 386
See also Ss. 408, 407 and 406
See also Ss. 408(1), 406, 407, 228(1), 227 and 26(a)(ii)
See also Ss. 409(2) & 194, 407 and 462 & 465
See also Ss. 482 and 407
See also Ss. 482, 407 and 220
See also Ss. 482, 407 and 386(d)
See also Ss. 482, 439, 438 and 407

[6183] — S. 407 — Constitutionality — Held does not violate Art. 14

Per Ranganathan, J.

Section 407 cannot be challenged under Art. 14 as it is based on a reasonable classification having relation to the objects sought to be achieved. Though, in general, the trial of cases will be by courts having the normal jurisdiction over them, the exigencies of the situation may require that they be dealt with by some other court for various reasons. Likewise, the nature of a case, the nature of issues involved and other circumstances may render it more expedient, effective, expeditious or desirable that the case should be tried by a superior court or the High Court itself. The power of transfer and withdrawal contained in S. 407 of CrPC is one dictated by the requirements of justice and is, indeed, but an aspect of supervisory powers of a superior court over courts subordinate to it: (See also Ss. 408 to 411 of the CrPC). A judicial discretion to transfer or withdraw is vested in the highest court of the State and is made exercisable only in the circumstances set out in the section. Such a power is not only necessary and desirable but indispensable in the cause of the administration of justice. The accused will continue to be tried by a court of equal or superior jurisdiction. Section 407(8) r/w S. 474 of the CrPC and S. 8(3) of the 1952 Criminal Law Amendment Act makes it clear that he will be tried in accordance with the procedure followed by the original court or ordinarily by a Court of Session. The accused will, therefore, suffer no prejudice by reason of the application of S. 407. Even if there is a differential treatment which causes prejudice, it is based on logical and acceptable considerations with a view to promote the interests of justice. The transfer or withdrawal of a case to another court or the High Court, in such circumstances, can hardly be said to result in hostile discrimination against the accused in such a case. *A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602: 1988 SCC (Cri) 372: AIR 1988 SC 1531.

Bench Strength 7. Coram: **Sabyasachi Mukharji**[1], **Ranganath Misra**[2], **G.L. Oza**[1&3], **B.C. Ray**[4], *S. Natarajan*[1], **M.N. Venkatachaliah**[5] and **S. Ranganathan**[6], JJ. [Date of decision: 29-4-1988]

[6184] — Ss. 407 and 9(6) — Transfer of case — What is — Power of High Court to transfer cases/appeals vis-à-vis shifting of venue of trial — *Transfer, held (per Sharma, J.), involves removing a case from a court of one jurisdiction and putting it under a court of another jurisdiction — Every transfer involves two different courts — Shifting of venue of trial from the usual place of Sessions Court to premises inside jail does not involve transfer of a case — Civil Procedure Code, 1908, Ss. 24 and 25*

The key word in Section 407 is "transfer", which essentially consists of two steps: (*a*) removing a case or class of cases from the jurisdiction of the court where it/they is/are pending trial, and (*b*) putting it/them under the jurisdiction of another court (whether of equal or superior jurisdiction) for adjudication. Every transfer involves two different courts. By issuing said notification under Section 9(6) CrPC, the High Court cannot be said to have transferred cases pending against the appellant, for the notification simply notified premises of District Jail, Siwan, to be the place of sitting for holding trial of cases pending against the appellant. The notifications did not in any manner affect or abridge jurisdiction of Court of Session, Siwan, to try those cases. Thus, there was a shift *simpliciter* in the venue of trial, without there being anything more. In such circumstances, the present case cannot be said to be a case of "transfer" to which provisions of Section 407 are attracted. (Para 172). *Mohd. Shahabuddin* v. *State of Bihar*, (2010) 4 SCC 653.

Bench Strength 2. Coram: **Dalveer Bhandari**[1] and **Dr. M.K. Sharma**[2], JJ. [Date of decision: 25-3-2010]

[6185] — S. 407 — High Court cannot transfer to itself proceedings under Ss. 6 and 7 of Criminal Law Amendment Act, 1952. *A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602: 1988 SCC (Cri) 372: AIR 1988 SC 1531.

Bench Strength 7. Coram: **Sabyasachi Mukharji**[1], **Ranganath Misra**[2], **G.L. Oza**[1&3], **B.C. Ray**[4], *S. Natarajan*[1], **M.N. Venkatachaliah**[5] and **S. Ranganathan**[6], JJ. [Date of decision: 29-4-1988]

[6186] — S. 407 — Scope — *It is subject to overriding provisions of S. 7(1) of Criminal Law Amendment Act, 1952 (Per majority). A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602: 1988 SCC (Cri) 372: AIR 1988 SC 1531.

Bench Strength 7. Coram: **Sabyasachi Mukharji**[1], **Ranganath Misra**[2], **G.L. Oza**[1&3], **B.C. Ray**[4], *S. Natarajan*[1], **M.N. Venkatachaliah**[5] and **S. Ranganathan**[6], JJ. [Date of decision: 29-4-1988]

[6187] — S. 407 — High Court cannot transfer a case from one Judge to another Judge of a Special Court — S. 407 CrPC not applicable — Special Court is not subordinate to High Court — *High Court has no administrative control over Special Court — Constitution of India, Arts. 235 and 226, 227 — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, Ss. 5, 5-A, 6, 7, 9, 10 and 11-A*

The Special Courts Act was amended in 1997 to enable appointment of two or more Judges as the workload was found to be very heavy. Canbank Financial Services Ltd. filed Civil Petition No. 74 before the Special Court claiming criminal conspiracy to cause unlawful loss to them by sale and purchase of the same securities within a period of two days at differing rates. CANFINA claimed damages arising out of the tort of conspiracy. Subsequently, CBI filed Criminal Case No. 2 of 1998 before the Special Court alleging criminal conspiracy amongst the respondents to cause unlawful loss to CANFINA by sale and purchase of the same securities within a period of two days at differing rates. One of the two Judges of the Special Court viz. Justice Kapadia disposed of Petition No. 74 of 1995. Special Case No. 2 of 1998 was earlier before the other Judge presiding over the Special Court viz. Justice Trivedi but later it was administratively transferred by Chief Justice of the Bombay High Court to Justice Kapadia. The appellant then filed a criminal application before the High Court praying for an order transferring the case to Justice Trivedi. The parties made an oral request to Justice Kapadia to withdraw from the case but the same was rejected. A Division Bench of the High Court disposed of the criminal application by directing that a written application for transfer be moved before Justice Kapadia himself. The appellant then filed an application praying that Justice Kapadia may recuse himself from the matter. The application was rejected. The parties also moved the Division Bench of the High Court for some clarification but the Bench refused to issue any clarification. Disposing of the appeals,

Held:

The Special Court is not subordinate to the High Court. The High Court would have no power under Section 407 of the Criminal Procedure Code to transfer a case from one Judge of the Special Court to another. The High Court does not have administrative control over the Special Court under Article 235 of the Constitution. The Special Court is manned by a sitting Judge of the High Court. On occasions, the same Judge also takes up matters of the High Court. Also Section 5 provides that if the Judge manning the Special Court is absent or on leave the duties could be performed by another Judge of the High Court nominated by the Chief Justice of the High Court in consultation with the Chief Justice of India. It would therefore not be in the fitness of things that for purposes of Section 407 CrPC, a sitting Judge of the High Court performing simultaneous duties be deemed subordinate to the High Court merely because he is trying cases of the Special Court. (Paras 43, 41 and 42). *Dhyan Investments & Trading Co. Ltd.* v. *CBI*, (2001) 6 SCC 607: 2001 SCC (Cri) 1193: AIR 2001 SC 2456: (2001) 107 Comp Cas 1.

Bench Strength **2**. Coram: *K.T. Thomas* and **S.N. Variava**, JJ. [Date of decision: 31-7-2001]

Special Courts Bill, 1978, In re, (1979) 1 SCC 380: (1979) 2 SCR 476, explained

T. Sudhakar Prasad v. Govt. of A.P., (2001) 1 SCC 516: 2001 SCC (L&S) 263, relied on

[6188] — S. 407 — Trials before various Special Courts — Transfer of all cases to one court — Prayer made by accused-appellant in respect of *— All the Special Courts were housed in one building — These Courts were functioning smoothly and fairly — Transfer to one court might prejudicially affect the other accused persons — Hence the transfer application, held, liable to be dismissed* (Para 12). *Lalu Prasad* v. *State*, (2003) 11 SCC 786: 2004 SCC (Cri) 1244: AIR 2003 SC 3838.

Bench Strength **3**. Coram: **S.N. Variava**, *P. Venkatarama Reddi* and *Ashok Bhan*, JJ. [Date of decision: 26-8-2003]

[6189] — S. 407 — Jurisdiction of High Court to make inter-State transfer of case — Phrase "criminal court subordinate thereto" — Significance of *— High Court of State (Uttaranchal) transferring case from Sessions Court in district not in that State (Ghaziabad) to Sessions Court in district in that State (Dehradun) — Impermissibility. Pal Singh* v. *CBI*, (2005) 12 SCC 329.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *S.B. Sinha*, JJ. [Date of decision: 24-1-2005]

[6190] — S. 407 — Power of High Court to transfer cases suo motu — Notice to the parties necessary *— Suo motu transfer of a case from Sessions Judge of one district to another district without affording an opportunity of hearing to the accused — Held, order not sustainable particularly in view of the difficulties expressed by some of the accused that they may have to engage other counsel, etc. — Case directed to be tried by the seniormost Additional District Judge of the district and not by the Sessions Judge from whose court it was ordered to be transferred by the High Court. Nirmal Singh* v. *State of Haryana*, (1996) 6 SCC 126: 1996 SCC (Cri) 1122: AIR 1996 SC 2759.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *S.B. Majmudar*, JJ. [Date of decision: 19-8-1996]

[6191] — S. 407 — Transfer applications — Power of "Inspecting Judge" of High Court to pass order on — High Court's power of superintendence and control over subordinate courts — Scope of — Whether it authorises the "Inspecting Judges" of High Court to transact any judicial work which is in the domain of subordinate courts *— Administrative Judge of High Court during the course of inspection passing order to Sessions Judge to consider the bail application of appellant and enlarge him on bail — Propriety of — Held, power under Art. 227 is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority — Powers under Arts. 227 and 235 not to be exercised to interfere with judicial functions of subordinate courts — Protection of independence of subordinate courts in the discharge of their judicial functions, emphasised — Held, under the aforesaid articles the High Court cannot direct the subordinate court to pass a judicial order in a particular manner as that would amount to interfering with the independence of subordinate judiciary — In this view, stating the powers and functions of Inspecting Judge, held, a High Court Judge during the course of inspection has no power to pass any judicial order in individual cases pending in subordinate courts — During inspection he cannot pass any order on interim applications, such as bail petitions or transfer applications or applications for interim injunction, howsoever justified they may be — If any bail application is received by Inspecting Judge, the proper course would be to send the said applica-*

tion without commenting on merits of case to the court concerned to pass appropriate orders — Constitution of India, Arts. 227, 235 & 50

The appellant was arrested and remanded to judicial custody in a case under the provisions of the Prevention of Corruption Act and IPC. The appellant moved an application for bail, but the same was rejected. The appellant moved another bail application on 24-4-2003 before the Sessions Judge, which was fixed for hearing on 5-5-2003. Meanwhile, on 29-4-2003 the Administrative Judge of the High Court concerned came for annual inspection to the District and Sessions Court concerned. The said Judge also visited jail as part of the inspection programme. The appellant moved an application for bail during the course of inspection. The Inspecting Judge noticed the police officers as representative of the prosecution, and since they had no objection to the granting of bail to the appellant, the said Judge, considering that the co-accused had been enlarged on bail and the appellant was in jail for the last seven months, passed an order directing the Sessions Judge to look into the application of the appellant and enlarge him on bail as his trial was likely to take some time before it was concluded. Pursuant to the said order, the appellant was released on bail by the Sessions Judge. Thereafter, on a complaint being made to the Chief Justice of the High Court alleging mala fides on the part of the Sessions Judge in granting bail to the appellant, the Chief Justice called for the proceedings and directed that the entire matter be placed before the very same Administrative Judge on the judicial side. The *de facto* complainant reiterated her allegation and sought for cancellation of bail granted to the appellant. The Administrative Judge held that while passing the order of bail, the Sessions Judge had not discussed the matter on merit and, therefore, the said order was set aside. Hence, the present appeal.

Before the Supreme Court it was submitted that the Judges of the High Court are vested with the power of superintendence and control over all courts and tribunals subordinate to the High Court under Article 227, and as part of such constitutional power, the Inspecting Judges have the right and duty to consider the bail applications during inspection. It was also contended that the power of superintendence and control over the subordinate courts is conferred on the High Court under Article 235 of the Constitution and therefore the Inspecting Judge was fully justified under certain circumstances to entertain the bail petitions or transfer applications and direct the District Judges or other courts to pass appropriate orders.

Disposing of the appeal,

Held :

The power of superintendence over all the subordinate courts and tribunals is given to the High Court under Article 227 of the Constitution. The said power is both of administrative and judicial nature and it could be exercised *suo motu also*. However, such power of superintendence does not imply that the High Courts can influence the subordinate judiciary to pass any order or judgment in a particular manner. While invoking the provisions of Article 227 the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. It cannot intervene in the judicial functions of the lower judiciary. The independence of the subordinate courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior courts in the discharge of their judicial functions is. It is the members of the subordinate judiciary who directly interact with the parties in the course of proceedings of the case and, therefore, it is no less important that their independence should be protected effectively to the satisfaction of the litigants. The independence of the judiciary has been considered as a part of the basic structure of the Constitution and such independence is postulated not only from the executive, but also from all other sources of pressure. (Paras 10 and 14)

In respect of Article 235 also, the powers of control to be exercised thereunder do not extend to interfering with the judicial functions of the subordinate courts. By virtue of the power under Article 235 the High Court cannot direct the presiding officer of the subordinate court to pass a judicial order in a particular manner as that would certainly amount to interfering with the independence of the subordinate judiciary. (Para 15)

In the course of inspection, the High Court Judge is required to examine whether the courts are functioning within the norms laid down by the High Court. Mostly the inspection is to be confined to the administrative functioning of the courts and its officers. If any member of the administrative staff is not doing the work assigned to him or is causing any delay in the process of administration of justice, the Inspecting Judge can give proper direction and see that the courts function smoothly. But under no circumstances, the Inspecting Judge, as part of his administrative duty enjoys the power to interfere with the judicial functions of the subordinate courts in individual cases. In the course of inspection, a High Court Judge cannot pass any order on interim applications, such as bail petitions or transfer applications or applications for interim injunction, howsoever justified they may be. Orders on bail applications are passed under the provisions of the Code of Criminal Procedure or under various other enactments, which provide for grant of bail and such orders are passed as part of the judicial work. The Inspecting Judge is not supposed to pass any judicial order in individual cases in the course of inspection. While on inspection, he is not supposed to perform any judicial work. Of course, he can give administrative directions to the presiding officer or to any of the subordinate staff, if such directions are pertinent in the context of administration of justice. Except giving general directions regarding any matter concerning administration of justice, any interference in the judicial functions of the presiding officer would amount to interference with the independence of the subordinate judiciary. (Paras 16 and 17)

Therefore, even if any application for bail is received by the Inspecting Judge, the proper course is to send the application to the court concerned to pass appropriate orders. When the Inspecting Judge visits the jail, it is quite likely that so many inmates of the jail may file petitions before the Judge concerned. It is the duty of the Judge to see whether there is any merit in any of these petitions. If any application for bail is received, he can very well send it to the court concerned without making any comments on the merits of the case. On the contrary, if the learned Inspecting Judge passes any order in such matter, he would only be usurping the powers of the courts authorised to pass such orders. (Para 19). *Jasbir Singh* v. *State of Punjab*, (2006) 8 SCC 294: (2006) 3 SCC (Cri) 470.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 11-10-2006]

Waryam Singh v. Amarnath, AIR 1954 SC 215; Trimbak Gangadhar Telang v. Ramchandra Ganesh Bhide, (1977) 2 SCC 437; Mohd. Yunus v. Mohd. Mustaqim, (1983) 4 SCC 566; State v. Navjot Sandhu, (2003) 6 SCC 641: 2003 SCC (Cri) 1545; S.P. Gupta v. Union of India, 1981 Supp SCC 87; Alok Kumar Roy v. Dr. S.N. Sarma, AIR 1968 SC 453, relied on

[6192] — Ss. 407 and 194 — Administrative power of High Court exercised to transfer cases — Availability of judicial power not a bar to exercise of administrative power — *In a peculiar situation exercise of administrative power may be more efficacious — Transfer of case after commencement of trial on ground of administrative exigency without prejudicially affecting the rights of the parties, held, was not without jurisdiction — Case was transferred since all the accused and their lawyers could not be accommodated in the courtroom — So exception cannot be taken by those at whose behest the power was exercised — Constitution of India, Art. 227*

Under Article 227 of the Constitution of India every High Court has superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction and it is trite that this power of superintendence entitles the High Court to pass orders for administrative exigency and expediency. In the instant case the High Court had exercised the power of transfer in the context of the petition filed by some of the accused from jail complaining that they could not be accommodated in the courtroom as a result of which some of them had to remain outside. The other grievance raised was that the court was so crowded that even clerks of the lawyers were not being allowed to enter the courtroom to carry the briefs. Such a situation was obviously created by the trial of a large number of persons. If in the context of the above facts, the High Court exercised its plenary administrative power to transfer the case to another court which had a bigger and better arrangement to accommodate the accused, lawyers and others connected with the trial no exception can be taken to the same, particularly by those at whose instance and for whose benefit the power was exercised. (Para 12)

So long as power can be and is exercised purely for administrative exigency without impinging upon and prejudicially affecting the rights or interests of the parties to any judicial proceeding it cannot be held that administrative powers must yield place to judicial powers simply because in a given circumstance they coexist. On the contrary, the present case illustrates how exercise of administrative powers were more expedient, effective and efficacious. If the High Court had intended to exercise its judicial powers of transfer invoking Section 407 of the Code it would have necessitated compliance with all the procedural formalities thereof, besides providing adequate opportunities to the parties of a proper hearing which, resultantly, would have not only delayed the trial but further incarceration of some of the accused. It is obvious, therefore, that by invoking its power of superintendence, instead of judicial powers, the High Court not only redressed the grievances of the accused and others connected with the trial but did it with utmost dispatch. (Para 13). *Ranbir Yadav* v. *State of Bihar*, (1995) 4 SCC 392: 1995 SCC (Cri) 728: AIR 1995 SC 1219: 1995 Cri LJ 2665.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 21-3-1995]

A.R. Antulay v. R. S. Nayak, (1988) 2 SCC 602: 1988 SCC (Cri) 372, distinguished

[6193] — S. 407 — Transfer of case — Case pending before Sessions Judge, Sonepat — Application for transfer made before a Judge of the High Court when he was on an annual inspection tour at Gohana — *Application not filed in prescribed manner nor supported by an affidavit — Order of transfer passed while camping at Sonepat without affording sufficient opportunity of hearing to the opposite party — Application disposed of without considering the merits of the application — Held, in the circumstances, it was not proper and legal exercise of power under S. 407 in transferring the sessions case*

The learned Judge should have either directed the applicants to file their application in the Registry of the High Court at Chandigarh or if the learned Judge was of the opinion that it was required to be dealt with by the High Court in exercise of its suo motu revisional power, he should have himself forwarded it to the Registry of the High Court with a direction to place it before a Bench competent to deal with it. There was no valid reason for the learned Judge to entertain that application at Gohana and pass the final order at Sonepat, even if he was otherwise entitled to entertain such an application under the rules framed by the High Court and allocation of work by the Chief Justice of the High Court. The learned Judge should not have entertained it as an application made under Section 407 CrPC when it was not presented in the prescribed manner and was not supported by an affidavit. (Para 6)

The learned Judge disposed of that application without considering the merits of the application. It was not a consent order. No finding was recorded to the effect that the prosecution witnesses were terrorised or were likely to be terrorised or influenced in any other manner. The learned Judge failed to appreciate that in the absence of any justifiable reason, it was not proper and legal to exercise the power under Section 407 CrPC to transfer the sessions case. (Para 11). *Vijay Pal* v. *State of Haryana*, (1999) 9 SCC 67: 1999 SCC (Cri) 348.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.P. Kurdukar*, JJ. [Date of decision: 3-11-1998]

[6194] — S. 407 — Transfer of case — When permissible — Case in final stages of trial — *40 witnesses already having been examined, 15 witnesses remaining — Propriety of transfer — In such a situation, transfer of case held, not proper. Pal Singh* v. *CBI*, (2005) 12 SCC 329.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *S.B. Sinha*, JJ. [Date of decision: 24-1-2005]

[6195] — S. 407 — Transfer of cases on the ground that they should be heard at the place from where a large number of witnesses are to be examined, held, not proper — *Moreover, High Court not justified in allowing a transfer application on such ground when it had already rejected another application on the same ground*

The normal course of things should not be lightly interfered with and the case should be allowed to be tried by the court which had territorial jurisdiction. Therefore, the High Court was not justified in passing the impugned order transferring the case from Jammu to Srinagar on the sole ground that most of the witnesses belonging to Jammu had already been examined by the trial court and that only witnesses from Kashmir Division or Delhi remained to be examined. *Baljit Singh* v. *State of J & K*, (1982) 1 SCC 501: 1982 SCC (Cri) 268: AIR 1982 SC 1558: 1982 Cri LJ 1944.

Bench Strength **2**. Coram: **A.D. Koshal** and *A. Varadarajan*, JJ. [Date of decision: 30-11-1981]

[6196] — S. 407 — Transfer of criminal case — Allegations in complaints filed at different places almost the same — Case should be tried by same court — *Case remitted to High Court for directions accordingly — Penal Code, 1860, Ss. 500 and 501 read with S. 34. P.R. Behere* v. *Ganpatrao Shrinivasrao Chavan*, 1990 Supp SCC 139: 1990 SCC (Cri) 540(1).

Bench Strength **2**. Coram: *A.P. Sen* and *L.M. Sharma*, JJ. [Date of decision: 18-1-1988]

[6197] — S. 407 — Transfer of criminal proceedings to different court — Petition for — *Apprehension as to bias in favour of accused because brother of Sessions Judge concerned i.e.* ***B*** *and father of accused i.e.* ***F*** *were very close to each other —* ***B*** *and* ***F*** *belonged to same political party —* ***B*** *was a sitting MLA and* ***F*** *was a former Chief Minister — Held, though the present Judge showed no disinclination to hear the matter and would have acted in true sense of a judicial officer, still in order to ensure that justice is not only done but also seen to be done, and considering the peculiar facts of the case, it would be appropriate if the High Court transfers the case to some other Sessions Court — However, clarified that the said transfer must not be construed as casting any aspersion on the Sessions Judge concerned*

Challenge in this appeal was to the order passed by the High Court dismissing the transfer petition filed under Section 407 CrPC for transfer of Sessions Trial No. 329 of 2005 pending in the Court of Sessions Judge, Raipur, Chhattisgarh to some other court. The transfer was sought for primarily on the ground that the Sessions Judge before whom the trial was pending was the elder brother of a sitting MLA who was very close to the father of Respondent 3, one of the main accused persons. It was alleged that the father of Respondent 3 was the previous Chief Minister of the State and that he and the brother of the learned Sessions Judge belonged to the same political party. Therefore, according to the appellant, he was under a bona fide and genuine apprehension that he would not get justice if the trial was conducted and concluded by the present Sessions Judge. The High Court felt that the grounds set forth by the appellant seeking transfer could not be considered to be sufficient to direct transfer. Merely because the brother of the trial Judge was a sitting MLA, that could not be a ground to prima facie come to a conclusion that there would be pressure on the trial Judge either through his brother or through the father of the accused who was supposed to be close to his brother. It was further noted that the trial was at a final stage and about 150 prosecution witnesses and all the defence witnesses had been examined and what remained to be done was to hear the arguments and pass the judgment. Therefore, the prayer for transfer of the case was rejected.

Disposing of the appeal,

Held :

In this case, one thing which has to be kept in view is that the Sessions Judge himself has not indicated his disinclination to hear the matter. That is probably because he believes that the mere fact that his brother is known to some political heavyweight cannot stand in his way of discharging judicial function impartially without fear and favour. These are the hallmarks of judicial system. (Para 10)

A judicial officer in whatever capacity he may be functioning has to act with the belief that he is not to be guided by any factor other than to ensure that he shall render a free and fair decision which according to his conscience is the right one on the basis of materials placed before him. There can be no exceptions to this imperative, but at the same time there should not be any scope given to any person to go away with the feeling that the Judge was biased, however unfounded the impression may be. (Para 10)

It is sure that the present Sessions Judge would have acted in the true sense of a judicial officer. But nevertheless to ensure that justice is not only done, but also seen to be done and in view of the peculiar facts of the case, it will be appropriate if the High Court transfers the case to some other Sessions Court in Raipur itself. It is made clear that the transfer shall not be construed as casting any aspersion on the learned Sessions Judge. (Para 11). *Satish Jaggi* v. *State of Chhattisgarh*, (2007) 3 SCC 62: (2007) 2 SCC (Cri) 33: (2007) 53 AIC 249 (SC): 2007 Cri LJ 1786.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *R.V. Raveendran*, JJ. [Date of decision: 22-2-2007]

Gurcharan Das Chadha v. State of Rajasthan, AIR 1966 SC 1418; Maneka Sanjay Gandhi v. Rani Jethmalani, (1979) 4 SCC 167: 1979 SCC (Cri) 934; Abdul Nazar Madani v. State of T.N., (2000) 6 SCC 204: 2000 SCC (Cri) 1048, relied on

[6198] — Ss. 407 and 177 — Transfer petition in matrimonial matter — Allowed by High Court — Sustainability — *Plea that said order was not sustainable in view of the earlier decision of the Supreme Court made in proceedings between the same parties which adjudicated upon territorial jurisdiction of the court to try the matter — Sustainability thereof — Held, though the said decision of Supreme Court in* Y. Abraham Ajith, *(2004) 8 SCC 100 was rendered in the background of Criminal Procedure Code, it was relevant for the present dispute — Hence, in view of what was stated in the said decision, matter remitted to High Court for reconsideration — CPC, 1908, Ss. 24 & 20(c)* (Paras 5 and 6). *Y.A. Ajit* v. *Sofana Ajit*, (2007) 10 SCC 429: AIR 2007 SC 3151: (2007) 58 AIC 86 (SC): (2007) 4 CHN 62 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 7-9-2007]

Black's Law Dictionary; Words and Phrases (4th Edn.); Halsbury's Laws of England (4th Edn.), cited

[6199] — Ss. 407 and 482 — Grounds for transfer — *Prayer for transfer of case from Aizawl (Mizoram) to Gauhati (Assam) in view of hostile attitude of the people of Aizawl against the accused allowed in the interest of fair trial and because the parties agreed for the transfer. Akhilesh Prasad* v. *Union Territory of Mizoram*, (1981) 2 SCC 150: 1981 SCC (Cri) 337: AIR 1981 SC 806: (1981) 2 SCR 789: 1981 Cri LJ 407.

Bench Strength **2**. Coram: **A.D. Koshal** and *A.N. Sen*, JJ. [Date of decision: 11-2-1981]

[6200] — S. 407(1)(c) — Relief — Consolidation of cases — *Finance companies accepting deposits from a large number of persons but not repaying the same — Consequently, criminal cases initiated against Directors of such companies in courts in different States — Prayer of accused persons for consolidation of such cases, rejected by Supreme Court — However, liberty granted to approach the High Court, or as the case may be, the Appellate Consumer Forum in that regard — Penal Code, 1860, Ss. 420, 406, 409, 407, 120-B, 467, 468 and 471 — Negotiable Instruments Act, 1881, S. 138 — Constitution of India — Art. 32*

In regard to the prayer for consolidation the petitioner would be at liberty to approach the High Court in accordance with law. Similar is the situation as regards the orders of the Consumer Forum and the petitioner in the normal course of events would be at liberty to ventilate the grievance if any, before the Appellate Forum in accordance with law. (Para 63). *Narinderjit Singh Sahni* v. *Union of India*, (2002) 2 SCC 210: AIR 2001 SC 3810.

Bench Strength **3**. Coram: *G.B. Pattanaik*, **U.C. Banerjee** and *S.N. Variava*, JJ. [Date of decision: 12-10-2001]

[6201] — Ss. 407(1)(c) & (4), 406 and 408 — Transfer of case — Words "will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice" in S. 407(1)(c) — Scope — *Embarrassment likely to be caused to judge(s), counsel, witnesses or parties due to subject-matter of proceedings — If a ground on which case may be transferred — Proceedings concerning commission of offences relating to pornographic material/acts — Trial being assigned to Fast Track Court presided over by a lady Judge, and also being a designated "Mahila Court" — High Court presuming that the Judge, being a woman, and for that reason alone, would be caused embarrassment and transferring case to Court presided over by a male Judge — Appellant being one of the female witnesses/accused, applying for case to be retransferred to original court, claiming that avoidance of embarrassment to her should have been given primacy — Held, embarrassment is a state of mind which is more individual-related than related to the sex of a person — High Court was not justified in presuming embarrassment to the lady judicial officer solely on the ground that she was a woman even when the officer concerned had not expressed any reservation, nor sought for or directed transfer of the case — Moreover, even when given such a choice at an earlier stage by the High Court, the said lady officer had not sought or directed transfer of the case — In any case, counsel for either party cannot claim embarrassment as a ground for transfer of a case — Lawyers accept briefs knowing very well the facts of the case and it is up to them to continue in a case or not — However, following* Gurmit Singh case, *(1996) 2 SCC 384, if at all there was a question of avoiding embarrassment caused to any of the people concerned, held, the Court ought to have considered the embarrassment that would be caused to witnesses — High Court had erred in not considering the embarrassment that might be caused to female witnesses, like the appellant, more so when their own acts were part of the prosecution evidence — Moreover, the fact that the appellant herself was in the position of an accused in the trial was of no relevance — Hence matter retransferred to original court presided over by lady officer with liberty to make arrangements for viewing of evidence likely to cause the least embarrassment to herself — Evidence Act, 1872, S. 114 — Constitution of India — Art. 136 — Information Technology Act, 2000, S. 67 — Indecent Representation of Women (Prohibition) Act, 1986, S. 6 — Immoral Traffic (Prevention) Act, 1956, Ss. 5 and 6 — Penal Code, 1860, Ss. 366 and 376* (Paras 11 to 15). *Fatima Riswana* v. *State*, (2005) 1 SCC 582: 2005 SCC (Cri) 427: AIR 2005 SC 712: 2005 Cri LJ 900: (2005) 116 DLT 382: (2005) 26 AIC 73 (SC): (2005) 1 KLT 502.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 11-1-2005]

— S. 407(4) *See* Ss. 407(1)(c) & (4), 406 and 408

— S. 408 *See also* S. 528, Criminal Procedure Code, 1898, p. 1288 in Vol. 2

— S. 408 *See* Ss. 178 and 408

See also Ss. 407(1)(c) & (4), 406 and 408

[6202] — Ss. 408, 407 and 406 — Manner of disposal of cross-cases — *Held, should be disposed of by the same court and judgments should be pronounced on the same day — Supreme Court exhorting the legislature for not incorporating such a provision in CrPC*

An encounter took place on the night of 18-2-1996 at a particular place in the State of M.P., in which firearms and other weapons were used and persons were injured. FIRs were lodged by both the parties. After investigation by the police challans were laid in both the cases alleging offences under Section 307 read with Section 149 and certain other sections of IPC. The Magistrate committed both the cases to the Sessions Court for trial. In the first case, the Sessions Court framed charges under Section 307 read with Sections 149, 147 and 427 IPC. However, after the preliminary hearing under Section 227 CrPC in the second case, the Sessions Judge found that no offence triable exclusively by a Court of Session needed to be included in the charges and hence he framed a charge as envisaged in Section 228(1)(*a*) of the Code for the offence under Section 324 read with Section 149 and certain other provisions of IPC and transferred that case to the CJM as provided in Section 228(1) CrPC. Separate revision petitions filed by the accused in the first case and the State were dismissed by the High Court. Hence, they filed separate appeals by special leave before the Supreme Court.

Allowing the State's appeal but not the other appeal,

Held :

It is a salutary practice, when two criminal cases relate to the same incident, they are tried and disposed of by the same court by pronouncing judgments on the same day. Such two different versions of the same incident resulting in two criminal cases are compendiously called "case and counter-case" by some High Courts and "cross-cases" by some other High Courts. (Para 8)

It is not clear why the legislature is still parrying to incorporate such a salubrious practice as a statutory requirement in CrPC. (Para 10)

Where one of the two cases (relating to the same incident) is charge-sheeted or complained of, involves offences or offence exclusively triable by a Court of Session, but none of the offences involved in the other case is exclusively triable by the Sessions Court, the Magistrate has no escape from committing the former case to the Sessions Court as provided in Section 209 CrPC. Though, the next case cannot be committed in accordance with Section 209 of the Code, the Magistrate has, nevertheless, power to commit the case to the Court of Session. Section 323 is incorporated in CrPC to meet similar cases also. (Para 12)

Section 323 CrPC does not make an inroad into Section 209 because the former is intended to cover cases to which Section 209 does not apply. When a Magistrate has committed a case on account of the legislative compulsion by Section 209, its cross-case, having no offence exclusively triable by the Sessions Court, must appear to the Magistrate as one which ought to be tried by the same Court of Session. Commitment under Sections 209 and 323 might be through two different channels, but once they are committed their subsequent flow could only be through the stream channelised by the provisions contained in Chapter XVIII. (Para 13). *Sudhir* v. *State of M.P.*, (2001) 2 SCC 688: 2001 SCC (Cri) 387: AIR 2001 SC 826.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 2-2-2001]

Goriparthi Krishtamma, In re, 1929 MWN 881; Krishna Pannadi v. Emperor, AIR 1930 Mad 190: 31 Cri LJ 461, impliedly approved on this point

Nathi Lal v. State of U.P., 1990 Supp SCC 145: 1990 SCC (Cri) 638, followed

[6203] — Ss. 408(1), 406, 407, 228(1), 227 and 26(a)(ii) — Transfer of one of the cross-cases, by Sessions Court to CJM — Legality — *Case and counter-case both committed to Sessions Court — Sessions Court finding that in one case no charge for an offence triable exclusively by Sessions Court could be framed while such a charge could be framed in the other case — In such circumstances, transfer of the former case by Sessions Court to CJM for trial under S. 228(1), held, improper — Sessions Court should have rather itself tried it in the manner indicated in* Naithani Lal case *1990 Supp SCC 145 — Penal Code, 1860, Ss. 307, 149, 147, 427 and 324*

A Sessions Judge has the power to try any offence under IPC. It is not necessary for the Sessions Court that the offence should be one exclusively triable by a Court of Session. This power of the Sessions Court can be discerned from a reading of Section 26 CrPC. Therefore, when a case involving offence not exclusively triable by such court is committed to the Court of Session, the Sessions Judge has to exercise a discretion regarding the case which he has to continue for trial in his court and the case which he has to transfer to the CJM. In Section 228(1) CrPC, the employment of the word "may" at one place and the word "shall" at another place in the same sub-section unmistakably indicates that when the offence is not triable exclusively by the Sessions Court it is not mandatory that he should order transfer of the case to the CJM after framing a charge. In situations where it is advisable for him to try such offence in his court there is no legal obligation to transfer the case to the CJM. (Para 16)

In the present case, the Sessions Judge ought not to have transferred the second case to the CJM as he did, but he himself should have tried it in the manner indicated in *Nathi Lal*. (Para 17). *Sudhir* v. *State of M.P.*, (2001) 2 SCC 688: 2001 SCC (Cri) 387: AIR 2001 SC 826.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 2-2-2001]

— **S. 409** *See also* S. 528, Criminal Procedure Code, 1898, p. 1288 in Vol. 2

[6204] — Ss. 409(2) & 194, 407 and 462 & 465 — Case listed before one additional Sessions Judge tried by co-additional Sessions Judge after the recording of plea and framing of charges by the former — *Where no order for transfer was passed by High Court under S. 407 whether a mistrial occurred — That any prejudice was caused neither pleaded nor proved — Held, such a situation covered by S. 462 read with S. 465 — Scope of Ss. 462 and 465 indicated*

The case of the respondent-accused was committed to the Sessions Court, Metropolitan Area, Bangalore City and made over for trial to the Second Additional Sessions Judge who framed charges on August 21, 1980 and recorded the plea of the accused persons. On November 17, 1980 the

Bangalore City Civil Courts Act came into force. In the monthly statement for November, 1980 the case was shown pending before the IV Additional City Civil and Sessions Judge. It so transpired that the III Additional City Civil and Sessions Judge recorded the evidence in the case and convicted the respondent-accused under Ss. 302 and 332, IPC. In appeal and reference the High Court looked into the monthly statements and observing that there was no order under S. 407, CrPC transferring the case, that such transfer could not take place under S. 409(2), that there was no order of the Sessions Judge presiding over the Principal City Civil Court for allotting this case to the III Additional City Civil and Sessions Judge and that the defect could not be remedied under S. 465, CrPC, quashed the convictions and directed remand for retrial.

Allowing the appeal by the State,

Held :

So far as the trial is concerned it was not without jurisdiction.

As regards the case being withdrawn and made over to another Sessions Judge after the plea of the accused was recorded and charge framed, the irregularity is covered by Ss. 465 and 462, CrPC. Reading both these sections shows that the scheme of the Code of Criminal Procedure is that where there is no inherent lack of jurisdiction then merely either on the ground of lack of territorial jurisdiction or on the ground of any irregularity of procedure an order or sentence awarded by a competent court could not be set aside unless a prejudice is pleaded and proved which will mean failure of justice. But in absence of such a plea merely on such technical ground the order or sentence passed by a competent court cannot be quashed.

In the present case the plea of prejudice or failure of justice is neither pleaded nor proved. Not only that, even the judgment of the High Court does not indicate any possibility of prejudice or failure of justice. The respondent here also did not suggest any possibility of prejudice or failure of justice. The order of remand by the High Court therefore cannot be sustained. Appeals are therefore remitted back to be heard and disposed of on merits.

[The Supreme Court observed that had the High Court called for the orders passed by the Principal Sessions Judge under S. 194, CrPC it would have found the authorisation for the transfer. Apparently the Sessions judge who tried the case tried it since it must have been allotted to him.]

Whether a case could be withdrawn under S. 409(2), CrPC once the plea of the accused has been taken and charge framed, and transferred under S. 194, CrPC not decided. *State of Karnataka* v. *Kuppuswamy Gownder*, (1987) 2 SCC 74: 1987 SCC (Cri) 280: AIR 1987 SC 1354: 1987 Cri LJ 1075.

Bench Strength 2. Coram: **G.L. Oza** and *M.M. Dutt*, JJ. [Date of decision: 16-2-1987]

Kuppuswamy Gownder v. State of Karnataka, 1982 Cri LJ 90 (Kant), reversed

— **S. 410** *See* Ss. 7, 14 and 406, 410

— **S. 412** *See* Ss. 354, 355, 361, 264, 412 and 384(3)

— **Ch. XXXII (Ss. 413 to 435)** *See* Ss. 413, 414, 418 and 433 & 433-A and Ch. XXXII (Ss. 413 to 435)

— **S. 413** *See* Ss. 354(5), 413 and 414

See also Ss. 368 and 413, 414 and 415

See also Ss. 433, 433-A & 434 and 413, 414 & 418

See also Ss. 433, 433-A, 434, 413, 414, 418, 366, 368, 371

[6205] — Ss. 413, 414, 418 and 433 & 433-A and Ch. XXXII (Ss. 413 to 435) — Court whether has control over execution of sentence (of life imprisonment) — Court if can bar remission of sentence imposed — *Held, it is not correct to contend that execution of punishment is a matter in the hands of the executive alone and the court has no control over the same — Criminal Trial — Sentence — Execution of sentence — Court whether has control over execution of sentence (of life imprisonment) — Court if can bar remission of sentence imposed — Held, it is not correct to contend that execution of punishment was a matter in the hands of the executive alone and the court had no control over the same*

It was submitted that just as the court could not direct the appropriate Government for granting remission to a convicted prisoner, it was not open to the court to direct the appropriate Government not to consider the case of a convict for grant of remission in sentence. It was contended that giving punishment for an offence was indeed a judicial function but once the judgment was pronounced and punishment awarded, the matter no longer remained in the hands of the court. The execution of the punishment passed into the hands of the executive and under the scheme of the statute the court had no control over the execution. The submission is wholly misconceived and untenable. (Paras 72 and 73). *Swamy Shraddananda (2)* v. *State of Karnataka*, (2008) 13 SCC 767: AIR 2008 SC 3040: 2008 Cri LJ 3911.

Bench Strength 3. Coram: *B.N. Agrawal*, *G.S. Singhvi* and **Aftab Alam**, JJ. [Date of decision: 22-7-2008]

Aloke Nath Dutta v. State of W.B., (2007) 12 SCC 230: (2008) 2 SCC (Cri) 264; Dalbir Singh v. State of Punjab, (1979) 3 SCC 745: 1979 SCC (Cri) 848; Jayawant Dattatraya Suryarao v. State of Maharashtra, (2001) 10 SCC 109: 2002 SCC (Cri) 897, followed

Jagmohan Singh v. State of U.P., (1973) 1 SCC 20: 1973 SCC (Cri) 169; Subash Chander v. Krishan Lal, (2001) 4 SCC 458: 2001 SCC (Cri) 735; State of M.P. v. Ratan Singh, (1976) 3 SCC 470: 1976 SCC (Cri) 428; Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112; Bhagirath v. Delhi Admn., (1985) 2 SCC 580: 1985 SCC (Cri) 280; Zahid Hussein v. State of W.B., (2001) 3 SCC 750: 2001 SCC (Cri) 631; Shri Bhagwan v. State of Rajasthan, (2001) 6 SCC 296: 2001 SCC (Cri) 1095; Prakash Dhawal Khairnar (Patil) v. State of Maharashtra, (2002) 2 SCC 35: 2002 SCC (Cri) 281; Ram Anup Singh v. State of Bihar, (2002) 6 SCC 686: 2002 SCC (Cri) 1466; Mohd. Munna v. Union of India, (2005) 7 SCC 417: 2005 SCC (Cri) 1688; Nazir Khan v. State of Delhi, (2003) 8 SCC 461: 2003 SCC (Cri) 2033; Gopal Vinayak Godse v. State of Maharashtra, AIR 1961 SC 600: (1961) 3 SCR 440; Pandit Kishori Lal v. King Emperor, (1944-45) 72 IA 1: AIR 1945 PC 64, relied on

State (Govt. of NCT of Delhi) v. Prem Raj, (2003) 7 SCC 121: 2003 SCC (Cri) 1586, distinguished

Delhi Admn. v. Manohar Lal, (2002) 7 SCC 222: 2002 SCC (Cri) 1670; State of Punjab v. Kesar Singh, (1996) 5 SCC 495: 1996 SCC (Cri) 1034, impliedly distinguished

[6206] — Ss. 413 and 414 — Death sentence hanging since 2 years and nine months over the head of the accused — *Time consumed in confirmation of the sentence by High Court and appeal and review petition filed before Supreme Court and clemency petition presented before President of India by accused — Accused-petitioner aged 22 sincerely repenting and promising to strive to serve humanity if given a chance to survive — Jail authorities making no adverse report against him — On an overall view of all the circumstances, held, petitioner entitled to protection of Art. 21 — Death sentence commuted to life imprisonment — Constitution of India — Arts. 21 and 32. Javed Ahmed Abdul Hamid Pawala* v. *State of Maharashtra*, (1985) 1 SCC 275: 1984 SCC (Cri) 653: AIR 1985 SC 231.

Bench Strength **2**. Coram: **O. Chinnappa Reddy** and *E.S. Venkataramiah*, JJ. [Date of decision: 9-11-1984]

Sher Singh v. State of Punjab, (1983) 2 SCC 344: 1983 SCC (Cri) 461, doubted

***Impliedly overruled in** Triveniben v. State of Gujarat, (1988) 4 SCC 574 and (1989) 1 SCC 678*

[6207] — Ss. 413 and 414 — Delay beyond two years in executing death sentence, held, violative of Art. 21 — *Death sentence liable to be commuted to life imprisonment in appropriate cases — Constitution of India — Arts. 21, 32, 136, 226, 72 and 161 — Penal Code, 1860 — S. 302*

The accused appellant was sentenced to death for committing dastardly murders in a planned way. He was first a 'prisoner under remand' for two years and thereafter he was kept in solitary confinement for eight years. In the present SLP and writ petition, the accused has claimed that the prolonged delay of about 10 years in executing the sentence of death has violated his right under Art. 21.

Held :

Procedure established by law does not end with the pronouncement of sentence but includes the carrying out of the sentence. Prolonged delay in execution of a sentence of death has dehumanising effect, whatever may be the cause of delay be it the time necessary for appeal and consideration of reprieve or some other cause for which the accused himself may be responsible. This dehumanising factor of prolonged delay has the constitutional implication of depriving a person of his life in an unjust, unfair and unreasonable way so as to offend Art. 21. It is open to the court of appeal or a court exercising writ jurisdiction, in an appropriate proceeding to take note of the circumstance when it is brought to its notice and give relief where necessary.

Having regard to the periods, considered by the Supreme Court in various cases, to be sufficient to justify interference with the sentence of death and making all reasonable allowances for the time necessary for appeal and consideration of reprieve, it must be held that delay exceeding two years in the execution of a sentence of death is sufficient to entitle the person under sentence of death to invoke Art. 21 and demand quashing of the sentence of death.

In the present case in place of the sentence of death, the sentence of imprisonment for life must be substituted. *T.V. Vatheeswaran* v. *State of T.N.*, (1983) 2 SCC 68: 1983 SCC (Cri) 342: AIR 1983 SC 361 (2): 1983 Cri LJ 481: (1983) 2 MLJ 39: 1983 MLJ (Cri) 466.

Bench Strength **2**. Coram: **O. Chinnappa Reddy** and *R.B. Misra*, JJ. [Date of decision: 16-2-1983]

***Overruled in** Triveniben v. State of Gujarat, (1989) 1 SCC 678 [See its order at (1988) 4 SCC 574]; Sher Singh v. State of Punjab, (1983) 2 SCC 344: 1983 SCC (Cri) 461*

See also (1991) 1 SCC 752

[6208] — Ss. 413 and 414 — Delay in execution of death sentence — *Inordinate delay of more than 8 years in disposal of mercy petitions under Arts. 161 and 72, in absence of sufficient reasons therefor and in view of consequent mental agony suffered by the convict, the nature of crime, trend against death sentence and other circumstances, held, violated Art. 21 — Hence death sentence altered to sentence of life imprisonment — Constitution of India — Art. 21 — Penal Code, 1860 — S. 302*

The properties of 'G' and 'M' were attached and sold in auction sale by the deceased Amin for the purpose of realising arrears of land revenue. When the Amin was returning after delivery of the sale certificate, he was waylaid by 'G' and 'M's son 'D'. 'D' fired from his pistol at the Amin, who fell down from his cycle and while 'D' held down the Amin, 'G' cut his throat with his sword and inflicted other injuries also, as a result of which the Amin died. 'D' absconded but 'G' was arrested, tried, convicted and sentenced to death under S. 302 IPC by the trial court on October 19, 1978. The High Court confirmed the sentence on February 28, 1979 and the Supreme Court dismissed the appeal of 'G' on March 17, 1981. Thereafter 'G' filed mercy petitions to the Governor in October and November, 1981 which were rejected on November 26, 1981. The wife of 'G' then moved mercy petition to the President of India in December 1981. While the Ministry of Home Affairs was processing the case of 'G' it was intimated that 'D' was also later convicted and sentenced to death and his appeal before the Supreme Court was dismissed on February 18, 1985. Subsequently, two mercy petitions were filed on behalf of 'D' which were forwarded for consideration of the Governor in the first instance by the Ministry of Home Affairs of the State dated April 9, 1984 and August 9, 1985 respectively. These still remain undisposed of even though they figured in the half-yearly reports of pending petitions. Since 'D' and 'G' were involved in the same crime, the Governor's decision on the mercy petition of 'D' was awaited for final disposal of the mercy petition of 'G' by the President. Ultimately in March 1989 the State Government intimated that the Governor had rejected the petition of 'D'. Meanwhile the District and Sessions Judge had visited 'G' in jail in May 1988 and had sent a report to the Inspector General of Prisons stating 'G's mental state was such that he might commit suicide by banging his head on the iron grill of his cell if a decision on his petition was not taken soon. The Inspector General's office further sent an official to Delhi to expedite the case. Thereafter, the present petition was filed for the condemned prisoner by the National Convener of Hindustani Andolan seeking a writ of habeas corpus or an appropriate direction in favour of 'G' who had been waiting the decision on his mercy petition pending before the President for 8 or 9 years.

Held :

It is well settled now that undue long delay in execution of the sentence of death would entitle the condemned person to approach the Supreme Court or to be approached under Art. 32 of the Constitution, but the Court would only examine the nature of delay caused and circumstances which ensued after sentence was finally confirmed by the judicial process and will have no jurisdiction to reopen the conclusions reached by the Court while finally maintaining the sentence of death. But the Court is entitled and indeed obliged to consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay can be considered to be decisive. Article 21 is relevant in all stages. Speedy trial in criminal cases though may not be a fundamental right, is implicit in the broad sweep and content of Art. 21. Speedy trial is part of one's fundamental right to life and liberty. This principle is no less important for disposal of mercy petition. A condemned person has to suffer a degree of mental torture even though there is no physical mistreatment and no primitive torture.

There is no reason sufficiently commensurate to justify the long delay of over eight years in disposal of the mercy petition in the present case. The time and the manner in which the mercy petition has been dealt with in this case in respect of 'G' make sad reading and speak of the deplorable lack of speed and promptitude which in these matters should be there. Whether death sentence is the appropriate punishment for the crime of murder, cold-blooded in certain cases, is another debate. The convict has suffered mental agony of living under the shadow of death for long, far too long. He should not suffer that agony any longer. In the facts and circumstances, therefore, it is directed that the death sentence should not be carried out and the sentence imposed upon him be altered to imprisonment for life. *Madhu Mehta* v. *Union of India*, (1989) 4 SCC 62: 1989 SCC (Cri) 705: AIR 1989 SC 2299: 1989 Cri LJ 2321.

Bench Strength **2**. Coram: **Sabyasachi Mukharji** and *B.C. Ray*, JJ. [Date of decision: 9-8-1989]

Triveniben v. State of Gujarat, (1989) 1 SCC 678: 1989 SCC (Cri) 248, followed

[6209] — Ss. 413 and 414 — Delay in execution of death sentence — Held, inordinate delay in disposal of mercy petition under Art. 72 or 161 entitles a convict to approach Supreme Court for commutation of death sentence to sentence of life imprisonment on ground of violation of Arts. 14 and 21 — *But time taken in judicial proceedings up to the final judicial verdict to be excluded in considering the delay in execution — No time limit can be prescribed for execution of the sentence — Court would consider the delay factor along with other factors but without re-examining* *the final judicial decision and may, in appropriate case, commute the death sentence — Constitution of India — Arts. 32, 14, 21 — When can Court under Art. 32 commute death sentence to sentence of life imprisonment*

The accused persons were convicted under S. 302, IPC and sentenced to death by the trial court. The High Court confirmed their conviction and sentence. Supreme Court dismissed their special leave petitions or appeals and subsequent review petitions. Their mercy petitions to the President and/or the Governor were also rejected. They thereupon moved writ petitions under Art. 32 for setting aside the death sentence and substitution of sentence of life imprisonment on ground of prolonged delay in execution of death sentence. The ground of delay in execution was based on the inhuman suffering which a condemned prisoner suffers waiting to be executed and the mental torture it amounts to. These matters came up before the present Constitution Bench because of the conflict of decisions of a two-Judge Bench in *T.V. Vatheeswaran* v. *State of T.N.*, (1983) 2 SCC 68 and a three-Judge Bench in *Sher Singh* v. *State of Punjab*, (1983) 2 SCC 344 and also the observations of the Court in *Javed Ahmed Abdul Hamid Pawala* v. *State of Maharashtra*, (1985) 1 SCC 275. The Constitution Bench delivered its conclusion on October 11, 1988, (1988) 4 SCC 574, reserving the reasons to be given later. Giving the reasons the Supreme Court

Held :

Per majority

The delay which could be considered while considering the question of commutation of sentence of death into one of life imprisonment could only be from the date the judgment by the Apex Court is pronounced i.e. when the judicial process has come to an end. The time that has elapsed from the date of the offence till the final decision is taken into account by the courts and often lesser sentence awarded only on this account by Supreme Court.

So long as the matter is pending in any court before final adjudication even the person who has been condemned or who has been sentenced to death has a ray of hope and he does not suffer that mental torture which a person suffers when he knows that he is to be hanged but waits for the Doomsday. However, normally it is expected that the case where offence alleged is one which is punishable with death should be given top priority and trial should continue day to day unless it is concluded.

Besides, a judgment of court can never be challenged under Art. 14 or 21 and therefore the judgment awarding the sentence of death is not open to such challenge.

The only delay which would be material for consideration will be, subsequent to the final decision of the Court, the delay in disposal of the mercy petitions or delays occurring at the instance of the executive. Therefore, when such petitions under Art. 72 or 161 are received by the authorities concerned it is expected that the petitions shall be disposed of expeditiously. However, while considering the question of such delay, the time spent on petitions for review and repeated mercy petitions at the instance of the convicted person himself shall not be considered.

But it will not be open to the Supreme Court in exercise of jurisdiction under Art. 32 to go behind or to examine the final verdict reached by a competent court convicting and sentencing the condemned prisoner and even while considering the circumstances in order to reach a conclusion as to whether the inordinate delay coupled with subsequent circumstances could be held to be sufficient for coming to a conclusion that execution of the sentence of death will not be just and proper. The nature of the offence, circumstances in which the offence was committed will have to be taken as found by the competent court while finally passing the verdict. It may, however, be open to the court to examine or consider any circumstances after the final verdict was pronounced if it is considered relevant. But the question of improvement in the conduct of the prisoner after the final verdict cannot be considered for coming to the conclusion whether the sentence could be altered on that ground also.

Per Jagannatha Shetty, J. (concurring)

Article 21 received a creative connotation. It demands that any procedure which takes away the life and liberty of persons must be reasonable, just and fair. This procedural fairness is required to be observed at every stage and till the last breath of life. A condemned person has to suffer a degree of mental torture even though there is no physical mistreatment and no primitive torture. He may be provided with amenities of ordinary inmates in the prison, but nobody could succeed in giving him peace of mind.

The delay which is sought to be relied upon by the accused consists of two parts. The first part covers the time taken in the judicial proceedings. It is the time that the parties have spent for trial, appeal, further appeal and review. The second part takes into its fold the time utilized by the executive in the exercise of its prerogative clemency.

The judicial verdict pronounced by court in relation to a matter cannot be challenged on the ground that it violates one's fundamental right. The judgment of a court cannot be said to affect the fundamental rights of citizens.

The time taken in the judicial proceedings by way of trial and appeal up to the final judicial verdict cannot be taken into account by Court dealing with the accused's challenge to delay in execution of death sentence. The court also cannot take into consideration the time taken for disposal of any petition filed by or on behalf of the accused either under Art. 226 or under Art. 32 after the final judgment affirming the conviction and sentence. The time taken in judicial proceedings is intended to ensure a fair trial to the accused and to avoid hurry-up justice. The time is spent in the public interest for proper administration of justice. If there is inordinate delay in disposal of the case, the trial court while sentencing or the appellate court while disposing of the appeal may consider the delay and the cause thereof along with other circumstances. The court before sentencing is bound to hear the parties and take into account every circumstance for and against the accused. If the court awards death sentence, notwithstanding the delay in disposal of the case, there cannot be a second look at the sentence save by way of review. There cannot be a second trial on the validity of sentence based on Art. 21. The execution which is impugned is execution of a judgment and not apart from judgment. If the judgment with the sentence awarded is valid and binding, it falls to be executed in accordance with law since it is a part of the procedure established by law. If the delay in passing the sentence cannot render the execution unconstitutional, the delay subsequent thereof cannot also render it unconstitutional. Much less any fixed period of delay could be held to make the sentence inexecutable. It would be arbitrary to fix any period of limitation for execution on the ground that it would be a denial of fairness in procedure under Art. 21.

The court may only consider whether there was undue long delay in disposing of mercy petition, whether the State was guilty of dilatory conduct and whether the delay was for no reason at all. The mental torment faced by a condemned prisoner may become acute when the judicial verdict is finally set against the accused. Earlier to it, there was every reason for him to hope for acquittal. That hope is extinguished after the final verdict. If, therefore, there is inordinate delay in execution, the condemned prisoner is entitled to come to the court requesting to examine whether it is just and fair to allow the sentence of death to be executed. However, the inordinate delay may be a significant factor, but that by itself cannot render the execution unconstitutional. Nor can it be divorced from the dastardly and diabolical circumstances of the crime itself. The time taken by the executive for disposal of mercy petitions may depend upon the nature of the case and the scope of enquiry to be made. It may also depend upon the number of mercy petitions submitted by or on behalf of the accused. The court, therefore, cannot prescribe a time limit for disposal even of mercy petitions.

However, there should not be any delay either in listing or in disposal of the matter. The person who complains about the delay in execution should not be put to further delay. The matter, therefore, must be expeditiously and on top priority basis, disposed of. *Triveniben* v. *State of Gujarat*, (1989) 1 SCC 678: 1989 SCC (Cri) 248: AIR 1989 SC 1335.

Bench Strength 5. Coram: **G.L. Oza**[1], *M.M. Dutt*[1], *K.N. Singh*[1], **K. Jagannatha Shetty**[2] and *L.M. Sharma*[1], JJ. [Date of decision: 7-2-1989]

*T.V. Vatheeswaran v. State of T.N., (1983) 2 SCC 68: 1983 SCC (Cri) 342 and Javed Ahmed Abdul Hamid Pawala v. State of Maharashtra, (1985) 1 SCC 275: 1984 SCC (Cri) 653, **overruled***

Sher Singh v. State of Punjab, (1983) 2 SCC 344: 1983 SCC (Cri) 461, impliedly affirmed

[6210] — Ss. 413 and 414 — Delay in execution of death sentence — In case of inordinate delay, the convict is entitled to approach Supreme Court under Art. 32 — No fixed period of delay can be specified for this purpose — *Supreme Court considering facts and circumstances may alter the sentence of death to sentence of life imprisonment — But it cannot disturb the conclusion of court reached in finally maintaining the sentence of death. Triveniben* v. *State of Gujarat*, (1988) 4 SCC 574: 1989 SCC (Cri) 25: AIR 1989 SC 142.

Bench Strength 5. Coram: **G.L. Oza**, *M.M. Dutt, K.N. Singh, K. Jagannatha Shetty* and *L.M. Sharma*, JJ. [Date of decision: 11-10-1988]

*T.V. Vatheeswaran v. State of T.N., (1983) 2 SCC 68: 1983 SCC (Cri) 342, **overruled***

*Javed Ahmed Abdul Hamid Pawala v. State of Maharashtra, (1985) 1 SCC 275: 1984 SCC (Cri) 653, **impliedly overruled***

Sher Singh v. State of Punjab, (1983) 2 SCC 344: 1983 SCC (Cri) 461, impliedly affirmed

[6211] — Ss. 413 and 414 — Delay in execution of death sentence as ground for acquittal — *Five years elapsed since award of death sentence by trial court — For the lapse of about three years subsequent to Supreme Court's decision affirming death sentence accused persons themselves partly responsible having pursued further review and writ petitions in Supreme Court against the sentence — Writing or translating religious or other books by* *accused persons in jail, instead of showing hovering of death penalty in their mind, indicate their composed mind and concentrated attention — Having regard to the magnitude of murders committed, gruesome nature of offences and manner of perpetrating them, held, on facts and circumstances, their cases falls under "rarest of rare" category and hence no leniency in matter of sentence called for — Prompt execution of the death sentence urged. Munawar Harun Shah* v. *State of Maharashtra*, (1983) 3 SCC 354: 1983 SCC (Cri) 625: AIR 1983 SC 585: 1983 Cri LJ 971.

Bench Strength 2. Coram: *V.D. Tulzapurkar* and *Ranganath Misra*, JJ. [Date of decision: 18-4-1983]

[6212] — Ss. 413 and 414 — Delay in execution of sentence of death — When amounts to violation of Art. 21 and liable to be quashed by Supreme Court — *No absolute time limit can be fixed by Court — Rule laid down in T.V. Vatheeswaran case that a delay beyond two years in the execution would violate Art. 21, held, impractical and improper — Decision to be taken by court on facts and circumstances of each case — Court to find reason of the delay and who is responsible for it and decide accordingly — Constitution of India — Arts. 21, 32 & 136*

Article 21 stands like a sentinel over human misery, degradation and oppression. All procedure, at all stages — the trial, the sentence, the incarceration and finally, the execution of the sentence — must be just, fair and reasonable. So even if the question of sentence is finally settled by the Supreme Court, Art. 21 will not cease to operate at subsequent stages. Even though a sentence of death was justified when passed, its execution in the circumstances of the case, may not be justified by reason of unduly long lapse of time since the confirmation of that sentence by the court.

The inordinate delay in the execution of the sentence is one circumstance which has to be taken into account while deciding whether the death sentence ought to be allowed to be executed in a given case. The prolonged anguish of alternating hope and despair, the agony of uncertainty, the consequences of such suffering on the mental, emotional, and physical integrity and health of the individual can render the decision to execute the sentence of death an inhuman and degrading punishment in the circumstances of a given case. In appropriate cases therefore, the Supreme Court either while disposing of special leave petitions and appeals or while dealing with writ petitions filed after the unsuccessful termination of the normal processes of litigation has jurisdiction to exercise its power to direct ex debito justitiae that the death sentence shall not be executed by reason of supervening circumstances.

But no absolute or unqualified rule can be laid down that in every case in which there is a long delay in the execution of a death sentence, the sentence must be substituted by the sentence of life imprisonment. Moreover time limit of two years for execution of death sentence, as fixed by the Court in T.V. Vatheeswaran case runs in the teeth of common experience as regards the time generally occupied by proceedings in the High Court, the Supreme Court and before the executive, authorities. This is apart from the time which the President or the Governor, as the case may be, takes to consider petitions filed under Art. 72 or Art. 161 of the Constitution or the time which the Government takes to dispose of applications filed under Ss. 432 & 433 of the Code of Criminal Procedure.

Therefore, the Court called upon to vacate a death sentence on the ground of delay caused in executing that sentences must find why the delay was caused and who is responsible for it. It is relevant to consider whether the delay in the execution of the death sentence is attributable to the fact that he has resorted to a series of untenable proceedings which have the effect of defeating the ends of justice. Moreover, the nature of the offence, the diverse circumstances attendant upon it, its impact upon the contemporary society and the question whether the motivation and pattern of the crime are such as are likely to lead to its repetition, if the death sentence is vacated, are matters which must enter into the verdict as to whether the sentence should be vacated for the reason that its execution is delayed. The substitution of the death sentence by a sentence of life imprisonment cannot follow by the application of the two years' formula, as a matter of quod erat demonstrandum.

In the present case the sentence of death was imposed upon the petitioners by the Sessions Court on November 26, 1977, it was upheld by the High Court on July 18, 1978 and the SLP filed by the petitioners was dismissed by the Supreme Court on March 5, 1979. The matter was kept on pending in the Supreme Court since then in one form or another, by reason of some proceeding or the other. The last of the writ petitions filed by the petitioners was dismissed by the Supreme Court on August 24, 1981. The State Government must explain why the sentence imposed upon the petitioners had not been executed for more than a year and half. However, the sentence of death imposed upon the petitioners by the Sessions Court and which was uphold by the High Court and the Supreme Court, cannot be vacated merely for the reason that there has been a long delay in the execution of that sentence. *Sher Singh* v. *State of Punjab*, (1983) 2 SCC 344: 1983 SCC (Cri) 461: AIR 1983 SC 465: 1983 Cri LJ 803: 1983 MLJ (Cri) 545: (1983) 2 MLJ 46.

Bench Strength 3. Coram: **Y.V. Chandrachud, C.J.** and *V.D. Tulzapurkar* and *A. Varadarajan*, JJ. [Date of decision: 24-3-1983]

T.V. Vatheeswaran v. State of T.N., (1983) 2 SCC 68: 1983 SCC (Cri) 342, ***overruled on this point***

[6213] — Ss. 413 and 414 — Execution of death sentence — In case of undue long delay in the execution, Court in the circumstances of the case, may alter the sentence of death to that of life imprisonment — *Having regard to the mercy petitions pursued by the convict before the Governor and the President and filing of special leave petition, review petition and the present writ petition before Supreme Court, held, on facts there was no undue long delay in execution — Hence sentence of death does not call for interference on ground of delay in its execution. Jumman Khan* v. *State of U.P.*, (1991) 1 SCC 752: 1991 SCC (Cri) 283: AIR 1991 SC 345: 1991 Cri LJ 439.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 30-11-1990]

Triveniben (Smt) v. State of Gujarat, (1989) 1 SCC 678: 1989 SCC (Cri) 248; Sher Singh v. State of Punjab, (1983) 2 SCC 344: 1983 SCC (Cri) 461, followed

T.V. Vatheeswaran v. State of T.N., (1983) 2 SCC 68: 1983 SCC (Cri) 342, held ***overruled on this point***

[6214] — Ss. 413 to 415 — Execution of death sentence — Delay in — Commutation of sentence — *Mercy petition filed before Governor after dismissal of the earlier petition and consequently stay of execution of sentence ordered — Pendency of the mercy petition for two years, in absence of reasonable explanation, held, amounted to considerable delay in execution — Accordingly, petitioner would be governed and dealt with as a life convict for all purposes*

Only relief a convict awaiting execution of death sentence can get from this Court on the ground of delay is conversion of the sentence into that of life imprisonment. However, on conversion of the death sentence to life imprisonment, the petitioner would now be governed and dealt with as a life convict for all purposes. (Para 10). *Daya Singh* v. *Union of India*, (1991) 3 SCC 61: 1991 SCC (Cri) 523: AIR 1991 SC 1548: 1991 Cri LJ 1903.

Bench Strength 2. Coram: **L.M. Sharma** and *J.S. Verma*, JJ. [Date of decision: 24-4-1991]

Triveniben v. State of Gujarat, (1989) 1 SCC 678: 1989 SCC (Cri) 248, relied on

[6215] — Ss. 413 to 415 — Execution of death sentence — Delay in — Effect — *Writ petition filed before High Court for stay of execution dismissed on wrong findings of fact that after dismissal of first mercy petition under Art. 72 a second mercy petition had also been filed and that therefore delay caused in disposal of the second one had no significance, but in fact only one mercy petition had been filed which had been dismissed — SLP filed before Supreme Court dismissed solely on the basis of the incorrect statements made by the High Court in its judgment in the writ petition — Factual mistakes never brought to the notice of the Supreme Court and could be found by it only on examination of the entire file — In the special facts and circumstances, without expressing any precise and decisive opinion as to the fixed period within which a mercy petition should be disposed of, held, justice demands modification of sentence of death into that of life imprisonment. Shivaji Jaising Babar* v. *State of Maharashtra*, (1991) 4 SCC 375: 1991 SCC (Cri) 972: AIR 1991 SC 2147.

Bench Strength 3. Coram: **S. Ratnavel Pandian**, *K. Ramaswamy* and *K. Jayachandra Reddy*, JJ. [Date of decision: 11-9-1991]

— S. 414 *See* Ss. 354(5), 413, 414

See also Ss. 368 and 413, 414 and 415

See also Ss. 413 & 414

See also Ss. 413 to 415

See also Ss. 413, 414, 418 and 433 & 433-A and Ch. XXXII (Ss. 413 to 435)

See also Ss. 433, 433-A & 434 and 413, 414 & 418

See also Ss. 433, 433-A, 434, 413, 414, 418, 366, 368 and 371

[6216] — S. 414 — Mercy petitions before President should normally be disposed of within three months — *Writ petition for setting aside death sentence filed before Supreme Court during pendency of mercy petition pending before President for four years — Despite adjournments of the petition and notices issued to the Government of India, no affidavit filed on behalf of the Government — On facts and circumstances, sentence of life imprisonment substituted for sentence of death — Constitution of India, Arts. 72(1)(c), 32 and 21*

There are at least some sensitive areas like those concerning life and death where the need for speedy justice is self-evident. Even an election petition is required under S. 86(7) of the R.P. Act, 1951 to be tried within six months. The expectation of persons condemned to death that they still have a chance to live is surely not of lesser social significance than the expectation of contestants to an election petition. Therefore, a self-imposed rule of discipline that mercy petitions shall be disposed of within, say, three months should be accepted.

In the present case considering all the circumstances of the case, including those concerning the background and motivation of the crime, the death sentence imposed upon the petitioner should be set aside and in its place the sentence of life imprisonment should be passed. However, this decision is not based on ground of non-execution of death sentence for a certain number of years because a sentence of death does not become inexecutable merely after the lapse of any particular number of years. *K.P. Mohd.* v. *State of Kerala*, 1984 Supp SCC 684: 1985 SCC (Cri) 142.

Bench Strength 2. Coram: *Y.V. Chandrachud, C.J.* and *A.N. Sen*, J. [Date of decision: 11-3-1983]

See also Sher Singh v. State of Punjab, (1983) 2 SCC 344: 1983 SCC (Cri) 461

[6217] — Ss. 414 and 415 — Inconsistent decisions between Benches of the Supreme Court on award of death sentence while disposing of separate appeals of co-accused equally guilty in the same case — *Benefit of commutation to life imprisonment given to one must be extended to remaining co-accused — Jail authorities directed to verify consistency in award of death sentence between co-accused before carrying out any death sentence — Penal Code, 1860, S. 53 — Constitution of India, Arts. 134 and 136*

M, J, K and the petitioner *H* were convicted under S. 302, IPC and their sentence of death was affirmed by the High Court. All the four accused were equally guilty in causing the murders. *M* died in a police encounter. The separate appeals to the Supreme Court by the remaining three co-accused met different fates at the hands of different Benches of the Supreme Court before whom the matters came up for disposal. The special leave petition of *J* was dismissed on April 15, 1976 and he was hanged on October 6, 1981. But the special leave petition of *K* was admitted and appeal allowed on April 10, 1977 by a Bench consisting of Bhagwati and Fazal Ali, JJ. who commuted his sentence of death to imprisonment of life. However, the special leave petition of *H*, the petitioner herein, was dismissed on October 16, 1978 by another Bench consisting of Sarkaria and Shinghal, JJ. and his review petition was also dismissed on May 9, 1980 by Sarkaria and A.P. Sen, JJ. In the case of *H*, though the Registry of the Supreme Court mentioned in its Office Report the fact that co-accused *K's* death sentence had been already commuted, this fact was not specifically brought to the notice of the Court when the petitioner's special leave petition and review petition were dismissed

On dismissal of petitioner's petition to the President under Art. 72, his execution was fixed for October 6, 1981, when he filed the present writ petition under Art. 32 pointing out that his co-accused *K*, no less guilty than him, had escaped death sentence which he was due to suffer. Staying the execution of death sentence, the Supreme Court.

Held :

Per Chandrachud, C.J. and Desai, J.

In the present circumstances of the case no distinction at all can be made between the part played by *K* on the one hand and *H* (the petitioner) on the other. Since death sentence of *K* was commuted by the Supreme Court, it would be unjust to confirm the death sentence imposed upon the petitioner. That will involve the Court as well as the authorities concerned in the violation of rudimentary norms governing the administration of justice.

In view of the background of the case it would not be wrong if the Court itself commutes the sentence of death imposed on the petitioner. But in the interest of comity between the powers of the Supreme Court and the powers of the President of India, it will be more in the fitness of things if the Court recommends to the President for commutation of death sentence to life imprisonment in exercise of power under Art. 72. This is so because the President of India has already considered the mercy petition of the petitioner once and has rejected it.

It is however directed that prior to the actual execution of any death sentence, the Jail Superintendent should ascertain personally whether the sentence of death imposed upon any of the co-accused of the prisoner who is due to be hanged, has been commuted. If it has been commuted the Superintendent should apprise the superior authorities of the matter, who, in turn, must take prompt steps for bringing the matter to the notice of the Court concerned.

Per A.N. Sen, J. (concurring)

It will be a sheer travesty of justice and the course of justice will be perverted, if for the very same offence, the petitioner has to pay the extreme penalty of death whereas the death sentence imposed on his co-accused for the very same offence is commuted and his life is spared. Therefore, it will be manifestly unjust to allow the death sentence imposed on the petitioner to be executed.

Apart from the jurisdiction and powers conferred on the Court under Arts. 32 and 136, the Court retains and must retain an inherent power and jurisdiction for dealing with any extraordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done. This power must necessarily be sparingly used only in exceptional circumstances for furthering the ends of justice. Having regard to the facts and circumstances of this case, this is a fit case where the Court should entertain the present petition of *H* and the Court should interfere by commuting the death sentence imposed on the petitioner to one of life imprisonment.

As, however, the case of the petitioner had earlier been considered by the President of India to whom the petitioner had presented the petition for mercy, propriety and decorum require that the matter should be referred back to the President instead of the Supreme Court itself deciding to commute the death sentence. *Harbans Singh* v. *State of U.P.*, (1982) 2 SCC 101: 1982 SCC (Cri) 361: AIR 1982 SC 849: 1982 Cri LJ 795: 1982 MLJ (Cri) 409.

Bench Strength 3. Coram: **Y.V. Chandrachud, C.J.**[1] and *D.A. Desai*[1] and **A.N. Sen**[2], JJ. [Date of decision: 12-2-1982]

— S. 415 *See* Ss. 366, 415, 433, 434 & 435
See also Ss. 368 and 413, 414 and 415
See also Ss. 413 to 415
See also Ss. 414 and 415

— S. 418 *See also* S. 383, Criminal Procedure Code, 1898, p. 1178 in Vol. 2

— S. 418 *See* Ss. 413, 414, 418 and 433 & 433-A and Ch. XXXII (Ss. 413 to 435)
See also Ss. 433, 433-A & 434 and 413, 414 & 418
See also Ss. 433, 433-A, 434, 413, 414, 418, 366, 368, 371

[6218] — Ss. 418 and 428 — Period during which the prisoner was under preventive detention cannot be set off — *However if during the course of preventive detention the prisoner was subject to criminal process either on filing of an FIR or on criminal conviction, but under an erroneous assumption was not subjected to remand process or served with a warrant then he is entitled to set-off for such period*

The first writ petitioner before the High Court was under preventive detention when on December 18, 1969 an FIR was filed naming him and others for offences under the Indian Penal Code, Ss. 121-A, 120-B, read with 395 and 120-B, read with 447. Only when his preventive detention was revoked in April 1970, was he produced before the Magistrate. On conviction, he filed a writ petition claiming set-off for the period between December 18, 1969 to April 13, 1970.

The second writ petitioner was convicted on April 10, 1972 and sentenced to rigorous imprisonment for four years. He appealed. The High Court granted bail on April 29, 1972. He was arrested under MISA on June 26, 1975. His appeal was dismissed on November 28, 1975. But the warrant of arrest was served on him on December 30, 1975 on which date the detention order was revoked. He claimed set-off of the entire period of preventive detention or at least the period of one month from December 1 to December 30, 1975 since the warrant could have been served on him on December 1.

Held :

It is true that S. 428 speaks of the "period of detention" undergone by an accused person, but it expressly says that the detention mentioned refers to the detention during the investigation, enquiry or trial of the case in which the accused person has been convicted. Hence the period during which the writ petitioners were in preventive detention cannot be set off under S. 428 against the term of imprisonment imposed on them.

However on the peculiar facts of both the appeals there are periods of the preventive detention when they should have been subject to criminal process. Even while the first petitioner was in custody under preventive detention, he could have been produced before the Magistrate when the FIR was lodged. Neither the Criminal Procedure Code nor the preventive detention law bars such a course. Hence the entire period from December 19, 1969, when many of the co-accused were produced before the Magistrate, to April 18, 1970 should be treated as part of the period during which the first petitioner was under detention as an undertrial prisoner.

In the case of the second petitioner the warrant could have been served immediately on the dismissal of the appeal on November 28, 1975 and the accused was not responsible if the authority concerned chose to serve the warrant on him on December 30, 1975. Section 418, Criminal Procedure Code, 1973 includes the case where the warrant concerns an accused who is already under preventive detention. There is no provision in Criminal Procedure Code or MISA which requires the service of the warrant to be delayed until after the period of preventive detention is over. Nor is there an anomaly in a man having to suffer two kinds of detention at the same time, one preventive and the other punitive. *Govt. of A.P.* v. *Anne Venkatesware*, (1977) 3 SCC 298: 1977 SCC (Cri) 508: AIR 1977 SC 1096: (1977) 3 SCR 7: 1977 Cri LJ 935.

Bench Strength 2. Coram: *P.N. Bhagwati* and **A.C. Gupta**, JJ. [Date of decision: 17-2-1977]

[6219] — S. 418 — Held, imprisonment for life is executable in jail and not necessarily by banishment or exile — *State Government to appoint the jail for executing the sentence — Prisoners Act, 1900, S. 32 — 'Place' — Meaning of — Penal Code, 1860, Ss. 53 Secondly, 53-A, 55 and 58 (prior to repeal) — CrPC, 1898 — S. 383*

Under S. 32 of the Prisoners Act a sentence of transportation either for a term or for life could be and a sentence of life imprisonment can be made executable in local jails by constituting such jails as the 'places' within the meaning of S. 32 under orders of the State Governments. Apart from S. 32 of the Prisoners Act, S. 383 of Criminal Procedure Code, 1898 and S. 418 of Criminal Procedure Code, 1973 also contain the necessary legal authority and power under which a criminal court can by issuing a warrant direct the execution or carrying out of a sentence of life imprisonment in local jails. Ever since the sentence of transportation either for a term or for life became executable in jails within the country and the same position must obtain in regard to persons sentenced to imprisonment for life on and after January 1, 1956 in view of S. 53-A, IPC inserted by the Amending Act 26 of 1955. *Naib Singh* v. *State of Punjab*, (1983) 2 SCC 454: 1983 SCC (Cri) 536: AIR 1983 SC 855: 1983 Cri LJ 1345.

Bench Strength 2. Coram: **V.D. Tulzapurkar** and *R.B. Misra*, JJ. [Date of decision: 19-4-1983]

[6220] — S. 418 — Execution of sentence of imprisonment — *In view of the death of the accused, held, custodial sentence became unexecutable* (Para 10). *N. Somashekar* v. *State of Karnataka*, (2004) 11 SCC 334.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 6-5-2004]

— S. 420 *See* Ss. 197 and 420, 467, 468, 471

— S. 421 *See also* S. 386, Criminal Procedure Code, 1898, p. 1178 in Vol. 2

— S. 421 *See* Ss. 357 and 421
See also Ss. 357, 421 and 431
See also Ss. 357 and 421 & 431 and 374 and 389 & 387
See also Ss. 357(3) & (1) and 421
See also Ss. 357(3), 421 and 431
See also Ss. 389 and 421
See also Ss. 428 & 421

[6221] — Ss. 421 and 424 — Applicability — *Held, when a fine is imposed simpliciter S. 421 r/w S. 424 would be applicable, but where fine forms part of the sentence, it would not have any application* (Para 10). *Dilip S. Dahanukar* v. *Kotak Mahindra Co. Ltd.*, (2007) 6 SCC 528: (2007) 3 SCC (Cri) 209: (2007) 137 Comp Cas 1: (2007) 2 KLT 488: 2007 Cri LJ 2417: (2007) 55 AIC 244 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 10-4-2007]

[6222] — Ss. 421 and 424 — Fine — *Liability to pay certain amount imposed under FERA — Default in payment thereof — Sentence of imprisonment awarded by criminal court under old Act — Serving out the sentence, held, would not wipe out the civil liability to pay the penal amount — Hence procedure for recovery of the amount as arrears of land revenue can be prescribed under the new Act — Thereby no new liability created — Both penalty and criminal prosecution can be deemed to be under the new Act — CrPC, 1898 — Ss. 386 and 388. Kirpal Singh* v. *Collector*, 1992 Supp (3) SCC 183: 1993 SCC (Cri) 209.

Bench Strength 2. Coram: *M.M. Punchhi* and *K. Ramaswamy*, JJ. [Date of decision: 10-9-1991]

[6223] — S. 421 — Sentence for default in payment of fine — Modification of — *Offences under S. 21 and S. 23 r/w S. 8(c) NDPS Act — Appellant sentenced to 10 years' RI along with fine of Rs 1 lakh for each of the said two offences separately — Further sentenced to 3 years' RI along with fine of Rs 10,000 under S. 135-A Customs Act — He was to suffer 2 1/2 years' RI and 6 months' RI in default of payment of fine of Rs 1 lakh and Rs 10,000 respectively — All the substantive sentences were to run concurrently — Appellant already undergone sentence for more than 11 years and not in a position to pay fine — He was a Nigerian resident and intended to leave India as early as possible — On facts, RI for 2 1/2 years in default of payment of fine of Rs 1 lakh, modified to RI for one year — Customs Act, 1962, S. 135-A — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 21 and S. 23 r/w S. 8(c)* (Paras 4 and 5). *Obie Kwe Emeanu* v. *State of Maharashtra*, (2003) 11 SCC 317: 2004 SCC (Cri) 176.

Bench Strength 2. Coram: *M.B. Shah* and *S.N. Variava*, JJ. [Date of decision: 12-3-2001]

[6224] — Ss. 421(1) proviso and 357 — Realisation of fine even in case of default imprisonment undergone — When warranted — *Appellant M exhorting his fellows by saying 'maro sale ko' — Thereupon,* ***R*** *stabbing the deceased which resulted* *in his death — Held, even if the words 'maro sale ko' were used by **M** in an abusive way, it could not be said that he exhorted his fellows to kill the deceased — Conviction of **M** altered from Ss. 302/34 to Ss. 324/110 and sentence reduced to the period already undergone by him — However, considering the young age of the victim and the status of the accused **M** further sentenced to a fine of Rs 50,000 to be paid to the heirs of the victim under the provisions of the Hindu Succession Act, 1956 — Fine is to be realised even if the convict had undergone imprisonment in default of payment thereof — Penology — Penal Code, 1860, Ss. 324/110 and 302/34. Matadin* v. *State of Maharashtra*, (1998) 7 SCC 216: 1998 SCC (Cri) 1569: AIR 1999 SC 138.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **D.P. Wadhwa**, JJ. [Date of decision: 4-8-1998]

— S. 421 r/w S. 431 *See* Ss. 357(3) and 421 r/w S. 431

— S. 424 *See* Ss. 421 and 424

[6225] **— S. 427 — Concurrent running of sentences — Plea for — Conviction under S. 395 IPC** — *One accused-appellant convicted in 4 different cases while other accused-appellant convicted in 5 different cases — RI for 7 years ordered by Assistant Sessions Judge against the appellants in each case to run one after the other — Supreme Court not desiring to give benefit of all sentences to run concurrently — Adopting via media consistent with the administration of criminal justice, total period of 14 years' imprisonment to each appellant in respect of all the convictions passed against the appellants, held, was sufficient to meet the ends of justice — Penal Code, 1860, S. 395. Ammavasai* v. *Inspector of Police, Valliyanur*, (2000) 9 SCC 749: 2001 SCC (Cri) 1477: AIR 2000 SC 3544.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 3-3-2000]

[6226] **— Ss. 427 and 482 — Sentence — Concurrent or consecutive — Appellant convicted and sentenced in two separate cases — Appeals thereagainst before High Court and SLPs before Supreme Court dismissed** — *Application before High Court under Ss. 482/427 CrPC praying, inter alia, that the sentences imposed in both the cases be directed to run concurrently, rejected — Held, as provision of S. 427 CrPC was not invoked in the original cases or appeals, a separate application filed before the High Court after the dismissal of the SLPs was not maintainable — High Court could not have exercised its inherent jurisdiction in a case of this nature which it has previously not exercised while deciding the appeals — S. 482 CrPC, held, not an appropriate remedy as neither trial Judge nor High Court while convicting and sentencing the appellant indicated that sentences passed against him in both the cases shall run concurrently or that S. 427 CrPC would be attracted — Hence S. 427 CrPC rightly not applied in a separate and independent proceeding by the High Court — Penal Code, 1860, Ss. 120-B/420, 468 and 471 — Prevention of Corruption Act, 1947, S. 5(1)*

Application of the provision of Section 427 CrPC falls for consideration in this appeal. The appellant was a bank employee. He worked as a Manager. His job was to advance loans. Allegedly, in one case he sanctioned a loan to a customer for black & white television, while the scheme was for something else. In another case he sanctioned a loan for obtaining plots from the housing society. The Central Bureau of Investigation (CBI) had also filed charge-sheets against the appellant in both the cases. Two cases, thus, came to be registered against him; one being Criminal Case No. 9 of 1992 and another being Criminal Case No. 5 of 1993. In the first case he was convicted for commission of offences punishable under Sections 120-B/420, 468 and 471 IPC read with Section 5(1) of the Prevention of Corruption Act, 1947 and was sentenced to undergo 18 months' rigorous imprisonment with different amounts of fines for offences punishable under the said sections. In the second case he was found guilty for commission of offences punishable under Sections 120-B/420, 468 and 471 IPC read with Section 5(1) of the Prevention of Corruption Act, 1947 and convicted and sentenced to undergo rigorous imprisonment for two years with different amounts of fines for offences punishable under the said sections. Appeals preferred thereagainst before the High Court were dismissed by the judgments and orders dated 30-12-2004 and 20-1-2005 respectively. Special leave petitions filed thereagainst were also dismissed by the Supreme Court.

The appellant thereafter filed an application before the High Court purported to be under Sections 482/427 CrPC praying, inter alia, therein that the sentences imposed upon him in both the cases be directed to run concurrently. The said application has been rejected by the High Court by reason of the impugned judgment. Hence this appeal.

Dismissing the appeal,

Held :

The provision of Section 427 CrPC was not invoked in the original cases or in the appeals. A separate application was filed before the High Court after the special leave petitions were dismissed. Such an application was not maintainable. The High Court could not have exercised its inherent jurisdiction in a case of this nature as it had not exercised such jurisdiction while passing the judgments in appeal. Section 482 CrPC was, therefore, not an appropriate remedy having regard to the fact that neither the trial Judge, nor the High Court while passing the judgments of conviction and sentence indicated that the sentences passed against the appellant in both the cases shall run concurrently or Section 427 CrPC would be attracted. The said provision, therefore, could not have been applied in a separate and independent proceeding by the High Court. The appeal being devoid of any merit is dismissed. (Para 12). *M.R. Kudva* v. *State of A.P.*, (2007) 2 SCC 772: (2007) 1 SCC (Cri) 648: AIR 2007 SC 568: 2007 Cri LJ 763.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 15-12-2006]

[6227] — Ss. 427, 31 and 482 — Concurrent running of sentences — Grounds for directing — *In the present case, transactions relating to family of respondent who issuing different cheques to same complainant — Separate complaints filed in respect of those cheques and convictions recorded by separate courts in terms of S. 138, Negotiable Instruments Act — Discussing case law on the point held, High Court rightly directed the sentences to run concurrently — Negotiable Instruments Act, 1881, S. 138*

All the transactions related to the family of the respondent and the matter related to different cheques issued by the respondent to the complainant party. For this purpose separate complaints were filed. The convictions were in terms of Section 138 of the Negotiable Instruments Act, 1881. An application was filed in terms of Section 482 read with Section 427 CrPC. The prayer was to the effect that the quantum of punishment awarded may be permitted to run concurrently in respect of the three convictions and sentences imposed. The High Court directed that the sentences imposed by the Sessions Judge, and the Judicial Magistrate, were to run concurrently. Dismissing the appeal thereagainst, the Supreme Court held as above. (Paras 2, 3 and 7). *State of Punjab* v. *Madan Lal*, (2009) 5 SCC 238.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *L.S. Panta* and *P. Sathasivam*, JJ. [Date of decision: 5-3-2009]

Mohd. Akhtar Hussain v. Collector of Customs (Prevention), (1988) 4 SCC 183: 1988 SCC (Cri) 921; State of Maharashtra v. Najakat, (2001) 6 SCC 311: 2001 SCC (Cri) 1106, relied on

[6228] — S. 427 — Sentence of imprisonment for three years on two counts directed by High Court to run consecutively — *Offence committed of serious nature — Hence, prayer to direct the sentence to run concurrently, rejected — However, sentence reduced from three years to two years on two counts and directed to run consecutively — Thus, sentence reduced from six to four years — Penal Code, 1860, S. 326 r/w S. 34* (Para 4). *Ram Lal* v. *State of Haryana*, (2003) 9 SCC 242.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *P. Venkatarama Reddi*, JJ. [Date of decision: 7-5-2003]

[6229] — S. 427 — Concurrent or consecutive sentence — *On 5-5-2001 A-1 threatened dire consequences on being slapped by **K** (deceased) on account of a quarrel regarding borrowed money — On 6-5-2001 A-1 stopped **K** and PW 1 who were on a motorcycle at the bus-stand and a quarrel ensued — Noticing A-1 and A-2 armed with knives, PW 1 rushed towards **K** — A-1 poked a knife on the right abdomen of PW 1 and A-3 kicked him on his stomach as a result of which PW 1 fell down on the ground — A-1 stabbed **K** on his left side chest and ribs and A-2 stabbed **K** on the top of right side hip — **K** and PW 1 (informant) succumbed to their injuries — Case not covered under S. 302 — Conviction of appellant (A-1) altered to S. 304 Pt. I IPC — Conviction of A-1 under S. 307, upheld — Custodial sentence of 10 years, held, proper, to run concurrently with sentence under S. 307 — Penal Code, 1860 — S. 302 or S. 304 Pt. I*

On 5-5-2001 A-1 had threatened dire consequences being slapped by *K* (deceased) on account of a quarrel regarding borrowed money. On 6-5-2001 A-1 stopped *K* and PW 1 who were on a motorcycle in the bus stand and a quarrel ensued. Noticing A-1 and A-2 armed with knives, PW 1 rushed towards *K*. A-3 was also with the other accused persons. A-1 poked a knife on the right abdomen of PW 1 and A-3 kicked him on his stomach as a result of which PW 1 fell down on the ground. A-1 stabbed K on his left side chest and ribs and A-2 stabbed K on the top of right side hip. The dying declaration of the complainant PW 1 was recorded by Magistrate. The High Court upheld, the conviction of A-1 for offences under Section 302 and Section 307 IPC. The appellant was sentenced to undergo RI for life and to pay a fine of Rs 500 for the first offence and RI for five years and fine of Rs 2000 with default stipulation for the second offence.

Partly allowing the appeal,

Held :

When the factual position is considered in the background of the legal principles, the inevitable conclusion is that the appropriate conviction would be in terms of Section 304 Part I IPC and not Section 302 IPC. The conviction under Section 307 IPC does not suffer from any infirmity. Custodial sentence of 10 years in respect of the offence punishable under Section 304 Part I IPC would suffice. Both the sentences would run concurrently. (Para 14). *Kotikalapudi Subba Rao* v. *State of A.P.*, (2008) 5 SCC 390: (2008) 2 SCC (Cri) 621.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 6-5-2008]

Sridhar Bhuyan v. State of Orissa, (2004) 11 SCC 395: 2004 SCC (Cri) Supp 98; Parkash Chand v. State of H.P., (2004) 11 SCC 381: 2004 SCC (Cri) Supp 87; Sachchey Lal Tiwari v. State of U.P., (2004) 11 SCC 410: 2004 SCC (Cri) Supp 105; Sandhya Jadhav v. State of Maharashtra, (2006) 4 SCC 653: (2006) 2 SCC (Cri) 394; Lachman Singh v. State of Haryana, (2006) 10 SCC 524: (2007) 1 SCC (Cri) 123, relied on

[6230] — S. 427(1) — Sentence — Concurrent or consecutive — Where second offence is distinct and different from the first one or the facts constituting the two offences are quite different, the subsequent sentence should normally run consecutive to the first one — *Gold (Control) Act, 1968, S. 85(1)(ii) — Customs Act, 1962, S. 135 — Penology*

If a given transaction constitutes two offences under the enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different. In the present case the two offences for which the appellant was prosecuted were quite distinct and different. Therefore, the courts were not unjustified in directing that the sentences should be consecutive and not concurrent. *Mohd. Akhtar Hussain* v. *Asstt. Collector of Customs*, (1988) 4 SCC 183: 1988 SCC (Cri) 921: AIR 1988 SC 2143: (1988) 3 Crimes 291.

Bench Strength 2. Coram: *G.L. Oza* and **K. Jagannatha Shetty**, JJ. [Date of decision: 31-8-1988]

[6231] — S. 427(1) — Conviction under S. 353 IPC and that under S. 14 of Foreigners Act — Sentences under the two counts, held, cannot be directed to run concurrently in view of the nature of offence against the appellant that he rendered assistance to foreign nationals who were engaged in terrorist activities and also transported a member of a terrorist organisation — *Prayer therefore disallowed* (Para 4). *Saeed Ahmed* v. *State of U.P.*, (2000) 9 SCC 152: 2000 SCC (Cri) 1185.

Bench Strength 2. Coram: *K.T. Thomas* and *D.P. Mohapatra*, JJ. [Date of decision: 3-2-2000]

[6232] — S. 427(2) — Award of life imprisonment where accused already undergoing such sentence in previous case, held, would be a meaningless exercise — *In the teeth of S. 427(2) CrPC it is doubtful whether a person already undergoing sentence of imprisonment for life can be visited with another term of imprisonment for life to run consecutively with the previous one. Saibanna* v. *State of Karnataka*, (2005) 4 SCC 165: 2005 SCC (Cri) 1094.

Bench Strength 2. Coram: *K.G. Balakrishnan* and **B.N. Srikrishna**, JJ. [Date of decision: 21-4-2005]

[6233] — S. 427(2) — Sub-section (2) is in the nature of an exception to sub-section (1) — Person already serving sentence of life imprisonment again sentenced to life imprisonment on a subsequent conviction — *In such a situation, the subsequent sentence will run concurrently even in absence of any specific direction of court to that effect unlike sub-section (1) — Court's direction that in case of grant of any remission or commutation in respect of the earlier sentence of the imprisonment the subsequent sentence of life imprisonment, shall commence thereafter — Held, not inconsistent with S. 427(2) — It only means that the convict will not get any benefit of remission or commutation in respect of the earlier sentence*

The Supreme Court by its judgment and order dated September 30, 1983 awarded a subsequent sentence of life imprisonment on the present petitioner for a second offence of murder committed by him when he was released on parole while undergoing the first sentence of life imprisonment and directed "the instant sentence of imprisonment for life awarded to him should not run concurrently with his earlier sentence of life imprisonment. We therefore, direct that in case any remission or commutation in respect of his earlier sentence is granted to him the present sentence should commence thereafter." The petitioner filed the present writ petition under Art. 32 for issuance of a suitable writ or direction to correct the above direction given in the order dated September 30, 1983 to bring it in consonance with S. 427(2) CrPC and consequently for his release on the ground that both life sentences had to run concurrently in accordance with S. 427(2) CrPC and he is entitled to relief because he has undergone fourteen years sentence of imprisonment with remissions at the time of filing the writ petition. Treating the writ petition as a petition for clarification of the judgment dated September 30, 1983 and disposing of the petition

Held :

Sub-section (1) of S. 427 CrPC deals with an offender who while undergoing sentence for a fixed term is subsequently convicted to imprisonment for a fixed term or for life. In such a situation, the first sentence, being for a fixed term, expires on a definite date which is known when the subsequent conviction is made. Sub-section (1) says that in such a situation, the date of expiry of the first sentence which the offender is undergoing being known, ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the court directs the subsequent sentence to run concurrently with the previous sentence. Obviously, in cases covered by sub-section (1) where the sentence is for a fixed term, the subsequent sentence can be consecutive unless directed to run concurrently. Sub-section (2), on the other hand, provides for an offender "already undergoing sentence of imprisonment for life" who is sentenced on a subsequent conviction to imprisonment for a term or for life. It is well settled that imprisonment for life is a sentence for the remainder of the life of the offender unless the remaining sentence is commuted or remitted by the appropriate authority. This being so at the stage of sentencing by the court on a subsequent conviction, the earlier sentence of imprisonment for life must be understood in this manner and, therefore, there can be no question of a subsequent sentence of imprisonment for a term or for life running consecutively which is the general rule laid down in sub-section (1) of S. 427. The earlier sentence of imprisonment for life being understood to mean as a sentence to serve the remainder of life in prison unless commuted or remitted by the appropriate authority and a person having only one life span, the sentence on a subsequent conviction of imprisonment for a term or imprisonment for life can only be superimposed to the earlier life sentence and certainly not added to it since extending the life span of the offender or for that matter anyone is beyond human might. It is this obvious situation which is stated in sub-section (2) of S. 427. The only situation in which no direction of the court is needed to make the subsequent sentence run concurrently with the previous sentence is provided for in sub-section (2) which has been enacted to avoid any possible controversy based on sub-section (1) if there be no express direction of the court to that effect. Sub-section (2) is thus in the nature of an exception to the general rule enacted in sub-section (1) of S. 427 that a sentence on subsequent conviction commences on expiry of the first sentence unless the court directs it to run concurrently. (Para 8)

The direction of the Supreme Court must be construed to harmonies with S. 427(2) CrPC which is the statutory mandate apart from being the obvious truth. The subsequent sentence of imprisonment for life has, therefore, to run concurrently with the earlier sentence of imprisonment for life awarded to the petitioner. (Para 9)

The last sentence in the direction means that in case, any remission or commutation is granted in respect of the earlier sentence of life imprisonment alone then the benefit of that remission or commutation will not ipso facto be available in respect of the subsequent sentence of life imprisonment which would continue to be unaffected by the remission or commutation in respect of the earlier sentence alone. In other words, the operation of the superimposed subsequent sentence of life imprisonment shall not be wiped out merely because in respect of the corresponding earlier sentence of life imprisonment any remission or commutation has been granted by the appropriate authority. The consequence is that the petitioner would not get any practical benefit of any remission or commutation in respect of his earlier sentence because of the superimposed subsequent life sentence unless the same corresponding benefit in respect of the subsequent sentence is also granted to the petitioner. It is in this manner that the direction is given for the two sentences of life imprisonment not to run concurrently. The ultimate direction contained in the last sentence is obviously for this purpose. So construed the direction of the Court in the judgment dated September 30, 1983 fully harmonises with S. 427(2) CrPC. (Paras 9 and 10). *Ranjit Singh* v. *UT, Chandigarh*, (1991) 4 SCC 304: 1991 SCC (Cri) 965: AIR 1991 SC 2296.

Bench Strength **3**. Coram: *M.N. Venkatachaliah*, **J.S. Verma** and *N.D. Ojha*, JJ. [Date of decision: 23-8-1991]

Maru Ram v. Union of India, (1981) 1 SCC 107: (1981) 1 SCR 1196: 1981 SCC (Cri) 112, relied on

Ranjit Singh v. UT of Chandigarh, (1984) 1 SCC 31: 1984 SCC (Cri) 27, clarified

[6234] — Ss. 427(2) and 433-A — Second sentence of life imprisonment imposed by Supreme Court on petitioner already undergoing a previous sentence of life imprisonment — Writ petition under Art. 32 challenging the second sentence as being inconsistent with S. 427(2) CrPC, held, not maintainable — *Petitioner's incarceration being result of a valid judicial order, there can be no claim to infringement of any fundamental right — Moreover, petitioner having not yet served out the mandatory minimum of 14 years' actual imprisonment for the first sentence as required by S. 433-A CrPC, he cannot claim any relief, much less a writ under Art. 32, in absence of remaining sentence being remitted by government.* *Ranjit Singh* v. *UT, Chandigarh*, (1991) 4 SCC 304: 1991 SCC (Cri) 965: AIR 1991 SC 2296.

Bench Strength **3**. Coram: *M.N. Venkatachaliah*, **J.S. Verma** and *N.D. Ojha*, JJ. [Date of decision: 23-8-1991]

[6235] — S. 427(3) — Maximum sentence in subsequent case — When unwarranted — Factors to be considered — Totality of sentence — *Maximum sentence already imposed in the first case and accused pleaded guilty to the charge are factors calling for lesser sentence in the subsequent case irrespective of enormity of crime committed by the accused — But accused's plea of guilty should not be inevitable in the circumstances of the case — Court however can consider the totality of both sentences in deciding quantum of the latter — In any case courts must take into consideration the usual factors — Gold (Control) Act, 1968, S. 85(1)(ii) — Customs Act, 1962, S. 135 — Penology*

The appellant, a foreign national, was charged under S. 85(1)(*ii*) of the Gold (Control) Act pursuant to seizure of 7000 tolas of gold of foreign mark of the value of Rs 1.4 crores from his possession in April 1982. He pleaded guilty to the charge. Accordingly he was convicted and sentenced to the maximum punishment of imprisonment for 7 years and fine of Rs 10 lakhs prescribed under S. 85(1)(*ii*) of the said Act. On appeal, the High Court confirmed that sentence but reduced the fine to Rs 5 lakhs. The special leave petition filed by the appellant was dismissed by Supreme Court. That conviction and sentence became final. While the appellant was in judicial custody, a further investigation was conducted and on that basis a complaint was filed alleging that the appellant along with 18 others had imported gold worth Rs 12.5 crores and smuggled out of India silver worth Rs 11.5 crores during December 1981 to February 1982. He along with others was prosecuted under S. 135 of the Customs Act. He again pleaded guilty to the charge though others did not do so. The trial court convicted him under S. 135 and sentenced him to 4 years' RI and a fine of Rs 2 lakhs and on failure to pay the fine to further RI for 6 months. The sentences were ordered to run consecutively. The trial court considered it not reasonable to again impose the maximum penalty under S. 135 and showed slight mercy as the accused had pleaded guilty. The High Court on appeal enhanced the sentence from 4 years to the maximum prescribed punishment of 7 years having regard to the enormity of the crime committed by the appellant. Accordingly, he has to serve in all 14 years' imprisonment which he has challenged in this appeal. Allowing the appeal of the accused and restoring the judgment of the trial court

Held :

Though, the enormity of the crime committed by the accused is relevant for measuring the sentence, but the maximum sentence awarded in one case against the same accused should also be kept in mind while giving the consecutive sentence in the second case although it is grave. The court has to consider the totality of the sentences which the accused has to undergo if the sentences are to be consecutive. The broad expanse of discretion left by legislation to sentencing courts should not be narrowed only to the seriousness of the offence. No single consideration can definitively determine the proper sentence. Generally, it is both proper and customary for courts to give credit to an accused for pleading guilty to the charge. But no credit need be given if the plea of guilty in the circumstance is inevitable or the accused has no alternative but to plead guilty. The accused being caught red-handed is one such instance.

In the first case under the Gold (Control) Act the plea of guilty was inevitable as the gold in question was seized from his possession. The court was, therefore, justified in awarding the maximum sentence. But the second case under the Customs Act was not of that type. There the prosecution had to prove many things. Though there were other accused facing the trial in the same case the accused had pleaded guilty. The trial Magistrate in this case had properly considered all aspects including the plea of guilty and had given good reasons for awarding 4 years' RI. That by itself is quite long enough in a man's life. The High Court was not justified in taking a narrow view of the whole matter with the enormity of the crime on the forefront. *Mohd. Akhtar Hussain* v. *Asstt. Collector of Customs*, (1988) 4 SCC 183: 1988 SCC (Cri) 921: AIR 1988 SC 2143: (1988) 3 Crimes 291.

Bench Strength **2**. Coram: *G.L. Oza* and **K. Jagannatha Shetty**, JJ. [Date of decision: 31-8-1988]

State of Gujarat v. Ibrahim, 1988 Cri LJ 631(Guj), reversed

— **S. 428** *See* Ss. 357, 320, 431 and 428
See also Ss. 374, 386 & 428
See also Ss. 418 and 428
See also Ss. 432 and 428

[6236] — S. 428 — Set-off — Purpose and conditions for applicability of — *Held, per majority (Sethi, J. contra) period of imprisonment undergone by an accused as an undertrial during investigation, inquiry or trial of a particular case, irrespective of whether it was in connection with that very case or any other case, held, can be set-off against the sentence of imprisonment imposed on conviction in that particular case — Words "same case" do not suggest that set-off would be available only if the period undergone as an undertrial prisoner is in connection with the same case in which he* *was later convicted and sentenced to a term of imprisonment — Those words merely denote pre-sentence period of detention undergone by an accused and nothing more*

The respondent-accused was tried in two cases. One was numbered SC No. 230 of 1995 and the other as SC No. 313 of 1996. He was arrested on 21-9-1995 in connection with both cases. The Sessions Judge who convicted him in SC No. 230 of 1995 on 3-4-1998, while sentencing him, directed that the accused would be entitled to the set-off under Section 428 of the Code. Subsequently, a Sessions Court convicted him in SC No. 323 of 1998 on 23-7-1998 and sentenced him to certain terms of imprisonment. The Sessions Judge concerned observed therein that the accused is entitled to the set-off under Section 428 of the Code. The respondent-accused sent an intimation to the jail authorities that he is entitled to be released from jail since he has already served the sentences imposed on him in both cases. But the jail authorities refused to release him on the premise that he could not claim the benefit of set-off in the second case "as he had been given set-off in the first case". The jail authorities did so on the strength of a resolution dated 7-9-1974 adopted by the Government of Maharashtra. That resolution reads thus: "If a prisoner is convicted in different cases and different set-off period is granted by different courts, then in that case maximum period of set-off in one case should be granted to prisoners, as other set-off period will be merged in the set-off which is the maximum." The accused filed a petition in the High Court which was allowed by the impugned order, holding that the convict was entitled to benefit of Section 428 of the Code in both the cases for the period of detention undergone by him during investigation, enquiry and trial. Dismissing the appeal of the State by a 2:1 majority,

Held :

Per Thomas, J.

The section preceding Section 428, i.e. Section 427 indicates that the sentence of life imprisonment imposed on the same person in two different convictions would converge into one and thereafter it would flow through one stream alone. Even if the sentence in one of those two cases is not imprisonment for life but only a lesser term the convergence will take place and the post-convergence flow would be through the same channel. In all other cases, it is left to the court to decide whether the sentences in two different convictions should merge into one period or not. If no order is passed by the court the two sentences would run one after the other. Section 427 is intended to provide amelioration to the prisoner. A penumbra of the succeeding section can be glimpsed through the former provision. (Para 13)

The purpose of Section 428 of the Code is also for advancing amelioration to the prisoner. The section does not contain any indication that if the prisoner was in jail as an undertrial prisoner in a second case the benefit envisaged in the section would be denied to him in respect of the second case. The ideology enshrined in Section 428 was introduced for the first time only in the Code of Criminal Procedure, 1973. From the Statement of Objects and Reasons for bringing the provision it is clear that the convicted person is given the right to reckon the period of his sentence of imprisonment from the date he was in jail as an undertrial prisoner. In other words, the period of his being in jail as an undertrial prisoner would be added as a part of the period of imprisonment to which he is sentenced. (Paras 14 and 15)

There are two requisites postulated in Section 428 of the Code:

(*1*) During the stage of investigation, enquiry or trial of a particular case the prisoner should have been in jail at least for a certain period.

(*2*) He should have been sentenced to a term of imprisonment in that case. (Paras 14 and 15)

If the above two conditions are satisfied then the operative part of the provision comes into play i.e. if the sentence of imprisonment awarded is longer than the period of detention undergone by him during the stages of investigation, enquiry or trial, the convicted person need undergo only the balance period of imprisonment after deducting the earlier period from the total period of imprisonment awarded. The words "if any" in the section amplify that if there is no balance period left after such deduction the convict will be entitled to be set free from jail, unless he is required in any other case. In other words, if the convict was in prison, for whatever reason, during the stages of investigation, enquiry or trial of a particular case and was later convicted and sentenced to any term of imprisonment in that case the earlier period of detention undergone by him should be counted as part of the sentence imposed on him. (Para 16)

Reading Section 428 of the Code in the above perspective, the words "of the same case" are not to be understood as suggesting that the set-off is allowable only if the earlier jail life was undergone by him exclusively for the case in which the sentence is imposed. The period during which the accused was in prison subsequent to the inception of a particular case, should be credited towards the period of imprisonment awarded as sentence in that particular case. It is immaterial that the prisoner was undergoing sentence of imprisonment in another case also during the said period. The words "of the same case" were used to refer to the pre-sentence period of detention undergone by him. Nothing more can be made out of the collocation of those words. It must therefore, be held that Section 428 of the Code permits the accused to have the period undergone by him in jail as an undertrial prisoner set off against the period of sentence imposed on him irrespective of whether he was in jail in connection with the same case during that period. (Paras 18 and 21)

Per Phukan, J. (concurring)

The only question which needs consideration is the true effect of the expression "same case" as appearing in Section 428. The provision is couched in clear and unambiguous language and states that the period of detention which it allows to be set off against the term of imprisonment imposed on the accused on conviction must be one undergone by him during investigation, enquiry or trial in connection with the "same case" in which he has been convicted. Any other period which is not connected with the said case cannot be said to be reckonable for set-off. The view of learned Brother Mr Justice Thomas according to me accords the legislative intent. Acceptance of any other view would necessitate either adding or subtracting words to the existing provision, which would not be a proper procedure to be adopted while interpreting the provision in question. (Para 44)

Per Sethi, J. (dissenting)

Section 427 authorises a court of law to direct the sentence awarded by it to run concurrently, obviously keeping in view the facts and circumstances pertaining to the case of the accused. His detention pending investigation, enquiry and trial in that case or some other cases is relevant consideration while directing the sentences to run consecutively or concurrently. (Para 26)

Section 428 has imposed some restrictions for a convicted person claiming the benefit of set-off which are as under:

(*i*) The imprisonment should be for a term.

(*ii*) The imprisonment should not be one awarded in default of payment of fine.

(*iii*) The period of detention undergone by the accused person during the investigation, enquiry or trial should relate to the *same case* in which he is convicted and sentenced to undergo imprisonment for a term. (Para 30)

A plain reading of Section 428 makes it clear that the period of detention which the section permits to be set off against the term of imprisonment imposed on the accused upon conviction, must be during the investigation, enquiry or trial in connection with the *same* case in which he has been convicted. Generally speaking the words "same case" mean "same transaction" for which the accused has been tried. Two different criminal cases, therefore cannot be treated to be the "the same case" in relation to an accused for the purposes of determining the applicability of Section 428. It does not contemplate the benefit of set-off of the period of detention during investigation, enquiry or trial in any other case. The section does not intend to give any benefit or bonus to an accused guilty of commission of more than one crime by treating the period of detention during investigation, enquiry and trial in one case as that period in the other cases also for the purposes of set-off in the sentence. Such an entitlement requires judicial determination which can be adjudicated by a court awarding the sentence in exercise of its powers under Section 427. (Paras 27, 31 and 29)

The purpose and object of Section 428 is aimed at providing amelioration to a prisoner in a case where he has been in detention for no fault of his. By introducing the provision of set-off, the legislature intended to mitigate, to a great extent, the hardship caused to the accused persons by reason of their being unable to come out on bail during the trial period. While interpreting Section 428, the underlying object of the section cannot be lost sight of. Any set-off claimed under Section 428 has necessarily to be within the terms of the section and not beyond it. No accused person can claim that irrespective of the terms of Section 428, he is entitled to the benefit of set-off in each and every case. (Paras 29 and 30)

The accused tried for various offences in one trial can be held to be entitled to the benefit of Section 428 being tried for the "same case". The words "same case" appearing in the section are ejusdem generis to the preceding words "investigation, enquiry or trial". If the period of detention relating to investigation, enquiry or trial is in a different case, that would not ipso facto entitle the accused to claim the benefit of Section 428 but that may permit him to persuade the court to pass appropriate orders in terms of Section 427, keeping in view the period of his undertrial detention in other cases as well. It is the need of the time that the court convicting the accused should develop a healthy practice of specifying in the order the total period of pre-conviction detention that he has undergone in that case or in some other case for the purposes of awarding the sentence upon conviction. (Para 32)

Therefore, the law laid down by the Supreme Court in *Raghbir Singh case* does not require any review or a new interpretation. Taking any other view would amount to legislating and amending the plain meaning of the section. Giving a contrary interpretation may, in some cases, be against public policy. Any person accused of a heinous crime, in that event would be at liberty to commit minor offences and being an undertrial prisoner in the main case, eventually may not get any imprisonment in law for the minor offences committed by him. It cannot be the object of civilised criminal jurisprudence to encourage the repetition of crime by adoption of an approach of liberality. The commercial approach of sale of commodities providing for purchasing of one expensive item and getting three free with it, cannot be imported into criminal justice system. (Para 36)

The object of criminal justice system is to reform the criminal but not to encourage him for the repetition of crime. Penology has twin objects i.e. (*i*) punishing the criminal to avoid repetition of crime, and (*ii*) to endeavour for his reform wherever possible. The increasing crime in the country has seriously to be taken note of. Crime is an act of warfare against community touching new depths of lawlessness. The object of imposing deterrent sentences is to protect the community against callous criminals; to administer as clearly as possible to others tempted to follow into lawlessness on a war scale that if they are brought to and convicted, deterrent punishment will follow and to deter criminals from repeating their criminal acts in future. (Para 38)

Discretion of treating undertrial detention period may be a relevant consideration for the court while passing orders in terms of Section 427 but the accused cannot be permitted to claim set-off of the undertrial period undergone by him in connection with other cases. Powers of the court to impose sentences should not be allowed to be regulated at the instance or discretion of the accused. (Para 39)

The fallout of the interpretation giving the benefit of detention during investigation, enquiry and trial in one case, in the other case, may also tempt the investigating agencies not to arrest the accused for the commission of the second offence pending conclusion of the trial and passing of sentence in the first case. After conviction and sentence in a criminal case, if arrested in the second case, the accused shall not be entitled to claim the benefit of Section 428 because the sentence, upon conviction, can obviously be not equated with the period of detention contemplated under Section 428. As such, by adopting such a recourse, the courts would not, in any case, advance the interests of justice but actually and factually frustrate its purpose defeating the concept of speedy trial in criminal cases. (Para 40)

In the light of the above view the impugned judgment of the High Court cannot be sustained and is liable to be set aside. (Para 42). *State of Maharashtra* v. *Najakat Alia Mubarak Ali*, (2001) 6 SCC 311: 2001 SCC (Cri) 1106: AIR 2001 SC 2255.

Bench Strength **3**. Coram: **K.T. Thomas**[1], **R.P. Sethi**[2] and **S.N. Phukan**[3], JJ. [Date of decision: 9-5-2001]

Raghbir Singh v. State of Haryana, (1984) 4 SCC 348: 1984 SCC (Cri) 616, overruled

K.C. Das v. State, 1979 Cri LJ 362: ILR (1978) 2 Del 341 (Del); Lalrinfela v. State of Mizoram, 1982 Cri LJ 1793 (Gau); Gedala Ramulu Naidu v. State of A.P., 1982 Cri LJ 2186 (AP); Chinnasamy v. State of T.N., 1984 Cri LJ 447: 1983 MLJ (Cri) 531 (Mad), approved

Najakat Alia Mubarak Ali v. Supdt., Thane Central Prison, (1999) 1 Mah LJ 334, affirmed

[6237] — S. 428 — Applicability — Benefit of set-off under — Is only available in relation to period of detention already undergone in respect of the same case — *Hence, a convict in a given case cannot be granted set-off against periods of detention/imprisonment undergone by him in connection with other cases*

The short point involved was whether a person, who has been convicted in several cases and has suffered detention or imprisonment in connection therewith, would be entitled to the benefit of set-off in a separate case for the period of detention or imprisonment undergone by him in the other cases.

Answering the said question in the negative, *Held* :

The wording of Section 428 CrPC is clear and unambiguous. The heading of the section itself indicates that the *period of detention undergone by the accused is to be set off against the sentence of imprisonment*. The section makes it clear that the period of sentence on conviction is to be reduced by the extent of *detention* already undergone by the convict during investigation, enquiry or trial *of the same case*. It is quite clear that the period to be set off relates only to pre-conviction detention and not to imprisonment on conviction. (Paras 12 and 14). *Atul Manubhai Parekh* v. *CBI*, (2010) 1 SCC 603.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 24-11-2009]

Maliyakkal Abdul Azeez v. Collector, (2003) 2 SCC 439: 2003 SCC (Cri) 551; Govt. of A.P. v. Anne Venkatesware, (1977) 3 SCC 298: 1977 SCC (Cri) 508; Raghbir Singh v. State of Haryana, (1984) 4 SCC 348: 1984 SCC (Cri) 616; Champalal Punjaji Shah v. State of Maharashtra, (1982) 1 SCC 507: 1982 SCC (Cri) 265, followed

State of Maharashtra v. Najakat Alia Mubarak Ali, (2001) 6 SCC 311: 2001 SCC (Cri) 1106, explained and limited

[6238] — S. 428 — Benefit of set-off — Entitlement to — *Appellant-accused convicted under Ss. 302, 307 and 333 IPC and sentenced to life imprisonment — While sentencing him, trial court, on basis of* Kartar Singh case, *(1982) 3 SCC 1, did not grant him benefit of set-off under S. 428 — Sustainability — Held,* Kartar Singh *specifically overruled by* Bhagirath case, *(1985) 2 SCC 580 — Hence, appellant entitled to benefit of set-off under S. 428 — Penal Code, 1860, Ss. 302, 307 and 333* (Paras 3 and 4). *Ranjit Singh* v. *State of Punjab*, (2010) 12 SCC 506.

Bench Strength **2**. Coram: *Dalveer Bhandari* and *A.K. Patnaik*, JJ. [Date of decision: 4-1-2010]

Bhagirath v. Delhi Admn., (1985) 2 SCC 580: 1985 SCC (Cri) 280, relied on

Kartar Singh v. State of Haryana, (1982) 3 SCC 1: 1982 SCC (Cri) 522, held, overruled

[6239] — Ss. 428 and 427 — Situations dealt with by said two provisions — Distinguished (Para 16). *Atul Manubhai Parekh* v. *CBI*, (2010) 1 SCC 603.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 24-11-2009]

[6240] — Ss. 428 and 421 — No distinction between a substantive sentence of imprisonment and a sentence of imprisonment in default of payment of fine

The distinction sought to be made between a substantive sentence of imprisonment and an imprisonment in default of payment of fine is unfounded. When an accused person is sentenced to imprisonment for a term in default of payment of fine, it is as much a sentence of imprisonment imposed upon him as a substantive sentence of imprisonment.

Having regard to the object of S. 428 no distinction can be made in principle between a substantive sentence of imprisonment and a sentence of imprisonment in default of payment of fine and both must be held to be within the scope of intendment of S. 428. *Boucher Pierre Andre* v. *Supdt., Central Jail*, (1975) 1 SCC 192: 1975 SCC (Cri) 70: AIR 1975 SC 164: 1975 Cri LJ 182.

Bench Strength **2**. Coram: *Y.V. Chandrachud* and **P.N. Bhagwati**, JJ. [Date of decision: 21-11-1974]

[6241] — S. 428 — In applying the set-off it is immaterial that the trial court or the appellate court has awarded a lesser sentence in consideration of the period of imprisonment undergone as undertrial

Section 428 is absolute in its terms. It provides for set-off of the pre-conviction detention of an accused person against the term of imprisonment imposed on him on conviction, whatever be the term of imprisonment imposed and whatever be the factors taken into account by the Court while imposing the term of imprisonment. It does not say that where the pre-conviction detention of an accused person has already been taken into account by the Court while imposing the term of imprisonment on conviction, no set-off of such pre-conviction detention shall be permitted, and if the Legislature has not introduced any such exception, it cannot be read into the section by a process of judicial construction. To read such an exception into the section would be to do violence to the language of the section and to read words which are not there. That is clearly impermissible according to well-recognized canons of construction. *Boucher Pierre Andre* v. *Supdt., Central Jail*, (1975) 1 SCC 192: 1975 SCC (Cri) 70: AIR 1975 SC 164: 1975 Cri LJ 182.

Bench Strength **2**. Coram: *Y.V. Chandrachud* and **P.N. Bhagwati**, JJ. [Date of decision: 21-11-1974]

[6242] — S. 428 — Life convicts, held, not entitled to the benefit of set-off under — *Remission of their sentence under S. 432, CrPC or relevant remission jail rules will not make S. 428 applicable — 'Imprisonment for a term' does not include 'imprisonment for life' — Penal Code, 1860, S. 57 — Punjab Jail Manual, Para 516-B — Haryana Government Order No. 1953/59/G1/G.3/T-19(11), dated February 2, 1981 — Constitution of India — Arts. 14 and 21*

Section 428, CrPC does not apply to those convicted for "imprisonment for life". It is applicable only in cases of accused person who have, on conviction, been *sentenced to imprisonment for a term* and the Penal Code as well as the Criminal Procedure Code make and maintain a clear distinction between 'imprisonment for a term' and 'imprisonment for life' in that the former means imprisonment for a definite or fixed period while the latter means imprisonment for the remainder of the natural life of the convict. The periods of life term mentioned in S. 57, IPC or the remission rules contained in Jail Manuals (e.g. Para 516-B of Punjab/Haryana Jail Manual) are irrelevant in this context.

The grant of remission under S. 432, CrPC or under the relevant remission rules in Jail Manuals, do not convert sentences for life imprisonment to 'sentences of imprisonment for a term'. An order of remission passed by the State Government or by the jail authorities does not interfere with either the conviction or the sentence recorded by the Court which remains intact.

Section 428 will come into play where 'imprisonment for a term' is awarded on conviction by a court and not where the convict's sentence becomes a sentence for a term on remission being granted by the Executive. *Kartar Singh* v. *State of Haryana*, (1982) 3 SCC 1: 1982 SCC (Cri) 522: AIR 1982 SC 1439: 1982 Cri LJ 1772.

Bench Strength **3**. Coram: **V.D. Tulzapurkar**, *Baharul Islam* and *R.B. Misra*, JJ. [Date of decision: 26-8-1982]

Overruled in Bhagirath v. Delhi Admn., (1985) 2 SCC 580

[6243] — S. 428 — Period elapsed in inquiry or trial in one case while undergoing sentence of imprisonment in an earlier case cannot be set off against the term of imprisonment imposed in the latter case — *Punjab and Haryana High Court's Instruction No. 29442 Rr. VI.V. 38, dated November 29, 1975, held, valid*

In order to secure the benefit of S. 428 of the Code, the prisoner should show that he had been detained in prison for the purpose of investigation, inquiry or trial of the case in which he is later on convicted and sentenced. But he cannot claim a double benefit under S. 428 i.e. the same period being counted as part of the period of imprisonment imposed for committing the former offence and also being set off against the period of imprisonment imposed for committing the latter offence as well. If a person is undergoing the sentence of imprisonment imposed by a court of law on being convicted of an offence in one case during the period of investigation, inquiry or trial of some other case, he cannot claim that the period occupied by such investigation, inquiry or trial should be set off against the sentence of imprisonment to be imposed in the latter case even though he was under detention during such period. In such a case the period of detention is really a part of the period of imprisonment which he is undergoing having been sentenced earlier for another offence. *Raghbir Singh* v. *State of Haryana*, (1984) 4 SCC 348: 1984 SCC (Cri) 616: AIR 1984 SC 1796.

Bench Strength **2**. Coram: **E.S. Venkataramiah** and *Sabyasachi Mukharji*, JJ. [Date of decision: 13-9-1984]

Overruled in (2001) 6 SCC 311, 321

[6244] — S. 428 — 'Period of detention' — Preventive detention after conviction under criminal law on identical facts set aside by appellate court — *Held, detention cannot be considered as one pursuant to conviction or that of an under-trial and hence period of detention cannot be set off against the sentence of imprisonment imposed on the detenu in the criminal case*

Expression 'period of detention' in S. 428 does not include the detention under preventive detention laws such as the Preventive Detention Act or MISA. It is only in circumstances where the prisoner would have unquestionably been in detention in connection with a criminal case if he had not been preventively detained, his preventive detention might be reckoned as detention as an under-trial prisoner or detention pursuant to conviction, for the purposes of S. 428. The present case is, however, altogether different where the petitioner had been acquitted by the High Court before any of the orders of detention were made against him. Thus there can be no question of the detention being considered as detention pursuant to conviction; nor can the detention be treated as that of an undertrial. *Champalal Punjaji Shah* v. *State of Maharashtra*, (1982) 1 SCC 507: 1982 SCC (Cri) 265: AIR 1982 SC 791: 1982 Cri LJ 612: 1982 MLJ (Cri) 334.

Bench Strength **3**. Coram: **O. Chinnappa Reddy**, *A.P. Sen* and *Baharul Islam*, JJ. [Date of decision: 27-1-1982]

[6245] — S. 428 — Set off — Persons undergoing sentence of life imprisonment entitled to set off under S. 428 if an order under S. 432 or 433 is made — *Expression 'imprisonment for a term' includes life imprisonment*

A person who is sentenced to life imprisonment is sentenced to imprisonment for a 'term'. The word 'term' does not necessarily imply concept of ascertainability or conveys a sense of certainty. Ss. 53, 53-A(4)*(a)* and *(b)*, 57 or 65, IPC do not militate against this conclusion, nor the words "for a term which may extend to one-half of the imprisonment for life" in S. 511, IPC support this conclusion. The expressions 'imprisonment for life' and 'imprisonment for a term' are not used either in the Penal Code or in the CrPC in contradistinction with each other.

Usually, those who are liable to be sentenced to imprisonment for life are not enlarged on bail. The benefit of S. 428 must be available to them otherwise it would amount to withdrawal of application of a benevolent provision from a large majority of cases in which such benefit would be needed and justified on equitable considerations.

The modalities for working out the provisions of S. 428 would be that by virtue of S. 433-A, where a sentence of imprisonment for life is imposed on a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under S. 433 to one of imprisonment for life, such person cannot be released from prison unless he has served at least fourteen years of imprisonment. But S. 433-A being prospective in operation, it cannot apply to cases which were decided by the trial court before December 18, 1978, being the date on which the section came into force. The question of setting off the period of detention undergone by an accused as an undertrial prisoner against the sentence of life imprisonment can arise only if an order is passed by the appropriate authority under S. 432 or S. 433. In the absence of such order, passed generally or specially, and apart from the provisions, if any, of the relevant Jail Manual, imprisonment for life would mean, according to the rule in *Gopal Vinayak Godse*, imprisonment for the remainder of life. *Bhagirath* v. *Delhi Admn.*, (1985) 2 SCC 580: 1985 SCC (Cri) 280: AIR 1985 SC 1050: 1985 Cri LJ 1179.

Bench Strength **5**. Coram: **Y.V. Chandrachud, C.J.** and *D.A. Desai, O. Chinnappa Reddy, E.S. Venkataramiah* and *Ranganath Misra*, JJ. [Date of decision: 16-4-1985]

[6246] — S. 428 — Set-off — Accused sentenced to 10 years' RI in TADA — *In view of the fact that sentence imposed on accused in another case would be completing almost with the sentence imposed in instant case, plea for reduction of sentence held to be of no use — However, set-off benefit denied by the trial court permitted provided the accused was entitled to it as per the law declared by the Supreme Court. Mohd. Aslam* v. *State of Maharashtra*, (2001) 9 SCC 362.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.C. Lahoti*, JJ. [Date of decision: 27-4-2000]

[6247] — S. 428 — Set-off — Period of detention under the preventive detention laws (COFEPOSA Act in this case) — *Held, cannot be set off in terms of S. 428 against imprisonment imposed under any statute — Object behind incorporation of S. 428 in CrPC, conditions required for entitlement to the benefit of set-off as well as nature of detention under the preventive detention laws, considered — Customs Act, 1962, S. 135*

In the instant petition the petitioner contended that he was entitled to the benefit of set-off as provided under Section 428 CrPC for the period of detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

Dismissing the petition,

Held :

Section 428 of the Code was brought on the statute-book for the first time in 1973. It was incorporated in the light of the proposal put forward by the Joint Select Committee. It was noticed by the Committee that in many cases the accused persons are kept in prison for a very long period as undertrial prisoners and in some cases the period spent in jail by undertrial prisoners far exceeded the sentence of imprisonment ultimately awarded. It was also noticed by the Committee with concern that a large number of prisoners in the overcrowded jails of the country were undertrial prisoners. The provision was introduced to remedy the unsatisfactory state of affairs, by providing for setting off the period of detention as undertrial prisoners against the sentence of imprisonment imposed on the accused. (Para 9)

The two requisites postulated in Section 428 of the Code are that (*i*) during the stage of investigation, enquiry or trial of a particular case the prisoner should have been in jail at least for a certain period, and (*ii*) he should have been sentenced to a term of imprisonment in that case. If these two conditions are satisfied then the operative part of the provision comes into play. (Para 8)

It is well settled that detention under the preventive detention laws is not punitive but is essentially a precautionary measure intended to prevent and intercept a person before he commits an infra-active act which he had done earlier. (Para 14)

Thus, the petition is without any merit and is dismissed. (Para 15). *Maliyakkal Abdul Azeez* v. *Asstt. Collector*, (2003) 2 SCC 439: 2003 SCC (Cri) 551: AIR 2003 SC 928: (2003) 113 Comp Cas 632: 2003 Cri LJ 1215: (2003) 1 KLT 557.

Bench Strength **2**. Coram: *Shivaraj V. Patil* and *Arijit Pasayat*, JJ. [Date of decision: 17-1-2003]

Govt. of A.P. v. Anne Venkatesware, (1977) 3 SCC 298: 1977 SCC (Cri) 508; Champalal Punjaji Shah v. State of Maharashtra, (1982) 1 SCC 507: 1982 SCC (Cri) 265; R. v. Halliday, 1917 AC 260: 116 LT 417: 86 LJKB 1119 (HL); Kubic Darusz v. Union of India, (1990) 1 SCC 568: 1990 SCC (Cri) 227, relied on

[6248] — S. 428 — Set-off of period of detention undergone during investigation, inquiry or trial against sentence of imprisonment — Benefit of, under S. 428 — *Held, not available to person tried and convicted by Security Force Court under BSF Act — Nor such person entitled to any compensation for denial of set-off of period of pre-trial detention in absence of any provision like R. 27 of Army Rules requiring obtaining of approval of higher authorities if an undertrial is to be detained during court-martial proceedings for more than three months — R. 39(2) of BSF Rules only requires sending of delay report — Where the member of BSF was convicted for offence under S. 307 IPC but having regard to mitigating circumstance he was sentenced to only one year's RI though sentence of imprisonment up to 10 years could be awarded for such offence, Supreme Court would not give any direction on ground of doing complete justice under Art. 142 for monetary compensation for long detention (about one year) as undertrial accused — However, it is desirable that a provision regarding* *set-off similar to S. 169-A of Army Act and a provision similar to R. 27 of Army Rules should be incorporated in BSF Act and Rules — Border Security Force Act, 1968 — Benefit of set-off of period of detention undergone during investigation, inquiry or trial against sentence of imprisonment not available to person tried and convicted by Security Court Force under the Act — Border Security Force Rules, 1969, R. 39(2) — Army Act, 1950, S. 169-A — Army Rules, 1954, R. 27(3)(ii) — Constitution of India, Arts. 142, 134, 136. Union of India* v. *Anand Singh Bisht*, (1996) 10 SCC 153: 1996 SCC (Cri) 1198: AIR 1997 SC 361.

Bench Strength **2**. Coram: *G.N. Ray* and *B.L. Hansaria*, JJ. [Date of decision: 28-8-1996]

[6249] — S. 428 — Set-off of pre-conviction period — Retrospective operation of section — *Person convicted before the coming into force of the new CrPC is entitled to get the benefit of S. 428 of the new CrPC. Hardev Singh* v. *State of Punjab*, (1975) 3 SCC 731: 1975 SCC (Cri) 186: AIR 1975 SC 179: 1975 MLJ (Cri) 369: (1975) Cri LJ 243.

Bench Strength **2**. Coram: *P.N. Bhagwati* and **N.L. Untwalia**, JJ. [Date of decision: 4-12-1974]

[6250] — S. 428 — Term of imprisonment completed — Petition becomes infructuous — *Question of set-off of period during which petitioner was in detention prior to conviction not considered. Major Dharam Paul Sood* v. *Union of India*, 1990 Supp SCC 652: 1991 SCC (Cri) 157(2).

Bench Strength **2**. Coram: *G.L. Oza* and *M.H. Kania*, JJ. [Date of decision: 3-12-1987]

[6251] — S. 428 — Undertrial detention cannot be equated with imprisonment on conviction

Section 428 provides that the period of detention of an accused as an undertrial prisoner shall be set off against the term of imprisonment imposed on him on conviction. The section only provides for a "set-off", it does not equate an "undertrial detention or remand detention with imprisonment on conviction". The provision as to set-off expresses a legislative policy; this does not mean that it does away with the difference in the two kinds of detention and puts them on the same footing for all purposes. *Govt. of A.P.* v. *Anne Venkatesware*, (1977) 3 SCC 298: 1977 SCC (Cri) 508: AIR 1977 SC 1096: (1977) 3 SCR 7: 1977 Cri LJ 935.

Bench Strength **2**. Coram: *P.N. Bhagwati* and **A.C. Gupta**, JJ. [Date of decision: 17-2-1977]

[6252] — Ss. 428, 2(g) and (h) — Set off of detention as under trial — *Conviction and sentence by General Court-martial under Army Act — Nothing on record to show any investigation or enquiry under the Code — S. 428, held, not applicable to such convicts even if lodged in civil jail — Army Act, 1950. Ajit Kumar* v. *Union of India*, 1987 Supp SCC 493: 1988 SCC (Cri) 101: AIR 1988 SC 283.

Bench Strength **2**. Coram: *B.C. Ray* and **K. Jagannatha Shetty**, JJ. [Date of decision: 25-11-1987]

[6253] — Ss. 428, 5 and 475, 2(h), (g) — Persons sentenced to imprisonment by Court-martial not entitled to set off under S. 428 — *Provisions of the Code inapplicable to proceedings before Court-martial — Army Act, 1950, S. 167 — Air Force Act, 1950, S. 164 — Navy Act, 1957, S. 151*

The effect of S. 5, CrPC is to render the provisions of the Code inapplicable in respect of all matters covered by any special law. The relevant Chapters of the Army Act, the Navy Act and the Air Force Act embody a completely self-contained comprehensive Code. These Acts contain elaborate and comprehensive provisions dealing with all the stages commencing from the investigation of offences and the apprehension and detention of offenders and terminating with the execution of sentences and the grant of remissions, suspensions etc. They, therefore, constitute a special law in force conferring special jurisdiction and powers on Court-martial and prescribing a special form of procedure for the trial of the offences under those Acts. Section 475, CrPC furnishes a conclusive indication that the provisions of the Code are not intended to apply in respect of proceeding before the Court-martial. Inasmuch as S. 167 of the Act specifically deals with the topic of the date of commencement of the sentence of imprisonment, there is absolutely no scope for invoking the aid of S. 428, CrPC in respect of prisoners convicted by Court-martial under the Act. Section 428 provides for set off of the period of detention undergone by an accused person during "the investigation, inquiry or trial" of the same case before the date of conviction. In the case of persons tried by Court-martial, there is neither any investigation, nor inquiry, nor trial under the Code. As such the provision for set off contained in S. 428 of the Code of Criminal Procedure can never be attracted in the case of persons convicted and sentenced by Court-martial to undergo imprisonment. *Ajmer Singh* v. *Union of India*, (1987) 3 SCC 340: 1987 SCC (Cri) 499: AIR 1987 SC 1646: 1987 Cri LJ 1877.

Bench Strength **2**. Coram: *A.P. Sen* and **V. Balakrishna Eradi**, JJ. [Date of decision: 29-4-1987]

Criminal Writ No. 40 of 1975, decided on December 12, 1975; P.P. Chandrasekaran v. Government of India, 1977 Cri LJ 677 (Mad); T.S. Ramani v. Superintendent of Prisons, 1984 Cri LJ 492 (Mad) and F.R. Jesuratnam v. Chief of Air Staff, 1976 Cri LJ 65 (Del), approved

*Subramonian v. Officer Commanding, Armoured Static Workshop, 1979 Cri LJ 617 (Ker) and Anand Singh Bishit v. Union of India, 1986 Cri LJ 563 (Cal), **overruled***

[6254] — S. 428 — Applicability — Set off of period of pre-trial detention against period of sentence — *Held, not available where appellant convicted and sentenced by court-martial long before introduction of S. 169-A, Army Act — There being no investigation and trial under CrPC, S. 428 thereof not attracted — Army Act, 1950, S. 169-A (introduced in 1992). Bhuwneshwar Singh* v. *Union of India*, (1993) 4 SCC 327: 1994 SCC (Cri) 1.

Bench Strength **2**. Coram: *J.S. Verma* and **Dr. A.S. Anand**, JJ. [Date of decision: 1-9-1993]

[6255] — Ss. 428 and 5 — Applicability to Army personnel — *Army Act being a special enactment S. 428 not applicable to persons convicted and sentenced under the Act even if lodged in civil prison — Army Act, 1950, Ss. 2, 167, 169. Ajit Kumar* v. *Union of India*, 1987 Supp SCC 493: 1988 SCC (Cri) 101: AIR 1988 SC 283.

Bench Strength **2**. Coram: *B.C. Ray* and **K. Jagannatha Shetty**, JJ. [Date of decision: 25-11-1987]

Bhawan Singh v. Assistant Superintendent, (1977) 79 Punj LR 19 ; F.R. Jesuratnam v. Chief of Air Staff, 1976 Cri LJ 65 and P.P. Chandrasekaran v. Government of India, 1977 Cri LJ 677, approved

*Subramonian v. O.C. Armoured Static Workshop, 1979 Cri LJ 617, **overruled***

[6256] — Ss. 428 and 433 — Comparison between

Section 428 contemplates a conviction by the court and it operates at the time of the pronouncement of the sentence by the court, whereas Section 433 deals with commutation by the State authority. Consequences that follow from the provisions of Section 433 do not affect Section 428. (Para 11). *State (Govt. of NCT of Delhi)* v. *Prem Raj*, (2003) 7 SCC 121: 2003 SCC (Cri) 1586.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 5-8-2003]

[6257] — Ss. 428 and 484(2)(b) — Set-off of period of imprisonment undergone as undertrial — *Applicability to convictions held prior to the coming into force of the new Code of 1973 for which the sentence still continuing — Does not amount to giving retrospective effect — Effect of fiction created under — Consequence to follow in respect of past conviction*

Section 428, on a plain natural construction of its language, posits for its applicability a fact situation which is described by the clause "where an accused person has, on conviction, been sentenced to imprisonment for a term". There is nothing in this clause which suggests, either expressly or by necessary implication, that the conviction and sentence must be after the coming into force of the new Code of Criminal Procedure. The language of the clause is neutral.

Therefore, where an accused person has been convicted and he is still serving his sentence at the date when the new Code of Criminal Procedure came into force, S. 428 would apply and he would be entitled to claim that the period of detention undergone by him during the investigation, inquiry of trial of the case should be set off against the term of imprisonment imposed on him and he should be required to undergo only the remainder of the term.

On this interpretation, the section is not given any retrospective effect. The section operates prospectively on the sentence which yet remains to be served.

Also by S. 484(2)(*b*) sentence of imprisonment and fine passed against the petitioner under the provisions of the old Code of Criminal Procedure must, therefore, be deemed to have been passed under the corresponding provisions of the new Code of Criminal Procedure. The legal fiction created by that section must be given full effect. *Boucher Pierre Andre* v. *Supdt., Central Jail*, (1975) 1 SCC 192: 1975 SCC (Cri) 70: AIR 1975 SC 164: 1975 Cri LJ 182.

Bench Strength **2**. Coram: *Y.V. Chandrachud* and **P.N. Bhagwati**, JJ. [Date of decision: 21-11-1974]

[6258] — Ss. 428 and 432 — Where accused sentenced to life imprisonment, period of imprisonment undergone as undertrial prisoner not liable to be set off — *But such period can be taken into account while considering premature release on completion of 14 years under R. 591(1) of W.B. Jail Code and on completion of 20 years under Pt. IV, R. 20 thereof — Remission earned by the prisoner must also be taken into account for determining whether case falls within R. 591(1) or Pt. IV, R. 29 — State Government directed to consider for remission of sentences and grant relief accordingly in appropriate cases and meanwhile to release on parole prisoners who on the basis of remission earned and the period undergone as undertrial prisoners, suffered imprisonment for a period of over 20 years — Prisons, Prisoners and Probation of Offenders — W.B. Jail Code, R. 591(1) and Pt. IV, R. 29. Suklal Hansda* v. *State of W.B.*, (1986) 4 SCC 433: 1986 SCC (Cri) 497.

Bench Strength **3**. Coram: *P.N. Bhagwati, R.S. Pathak* and *A.N. Sen*, JJ. [Date of decision: 3-3-1983]

[6259] — S. 428 — Accused convicted by Sessions Court and filing appeal before High Court prior to coming into force of the new Code of 1973 — *Held, High Court erred in disallowing* *benefit of S. 428 to the accused after introduction of the new Code. Mer Dhana Sida* v. *State of Gujarat*, (1985) 1 SCC 200: 1985 SCC (Cri) 54: AIR 1985 SC 386: 1985 Cri LJ 660.

Bench Strength 2. Coram: **D.A. Desai** and *Ranganath Misra*, JJ. [Date of decision: 29-11-1984]

Boucher Pierre Andre v. Superintendent, Central Jail, Tihar, New Delhi, (1975) 1 SCC 192: 1975 SCC (Cri) 70, followed

[6260] — S. 428 — Accused detained in jail in pursuance of non-bailable warrant during pendency of the appeal — *Held, entitled to set-off. State of U.P.* v. *Ram Kishun*, (1976) 3 SCC 449: 1976 SCC (Cri) 443: AIR 1976 SC 2016: (1976) 3 SCR 379: 1976 Cri LJ 1559.

Bench Strength 2. Coram: *P.N. Bhagwati* and **P.K. Goswami**, JJ. [Date of decision: 13-2-1976]

— S. 431 *See* Ss. 357, 320, 431 and 428
See also Ss. 357, 421 and 431
See also Ss. 357 and 421 & 431 and 374 and 389 & 387
See also Ss. 357(3) and 431
— S. 431 r/w S. 64 *See* Ss. 357(3), 421 and 431 r/w S. 64

— **S. 432** *See also* Ss. 401 and 402, Criminal Procedure Code, 1898, pp. 1179 et seq. in Vol. 2

— S. 432 *See* Ss. 389, 432 & 433
See also Ss. 428 and 432
See also Ss. 433 and 432
See also Ss. 433, 432 and 433-A
See also Ss. 433-A, 432 and 433

[6261] — S. 432 — Accused-appellant aged 18 years inflicting fatal knife blows on the deceased in a sudden quarrel — *Although his conviction under S. 302, IPC upheld but in the circumstances he deserves consideration by State Government for action under S. 432. Vinod Mohan Avasthi* v. *State of U.P.*, (1982) 2 SCC 146: 1982 SCC (Cri) 372.

Bench Strength 2. Coram: *R.S. Pathak* and **A.D. Koshal**, JJ. [Date of decision: 19-3-1980]

[6262] — S. 432 — Governor's power to grant pardon or remission of punishment — Factors to be considered while exercising power — Scope of judicial review — Grounds for Court's interference — *Where accused is convicted under S. 302 for murder and is sentenced to life imprisonment, period of sentence actually undergone by him and his conduct in prison along with other relevant facts should be brought to the notice of the Governor — In absence of such materials and having regard to the undue haste with which his case had been processed, held, order granting pardon was vitiated by non-application of mind and Governor had not been properly advised with all the relevant material — Hence the order liable to be quashed — Constitution of India, Arts. 161 and 32*

The respondent *S* along with four other accused persons belonging to a political party were tried for having committed offence under Section 302 read with Sections 149 and 120-B as well as under Sections 392, 148, 452 and 323 of the Indian Penal Code. The trial court convicted all the five accused but on appeal the High Court acquitted *S* and two other accused. The State of Haryana preferred appeal against acquittal of the said three accused. The Supreme Court by its judgment dated 10-12-1998 set aside acquittal of *S* and another accused and directed them to surrender to the custody in order to serve out the remaining part of their sentence. But *S* instead of surrendering to serve the sentence, immediately filed an application on 15-1-1999 before the Governor invoking his jurisdiction under Article 161. The Secretary to the Governor addressed a letter to the Secretary to the Government of Haryana, Department of Jails requesting for a report in the matter to be placed before the Governor of Haryana. The appropriate authority, namely, Joint Secretary to the Government in the Home Department indicated in his note that the opinion of the Legal Remembrancer should be obtained as to whether this is a fit case for exercising the power under Article 161 of the Constitution or not. The opinion of the Legal Remembrancer was then placed before the Minister concerned and finally the Chief Minister agreed with the views of the Legal Remembrancer and came to the conclusion that this was a fit case where discretion given under Article 161 be exercised and relief prayed for be granted. On the basis of the aforesaid advice of the Chief Minister the Governor finally granted pardon by his order dated 25-1-1999 stating that the Governor was pleased to grant pardon remitting the unexpired portion of sentence passed on *S* confined in Central Jail, Hissar. But as a matter of fact *S* was not confined in the Central Jail, Hissar on that date and on the other hand after obtaining the order of pardon and remission of sentence to give an appearance of compliance with the order of the Supreme Court *S* surrendered before the Court of Sessions Judge, Hissar on 2-2-1999 and also was released on the very same day in view of the order of the Governor dated 25-1-1999. The brother and the widow of the man who was murdered filed a writ petition before the Supreme Court assailing the Governor's order dated 25-1-1999 inter alia on the ground that the power had been exercised without application of mind, and on extraneous consideration and even without the aid and advice of the Government, namely, the Minister concerned. Allowing the writ petition and quashing the order dated 25-1-1999,

Held :

The power of granting pardon under Article 161 is very wide and does not contain any limitation as to the time on which and the occasion on which and the circumstances in which the said powers could be exercised. But the said power being a constitutional power conferred upon the Governor by the Constitution is amenable to judicial review on certain limited grounds. The Court, therefore, would be justified in interfering with an order passed by the Governor in exercise of power under Article 161 of the Constitution if the Governor is found to have exercised the power himself without being advised by the Government or if the Governor transgresses the jurisdiction in exercising the same or it is established that the Governor has passed the order without application of mind or the order in question is a mala fide one or the Governor has passed the order on some extraneous consideration. (Para 4)

When an accused is convicted of the heinous offence of murder and is sentenced to imprisonment for life the authority who has been conferred with power to grant pardon and remission of sentence under Article 161 of the Constitution must be made aware of the period of sentence in fact undergone by the said convict as well as his conduct and behaviour while he has been undergoing the sentence which would all be germane considerations for exercise of the power. Not being aware of such material facts would tend to make an order of granting pardon arbitrary and irrational. (Para 5)

In the present case the Governor had not been made aware of as to what was the total period of sentence the accused had really undergone, and if at all had undergone any sentence. The file concerned produced before the Supreme Court shows the uncanny haste with which the file had been processed and the unusual interest and zeal shown by the authorities in the matter of exercise of power to grant pardon. Moreover, how the order in question could show that the prisoner was in jail while in fact he was free at large and had not surrendered to serve the sentence notwithstanding the positive direction of the Supreme Court dated 10-12-1998, disposing of the appeal filed by the State. If by order dated 25-1-1999, the accused has already been granted pardon and there has been a remission of the sentence then there was no reason for him to go and surrender before the District Judge on 2-2-1999. However, there is no substance in the contention that the Governor passed the order on his own without being advised by the Council of Ministers. (Paras 6 and 7)

Therefore, the order in question has been vitiated and the Governor has not been advised properly with all the relevant materials and, the same is, therefore, liable to be quashed. (Para 8). *Satpal* v. *State of Haryana*, (2000) 5 SCC 170: 2000 SCC (Cri) 920: AIR 2000 SC 1702: 2000 Cri LJ 2297.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *U.C. Banerjee*, JJ. [Date of decision: 1-5-2000]

Kehar Singh v. Union of India, (1989) 1 SCC 204: 1989 SCC (Cri) 86; Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112; Swaran Singh v. State of U.P., (1998) 4 SCC 75: 1998 SCC (Cri) 804, relied on

[6263] — Ss. 432, 433 and 433-A — Applicable remission policy — Policy existing on date of conviction of accused or policy existing on date of consideration of his case by appropriate authority — Legitimate expectation of convict — Relevance — *Of the possibly applicable policies, the one which is more liberal or beneficial to the convict should be applied — State while exercising power of remission should construe any available benefit liberally in favour of convict — On the one hand there is an expectation perceived by convict at the time of his conviction that his case for premature release would be considered after serving the sentence prescribed in short-sentencing policy applicable on date of conviction — On the other hand, in case a more liberal policy prevails on date of consideration of case of "lifer" for premature release, he should be given benefit thereof —* Mahender Singh, *(2007) 13 SCC 606 and* Bhup Singh, *(2009) 2 SCC 268 harmonised with* Balwan, *(1999) 7 SCC 355 — Respondent prisoner already serving 15 years of imprisonment and falling in Category 3 of prisoners under applicable rules as he had not indulged in any organised crime — Hence, appellant State directed to calculate sentence for purposes of remission as per the more liberal remission policy, which in this case was the one in existence on date of conviction i.e. policy dt. 4-2-1993*

The respondent was convicted vide judgment and order dated 20-5-1999 under Sections 302, 148 and 149 IPC and sentenced to life imprisonment. The policy which was in existence at that point of time was dated 4-2-1993. The respondent, having served more than 10 years' imprisonment, approached the High Court that in spite of having undergone the sentence as per the policy dated 4-2-1993, his case for premature release was not being considered in view of the new policy of short-sentencing, introduced on 13-8-2008. The High Court placing reliance on the judgments of the Supreme Court in *Mahender Singh case*, (2007) 13 SCC 606 and *Bhup Singh case*, (2009) 2 SCC 268 came to the conclusion that the case of the respondent for premature release was to be considered in the light of the short-sentencing policy existing on the date of his conviction and thus, a direction was issued to the State authorities to consider his case for premature release in view of the policy dated 4-2-1993.

A different view had been taken in *State of Haryana* v. *Balwan*, (1999) 7 SCC 355. So in view of conflicting views on the question, the matter came to be referred to this Bench.

Affirming the High Court's decision and dismissing the appeal,

Held :

Articles 72 and 161 of the Constitution provide for a residuary sovereign power, thus, there can be nothing to debar the authority concerned to exercise such power, even after rejection of one clemency petition, if the changed circumstances so warrant and in exceptional circumstances, variation from the policy is permissible. Thus, it is evident that the clemency power of the executive is absolute and remains unfettered for the reason that the provisions contained under Article 72 or 161 of the Constitution cannot be restricted by the provisions of Sections 432, 433 and 433-A CrPC though the authority has to meet the requirements of rule of law while exercising the clemency power. To say that clemency power under Articles 72/161 of the Constitution cannot be exercised by the President or the Governor, as the case may be, before a convict completes the incarceration period provided in the short-sentencing policy, even in an exceptional case, would be mutually inconsistent with the theory that clemency power is unfettered. The expectancy of period of incarceration is determined soon after the conviction on the basis of the applicable laws and the established practices of the State. When a short-sentencing scheme is referable to Article 161 of the Constitution, it cannot be held that the said scheme cannot be pressed in service. Even if a life convict does not satisfy the requirement of remission rules/short-sentencing schemes, there can be no prohibition for the President or the Governor of the State, as the case may be, to exercise the power of clemency under the provisions of Articles 72 and 161 of the Constitution. Right of the convict is limited to the extent that his case be considered in accordance with the relevant rules, etc. He cannot claim premature release as a matter of right. (Paras 34 to 39)

The earlier policies including the policy dated 4-2-1993 refer to the exercise of powers under Article 161 of the Constitution whereas the policy dated 13-8-2008 is in exercise of the powers under Section 432 read with Sections 433 and 433-A CrPC. The restriction under Section 433-A is only to the extent of the powers to be exercised in respect of offences as referred to under Section 432 CrPC. The Notification dated 13-8-2008 is, therefore, under a rule of procedure, which is subordinate to the Constitution. The power exercised under Article 161 of the Constitution is obviously a mandate of the Constitution and, therefore, the policy dated 13-8-2008 cannot override the policy dated 4-2-1993. The right of the respondent prisoner, therefore, to get his case considered on a par with such of his inmates, who were entitled to the benefit of the said policy dated 4-2-1993, cannot be taken away by the policy dated 13-8-2008. The High Court was absolutely justified in arriving at the conclusion that the case of the respondent was to be considered on the strength of the policy that was existing on the date of his conviction. (Paras 52 and 53)

Section 433-A CrPC and the short-sentencing policy would apply prospectively. The life convicts who had been sentenced prior to 18-12-1978 i.e. date of enforcement of amendment would not come within the purview of the provisions of Section 433-A CrPC. Remission rules/short-sentencing policies could be taken as guidelines for exercise of power under Article 72 or 161 of the Constitution and in such an eventuality, remission rules will override Section 433-A CrPC. (Paras 22 and 39)

The State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for premature release would be considered after serving the sentence, prescribed in the short-sentencing policy existing on that date. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a "lifer" for premature release, he should be given benefit thereof. The respondent has served more than 15 years. The respondent falls in Category 3 of the prisoners as per the applicable rules [*See under* Shortnote *M*, below] as he did not indulge in any organised crime. The State Government is directed to calculate sentence of remission of the respondent as per the policy dated 4-2-1993. (Paras 54 and 55). *State of Haryana* v. *Jagdish*, (2010) 4 SCC 216.

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and *J.M. Panchal* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 22-3-2010]

K.M. Nanavati v. State of Bombay, AIR 1961 SC 112: (1961) 1 Cri LJ 173; G. Krishta Goud v. State of A.P., (1976) 1 SCC 157: 1975 SCC (Cri) 788; R. v. Secy. of State for the Home Deptt., 1996 EWCA Civ 555; Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112, relied on

Ramraj v. State of Chhattisgarh, (2010) 1 SCC 573: (2010) 1 SCC (Cri) 842, referred to

State of Haryana v. Mahender Singh, (2007) 13 SCC 606: (2009) 1 SCC (Cri) 221; State of Haryana v. Bhup Singh, (2009) 2 SCC 268: (2009) 1 SCC (Cri) 710; State of Haryana v. Balwan, (1999) 7 SCC 355: 1999 SCC (Cri) 1193, harmonised

[6264] — Ss. 432, 433 and 433-A — Interpretation of — Case law discussed — Imposition of minimum term under sentence of life imprisonment — *Held, in no case, with possible exception in case of exercise of powers vested in President and Governor under Arts. 72 and 161 of the Constitution, respectively, even with remissions earned, can a sentence of imprisonment for life be reduced to below 14 years — Herein, petitioner is fortunate to have escaped death penalty — This is not a fit case where petitioner should be released on completion of 14 years' imprisonment — Minimum sentence of 20 years' RI directed — Penal Code, 1860, Ss. 45 & 57 and 302 & 201 — Constitution of India, Arts. 72 and 161*

In the various decisions rendered after the decision in *Godse case*, AIR 1961 SC 600, "imprisonment for life" has been repeatedly held to mean imprisonment for the natural life term of a convict, though the actual period of imprisonment may stand reduced on account of remissions earned. But in no case, with the possible exception in case of exercise of the powers vested in the President under Article 72 of the Constitution and the powers vested in the Governor under Article 161 of the Constitution, even with remissions earned, can a sentence of imprisonment for life be reduced to below 14 years. It is thereafter left to the discretion of the authorities concerned to determine the actual length of imprisonment having regard to the gravity and intensity of the offence. (Paras 22 and 23)

In the present case, the facts are such that the petitioner is fortunate to have escaped the death penalty. This is not a fit case where the petitioner should be released on completion of 14 years' imprisonment. The petitioner's case for premature release may be taken up by the authorities concerned after he completes 20 years' imprisonment, including remissions earned. (Para 25). *Ramraj* v. *State of Chhattisgarh*, (2010) 1 SCC 573.

Bench Strength **2**. Coram: **Altamas Kabir** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 10-12-2009]

Gopal Vinayak Godse v. State of Maharashtra, AIR 1961 SC 600: (1961) 1 Cri LJ 736: (1961) 3 SCR 440; Dalbir Singh v. State of Punjab, (1979) 3 SCC 745: 1979 SCC (Cri) 848; Rajendra Prasad v. State of U.P., (1979) 3 SCC 646: 1979 SCC (Cri) 749; State of Punjab v. Joginder Singh, (1990) 2 SCC 661: 1990 SCC (Cri) 419; Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112; Ashok Kumar v. Union of India, (1991) 3 SCC 498: 1991 SCC (Cri) 845; Laxman Naskar v. Union of India, (2000) 2 SCC 595: 2000 SCC (Cri) 509; Subash Chander v. Krishan Lal, (2001) 4 SCC 458: 2001 SCC (Cri) 735; Shri Bhagwan v. State of Rajasthan, (2001) 6 SCC 296: 2001 SCC (Cri) 1095; Mohd. Munna v. Union of India, (2005) 7 SCC 417: 2005 SCC (Cri) 1688, relied on

Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767: (2009) 3 SCC (Cri) 113, applied

[6265] — S. 432 — Question of premature release, when to be considered — *Contention raised by State that after a few years the case of respondent was likely to be considered for his premature release, as he had been in jail for a period of 8 years, and in the event of the respondent coming out, it would endanger the life of the daughter of the deceased — Rejecting the said plea, held, respondent could not be deprived of his right of being considered for premature release — Question of premature release is considered on the basis of the report of the officers concerned as well as the material facts and circumstances prevailing at the relevant time of release — There cannot be any presumption about release or non-release of a prisoner — Further, held, it would not be a valid consideration to inflict the extreme penalty on the accused*

It is submitted by the State that after a few years the case of the respondent is likely to be considered for his premature release, as he has been in jail for a period of eight years and in the event of the respondent coming out, it will endanger the life of *G*, the daughter of deceased *J*. The said contention has no force as premature release is considered on the material facts and circumstances prevailing at the relevant time of release. Report of the officers concerned is also called for and it is after consideration of all the material that necessary decision is taken in the matter. The respondent would not lose his right of being considered for premature release, which matter indeed may have to be considered at the appropriate time in the light of the facts and circumstances then found prevailing. There cannot be any presumption about release or non-release of a prisoner. It would not be a valid consideration to inflict the extreme penalty. (Para 8). *State of Punjab* v. *Gurmej Singh*, (2002) 6 SCC 663: 2002 SCC (Cri) 1460: AIR 2002 SC 2811.

Bench Strength **2**. Coram: *R.C. Lahoti* and **Brijesh Kumar**, JJ. [Date of decision: 2-8-2002]

[6266] — S. 432 — Remission of sentence — Power to grant, held, vests in the Government and not in any court (Para 7). *K. Pandurangan* v. *S.S.R. Velusamy*, (2003) 8 SCC 625: AIR 2003 SC 3318.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 18-9-2003]

[6267] — Ss. 432 and 433 — Power of sentencing court to bar remission or amnesty — *Trial court's order that no order of remission or amnesty will apply to the accused upheld by Supreme Court — Constitution of India, Arts. 72 and 161 — Power of court to bar remission or amnesty*

The order of the trial court that any remission of sentence or amnesty on any special occasions announced or to be announced either by the Central or the State Government shall not apply to the sentence and imprisonment imposed on all the accused, is also maintained. (Para 78). *Kamalanantha* v. *State of T.N.*, (2005) 5 SCC 194: 2005 SCC (Cri) 1121: AIR 2005 SC 2132.

Bench Strength 2. Coram: *B.N. Agrawal* and **H.K. Sema**, JJ. [Date of decision: 5-4-2005]

***Followed in** Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767*

[6268] — Ss. 432 and 433 — Nature of the provisions

Sections 432 and 433 confer powers of suspension, remission and commutation of sentences on the appropriate government, an expression defined in sub-section (7) of S. 432 of the Code. *State of Punjab* v. *Joginder Singh*, (1990) 2 SCC 661: 1990 SCC (Cri) 419: AIR 1990 SC 1396: 1990 Cri LJ 1464.

Bench Strength 2. Coram: **A.M. Ahmadi** and *M. Fathima Beevi*, JJ. [Date of decision: 23-3-1990]

[6269] — S. 432 — Remission of sentence — Power to grant remission is a matter of policy and no prisoner has absolute right to remission — *Andhra Pradesh Government issuing a GO granting remission to a category of prisoners and subject to certain conditions — GO excluding those prisoners who were convicted for life and for crimes against women — Held, GO valid — Further held, in such class or category of orders, there is no justification for any addition or subtraction to facilitate enlargement of the scope and applicability of the order beyond what was specifically intended in the order itself — Appellant, who was convicted under S. 498-A IPC not entitled to the benefit under the scheme — Penal Code, 1860, S. 498-A — Constitution of India, Art. 15(3)*

The Government of Andhra Pradesh in the 50th year of Independence issued a GO which inter alia granted remission to prisoners of certain categories and subject to certain conditions. The GO excluded inter alia those prisoners from the scheme of remission who had been convicted for "crimes against women such as Sections 376 and 354 IPC while being sentenced for life". The appellant had previously been convicted of offences under Sections 302, 201 and 498-A IPC and sentenced for life, 4 years and 3 years respectively and for which he was undergoing imprisonment. The appellant's brother filed a writ before the High Court challenging the said GO. Before the High Court the petitioner contended that since the present appellant has not committed a crime against women under Sections 376 or 354 IPC he should be given the benefit of the GO and granted remission. It was further contended that the condition stipulating the exclusion of prisoners having committed crimes against women was discriminatory and violated Article 14. The High Court rejected the contentions of the petitioner and before the Supreme Court the appellant advanced the same arguments.

Dismissing the appeals,

Held :

The rejection of the plea on behalf of the appellant by the High Court was well merited and supported by sound reasons. The remission to be granted was in respect of only a specified class of convicts and that too "subject to the conditions" specified in the very government order. (Para 7)

The claim for remission cannot be made or countenanced dehors the specific conditions subject to which only it has been accorded and inasmuch as the grant as well as the conditions formed a compendious single common pattern or scheme of concession by way of remission, impregnated with a policy designed in public interest and the safety and interests of the society, either the remission could be availed of only subject to the conditions stipulated or the entirety of the scheme fails as a whole, and there is no scope for judicial modification or modulating the same so as to extend the concession in excess of the very objective of the maker of the order who seems to have been guided by considerations of State policy. In such class or category of orders, there is no justification for any addition or subtraction to facilitate enlargement of the scope and applicability of the order beyond what was specifically intended in the order itself. (Para 7)

The Constitution of India itself has chosen to countenance the claims of women for favourable treatment and acknowledge the fact that sex is a sound classification. The issue in question being one pertaining purely to the area policy and political philosophy of the State, the courts except in the rarest of rare cases, cannot be called upon to adjudicate on the desirability or wisdom of such decisions. (Para 9)

The classification in this regard to keep away convicts of crimes against women from the benefits of remission under the order dated 25-1-2000 cannot be said to violate any reasonable principle or concept of law so as to call for its condemnation in exercise of the powers of judicial review. The classification therefore sounds just, reasonable, proper and necessitated in the larger interests of society and greater public interest and consequently, cannot by any stretch of imagination be branded to be invidious to attract the vice of Article 14 of the Constitution of India. A careful scrutiny of the various excepted class of convicts only shows that the real object is to ensure that those who prey on the community and violate fundamental values of mankind, society and national interest should not get undeserved benefit. (Para 9). *Sanaboina Satyanarayana* v. *Govt. of A.P.*, (2003) 10 SCC 78: AIR 2003 SC 3074: 2003 Cri LJ 3854.

Bench Strength 2. Coram: **Doraiswamy Raju** and *H.K. Sema*, JJ. [Date of decision: 29-7-2003]

[6270] — S. 432 — "Remission" and "remit" — Meaning of — Remission does not affect conviction — Government can only remit the sentence and it cannot revise the judgment of the court — *Constitution of India, Arts. 72 and 161*

The word "remit" as used in Section 432 is not a term of Art. Some of the meanings of the word "remit" are "to pardon, to refrain from inflicting, to give up". Remission is reduction of the amount of a sentence without changing its character. In the case of a remission, the guilt of the offender is not affected, nor is the sentence of the court, except in the sense that the person concerned does not suffer incarceration for the entire period of the sentence, but is relieved from serving out a part of it. (Para 10)

Section 432 confines the power of the Government to the suspension of the execution of the sentence or the remission of the whole or any part of the punishment. The conviction under which the sentence is imposed remains unaffected. The section gives no power to the Government to revise the judgment of the court. It only provides with the power to remit the sentence. Remission of punishment assumes the correctness of the conviction and only reduces the punishment in part or in whole. (Para 10)

A remission of sentence does not mean acquittal and an aggrieved party has every right to vindicate himself or herself. (Para 10). *State (Govt. of NCT of Delhi)* v. *Prem Raj*, (2003) 7 SCC 121: 2003 SCC (Cri) 1586.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 5-8-2003]

Distinguished in Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767

[6271] — S. 432 — Premature release of life convict — Considerations for — *Guidelines for, laid down by Supreme Court in* Laxman Naskar *v.* Union of India *(2000) 2 SCC 595 — Facts of particular case considered in the light of the guidelines — Constitution of India — Art. 161*

In the present case, the report of the jail authorities was in favour of the petitioner. However, the Review Committee constituted by the Government recommended to reject the claim of premature release of the petitioner for the following reasons:

(1) that the police report had revealed that the two witnesses who had deposed before the trial court and the people of the locality were all apprehensive of acute breach of peace in the locality in case of premature release of the petitioner;

(2) that the petitioner was a person of about 43 years and hence he had the potential of committing crime; and

(3) that the incident in relation to which the crime had occurred was the sequel of the political feud affecting the society at large.

Held :

The reasons given by the Government are palpably irrelevant or devoid of substance. Firstly, the views of the witnesses who had been examined in the case or the persons in the locality cannot determine whether the petitioner would be a danger if prematurely released because the persons in the locality and the witnesses may still live in the past and their memories are being relied upon without reference to the present and the report of the jail authorities to the effect that the petitioner has reformed himself to a large extent. Secondly, by reason of one's age one cannot say whether the convict has still the potentiality of committing the crime or not, but it depends on his attitude to matters, which is not being taken note of by the Government. Lastly, as regards the suggestion that the incident is not an individual act of crime but a sequel of the political feud affecting the society at large, whether his political views have changed or he still carries the same so as to commit crime has not been examined by the Government. On the basis of the grounds of detention the Government could not have rejected the claim made by the petitioner. In the circumstances, the order made by the Government is quashed and the matter is remitted to it again to examine the case of the petitioner in the light of what has been stated by the Supreme Court earlier and the comments made in this order as to the grounds upon which the Government refused to act on the report of the jail authorities and also to take note of the change in the law by enacting the West Bengal Correctional Services Act 32 of 1992 and to decide the matter afresh within a period of three months from the date of the present judgment. (Para 9). *Laxman Naskar* v. *State of W.B.*, (2000) 7 SCC 626: AIR 2000 SC 2762.

Bench Strength **2**. Coram: **S. Rajendra Babu** and *Shivaraj V. Patil*, JJ. [Date of decision: 1-9-2000]

Laxman Naskar v. Union of India, (2000) 2 SCC 595: 2000 SCC (Cri) 509, applied

[6272] — S. 432 — Remission of prison sentence — Classification of convicts for grant of — Based on nature of offence committed and effect of such offence on society as also integrity of State — *Notification under S. 432 excluding from remission those convicted for offences of rape, dowry death, abduction and murder of child below 14 years, unnatural offences, robbery, offences under Ss. 121 to 130 IPC, offences under NDPS Act, TADA Act, Foreigners Act, Passport Act, offences under Ss. 2 and 3 of Criminal Law Amendment Act, those detained under detention laws and those violating jail manual — Classification for exclusion from benefit of remission, held, not violative of Art. 14*

The Government of Haryana, on the eve of the independence day, issued a notification dated 14-8-1995 in exercise of its power vested under Section 432 of the Code, granting remission of prison sentence to all convicts except those excluded in the said notification. The said notification excluded such convicts who had been convicted for the offences of rape, dowry death, abduction and murder of a child below 14 years, unnatural offences, robbery, persons sentenced under the Narcotic Drugs and Psychotropic Substances Act (NDPS), TADA, the Foreigners Act, the Passport Act, the persons detained under the detention laws, the persons sentenced under Sections 2 and 3 of the Criminal Laws Amendment Act, the persons convicted under Sections 121 to 130 IPC, and the convicts found guilty of violation of jail manual. Because of the above exclusion of certain offences from the benefit of remission under the notification, the respondent who was serving a sentence of 7 years' RI for commission of rape punishable under Section 376 IPC, became ineligible for such remission. He therefore, filed a petition before the High Court challenging the classification for the purpose of denying remission on ground of the classification being discriminatory, violative of Article 14 of the Constitution. The High Court following an earlier judgment of the same court made in *Suresh Kumar* v. *State of Haryana* came to the conclusion that it is not open to the State Government while granting general remission to carve out special exceptions in cases which, according to it, could be termed as heinous offences and deny the benefit of remission to such class of convicts and therefore, while allowing the petition, it directed the State Government to grant the benefit of remission to the respondent also. In *Suresh Kumar case* the High Court, following a Division Bench judgment of the Andhra Pradesh High Court in the case of *Jagaram* v. *State of A.P.* had come to the conclusion that the State had no power to place a restriction on the grant of remission because such power of restriction has already been exercised by Parliament while amending Section 433-A of the Code. Though the notification in question did not give any specific reason for exclusion of such convicts, from the pleadings of the State Government, it appeared that this exclusion was based on the nature of offence committed by the said convicts and taking into consideration the effect of such offence on the society as also the integrity of the State. The question before the Supreme Court was whether such classification of convicts based on the nature of offence committed by them, would be an arbitrary classification having no nexus with the object of the Code.

Allowing the appeal,

Held :

While considering the challenge based on Article 14 as to the arbitrariness in the impugned classification, the court has to examine whether the impugned classification satisfies certain constitutional mandates or not. They are (*i*) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; (*ii*) that the differentia must have a rational relationship with the objects sought to be achieved by the Act. (Para 6)

The gravity of an offence and the quantum of sentence prescribed in the Code could be a reasonable basis for a valid classification if the object of such classification is to grant or not to grant remission. The offences of rape, dowry death, abduction and murder of a child below 14 years, offences coming under Sections 121 to 130 IPC, dacoity, robbery etc. are the offences for which the Code has prescribed the sentence of rigorous imprisonment extending up to life, therefore, from the very nature of the sentence which the offence entails, the said offences can be categorised as grave offences. Therefore, they can be aptly classified as grave offences, which classification will be a valid classification for the purpose of deciding whether the persons who have committed such offences should be granted remission or not. On this basis, the State Government having decided not to grant remission to these offenders/offences which carry life imprisonment, should not be granted remission, is justified in doing so. Similarly, the offences under the NDPS and the TADA Acts, apart from carrying heavy penal sentences are offences which could be termed as offences having serious adverse effect on the society, cognizance of which is required to be taken by the State while granting remission; therefore, they can also be classified as offences which should be kept out of the purview of remission. The offences enumerated in Sections 121 to 130 IPC are the offences against the State, though some of them may not be punishable with life imprisonment, still taking into consideration the nature of offence which undermines the security of the State, can be classified for exclusion from the benefit of remission. Again the offences under the Foreigners Act, the Passport Act, the Official Secrets Act also being offences against the State, they can be classified as offences which will not be entitled to the benefit of remission. The persons who have indulged in the breach of mandate of the jail manual can also be classified as the offenders who should not be granted the incentive of remission because of their conduct during the period of their conviction. Therefore, the offences excluded from the benefit of remission under the impugned notification have been properly classified which classification, is a valid classification for the purpose of making them ineligible for the grant of remission. (Paras 8, 11 to 15). *State of Haryana* v. *Jai Singh*, (2003) 9 SCC 114: AIR 2003 SC 1696.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 17-2-2003]

Kathi Raning Rawat v. State of Saurashtra, AIR 1952 SC 123: 1952 SCR 435: 1952 Cri LJ 805; State of Haryana v. Mohinder Singh, (2000) 3 SCC 394: 2000 SCC (Cri) 645; Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112; Sunil Batra v. Delhi Admn., (1978) 4 SCC 494: 1979 SCC (Cri) 155, relied on

[6273] — S. 432 — Punjab Government G.O. dated 14-8-2002 — Interpretation of — Dowry death — Sentence — Remission — Permissibility — *Accused convicted under S. 304-B and sentenced to 7 years' RI and to pay fine of Rs 5000 each with default stipulation — High Court, while confirming conviction of Accused 1 and 2, observing that Accused 1 (Respondent 2) was stated to have already undergone imprisonment and directing his release — Government Order dated 14-8-2002 under S. 432 CrPC r/w Art. 161 of the Constitution expressly stipulating that remission would not apply to offences under S. 304-B IPC, among some other offences — Held, High Court erred in doing so — Incident occurred on 14-3-2000 and the High Court decided the matter on 31-10-2006 — Hence seven years were not over — Seven years from the date of incident would be over only on 13-3-2007 — Accused also not entitled to benefit of Government Order — Respondent 2 therefore directed to surrender to custody and remain in jail for a period of seven years — If such benefit was granted to Accused 2, she also directed to surrender to custody till the period of seven years was over — Punjab Government G.O. dated 14-8-2002 — Interpretation of — Constitution of India, Art. 161 — Penal Code, 1860, S. 304-B* (Paras 1 and 17 to 23). *Dharam Chand* v. *State of Punjab*, (2008) 15 SCC 513: (2009) 3 SCC (Cri) 1107: AIR 2009 SC 1304.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 5-11-2008]

[6274] — S. 432 — Remission of sentence — While power to grant remission cannot be exercised by State Government arbitrarily, no prisoner has absolute right to remission — Government can prescribe conditions for eligibility for granting remission and it can also except from such grant prisoners convicted for a particular offence — *Circular issued by State of Haryana under S. 432 providing special remission to all convicts who were in jail undergoing sentences including even those on parole or furlough from the jail on 6-7-1987 — But the circular not permitting remission to the prisoners convicted of rape or dowry deaths — Held, circular valid — In view of specific provisions for applicability of the circular, held, remission under the circular not available to the prisoners on bail as also prisoners convicted for rape — Merely because when bail was granted to the convict by appellate court during pendency of his appeal his conviction was not suspended, the convict would not become entitled to remission under the circular for the period he was on bail — Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (28 of 1988), Ss. 3, 4 — Punjab Jail Manual (as applicable in Haryana), Paras 633, 633-A, 634, 635, 637, 644, 645*

The State of Haryana issued the circular in question in exercise of powers under Section 432 CrPC. It inter alia granted special remission to the prisoners who were confined in jails in the State of Haryana on 6-7-1987. It also granted remission to all the convicts who were even on parole/furlough from the jail on 6-7-1987. But remission of sentence was not granted by it to prisoners convicted of rape or dowry deaths. In five of the appeals [arising from SLPs (Crl.) Nos. 1810, 1812, 2033-34, 2151 of 1999 and 145 of 2000] out of the batch of six the question involved was whether the respondent, a convict, is entitled to remission of his sentence for the period during which he is on bail. In the sixth appeal [arising from SLP (Crl.) No. 643 of 1999] the question was whether the prisoner, who is convicted of an offence under Section 376 IPC, though confined in jail, is entitled to remission of his sentence when the government circular does not grant such remission to an inmate who has been convicted under Section 376 IPC. The High Court in the batch of five appeals observed that conviction and sentence are two separate terms and that the moment a person is convicted he becomes stigmatic. The High Court said that at that point of time he is a convict and if he has been granted bail by the appellate court it is by virtue of the provision of Section 389 of the Code and his sentence stands suspended and not that his conviction is suspended and that with the dismissal of appeal of such convict the stigma of conviction is not wiped off. The High Court was, therefore, of the opinion that such a convict would be entitled to remission for the period he was on bail when the circular gave the benefit of remission to a prisoner on parole/furlough. As regards the respondent who was convicted for an offence under Section 376 IPC the High Court considered various provisions of the Punjab Jail Manual as applicable in the State of Haryana (paras 634, 635 and 637 of the Jail Manual) and held that the prisoner in this case was also entitled to remission as was granted to those prisoners who were on parole/furlough or were in jail on the date of the circular granting remission. Allowing the appeals, *Held* :

The respondents were not entitled to remission of their sentences under the circulars in question issued under Section 432 CrPC. (Para 25)

In respect of the respondent, who was convicted of rape, the circular specifically is not applicable to the prisoner convicted of an offence of rape or other dowry offences. (Para 21)

When a circular specifically applies to the prisoners who are undergoing sentence and are confined in jail and even to those who are on parole or furlough, the Court cannot extend this circular to convicts who are on bail and thus carve out another category to which the Court is not entitled under Section 432 of the Code. The validity of the circular has not been challenged on any other ground. (Para 20)

The circular granting remission is authorised under the law. It prescribes limitations both as regards the prisoners who are eligible and those who have been excluded. Conditions for remission of sentence to the prisoners who are eligible are also prescribed by the circular. Prisoners have no absolute right for remission of their sentence unless except what is prescribed by law and the circular issued thereunder. That special remission shall not apply to a prisoner convicted of a particular offence can certainly be a relevant consideration for the State Government not to exercise power of remission in that case. Power of remission, however, cannot be exercised arbitrarily. Decision to grant remission has to be well informed, reasonable and fair to all concerned. (Para 9)

The terms bail, furlough and parole have different connotations. Bail is well understood in criminal jurisprudence. Provisions of bail are contained in Chapter XXXIII of the Code. It is granted by the officer in charge of a police station or by the court when a person is arrested and is accused of an offence other than a non-bailable offence. The court grants bail when a person apprehends arrest in case of a non-bailable offence or is arrested for a non-bailable offence. When a person is convicted of an offence he can be released on bail by the appellate court till his appeal is decided. If he is acquitted his bail bonds are discharged and if appeal dismissed he is taken into custody. Bail can be granted subject to conditions. It does not appear to be quite material that during the pendency of appeal though his sentence is suspended he nevertheless remains a convict. For the exercise of powers under Section 432 it may perhaps be relevant that the State Government may remit the whole or any part of the punishment to which a person has been sentenced even though his appeal against conviction and sentence was pending at that time. Appeal in that case might have to abate inasmuch as the person convicted has to accept the conditions on which the State Government remits the whole or part of his punishment. (Para 10)

"Furlough" and "parole" are two distinct terms now being used in the Jail Manuals or laws relating to temporary release of prisoners. These two terms have acquired different meanings in the statute with varied results. Dictionary meanings, therefore, are not quite helpful. When a prisoner is on parole his period of release does not count towards the total period of sentence while when he is on furlough he is eligible to have the period of release counted towards the total period of his sentence undergone by him. (Paras 17 and 18). *State of Haryana* v. *Mohinder Singh*, (2000) 3 SCC 394: 2000 SCC (Cri) 645: AIR 2000 SC 890: 2000 Cri LJ 1408.

Bench Strength 2. Coram: *S. Saghir Ahmad* and **D.P. Wadhwa**, JJ. [Date of decision: 7-2-2000]

Jai Prakash v. State of Haryana, (1987) 4 SCC 296: 1987 SCC (Cri) 715; Poonam Lata v. M.L. Wadhawan, (1987) 3 SCC 347: 1987 SCC (Cri) 506, relied on

Nalamolu Appala Swamy v. State of A.P., 1989 Supp (2) SCC 192: 1990 SCC (Cri) 44, distinguished

(1999) 1 Chand LR 319 (P&H), reversed

[6275] — Ss. 432, 433 and 433-A — Applicable remission policy — Jagdish case, *(2010) 4 SCC 216, holding that of the possibly applicable remission policies, the one which is more liberal or beneficial to convict should be applied — Supreme Court in* Jagdish case *upholding High Court's direction for applying more beneficial policy and dismissing appeal of State thereagainst — Following* Jagdish case, *all the SLPs (of the State) herein dismissed as well. State of Haryana* v. *Harpal*, (2010) 11 SCC 748.

Bench Strength 3. Coram: *K.G. Balakrishnan, C.J.* and *J.M. Panchal* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 22-3-2010]

State of Haryana v. Jagdish, (2010) 4 SCC 216: (2010) 2 SCC (Cri) 806, applied

[**Ed.**: *See* especially *Shortnote* B.]

[6276] — Ss. 432, 433, 433-A and 306 — "Pardon" — Grant of — Held, is a sovereign power — Powers of the President and the Governor under Arts. 72 and 161 respectively — *Held, are absolute and cannot be fettered by any statutory provision — But the President or the Governor, as the case may be, must act on the advice of the Council of Ministers — Meaning and effect of "pardon", explained — Difference between "pardon" and "amnesty", also explained — Constitution of India, Arts. 72 and 161*

"Pardon is one of the many prerogatives which have been recognized since time immemorial as being vested in the Sovereign, wherever the sovereignty might lie." This sovereign power to grant a pardon has been recognized in our Constitution in Articles 72 and 161, and also in Sections 432 and 433 of the Criminal Procedure Code. Grant of pardon to an accomplice under certain conditions as contemplated by Section 306 of the Code is a variation of this very power. The grant of pardon, whether it is under Article 161 or 72 of the Constitution or under Sections 306, 432 and 433 of the Code is the exercise of sovereign power. (Para 12)

A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. It affects both the punishment prescribed for the offence and the guilt of the offender; in other words, a full pardon may blot out the guilt itself. It does not amount to an acquittal unless the court otherwise directs. Pardon is to be distinguished from "amnesty" which is defined as "general pardon of political prisoners; an act of oblivion". As understood in common parlance, the word "amnesty" is appropriate only where political prisoners are released and not in cases where those who have committed felonies and murders are pardoned. (Para 9)

Article 72 of the Constitution confers upon the President power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence. The power so conferred is without prejudice to the similar power conferred on the Court Martial or the Governor of a State. Article 161 of the Constitution confers upon the Governor of a State similar powers in respect of any offence against any law relating to a matter to which the executive power of the State extends. The power under Articles 72 and 161 of the Constitution is absolute and cannot be fettered by any statutory provision such as, Sections 432, 433 or 433-A of the Code or by any prison rules. But the President or the Governor, as the case may be, must act on the advice of the Council of Ministers. (Para 8). *State (Govt. of NCT of Delhi)* v. *Prem Raj*, (2003) 7 SCC 121: 2003 SCC (Cri) 1586.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 5-8-2003]

[6277] — Ss. 432, 433 and 433-A — Primacy of remission policy framed with reference to Art. 161 — *Policy dt. 4-2-1993 framed with reference to Art. 161, while policy dt. 13-8-2008 framed under S. 432 r/w Ss. 433 & 433-A — Primacy between — Held, policy dt. 13-8-2008 cannot override policy dt. 4-2-1993 — Hence, direction of High Court that case of respondent prisoner be considered under policy dt. 4-2-1993, affirmed Primacy of remission policy framed with reference to Art. 161 — Constitution of India, Arts. 161 & 72*

The respondent was convicted vide judgment and order dated 20-5-1999 under Sections 302, 148 and 149 IPC and sentenced to life imprisonment. The policy which was in existence at that point of time was dated 4-2-1993. The respondent, having served more than 10 years' imprisonment, approached the High Court that in spite of having undergone the sentence as per the policy dated 4-2-1993, his case for premature release was not being considered in view of the new policy of short-sentencing, introduced on 13-8-2008. The High Court placing reliance on the judgments of the Supreme Court in *Mahender Singh case*, (2007) 13 SCC 606 and *Bhup Singh case*, (2009) 2 SCC 268 came to the conclusion that the case of the respondent for premature release was to be considered in the light of the short-sentencing policy existing on the date of his conviction and thus, a direction was issued to the State authorities to consider his case for premature release in view of the policy dated 4-2-1993.

A different view had been taken in *State of Haryana* v. *Balwan*, (1999) 7 SCC 355. So in view of conflicting views on the question, the matter came to be referred to this Bench.

Affirming the High Court's decision and dismissing the appeal,

Held :

Articles 72 and 161 of the Constitution provide for a residuary sovereign power, thus, there can be nothing to debar the authority concerned to exercise such power, even after rejection of one clemency petition, if the changed circumstances so warrant and in exceptional circumstances, variation from the policy is permissible. Thus, it is evident that the clemency power of the executive is absolute and remains unfettered for the reason that the provisions contained under Article 72 or 161 of the Constitution cannot be restricted by the provisions of Sections 432, 433 and 433-A CrPC though the authority has to meet the requirements of rule of law while exercising the clemency power. To say that clemency power under Articles 72/161 of the Constitution cannot be exercised by the President or the Governor, as the case may be, before a convict completes the incarceration period provided in the short-sentencing policy, even in an exceptional case, would be mutually inconsistent with the theory that clemency power is unfettered. The expectancy of period of incarceration is determined soon after the conviction on the basis of the applicable laws and the established practices of the State. When a short-sentencing scheme is referable to Article 161 of the Constitution, it cannot be held that the said scheme cannot be pressed in service. Even if a life convict does not satisfy the requirement of remission rules/short-sentencing schemes, there can be no prohibition for the President or the Governor of the State, as the case may be, to exercise the power of clemency under the provisions of Articles 72 and 161 of the Constitution. Right of the convict is limited to the extent that his case be considered in accordance with the relevant rules, etc. He cannot claim premature release as a matter of right. (Paras 34 to 39)

The earlier policies including the policy dated 4-2-1993 refer to the exercise of powers under Article 161 of the Constitution whereas the policy dated 13-8-2008 is in exercise of the powers under Section 432 read with Sections 433 and 433-A CrPC. The restriction under Section 433-A is only to the extent of the powers to be exercised in respect of offences as referred to under Section 432 CrPC. The Notification dated 13-8-2008 is, therefore, under a rule of procedure, which is subordinate to the Constitution. The power exercised under Article 161 of the Constitution is obviously a mandate of the Constitution and, therefore, the policy dated 13-8-2008 cannot override the policy dated 4-2-1993. The right of the respondent prisoner, therefore, to get his case considered on a par with such of his inmates, who were entitled to the benefit of the said policy dated 4-2-1993, cannot be taken away by the policy dated 13-8-2008. The High Court was absolutely justified in arriving at the conclusion that the case of the respondent was to be considered on the strength of the policy that was existing on the date of his conviction. (Paras 52 and 53)

Section 433-A CrPC and the short-sentencing policy would apply prospectively. The life convicts who had been sentenced prior to 18-12-1978 i.e. date of enforcement of amendment would not come within the purview of the provisions of Section 433-A CrPC. Remission rules/short-sentencing policies could be taken as guidelines for exercise of power under Article 72 or 161 of the Constitution and in such an eventuality, remission rules will override Section 433-A CrPC. (Paras 22 and 39)

The State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for premature release would be considered after serving the sentence, prescribed in the short-sentencing policy existing on that date. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a "lifer" for premature release, he should be given benefit thereof. The respondent has served more than 15 years. The respondent falls in Category 3 of the prisoners as per the applicable rules

[*See under* Shortnote *M*, below] as he did not indulge in any organised crime. The State Government is directed to calculate sentence of remission of the respondent as per the policy dated 4-2-1993. (Paras 54 and 55). *State of Haryana* v. *Jagdish*, (2010) 4 SCC 216.

Bench Strength 3. Coram: *K.G. Balakrishnan, C.J.* and *J.M. Panchal* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 22-3-2010]

K.M. Nanavati v. State of Bombay, AIR 1961 SC 112: (1961) 1 Cri LJ 173; G. Krishta Goud v. State of A.P., (1976) 1 SCC 157: 1975 SCC (Cri) 788; R. v. Secy. of State for the Home Deptt., 1996 EWCA Civ 555; Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112, relied on

Ramraj v. State of Chhattisgarh, (2010) 1 SCC 573: (2010) 1 SCC (Cri) 842, referred to

State of Haryana v. Mahender Singh, (2007) 13 SCC 606: (2009) 1 SCC (Cri) 221; State of Haryana v. Bhup Singh, (2009) 2 SCC 268: (2009) 1 SCC (Cri) 710; State of Haryana v. Balwan, (1999) 7 SCC 355: 1999 SCC (Cri) 1193, harmonised

[6278] — Ss. 432, 433 and 433-A — Remission of sentence — Proper mode for seeking — On conviction being confirmed by Supreme Court, appellant seeking remission directly from Supreme Court — Impropriety — *Held, remission can only be granted by executive authorities — Appellant may file a petition for remission before High Court if any rule or G.O. of State Government provides for remission of sentence — Constitution of India, Art. 72 or 161, Art. 136. Samjuben Gordhanbhai Koli* v. *State of Gujarat*, (2010) 13 SCC 466.

Bench Strength 2. Coram: *Markandey Katju* and *T.S. Thakur*, JJ. [Date of decision: 7-10-2010]

[6279] — Ss. 432, 433 and 433-A — Criminal appeal — Death sentence reference — Relief — *Death sentence awarded to appellant by Designated Court (constituted under TADA Act) — Upheld by Supreme Court by 2:1 majority — As per minority view, appellant entitled to acquittal — In such situation, appellant would not be remediless — If any motion is made in terms of Ss. 432, 433, 433-A CrPC and/or Art. 72 or 161 of the Constitution, as the case may be, the same may be appropriately dealt with — Constitution of India, Arts. 134 and 136*

Per Arijit Pasayat, J. (B.N. Agrawal, J. concurring)

The trial Judge has rightly held the appellant to be guilty. (Para 56)

However, a question arises as to the effect of Brother Shah, J. holding the accused innocent, while deciding the question of sentence. Observations made by the Supreme Court in *Ramdeo Chauhan case* are relevant and the same have application to the present case. The Court in *Ramdeo Chauhan case* inter alia had observed:

"If any motion is made in terms of Sections 432, 433 and 433-A of the Code and/or Article 72 or Article 161 of the Constitution as the case may be, the same may be appropriately dealt with. It goes without saying that at the relevant stage, the factors which have weighed with my learned Brother Mr Justice Thomas can be duly taken note of in the context of Section 432(2) of the Code." (Paras 60 and 62)

Thus there is no reason to interfere with the order of the trial Judge. The appeal deserves to be dismissed. Reference as made for confirmation of death sentence imposed under Section 3(2)(*i*) is accepted. (Para 62). *Devender Pal Singh* v. *State of NCT of Delhi*, (2002) 5 SCC 234: 2002 SCC (Cri) 978: AIR 2002 SC 1661: 2002 Cri LJ 2034: (2002) 97 DLT 57.

Bench Strength 3. Coram: **M.B. Shah**[1], **B.N. Agrawal**[3] and **Arijit Pasayat**[2], JJ. [Date of decision: 22-3-2002]

Ramdeo Chauhan v. State of Assam, (2001) 5 SCC 714: 2001 SCC (Cri) 915, applied

[6280] — Ss. 432, 433 and 433-A — Premature release — Remission of period of imprisonment — State's power to formulate policy decision — Subsequent change in policy — Effect on convict's right — *Convict has a right to be considered for remission, if his case falls within the purview of State's policy prevailing at the time of his conviction and imposition of sentence — Subsequent change in prison policy would operate prospectively without affecting convict's right to be considered for remission under the pre-amended policy — State has power to formulate prison policy, as distinguished from sentencing policy and while doing so it has power to make classification of convicts on the basis of gravity of offence but the classification must be non-discriminatory and the policy must treat all the convicts falling within its ambit equally so as not to be violative of Art. 14 — Further, executive instructions conveying the policy decision cannot supersede the statutory rules laying down parameters within which convicts would be entitled to be considered for remission — Prisons Act, 1894, S. 59(5) — Punjab Prisons Rules, Rr. 2(a) to (d), (f), 20, 21, Note appended on 12-7-1910 — Punjab Jail Manual, Paras 516-B, 635 — Penal Code, 1860, Ss. 54 and 55 — Constitution of India — Arts. 14, 72, 161 and 20 & 21*

The respondents were found guilty of commission of murder of three persons and by a judgment of conviction and sentence dated 25-1-1988 passed by trial court they were awarded life imprisonment. Their appeals before High Court as well as before the Supreme Court against conviction and sentence were dismissed. State of Punjab had been issuing instructions in relation to premature release of the convicts from time to time. In the year 1988, when the respondents were convicted, the rules which were applicable were of 27-2-1984. Thereunder, for consideration of their cases for remission, they should have (*a*) undergone at least 8 1/2 years of substantive or actual sentence, and (*b*) should also have undergone 14 years of sentence including the period of remission earned. However, the same was subject to Section 433-A CrPC. In 1984 and 1988 instructions there did not exist any category of life convict involved in a heinous crime. But on or about 28-9-1988, when the earlier instructions dated 27-2-1984 were amended, inter alia, the life convicts were classified into two categories viz. those not convicted for heinous crimes and those convicted for heinous crimes and for them different provisions for remission were made. Yet again on 19-11-1991, the policy was modified making further provisions in regard to life convicts "who have committed crimes which are not considered heinous". Similar provisions were again made by reason of a policy statement made on 4-2-1993. Paras 516-B and 635 of the Punjab Jail Manual made further provisions regarding the adult life convicts and scaling of award of remission.

The State of Haryana formulated a policy on or about 12-4-2002 in regard to premature release of "convicts whose death sentence has been commuted to life imprisonment and convicts who have been imprisoned for life having committed a heinous crime" specified therein. In terms of the said policy, the cases for remission were required to be considered after completion of 10 years of actual imprisonment and 14 years including remission. A writ petition was preferred by the respondents questioning constitutionality of the said policy decision which the High Court allowed on the premise that no discrimination could be made inter se amongst the life convicts; all of them being similarly situated and, thus, the purported classification on the ground of number of murders was arbitrary and discriminatory.

In the present appeal preferred by the State before the Supreme Court, it was submitted that the State having an unfettered right to formulate a policy decision in regard to remission of sentence, the High Court committed a manifest error in arriving at the aforementioned conclusion; particularly, having regard to the provisions contained in Sections 54 and 55 of the Penal Code and Section 433-A CrPC. It was contended that the executive Government of the State in exercise of its constitutional power under Article 161 can formulate such a policy decision and the same has been approved by the Supreme Court and in that view of the matter it can also reformulate the policy from time to time. According to the appellant, Article 14 does not forbid reasonable classification. Such a policy decision having been formulated for the benefit of the convicts themselves, as in terms of Section 433-A CrPC, a convict does not have any constitutional or statutory right of remission of sentence, hence the same cannot be held to be unconstitutional.

Dismissing the appeals,

Held :

It is true that no convict has a fundamental right of remission or shortening of sentences. However, a right to be considered for remission, keeping in view the constitutional safeguards of a convict under Articles 20 and 21 of the Constitution, must be held to be a legal one. Such a legal right emanates not only from the Prisons Act but also from the Rules framed thereunder and the State's own executive instructions. In view of the policy decision itself a convict must be held to have a right to be considered therefor. (Paras 27, 38 and 41)

The State indisputably is entitled to take a prison policy as contradistinguished from a sentencing policy. The State in exercise of its executive power of remission must consider each individual case keeping in view the relevant factors. The power of the State to issue general instructions, so that no discrimination is made, is also permissible in law. (Paras 23 and 27)

The High Court might not be correct in holding that the State has no power to make any classification at all. A classification validly made would not offend Article 14 of the Constitution. (Para 46)

The question, however, which would inter alia arise for consideration is as to whether new policy decision adopted by the State of Haryana will have a prospective operation. Herein we are concerned with the right of the respondents to be considered for remission and not what should be the criteria when the matter is taken up for grant thereof. (Paras 28 and 45)

Whether by reason of a statutory rule or otherwise if a policy decision has been laid down, the persons who come within the purview thereof are entitled to be treated equally. A' fortiori the policy decision applicable in such cases would be which was prevailing at the time of his conviction. (Paras 38 and 40)

Any guidelines which do not have any statutory flavour are merely advisory in nature. They cannot have the force of a statute. They are subservient to the legislative Act and the statutory rules. (Para 39)

Furthermore, if the Punjab Rules are applicable in the State of Haryana in view of the State Reorganisation Act, no executive instruction would prevail over the statutory rules. The Rules having defined "convicts" in terms whereof a "life convict" was entitled to have his case considered within the parameters laid down therein, the same cannot be taken away by reason of an executive instruction by redefining the term "life convict". It is one thing to say that the "life convict" has no right to obtain remission but it is another thing to say that they do not have any right to be considered at all. Right to be considered emanates from the State's own executive instructions as also the statutory rules. (Para 41). *State of Haryana* v. *Mahender Singh*, (2007) 13 SCC 606: (2007) 60 AIC 73 (SC): 2008 Cri LJ 444.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 2-11-2007]

State of Mysore v. H. Srinivasmurthy, (1976) 1 SCC 817: 1976 SCC (L&S) 126; Commr. of Municipal Corpn. v. Prem Lata Sood, (2007) 11 SCC 40; Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112; Sadhu Singh v. State of Punjab, (1984) 2 SCC 310: 1984 SCC (Cri) 241; State of Punjab v. Joginder Singh, (1990) 2 SCC 661: 1990 SCC (Cri) 419; State of Haryana v. Ram Diya, (1990) 2 SCC 701: 1990 SCC (Cri) 426; State of Mysore v. H. Srinivasmurthy, (1976) 1 SCC 817: 1976 SCC (L&S) 126; Maharao Sahib Shri Bhim Singhji v. Union of India, (1981) 1 SCC 166; J.R. Raghupathy v. State of A.P., (1988) 4 SCC 364; Narendra Kumar Maheshwari v. Union of India, 1990 (Supp) SCC 440, relied on

Mohd. Munna v. Union of India, (2005) 7 SCC 417: 2005 SCC (Cri) 1688; Epuru Sudhakar v. Govt. of A.P., (2006) 8 SCC 161: (2006) 3 SCC (Cri) 438, distinguished

***Applied in** State of Haryana v. Bhup Singh, (2009) 2 SCC 268*

[6281] — Ss. 432 and 434 — Order of remission passed under — Held, affects only the execution of the sentence and not the conviction or sentence itself — *Remission rules under Jail Manuals also have the same effect — Punjab Jail Manual, Para 516-B*

An order of remission passed by the State Government or by the jail authorities does not interfere with either the conviction or sentence recorded by the Court which remains intact, it merely affects the execution of the sentence passed by the Court and frees the convicted person from his liability to undergo the full term of imprisonment and it is for this reason that an accused person has every right to press his appeal against the conviction and sentence imposed upon him, full remission notwithstanding. Section 428 will come into play in cases where 'imprisonment for a term is awarded on conviction by a court and not where the convict's sentence becomes a sentence for a term on remission being granted by the Executive. *Kartar Singh* v. *State of Haryana*, (1982) 3 SCC 1: 1982 SCC (Cri) 522: AIR 1982 SC 1439: 1982 Cri LJ 1772.

Bench Strength **3**. Coram: **V.D. Tulzapurkar**, *Baharul Islam* and *R.B. Misra*, JJ. [Date of decision: 26-8-1982]

[6282] — Ss. 432, 433 and 433-A — Remission of sentence

Remission schemes are introduced to ensure prison discipline and good behaviour and not to upset sentences; if the sentence is of imprisonment for life, ordinarily the convict has to pass the remainder of his life in prison but remissions and commutations are granted in exercise of power under Ss. 432 and 433 carving out an exception in the category of those convicts who have already enjoyed the generosity of executive power on the commutation of death sentence to one of life imprisonment. Even in such cases S. 433-A of the Code or the executive instruction of 1976 does not insist that the convict pass the remainder of his life in prison but merely insists that he shall have served time for at least 14 years. *State of Punjab* v. *Joginder Singh*, (1990) 2 SCC 661: 1990 SCC (Cri) 419: AIR 1990 SC 1396: 1990 Cri LJ 1464.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *M. Fathima Beevi*, JJ. [Date of decision: 23-3-1990]

[6283] — Ss. 432, 433 and 433-A — Scope and applicability — Remission — *Even if sentence of death imposed on accused is confirmed by Supreme Court, accused is not remediless as he still can seek benefit under Ss. 432, 433 and 433-A — Word "remit" in S. 432 — Meaning — Categories of persons to whom S. 433-A applies*

Per Phukan, J.

The release of the prisoners condemned to death in exercise of the powers conferred under Section 432 CrPC and Article 161 of the Constitution does not amount to interference with due and proper course of justice, as the power of the court to pronounce upon the validity, propriety and correctness of the conviction and sentence remains unaffected. Similar power as that contained in Section 432 of the Code or Article 161 of the Constitution can be exercised before, during or after trial. The power exercised under Section 432 of the Code is largely an executive power vested in the appropriate Government and by reducing the sentence, the authority concerned thereby modifies the judicial sentence. The section confines the power of the Government to the suspension of the execution of the sentence or remission of the whole or any part of the punishment. Section 432 of the Code gives no power to the Government to revise the judgment of the court. It only provides power of remitting the sentence. Remission of punishment assumes the correctness of the conviction and only reduces punishment in part or whole. The word "remit" as used in Section 432 is not a term of Art. Some of the meanings of the word "remit" are "to pardon, to refrain from inflicting, to give up". It is therefore no obstacle in the way of the President or Governor, as the case may be in remitting the sentence of death. A remission of sentence does not mean acquittal. (Para 57)

The power to commute a sentence of death is independent of Section 433-A. The restriction under Section 433-A of the Code comes into operation only after power under Section 433 is exercised. Section 433-A is applicable to two categories of convicts: (*a*) those who could have been punished with sentence of death, and (*b*) those whose sentence has been converted into imprisonment for life under Section 433. (Para 58)

In the circumstances, if any motion is made in terms of Sections 432, 433 and 433-A of the Code and/or Article 72 or Article 161 of the Constitution as the case may be, the same may be appropriately dealt with. The factors which have weighed with my learned Brother Mr Justice Thomas can be duly taken note of in the context of Section 432(2) of the Code. (Para 59). *Ramdeo Chauhan* v. *State of Assam*, (2001) 5 SCC 714: 2001 SCC (Cri) 915: AIR 2001 SC 2231: 2001 Cri LJ 2902.

Bench Strength **3**. Coram: **K.T. Thomas**[2], **R.P. Sethi**[1] and **S.N. Phukan**[3], JJ. [Date of decision: 10-5-2001]

Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112, relied on

[6284] — Ss. 432, 433-A, 389 and 482 — Remission of sentence — Remission in respect of period of enlargement on bail anterior to the existence of an operative conviction — Impermissibility of — *Accused acquitted by trial court, of offence under Ss. 302/34 IPC — Granted bail during pendency of appeals before High Court and Supreme Court — High Court convicting him and Supreme Court upholding the conviction — In such circumstances, although the conviction by Supreme Court related back to the date of judgment of the trial court which was anterior to the date of enactment of S. 433-A CrPC, grant of remission in respect of the period of enlargement of bail, held, impermissible — State Government's instructions enabling the grant of remission of the period of "parole or furlough" held, not applicable to the period of enlargement on bail*

The respondent was acquitted on 5-1-1978 by the trial court, of the offence under Sections 302/34 IPC. The High Court, although allowed the respondent to remain on bail during the pendency of appeal, ultimately convicted him on 23-4-1980 under the said provisions. Consequently, the respondent surrendered on 7-6-1980. During the pendency of his appeal before Supreme Court he was again released on bail on 2-8-1980. The Supreme Court, ultimately, upheld the conviction and, consequently, he was again taken to jail on 22-8-1994. In such circumstances, the Punjab and Haryana High Court, upholding the respondent's contention that his conviction related back to the date of the trial court's decision, i.e. 5-1-1978, allowed his claim that the period during which he was on bail (from 5-1-1978 to 7-6-1980 and from 2-8-1980 to 21-8-1994) should be included within the period of his entitlement for remission. The respondent's claim was based on the instructions issued by the State of Haryana postulating that remission would "be also granted to all the convicts who were on parole/furlough from the jail on 25-1-1988". Allowing the State's appeal,

Held :

The High Court rightly held that Section 433-A CrPC, as inserted on 8-12-1978, would not stand in the way in the instant case as the order of conviction has to be treated as passed on 5-1-1978 when the trial court pronounced its judgment. (Para 6)

The instructions issued by the Government of Haryana under which the respondent claimed remission cannot be interpreted as to enable him to count the period during which he was on bail towards remission. The expression "parole or furlough" occurring therein cannot be stretched to the period during which the person was enlarged on bail, during the pendency of the trial or appeal or revision. No sentence would be passed on the accused during the time he remains under trial and hence there is no question of any remission to be granted to him during that stage, except the period during which he was under detention as provided in Section 428 CrPC. If he was released on bail during the pendency of appeal or revision it is on account of the fact that the court suspended the sentence passed on him. When the sentence stands suspended he would be released on bail on his own entitlement. But the case of parole or furlough is different from it. (Para 11)

Suspension of a sentence is obviously different from remission of any part of the punishment to which a person is sentenced. While Section 432 CrPC deals with power of the Government to suspend the sentence, Section 389 CrPC deals with power of the court to suspend execution of sentence pending appeal or revision. Whenever the sentence is suspended by the court the convict is entitled to be released on bail. The expression used in Section 432(1) CrPC for remission is "remit ... the punishment to which he has been sentenced". It is, therefore, clear that remission can be granted only with reference to an operative punishment. In other words, when there is no operative punishment there is no need to remit any part of such punishment. (Para 13)

Parole relates to executive action taken after the door has been closed on a convict. During parole period there is no suspension of sentence but the sentence is actually continuing to run during that period also. (Para 14)

Therefore, the part of the impugned judgment by which the High Court directed remission to be granted in respect of the period during which the respondent was released on bail, is hereby set aside. (Para 20). *State of Haryana* v. *Nauratta Singh*, (2000) 3 SCC 514: 2000 SCC (Cri) 711: AIR 2000 SC 1179: 2000 Cri LJ 1710.

Bench Strength **2**. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 10-3-2000]

Man Mohan Sahani v. State of Haryana, (1987) 2 R Cri R 292 (P&H), impliedly approved on the first point

Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112, followed

Sunil Fulchand Shah v. Union of India, (2000) 3 SCC 409; State of Haryana v. Mohinder Singh, (2000) 3 SCC 394, relied on

Man Mohan Sahani v. State of Haryana, (1987) 2 R Cri R 292 (P&H); Amrik Singh v. State of Haryana, (1992) 2 R Cri R 138 (P&H), overruled on the second point

[6285] — Ss. 432 and 433 — Words "reprieve" and "respite" — Meaning of, explained — *Constitution of India, Arts. 72 and 161*

Reprieve means a stay of execution of sentence, a postponement of capital sentence. Respite means awarding a lesser sentence instead of the penalty prescribed in view of the fact that the accused has had no previous conviction. It is something like a release on probation for good conduct under Section 360 CrPC. (Para 10). *State (Govt. of NCT of Delhi)* v. *Prem Raj*, (2003) 7 SCC 121: 2003 SCC (Cri) 1586.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 5-8-2003]

[6286] — Ss. 432 and 433 — Commutation/remission of sentence — Relevant factors to be considered — *Appellants killing two persons in a marriage ceremony in the course of a frivolous quarrel triggered off by sarcastic remark of one of the deceased — Apart from the unexpected turn of events that had taken place, the incident occurred about three decades back — One of the appellants was aged about 80 years and was ailing — Held, the State Government/Governor concerned should consider the appellants' applications, if filed, for commutation/remission of sentence with expedition, taking into account the relevant circumstances* (Para 12). *Suresh Chandra* v. *State of U.P.*, (2005) 6 SCC 130: 2005 SCC (Cri) 1364: AIR 2005 SC 3120: 2005 Cri LJ 3449.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *D.M. Dharmadhikari*, JJ. [Date of decision: 21-7-2005]

[6287] — Ss. 432 and 433-A — Remission of sentence of life imprisonment and release of prisoner — *Even if a person undergoing life sentence earns remission under prison rules or any law, he will be entitled to be released only when the appropriate Government passes an order remitting the balance period of the sentence — In absence of such an order, the life convict cannot claim any right to be automatically released on the ground that by virtue of Expln. to S. 61(1) of W.B. Correctional Services Act period of imprisonment for life has to be treated as equivalent to imprisonment for 20 years — W.B. Correctional Services Act, 1992 (32 of 1992), S. 61(1) Expln. — Penal Code, 1860, S. 53 — Constitution of India — Art. 161*

Solely on the basis of completion of a term in jail serving imprisonment and remissions earned under the relevant rules or law will not entitle an automatic release, but the appropriate Government must pass a separate order remitting the unexpired portion of the sentence. Therefore, it may not help a person undergoing sentence of life imprisonment even on the construction placed on Section 61(1) of the West Bengal Correctional Services Act 32 of 1992 with reference to explanation thereto that for the purpose of calculation of the total period of imprisonment under this section the period of imprisonment for life shall be taken to be equivalent to the period of imprisonment for 20 years. (Para 4). *Laxman Naskar* v. *State of W.B.*, (2000) 7 SCC 626: AIR 2000 SC 2762.

Bench Strength **2**. Coram: **S. Rajendra Babu** and *Shivaraj V. Patil*, JJ. [Date of decision: 1-9-2000]

State of M.P. v. Ratan Singh, (1976) 3 SCC 470: 1976 SCC (Cri) 428; Naib Singh v. State of Punjab, (1983) 2 SCC 454: 1983 SCC (Cri) 536; Gopal Vinayak Godse v. State of Maharashtra, AIR 1961 SC 600: (1961) 3 SCR 440: (1961) 1 Cri LJ 736, relied on

***Followed in** Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767*

[6288] — Ss. 432 and 433-A — Government's power under S. 432 to exclude a class of prisoners from benefit of remission — Scope — *Held, is not affected by S. 433-A*

The legislature by enacting Section 432 in the Code has given wide powers of suspension, remission and commutation to appropriate Government which can utilise the said power at any time with or without condition. Such power can be exercised by the appropriate Government either with reference to a single convict or with reference to a class of convicts so long as such classification is a valid classification. However, by enacting Section 433-A in the Code, Parliament has only restricted the power of the appropriate Government to grant remission to the convicts mentioned in that section. It does not do anything more. To grant or not to grant is the power vested in the appropriate Government under Section 432 which the said Government can exercise either by granting remission to all convicts except those mentioned in Section 433-A or by restricting the remission to a class of convicts provided such classification is valid. The High Court in the case of *Suresh Kumar* erred in holding that the Andhra Pradesh High Court in *Jagaram case* has held that the power of the appropriate Government to restrict the remission to any class of convicts stands excluded by virtue of the introduction of Section 433-A of the Code. By introduction of Section 433-A of the Code, Parliament has not excluded or denuded the power of the appropriate Government to restrict the grant of remission to a class of prisoners only or exclude a class of prisoners from such benefit of remission. (Para 16). *State of Haryana* v. *Jai Singh*, (2003) 9 SCC 114: AIR 2003 SC 1696.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 17-2-2003]

(2001) 2 Chand Cri C 367 (P&H); Suresh Kumar v. State of Haryana, (1999) 3 RCR 757 (P&H), overruled

[6289] — Ss. 432, 433 and 433-A — Power under — Scope — Effect of Ss. 432, 433 and 433-A CrPC — Maintainability of multiple clemency petitions — *Held, clemency power of executive is absolute and remains unfettered subject to rule of law — Further held, said power cannot be restricted by Ss. 432, 433 and 433-A CrPC — Also, there is nothing to deter authority concerned from exercising such power even after rejection of one clemency petition, if changed circumstances so warrant — Thus, to say that clemency powers cannot be exercised before a convict completes incarceration period as provided in short-sentencing policy even in an exceptional case would be mutually inconsistent with the theory that clemency power is unfettered — Even if life convict does not satisfy requirements of remission rules/short-sentencing schemes, there is no prohibition under Arts. 72/161 for exercising power of clemency — Constitution of India, Arts. 72 and 161*. (Paras 22 and 39). *State of Haryana* v. *Jagdish*, (2010) 4 SCC 216.

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and *J.M. Panchal* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 22-3-2010]

K.M. Nanavati v. State of Bombay, AIR 1961 SC 112: (1961) 1 Cri LJ 173; G. Krishta Goud v. State of A.P., (1976) 1 SCC 157: 1975 SCC (Cri) 788; R. v. Secy. of State for the Home Deptt., 1996 EWCA Civ 555; Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112, relied on

Ramraj v. State of Chhattisgarh, (2010) 1 SCC 573: (2010) 1 SCC (Cri) 842, referred to

[6290] — S. 432 — Sentence — Appellant technically guilty of the offence — Minimum sentence of 7 years' RI impossible — *Because of the several mitigating circumstances court recommending executive clemency under S. 432 — Penal Code, 1860, S. 397. Ram Shankar* v. *State of M.P.*, 1980 Supp SCC 470: 1981 SCC (Cri) 378: AIR 1981 SC 644: 1981 Cri LJ 162.

Bench Strength **2**. Coram: *R.S. Sarkaria* and *O. Chinnappa Reddy*, JJ. [Date of decision: 23-9-1980]

[6291] — S. 432 — Reckoning of study leave — *Held, cannot be reckoned under Kerala Prison Rules while computing period of sentence undergone — Kerala Prison Rules, 1958 — Rules for Suspension of Sentence of Prisoners for the Purpose of Study — Constitution of India, Arts. 161 and 72*

The Government of Kerala had constituted a High-Level Committee on the basis of the order passed in suo motu proceedings which were initiated as in several instances several convicts sentenced for serious offences were released after undergoing short term of imprisonment. Guidelines were framed by the Committee which were promulgated by GO (P) 228/03/Home dated 18-10-2003. In Para 3 of the guidelines of the State Government order, it was provided that the "Committee will recommend premature release of life convicts who have completed 8 years of actual imprisonment including set-off if any ordered by a competent court and excluding remission of any kind" considering the various factors set out therein. The appellant was suffering life imprisonment in view of his conviction under Section 302 IPC. He made a claim before the State Government that the Kerala Prison Rules provide for release on probation on completion of 8 years of custody. According to him the period of study leave amounting to 6 years 10 months and 13 days has to be reckoned while computing the period of sentence undergone. The prayer was rejected on the ground that the appellant had not suffered 8 years of custodial sentence.

Dismissing the appeal,

Held :

Stand of the appellant is clearly unsustainable. In view of the clear position emitting from Rule 225, the High Court's judgment does not suffer from any infirmity that, to be entitled to benefit the convict has to suffer at least 8 years of custody. (Para 8)

Rule 280-A provides for suspension of sentence as empowered under Section 432(6) of the Code of Criminal Procedure, 1973 for the period of leave for the purpose of study. During the period of study leave, the sentence stands suspended. The result of suspension of sentence as per Rule 225(2) is that the same is excluded from the period of sentence undergone. Thus Rule 225(2) makes the position very much explicit. Rule 461 i.e. the provision for treatment of the period of leave as the sentence undergone cannot be made applicable to the study leave period. The same is abundantly clear from the fact that at the time of commencement of study leave, the sentence stands suspended whereas for the emergency leave or ordinary leave, the above suspension is not contemplated under Chapter 26 of the Rules. It is also seen from Rule 453 that the period of emergency and ordinary leave are confined to a short period and the same is not granted continuously and also that a gap of six months is contemplated as per Rule 452-B for further release of a prisoner granting ordinary leave. Emergency leave vide Rule 455 is limited to extreme situations like death or serious illness of a near relative. But so far as study leave is concerned, the same is granted somewhat liberally. The appellant himself was outside the prison for more than six years. He was outside the prison more than the period he spent inside. (Paras 5 and 6)

[As and when the appellant suffers actual custody of more than 8 years, let his case be considered in accordance with law by the authorities concerned.] (Para 10). *C.A. Pious* v. *State of Kerala*, (2007) 8 SCC 312: (2007) 3 SCC (Cri) 544: AIR 2007 SC 3221: (2007) 58 AIC 31 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 14-9-2007]

Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112, relied on

***Followed in** Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767*

[6292] — S. 432 — Because of several mitigating circumstances court recommending executive clemency under. *Ram Shankar* v. *State of M.P.*, 1980 Supp SCC 470: 1981 SCC (Cri) 378: AIR 1981 SC 644: 1981 Cri LJ 162.

Bench Strength **2**. Coram: *R.S. Sarkaria* and *O. Chinnappa Reddy*, JJ. [Date of decision: 23-9-1980]

[6293] — S. 432 — Sentence — Reduction — Mitigating circumstances — *Accused government servants losing their jobs and all retiral benefits — Prolonged litigation causing considerable loss and suffering to them — They crossing 60 years of age — Hence, sentence of one year's RI reduced to six months — Penal Code, 1860, Ss. 161 and 120-B — Prevention of Corruption Act, 1947, S. 5(1)(d) r/w S. 5(2)*

It is argued that the incident in question having taken place nearly 23 years ago, the appellants have already suffered sufficiently and, therefore, the Supreme Court should take a lenient view of the matter and award a lesser sentence. It is noticed that the two appellants who were government servants have since lost their jobs and all retiral benefits and the prolonged litigation has caused considerable loss and suffering. Bearing in mind the fact that both the appellants have crossed 60 years of age, it would be appropriate that the sentence of 1 year's RI imposed by the High Court should be further reduced to a period of six months. (Para 10). *Shiv Nandan Dixit* v. *State of U.P.*, (2003) 12 SCC 636.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 19-12-2003]

[6294] — S. 432 — Government recommended to remit sentence under — Factors considered — *Prevention of Food Adulteration Rules, 1955, R. 29(f) — Prevention of Food Adulteration Act, 1954, Ss. 16(1)(A)(i) and 19*

The appellant, a petty trader was found guilty of commission of offence of selling 'kesari coloured sweet supari sali' adulterated with 'yellow basic coal tar dye' in violation of R. 29(f) of Prevention of Food Adulteration Rules (as it stood prior to amendment of the rule on November 15, 1984) and was sentenced to one year's simple imprisonment and a fine of Rs 2000, both being the statutorily compulsory minimum sentences under S. 16(1)(A)(i) of the Act. The appellant could not invoke S. 19(2) of the Act. On behalf of the appellant it was contended that while the bigger offenders who manufactured the supari and who distributed them to the retailers go scot free, small-time tradesmen like him, who purchase the goods from these manufacturers and/or wholesalers and sell them in retail, had to face great hardships.

Held :

The contention is not without force. Moreover, the offence was committed ten years ago and the appellate court had acquitted the appellant. The expression "fruit products" in the context of what the delegated legislative authority really meant and wanted to convey, was not a model of precision. The degree of precision should be such that not only those who read it in good faith understand but also that those who read it in bad faith do not misunderstand. For these reasons this is a fit case in which the appropriate government should exercise its executive powers of remission of the substantive sentence of imprisonment — though not of the fine — under S. 432, CrPC or under other law appropriate to the case. *Dineshchandra Jamnadas Gandhi* v. *State of Gujarat*, (1989) 1 SCC 420: 1989 SCC (Cri) 194: AIR 1989 SC 1011: (1989) 1 SCR 138: 1989 Cri LJ 889.

Bench Strength **2**. Coram: *Ranganath Misra* and **M.N. Venkatachaliah**, JJ. [Date of decision: 17-1-1989]

[6295] — S. 432 — Infanticide — Sentence — Remission — *Murder of two children by throwing them into a well — Remission of sentence — Reference — Procedure under Criminal Rules of Practice, Kerala, 1982, R. 131 — Said Rule not noticed by the Sessions Judge or by the High Court — Hence, Supreme Court disposing of the appeal with the recommendation to Government to consider the matter — (Kerala) Criminal Rules of Practice, R. 131. K.E. Thankamani* v. *State of Kerala*, 1998 SCC (Cri) 1357: AIR 1999 SC 1513.

Bench Strength 3. Coram: *S.C. Agrawal, S. Saghir Ahmad* and *K.T. Thomas*, JJ. [Date of decision: 6-4-1998]

[6296] — S. 432 — Petitioner, a life convict, undergoing more than 21 years' imprisonment including remission and actually remaining in jail custody for more than 15 years — *Petitioner of tender age (17 years) at the time of commission of offence — Petitioner, though not a juvenile at the time of commission of the offence, directed to be released from detention — Juvenile Justice Act, 1986, S. 2(h). Babu Ram* v. *State of U.P.*, 1994 SCC (Cri) 1401.

Bench Strength 2. Coram: *K. Ramaswamy* and *N.P. Singh*, JJ. [Date of decision: 8-10-1993]

[6297] — S. 432 — Power to suspend or remit sentence — Rape — *Long time lag between date of offence and conviction, fact that prosecutrix may have married and settled down, and may have children, held, may be factors for consideration by executive or constitutional authorities when deciding whether remission of sentence can be allowed to accused — Constitution of India, Arts. 72, 161 — Pardon/commutation/remission of sentence/punishment by President/Governor — Penal Code, 1860, S. 376*

The long time lag which elapsed subsequent to the date of offence and the fact that the prosecutrix got married and is well settled in life and that she is now mother of children — all these things which happened during the intervening period, may be factors for consideration by the executive or constitutional authorities if they have to decide whether remission of the sentence can be allowed to the accused. It is made clear that the enhanced sentenced has been imposed on the accused without prejudice to any motion he may make for such remission of the sentence before the authorities concerned. (Para 25). *Kamal Kishore* v. *State of H.P.*, (2000) 4 SCC 502: 2000 SCC (Cri) 833: AIR 2000 SC 1920: 2000 Cri LJ 2292.

Bench Strength 3. Coram: **K.T. Thomas**, *Doraiswamy Raju* and *S.N. Variava*, JJ. [Date of decision: 25-4-2000]

[6298] — S. 432 — Remission of sentence — Exclusion of bail period — *Period during which a person remained enlarged on bail, held, must be excluded from the period of remission granted under any remission notification*

Respondents 3 to 5 were convicted under Sections 326, 325, 324 read with Section 34 IPC and were sentence to RI for 1½ years. During the period of trial ending with confirmation of conviction in the revision petition by the High Court, Respondents 3 to 5 were almost all the time on bail except for a period of about 2 months and 25 days when they were in jail, serving part of their sentence. On dismissal of the revision petition by the High Court, the said respondents surrendered before the Jail Superintendent and on the very same day they were released by the jail authorities. The High Court held that taking into consideration the periods of remission granted by Punjab Government under various notifications cumulatively, the said period would cover the period of sentence awarded to the said respondents and even though they had not in fact served the sentence by virtue of the fact that they were enlarged on bail, they would be deemed to have served the sentence. Before the Supreme Court it was urged on behalf of the appellant (who was the complainant in the original criminal case) that the High Court erred in interpreting the various notifications of remission issued by the State Government to mean that the remission so granted under the notifications would be applicable to persons who were on bail and who had not served the sentence and that it also erred in construing the various applications as giving the benefit cumulatively. On behalf of the said respondents, on the other hand, it was submitted that the High Court was correct in interpreting the notifications issued by the State Government remitting the sentences by giving benefit also to the persons who were on bail. Rejecting the contentions of the respondent State and allowing the appeals,

Held :

Acceptance of the arguments of the said respondents would reduce the criminal justice system to a mockery. In several cases the Supreme Court has held that persons who are enlarged on bail cannot claim the benefit of the period during which they were on bail for the purpose of counting the period of sentence already undergone to apply the remission given by the Government. While applying the period of remission granted by the Government under any remission notification the period during which an accused person was on bail cannot be taken into account. In view of this enunciation of law, even by the inclusion of the word "bail" in the notification of the Punjab Government, an accused who has always remained on bail or has not served a substantial part of his sentence cannot take advantage of the remission notification. (Paras 10 and 14)

In this case, the High Court fell in error in accepting the argument of the said respondents that they were entitled to the benefit of the period of remission given by the various notifications cumulatively to be counted against the period during which they were on bail. (Para 14). *Joginder Singh* v. *State of Punjab*, (2001) 8 SCC 306: 2001 SCC (Cri) 1541: AIR 2001 SC 3703.

Bench Strength **2**. Coram: *U.C. Banerjee* and **N. Santosh Hegde**, JJ. [Date of decision: 11-9-2001]

State of Haryana v. Mohinder Singh, (2000) 3 SCC 394: 2000 SCC (Cri) 645; Sunil Fulchand Shah v. Union of India, (2000) 3 SCC 409: 2000 SCC (Cri) 659; State of Haryana v. Nauratta Singh, (2000) 3 SCC 514: 2000 SCC (Cri) 711; Satpal v. State of Haryana, (2000) 5 SCC 170: 2000 SCC (Cri) 920, relied on

[6299] — S. 432 — Remission of sentence — Refusal of — Grounds for — *Petitioner in jail for more than 26 years including remissions — State Government not considering his case for release on ground that he had no source of income and he would revert to crime and abscond — Held, order refusing to release the petitioner wholly bad in law — Direction for release of petitioner passed. Kansi Ram* v. *State of U.P.*, 1990 Supp SCC 134: 1990 SCC (Cri) 536.

Bench Strength **2**. Coram: *M.P. Thakkar* and *B.C. Ray*, JJ. [Date of decision: 26-7-1988]

[6300] — Ss. 432, 433 and 433-A — Para 516-B, of Punjab Jail Manual as amended in 1971 and 1976 will prevail over the Note below Para 613 — *Para 516-B, only an executive instruction, originally enjoining submission of case of prisoner who completed 14 years of imprisonment, inclusive of remissions, to State Government for consideration and also conferring discretion on Superintendent of Jail to refer the case even before completion of 14 years if in his opinion the case was fit for commuting the sentence — Main part of Para 631, having statutory force, only classifying prisoners and fixing duration of their sentences and Note below the para merely reproducing the gist of Para 516-B with reference to the relevant executive instruction — Para 516-B amended by executive instructions first in 1971 providing that a convict must have undergone 8½ years of substantive sentence and then in 1976 providing in consonance with S. 433-A, CrPC that life convicts must have undergone 14 years of substantive sentence before submission of their cases for premature release — Held, Note below Para 631 has no statutory force and it containing the gist of the unamended Para 516-B will not override the amended Para 516-B — Prisons Act, 1894, S. 59 — Punjab Jail Manual, Paras 516-B and 631 Note*

Remission schemes are introduced to ensure prison discipline and good behaviour and not to upset sentences; if the sentence is of imprisonment for life, ordinarily the convict has to pass the remainder of his life in prison but remissions and commutations are granted in exercise of power under Ss. 432 and 433, CrPC carving out an exception in the category of those convicts who have already enjoyed the generosity of executive power on the commutation of death sentence to one of life imprisonment. Even in such cases S. 433-A of the Code or the executive instruction of 1976 does not insist that the convict pass the remainder of his life in prison but merely insists that he shall have served time for at least 14 years. In the case of other 'lifers' the insistence under the 1971 amendment is that he should have a period of at least 8½ years of incarceration before release. The 1976 amendment was possibly introduced to make the remission scheme consistent with S. 433-A of the Code. Since S. 433-A is prospective, so also would be the 1971 and 1976 amendments.

The Note at the foot of Para 631 is neither an integral part of paragraph 631 nor does it have statutory favour. The Note at the foot of paragraph 631 merely reproduces paragraph 516-B, the marginal note thereto say so in no uncertain terms and therefore, the note cannot be ascribed a statutory character. According to the preface only those paragraphs which are backlined have statutory character. The Note in question is not so backlined. Where the Note is intended to be given statutory character it is backlined. Secondly, the source of paragraph 516-B and the note is the very same Resolution Nos. 159-167 of the Government of India dated September 6, 1905. The same resolution cannot be said to have been intended to be a mere executive instruction in one part of the Manual and was intended to be conferred a statutory character in another part of the same Manual. Thirdly, the marginal note to the Note in question in terms refers to paragraph 516-B which means it was merely a reproduction of the latter paragraph was not intended to confer a statutory character. Lastly, paragraph 631 classifies prisoners and fixes the duration of their sentences. The Note at the foot of the paragraph is by way of a remainder that notwithstanding the duration fixed under the said rule, paragraph 516-B requires that cases of such prisoners should be submitted on the expiry of the duration fixed under paragraph 516-B. It is therefore not possible to accept the view that the Note below Para 631 was also statutory in character like the main provision and therefore, in case of conflict between the Note and the amended Para 516-B the Note would prevail. However, paragraph 516-B insofar as it stands amended or modified by the 1971 and 1976 executive orders is prospective in character. *State of Punjab* v. *Joginder Singh*, (1990) 2 SCC 661: 1990 SCC (Cri) 419: AIR 1990 SC 1396: 1990 Cri LJ 1464.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *M. Fathima Beevi*, JJ. [Date of decision: 23-3-1990]

[6301] — Ss. 432 and 428 — State Government directed to reconsider petitioner's case for his premature release. *Babu* v. *State of U.P.*, 1987 Supp SCC 147: 1987 SCC (Cri) 673.

Bench Strength **2**. Coram: *M.P. Thakkar* and *B.C. Ray*, JJ. [Date of decision: 8-1-1987]

[6302] — Ss. 432 and 433 — Imprisonment for life awarded to the appellant for committing murder of a young girl — Motive being frustration in love — *Recommendation made by the High Court to State Government for showing some concession to the convict towards remission or reprieve — No interference by the Supreme Court is called for. Ashok Kumar Barik* v. *State of Orissa*, (1998) 8 SCC 539: 1998 SCC (Cri) 1520.

Bench Strength **2**. Coram: *M.M. Punchhi* and *M. Srinivasan*, JJ. [Date of decision: 5-11-1997]

[**Ed.**: In view of Section 433-A, CrPC the appellant cannot be released from prison unless he has served at least 14 years of imprisonment.]

[6303] — Ss. 432 and 433 — Power to remit and commute sentence — *Held, though the facts and circumstances of the instant case prima facie justifying remission of the sentence to some extent, but having found the appellants guilty under Ss. 302/34 IPC it was not possible for the Supreme Court to reduce the sentence of life imprisonment — Appellants directed to approach the State Government/Governor concerned for the commutation or remission of sentence* (Para 12). *Suresh Chandra* v. *State of U.P.*, (2005) 6 SCC 130: 2005 SCC (Cri) 1364: AIR 2005 SC 3120: 2005 Cri LJ 3449.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *D.M. Dharmadhikari*, JJ. [Date of decision: 21-7-2005]

[6304] — Ss. 432, 433 and 433-A — Rights of convict under — *Held, are limited to the extent that his case be considered according to remission rules/short-sentencing schemes — He cannot claim premature release as a matter of right — Constitution of India, Arts. 72 and 161* (Para 39). *State of Haryana* v. *Jagdish*, (2010) 4 SCC 216.

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and *J.M. Panchal* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 22-3-2010]

[6305] — Ss. 432 and 433-A — Life convict claiming to be in jail for more than 23 years including remission — *Normally entitled to premature release under relevant rules — But his claim being still unconfirmed, State Government directed to consider his case of premature release within four weeks and pass a reasoned order within eight weeks from the date of the present order. Lale* v. *State of U.P.*, 1986 Supp SCC 734: 1987 SCC (Cri) 224.

Bench Strength **2**. Coram: *M.P. Thakkar* and *B.C. Ray*, JJ. [Date of decision: 20-10-1986]

[6306] — Ss. 432 and 433-A — Person undergoing sentence of life imprisonment claiming to be already in jail for more than 22 years — *Period claimed to have been spent in jail would have entitled him to be released under relevant rules — But the claim still being unconfirmed, State Government directed to consider his case for premature release within four weeks and pass a reasoned order within eight weeks from the date of the present order. Dhyan Singh* v. *State of U.P.*, 1986 Supp SCC 694: 1987 SCC (Cri) 222.

Bench Strength **2**. Coram: *M.P. Thakkar* and *B.C. Ray*, JJ. [Date of decision: 20-10-1986]

[6307] — Ss. 432 and 433-A — Remission of sentence in terms of G.O./MS No. 580/Home (Prisons C) Department, dated 20.10.1984 issued by Government of A.P — *Held, benefit of remission not confined to prisoners actually in jail on date of G.O. — Person on bail on date of G.O. also entitled to benefit of remission — State Government directed to consider the matter afresh without reference to the fact that appellants were not in jail on date of G.O. Nalamolu Appala Swamy* v. *State of A.P.*, 1989 Supp (2) SCC 192: 1990 SCC (Cri) 44.

Bench Strength **3**. Coram: *S. Natarajan, K. Jagannatha Shetty* and *Kuldip Singh*, JJ. [Date of decision: 5-4-1989]

[6308] — S. 432(1) — Grant of special remission to prisoners belonging to the SC and ST and denial of the same to other prisoners rightly held by the High Court to be discriminatory — *Grant of such special remission cannot be said to be a measure for advancement of the SC & ST — However, the High Court was not justified in giving the same benefit to the non-SC & ST prisoners — Proper course was to strike down the order — Prisoners who had obtained the benefit of the High Court's order permitted to retain it. State of M.P.* v. *Mohan Singh*, (1995) 6 SCC 321: 1995 SCC (Cri) 1100: AIR 1996 SC 2106.

Bench Strength **2**. Coram: *S.P. Bharucha* and *B.N. Kirpal*, JJ. [Date of decision: 20-9-1995]

[6309] — S. 432(1) — State Government remitting only that part of sentence of imprisonment for life which was in excess of twenty-four years of total imprisonment — *Held, order not bad for non-application of mind — Decision not arbitrary or irrational. Jabbar Khaja Saudagar* v. *State of Maharashtra*, 1990 Supp SCC 637: 1991 SCC (Cri) 157(1).

Bench Strength **3**. Coram: *A.P. Sen*, *B.C. Ray* and *M.N. Venkatachaliah*, JJ. [Date of decision: 5-10-1987]

[6310] — Ss. 432(1) and 433-A (as inserted by Act 45 of 1978) — State Government declining to give to petitioner benefit of premature release without giving any reason — *State Government presumably misled that petitioner's case was governed by S. 433-A — Provision of S. 433-A not applicable to conviction recorded prior to December 18, 1978, the date of insertion of the section — Therefore, State Government directed to reconsider and dispose of petitioner's application within a period of four weeks. Damji* v. *State of Gujarat*, 1990 Supp SCC 143: 1990 SCC (Cri) 633: 1987 PLJR 78 (SC).

Bench Strength **2**. Coram: *A.P. Sen* and *B.C. Ray*, JJ. [Date of decision: 24-9-1987]

Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112, followed

— S. 432(7) *See* Ss. 406, 432(7), 385(1), 225, 2(u), 24 and 378

— S. 433 *See also* S. 402, Criminal Procedure Code, 1898, pp. 1180 et seq. in Vol. 2

— S. 433 *See* Ss. 366, 415, 433, 434 & 435
See also Ss. 389, 432 & 433
See also Ss. 413, 414, 418 and 433 & 433-A and Ch. XXXII (Ss. 413 to 435)
See also Ss. 428 and 433
See also Ss. 432 and 433
See also Ss. 432, 433 & 433-A
See also Ss. 432, 433, 433-A and 306
See also Ss. 433-A, 432 and 433
See also Ss. 482 and 433

[6311] — Ss. 433, 432 and 433-A — Sentence of life imprisonment — Means sentence of entire life — *Prisoner has no right to be released after serving 20 years' imprisonment including remission — Sub-rules (4) and (29) of R. 591 of the W.B. Rules only confers right to have his case put up by the prison authorities in time to State Government for consideration for premature release — Explanation to S. 61 of W.B. Correctional Services Act does not entitle accused to automatic release after 20 years' imprisonment — A positive order has to be passed by State Government after due consideration for premature release — Constitution of India, Arts. 72 and 161 — W.B. Rules for Superintendence and Management of Jails, R. 591(4) & (29) — W.B. Correctional Services Act, 1992 (32 of 1992), S. 61, Expln. — Penal Code, 1860, S. 53 Secondly*

A sentence of imprisonment for life does not automatically expire at the end of 20 years of imprisonment including remission, as a sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or part of the sentence. Therefore, a positive order of release has to be passed by the Government after due consideration. (Paras 4 and 9)

Sub-rules (4) and (29) of Rule 591 of the West Bengal Rules for the Superintendence and Management of Jails do not provide for automatic release of a life convict after he has completed 20 years of the detention including remission. Under these sub-rules the only right which a life convict can be said to have acquired is a right to have his case put up by the prison authorities in time to the State Government for consideration for premature release and in doing so the Government would follow the guidelines mentioned in sub-rule (4). (Para 6)

The Explanation to Section 61 of the West Bengal Correctional Services Act is only for the purpose of calculation of the total period of imprisonment of a life convict under Section 61, which shall be taken to be equivalent to the period of imprisonment for 20 years and a life convict would not be entitled to automatic release under this provision of law. (Para 8). *Zahid Hussein* v. *State of W.B.*, (2001) 3 SCC 750: 2001 SCC (Cri) 631: AIR 2001 SC 1312: 2001 Cri LJ 1692.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **S.N. Phukan**, JJ. [Date of decision: 15-3-2001]

Gopal Vinayak Godse v. State of Maharashtra, AIR 1961 SC 600: (1961) 3 SCR 440: (1961) 1 Cri LJ 736; State of M.P. v. Ratan Singh, (1976) 3 SCC 470: 1976 SCC (Cri) 428; Sohan Lal v. Asha Ram, (1981) 1 SCC 106; Bhagirath v. Delhi Admn., (1985) 2 SCC 580: 1985 SCC (Cri) 280; Laxman Naskar (Life Convict) v. State of W.B., (2000) 7 SCC 626: 2000 SCC (Cri) 1431, relied on

***Followed** in Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767*

[6312] — S. 433 — Commutation of sentence — Relevant factors and considerations — Duty of Government — Non-application of mind, non-specific grounds and insufficient evidence regarding ground of ailment and callous attitude of A-1 towards rule of law — *Trial court convicting A-1 under Ss. 148, 452 and 392 IPC — High Court convicting A-1 under Ss. 147 and 451 IPC and acquitting him of rest of the charges — On* *appreciation of evidence in SLP, trial court's order found justified and restored — High Court giving decision on 29-1-2007 — A-1 surrendering before Sessions Court only on 16-4-2007 — State Government ignoring facts that A-1 was absconding and also his callous attitude towards rule of law by drawing his salary during period of his abscondence — State Government commuting sentence of six months' rigorous imprisonment to Rs 5000 — State Government not independently scrutinising documents (in support of commutation of sentence of A-1) which were identical though given by different independent government authorities — A-1 taking stand that he was suffering from multiple medical ailments, but no document providing any details about his medical ailments — Effect — Held, S. 433 may not be extended to a law-breaker and absconder — State Government not having applied it mind, the order of commutation, held, improper — Trial court's order having been restored, commutation of sentence was set aside — Penal Code, 1860, Ss. 148, 452, 392, 147 and 451*

In Writ Petition (Crl.) No. 13 of 2008, State Government did not apply its mind. The order of commutation was only a reiteration of the identical reports submitted by different government authorities without any independent scrutiny. Section 433 CrPC may not be extended to a law-breaker and an absconder. Admittedly A-1 was absconding for 4 months before his surrender. The records clearly show that the High Court gave its decision on 29-1-2007, but A-1 surrendered before the Sessions Court only on 16-4-2007. Interestingly, A-1 is stated to have been drawing his salary during the period when he was absconding, which unmistakably showed his callous attitude towards rule of law. The State Government completely ignored this aspect. The sentence of A-1 was commuted from six month's rigorous imprisonment to fine of Rs 5000 and A-1 was released immediately after one week of his surrender on 24-4-2007. (Paras 30 to 32 and 24)

The powers conferred upon the appropriate Government under Section 433 CrPC, must be exercised in accordance with the rules and established principles. Such power must be viewed as a trust, coupled with a duty to exercise the same in the larger public and social interest. While exercising such power, relevant facts, reasons and purpose of law necessitating the commutation must be reflected and well established. Government must not as a matter of routine, indulge in exercise of such powers at its sweet will, pleasure and whim or fancy. (Para 34)

By simply making vague and bald statements, without having even an iota of indication with regard to the actual disease or ailment is not sufficient to justify the order of commutation. The order of commutation on the basis of these statements without ascertaining its genuineness/veracity shows that the impugned order was passed without any application of mind. It has been stated that A-1 is suffering from multiple medical ailments, but neither his petition for commutation nor any report nor the order of commutation provides any details with regard to what kind of medical ailment he is suffering from. (Para 33)

In view of the aforesaid discussion, the order of the State Government is untenable in law. It is also to be indicated that in view of the order passed in SLP, convicting the appellant under Sections 148, 382 and 452 IPC and restoration of the order of sentence passed by the trial court, the impugned order passed by the State Government is also liable to be struck down on the ground of changed situation and circumstances. The writ petition is allowed to the aforesaid extent. (Para 35). *Mohd. Ishaq* v. *S. Kazam Pasha*, (2009) 12 SCC 748: 2009 Cri LJ 3063.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dr. M.K. Sharma**, JJ. [Date of decision: 6-5-2009]

[6313] — S. 433 — Exercise of State Government's power to commute sentence — Whether subject to judicial review — Principles reiterated — *Constitution of India, Arts. 72 and 161*

Simply because a remedy exists in the form of Article 226 of the Constitution for filing a writ in the High Court concerned, it does not prevent or place any bar on an aggrieved person to directly approach the Supreme Court under Article 32 of the Constitution. It is true that the Court has imposed a self-restraint in its own wisdom on the exercise of jurisdiction under Article 32 where the party invoking the jurisdiction has an effective, adequate alternative remedy in the form of Article 226 of the Constitution. However, this rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than a rule of law. It does not oust the jurisdiction of the Supreme Court to exercise its writ jurisdiction under Article 32 of the Constitution. (Para 23). *Mohd. Ishaq* v. *S. Kazam Pasha*, (2009) 12 SCC 748: 2009 Cri LJ 3063.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dr. M.K. Sharma**, JJ. [Date of decision: 6-5-2009]

Epuru Sudhakar v. Govt. of A.P., (2006) 8 SCC 161: (2006) 3 SCC (Cri) 438, relied on

[6314] — Ss. 433, 433-A, 434, 413, 414, 418, 366, 368 and 371 — Murder — Death sentence — Commutation to/Substitution by sentence of life imprisonment — Actual term of imprisonment that may be directed by court — Power of court to direct the actual period of incarceration to be undergone by convict without the same being subject to remission/commutation, etc. by the executive under provisions of CrPC, Prisons Acts and rules framed by different States — Power to direct that in such cases, convict would serve out imprisonment for the remainder of the natural term of his life without any remission — Such power when to be exercised — Unacceptability of sentence of imprisonment for a term of 14 years, that goes under the name of (the ordinary remittable) sentence of life imprisonment in such cases of substitution — Reasons for, discussed in detail — *Held, the sentence of imprisonment for life (till its full natural span) given to a convict as a substitute for the death sentence must be viewed differently and segregated from the ordinary life imprisonment given as the sentence of first choice — Life imprisonment when awarded as a substitute for death penalty has to be carried out strictly as directed by the court —When the death sentence comes up for confirmation, if the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty — A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death — The Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all — Further, the formalisation of a special category of sentence, though for an extremely few number of cases, shall have the great advantage of having the death penalty on the statute book but to actually use it as little as possible, really in the rarest of rare cases — Contention rejected that execution of punishment was a matter in the hands of the executive alone and the court had no control over the same — Clarified that ruling in this case did not relate to constitutional provisions relating to commutation, remission, suspension, etc. of sentences by the President or the Governor — Present case not falling in the rarest of rare cases to merit the death sentence awarded by trial court and confirmed by High Court, death sentence substituted by imprisonment for life with the direction that the appellant convict would not be released from prison for the rest of his life — Reasons given for why present case did not fall in the rarest of rare category — Constitution of India, Arts. 72 and 161 — Penal Code, 1860 — S. 302*

The conviction of the appellant under Sections 302 and 201 IPC had attained finality. The trial court and the High Court had sentenced him to death. On appeal before the Supreme Court before a two-Judge Bench, in (2007) 12 SCC 288, both the Hon'ble Judges unanimously upheld the appellant's conviction for the two offences but they were unable to agree as to the punishment to be meted out to the appellant. One of the learned Judges felt that in the facts and circumstances of the case the punishment of life imprisonment, rather than death would serve the ends of justice. The said learned Judge however, made it clear that the appellant would not be released from prison *till the end of his life*. The other learned Judge on the other hand, took the view that the appellant deserved nothing but death. Hence the matter had been placed before the present three-Judge Bench.

Commuting the death sentence to life imprisonment with the direction that the appellant would not be released from prison till the end of his life,

Held :

The provisions in regard to commutation, remission, suspension, etc. are to be found both in the Constitution of India and in the statutes. Here it needs to be made absolutely clear that this judgment is not concerned at all with the constitutional provisions that are in the nature of the State's sovereign power. What is said hereinafter relates only to provisions of commutation, remission, etc. as contained in CrPC, the Prisons Acts and the rules framed by the different States. (Para 77)

Though the present case is not one of "rarest of the rare" to merit the death penalty, the question arises as to the penalty commensurate to the appellant's crime. The sentence of imprisonment for a term of 14 years, that goes under the euphemism of life imprisonment is equally, if not more, unacceptable. All that is changed by the insertion of Section 433-A CrPC is that before its insertion an imprisonment for life in most cases worked out to a dozen years of imprisonment and after its introduction it works out to fourteen years' imprisonment. As a matter of fact the respondent State has brought on record the fact that the appellant was taken in custody on 28-3-1994 and submitted that by virtue of the provisions relating to remission, the sentence of life imprisonment, without any qualification or further direction would, in all likelihood, lead to his release from jail in the first quarter of 2009 since he has already completed more than 14 years of incarceration. This eventuality is simply not acceptable. (Paras 56 and 89)

Once the judgment is signed and pronounced, the execution of the sentence passes into the hands of the executive and is governed by different provisions of law. There is no surety that the sentence awarded to the convict after painstaking and anxious deliberation would be carried out in actuality. The answer lies in breaking this standardisation that, in practice, renders the sentence of life imprisonment equal to imprisonment for a period of no more than 14 years: in making it clear that the sentence of life imprisonment when awarded as a substitute for death penalty would be carried out strictly as directed by the court. The sentence of imprisonment for life (till its full natural span) given to a convict as a *substitute for the death sentence* must be viewed differently and segregated from the ordinary life imprisonment given as the sentence of first choice. (Paras 2, 3, 56, 67 and 91)

It was submitted that just as the court could not direct the appropriate Government for granting remission to a convicted prisoner, it was not open to the court to direct the appropriate Government not to consider the case of a convict for grant of remission in sentence. It was contended that giving punishment for an offence was indeed a judicial function but once the judgment was pronounced and punishment awarded, the matter no longer remained in the hands of the court. The execution of the punishment passed into the hands of the executive and under the scheme of the statute the court had no control over the execution. The submission is wholly misconceived and untenable. (Paras 72 and 73)

The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh *or it may be highly disproportionately inadequate*. When an appellant comes to the Supreme Court carrying a death sentence awarded by the trial court and confirmed by the High Court, the Supreme Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all. (Para 92)

Further, the formalisation of a special category of sentence, though for an extremely few number of cases, shall have the great advantage of having the death penalty on the statute book but to actually use it as little as possible, really in the rarest of rare cases. This would only be a reassertion of the Constitution Bench decision in *Bachan Singh case*, (1980) 2 SCC 684, besides being in accord with the modern trends in penology. (Para 93)

It is undeniable that the appellant killed his victim in a planned and cold-blooded manner but at least this much can be said in his favour that he devised the plan so that the victim could not know till the end and even for a moment that she was betrayed by the one she trusted most. Further, though the way of killing appears quite ghastly it may be said that it did not cause any mental or physical pain to the victim. Thirdly, the appellant confessed his guilt at least partially before the High Court. This must not be understood to mean that the crime committed by the appellant was not very grave or the motive behind the crime was not highly depraved. Nevertheless, this Bench is hesitant in endorsing the death penalty awarded to him by the trial court and confirmed by the High Court. The absolute irrevocability of the death penalty renders it completely incompatible to the slightest hesitation on the part of the Court. The hangman's noose is thus taken off the appellant's neck. (Paras 53 to 55)

However, there is a good and strong basis for the Court to substitute a death sentence by life imprisonment or by a term in excess of fourteen years and further to direct that the convict must not be released from the prison for the rest of his life or for the actual term as specified in the order, as the case may be. The death sentence given to the appellant by the trial court and confirmed by the High Court is accordingly substituted by imprisonment for life and it is directed that he shall not be released from prison till the rest of his life. (Paras 94 and 95). *Swamy Shraddananda (2)* v. *State of Karnataka*, (2008) 13 SCC 767: AIR 2008 SC 3040: 2008 Cri LJ 3911.

Bench Strength **3**. Coram: *B.N. Agrawal, G.S. Singhvi* and **Aftab Alam**, JJ. [Date of decision: 22-7-2008]

Aloke Nath Dutta v. State of W.B., (2007) 12 SCC 230: (2008) 2 SCC (Cri) 264; Dalbir Singh v. State of Punjab, (1979) 3 SCC 745: 1979 SCC (Cri) 848; Jayawant Dattatraya Suryarao v. State of Maharashtra, (2001) 10 SCC 109: 2002 SCC (Cri) 897, followed

Jagmohan Singh v. State of U.P., (1973) 1 SCC 20: 1973 SCC (Cri) 169; Subash Chander v. Krishan Lal, (2001) 4 SCC 458: 2001 SCC (Cri) 735; State of M.P. v. Ratan Singh, (1976) 3 SCC 470: 1976 SCC (Cri) 428; Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112; Bhagirath v. Delhi Admn., (1985) 2 SCC 580: 1985 SCC (Cri) 280; Zahid Hussein v. State of W.B., (2001) 3 SCC 750: 2001 SCC (Cri) 631; Shri Bhagwan v. State of Rajasthan, (2001) 6 SCC 296: 2001 SCC (Cri) 1095; Prakash Dhawal Khairnar (Patil) v. State of Maharashtra, (2002) 2 SCC 35: 2002 SCC (Cri) 281; Ram Anup Singh v. State of Bihar, (2002) 6 SCC 686: 2002 SCC (Cri) 1466; Mohd. Munna v. Union of India, (2005) 7 SCC 417: 2005 SCC (Cri) 1688; Nazir Khan v. State of Delhi, (2003) 8 SCC 461: 2003 SCC (Cri) 2033; Gopal Vinayak Godse v. State of Maharashtra, AIR 1961 SC 600: (1961) 3 SCR 440; Pandit Kishori Lal v. King Emperor, (1944-45) 72 IA 1: AIR 1945 PC 64, relied on

State (Govt. of NCT of Delhi) v. Prem Raj, (2003) 7 SCC 121: 2003 SCC (Cri) 1586, distinguished

Delhi Admn. v. Manohar Lal, (2002) 7 SCC 222: 2002 SCC (Cri) 1670; State of Punjab v. Kesar Singh, (1996) 5 SCC 495: 1996 SCC (Cri) 1034, impliedly distinguished

[6315] — Ss. 433, 433-A & 434 and 413, 414 & 418 and Ss. 53, 55 & 57, Penal Code, 1860 — "Life imprisonment" — Meaning of — Remission practices followed by the States, leading effectively to a sentence of "life imprisonment" amounting only to a sentence of 14 years in practice — Legality of, doubted — *Held, it is conclusively settled by a catena of decisions of Supreme Court that a sentence of "life imprisonment" means a sentence of imprisonment for the convict for the rest of his life — S. 57 IPC does not in any way limit the punishment of imprisonment for life to a term of twenty years — Hence deemed conversion of life imprisonment by various States into one for a fixed term by executive orders, is illegal — There is no legal provision sanctioning such a course — It is thus seen that life convicts are granted remission and released from prison on completing a fourteen year term without any sound legal basis*

It is now conclusively settled by a catena of decisions that the punishment of imprisonment for life handed down by the court means a sentence of imprisonment for the convict for the rest of his life. (Para 75)

It is equally well settled that Section 57 IPC does not in any way limit the punishment of imprisonment for life to a term of twenty years. Section 57 IPC is only for calculating fractions of terms of punishment and provides that imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years. The object and purpose of Section 57 will be clear by simply referring to Sections 65, 116, 119, 129 and 511 IPC. (Para 76). *Swamy Shraddananda (2)* v. *State of Karnataka*, (2008) 13 SCC 767: AIR 2008 SC 3040: 2008 Cri LJ 3911.

Bench Strength **3**. Coram: *B.N. Agrawal, G.S. Singhvi* and **Aftab Alam**, JJ. [Date of decision: 22-7-2008]

Gopal Vinayak Godse v. State of Maharashtra, AIR 1961 SC 600; Dalbir Singh v. State of Punjab, (1979) 3 SCC 745: 1979 SCC (Cri) 848; Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112; Naib Singh v. State of Punjab, (1983) 2 SCC 454: 1983 SCC (Cri) 536; Ashok Kumar v. Union of India, (1991) 3 SCC 498: 1991 SCC (Cri) 845; Laxman Naskar v. State of W.B., (2000) 7 SCC 626: 2000 SCC (Cri) 1431; Zahid Hussein v. State of W.B., (2001) 3 SCC 750: 2001 SCC (Cri) 631; Kamalanantha v. State of T.N., (2005) 5 SCC 194: 2005 SCC (Cri) 1121; Mohd. Munna v. Union of India, (2005) 7 SCC 417: 2005 SCC (Cri) 1688; C.A. Pious v. State of Kerala, (2007) 8 SCC 312: (2007) 3 SCC (Cri) 544, followed

[6316] — Ss. 433, 433-A & 434 and 413, 414 & 418 and Ss. 53, 55 & 57, Penal Code, 1860 — Remission of sentences of life imprisonment — When permissible — Necessity for sociological and psychiatric appraisal of convict, with proper appraisal of effect of early release of a particular convict into society — *Penology — 'Life imprisonment'*

From the Prisons Acts and the Rules it appears that for good conduct and for doing certain duties, etc. inside the jail the prisoners are given some days' remission on a monthly, quarterly or annual basis. The days of remission so earned by a prisoner are added to the period of his actual imprisonment (including the period undergone as an undertrial) to make up the term of sentence awarded by the court. The way in which remission is allowed, it can only apply to a fixed term and life imprisonment, being for the rest of life, is by nature indeterminate. Both in Karnataka and Bihar remission is granted to life convicts by *deemed* conversion of life imprisonment into a fixed term of 20 years. The deemed conversion of life imprisonment into one for fixed term by executive orders issued by the State Governments apparently flies in the face of a long line of decisions by the Supreme Court and there is no provision of law which was brought to the Supreme Court's notice to sanction such a course. It is thus seen that life convicts are granted remission and released from prison on completing the fourteen-year term without any sound legal basis. One can safely assume that the position would be no better in the other States. The Supreme Court can also take judicial notice of the fact that remission is allowed to life convicts in the most mechanical manner without any sociological or psychiatric appraisal of the convict and without any proper assessment as to the effect of the early release of a particular convict on the society. The grant of remission is the rule and remission is denied, one may say, in the rarest of rare cases. (Paras 80 and 88). *Swamy Shraddananda (2)* v. *State of Karnataka*, (2008) 13 SCC 767: AIR 2008 SC 3040: 2008 Cri LJ 3911.

Bench Strength **3**. Coram: *B.N. Agrawal, G.S. Singhvi* and **Aftab Alam**, JJ. [Date of decision: 22-7-2008]

[6317] — Ss. 433 and 432 — Premature release of life sentencee — *Guidelines framed by State Government for Review Board constituted for considering prayers for premature release — Held on facts, guidelines not properly followed by the Board in rejecting cases of the petitioner convicts — Hence matter remitted for fresh decision — Generally*

The State Government constituted a Review Board to consider the cases of premature release of the petitioners. Following guidelines were framed by the Government for the premature release of life convicts, namely:

(*i*) Whether the offence is an individual act of crime without affecting the society at large.

(*ii*) Whether there is any chance of future recurrence of committing crime.

(*iii*) Whether there is any fruitful purpose of confining of these convicts any more.

(*iv*) Whether the convicts have lost potentiality in committing crime.

(*v*) Socio-economic condition of the convicts' families.

In the present case the jail authority recommended premature release of the writ petitioners. But the Review Board refused to grant premature release of the petitioners on the following grounds: (*1*) police report is adverse; (*2*) the convicts are not overaged persons and as such have not lost the potentiality in committing crime; (*3*) since other co-convicts were trying to come out from jail, there was a possibility of regrouping for antisocial activities; (*4*) the offence was not an individual act of crime but was affecting society at large; (*5*) convicts were antisocial; and (*6*) the witnesses who had deposed at the trial as well as local people were apprehensive of retaliation in the event of premature release. In case of one of the petitioners *T*, the Review Board also noted that one of the co-convicts was granted premature release who was murdered in an encounter after the release.

Held :

The conduct of the petitioners while in jail is an important factor to be considered as to whether they have lost their potentiality in committing crime due to long period of detention. The views of the witnesses who were examined during trial and the people of the locality cannot determine whether the petitioners would be a danger to the locality, if released prematurely. This has to be considered keeping in view the conduct of the petitioners during the period they were undergoing sentence. Age alone cannot be a factor while considering whether the petitioners still have potentiality of committing crime or not as it will depend on changes in mental attitude during incarceration. While coming to the conclusion for possibility of regrouping for anti-social activities, the Review Board did not take into account that the life convicts are in jail for more than 18 years. The Board also did not consider whether there would be any fruitful purpose of confining the convicts any more and also the socio-economic condition of their families. Regarding the petitioner *T* the Review Board also noted that one co-convict was released prematurely and was murdered in the encounter with other criminals after his release. It is learnt that the said co-accused was released in the year 1991 and was murdered in the year 1998 and therefore, this fact has no nexus with the consideration of premature release of the petitioner, *T*. Thus the reasons given by the Review Board for rejecting the prayers for premature release of the petitioners are irrelevant and devoid of any substance.

Accordingly, the impugned order of the State Government is quashed and the matter is remitted again for deciding it afresh within three months. (Paras 14 to 16). *Zahid Hussein* v. *State of W.B.*, (2001) 3 SCC 750: 2001 SCC (Cri) 631: AIR 2001 SC 1312: 2001 Cri LJ 1692.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **S.N. Phukan**, JJ. [Date of decision: 15-3-2001]

[6318] — Ss. 433 and 433-A — Respondent not completing 14 years' sentence when he filed the petition seeking premature release — *Direction by the High Court to release the respondent forthwith held, illegal — Even if the High Court could give such a direction, it could only direct consideration of respondent's case of premature release by the Government and could not have itself ordered the premature release of the respondent — Order of the High Court set aside — However, respondent can approach the Government for commutation of his sentence and premature release in terms of order dated 6-3-1985 issued by the Governor of Punjab. State of Punjab* v. *Kesar Singh*, (1996) 5 SCC 495: 1996 SCC (Cri) 1034: AIR 1996 SC 2512.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *S.B. Majmudar*, JJ. [Date of decision: 22-7-1996]

Impliedly distinguished in *Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767*

[**Ed.**: Under Section 433-A a person convicted for an offence for which death is one of the punishments cannot be released unless he has served at least 14 years of imprisonment. In the instant case the respondent was convicted under Sections 302/34 and had served only a little more than 8 years' imprisonment. It is not clear under which provision can he approach the Government for premature release as observed in para 4 of the judgment.]

[6319] — S. 433 — Sentence — Commutation of — Age of accused more than 80 years — *Incident relating to the year 1979 — Peculiar facts and circumstances of the case — Held, having regard to the relevant rules and the said facts, the State would consider the case of accused-appellant sympathetically as and when an application in that regard would be made by him — Penal Code, 1860 — S. 302 r/w S. 149*

Having regard to the relevant rules and keeping in view that Appellant *D* is more than 80 years old, the incident relates to the year 1979 and the case involves peculiar facts and circumstances, the respondent State will consider the case of *D* sympathetically as and when an application is made by him for commutation of sentence. (Para 9). *Dila* v. *State of U.P.*, (2002) 7 SCC 450: 2002 SCC (Cri) 1782: AIR 2002 SC 3387.

Bench Strength **3**. Coram: *S. Rajendra Babu*, **Shivaraj V. Patil** and *Ashok Bhan*, JJ. [Date of decision: 20-9-2002]

[6320] — S. 433 — Commutation of sentence by appropriate Government — Conditional/direction for — *On peculiar facts of present case accused-appellant directed to deposit Rs 7500 and move appropriate Government for commutation of custodial sentence — Prevention of Food Adulteration Act, 1954, Ss. 7(1) and 16. Om Prakash* v. *State (NCT) of Delhi*, (2007) 5 SCC 370: (2007) 2 SCC (Cri) 512: (2007) 55 AIC 26 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 5-6-2007]

— S. 433(a) *See* Ss. 433-A and 433(a)
See also Ss. 433-A, 433(a) and 5

[6321] — Ss. 433(a) and 354(3) — Death sentence — Commutation of — Role of NHRC — Order for commutation of death sentence based on recommendations of NHRC — Jurisdiction and powers of NHRC regarding such recommendations — *Entertainment of complaint/application by NHRC where cause of action is judicial order — Questions regarding whether accused's human rights were violated and by whom violated, unanswered — Held, NHRC proceedings not in line with procedure prescribed in Act — Recommendations, non est — Moreover, commutation order indicated no other reason — Hence set aside, with direction for reconsideration of application of accused — Protection of Human Rights Act, 1993, Ss. 2(1)(d) and 17 — Constitution of India — Arts. 32, 161 and 72*

The accused had been found guilty of brutally massacring four persons of a family. Death sentence was awarded by the trial court, confirmed by the High Court and the Supreme Court. A review petition filed thereagainst was dismissed. Subsequently the Governor of Assam ordered the commutation of the death sentence to that of life imprisonment. The order of commutation had its foundation on recommendations made by the National Human Rights Commission. NHRC made the recommendation purportedly on the basis of a complaint made by Prof. *V.*

The appellant had thus filed the present writ petition.

Allowing the petition,

Held :

In the documents filed before the Court by NHRC the name of the victim has been stated and cause of action is stated to be the date of judgment of the Supreme Court i.e. 31-7-2000. (Para 10)

The Protection of Human Rights Act, 1993 in Section 17 deals with inquiry into complaints regarding violation of human rights. There have to be at least two individual persons. One whose human rights have been violated and the other who has violated the human rights. The counsel for NHRC was asked as to who had violated the human rights of the accused. An evasive reply was given that when any action violated the human rights, there can be violation of the human rights. This situation is not conceivable in law. (Para 11)

Since the date of cause of action was indicated to be the date of the Supreme Court's judgment, it was pointedly asked of counsel for NHRC as to whether the Judges of the Supreme Court or the Court itself had violated the human rights. Here again an evasive reply was given. This is the same thing as saying that by an order of the Supreme Court there has been violation of human rights. Such a position can never be countenanced. (Para 12)

Proceedings before NHRC were without sanction of law and were not in line with the procedure prescribed under the Act. The recommendations, if any, by NHRC are non est. (Paras 15 and 16)

The State of Assam has indicated that not only the recommendations of NHRC but several other aspects have been taken note of. But the order directing commutation does not indicate any reason. Order of commutation of death sentence to life imprisonment is set aside. Reconsideration of the application filed by the accused for commutation of sentence is directed. (Paras 17 and 18). *Bani Kanta Das* v. *State of Assam*, (2009) 15 SCC 206: (2009) 3 CTC 283 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 8-5-2009]

Epuru Sudhakar v. Govt. of A.P., (2006) 8 SCC 161: (2006) 3 SCC (Cri) 438, relied on

[6322] — Ss. 433(b) and 433-A — Imprisonment for life — *In absence of commutation of sentence under S. 55 IPC or S. 433(b) CrPC for a term not exceeding 14 years, held, a life convict not entitled to be released before 14 years of actual imprisonment — Naib Singh case does not require reconsideration — Appellant having undergone 13 years and 6 months' actual imprisonment and over 17 years' imprisonment including remission, not entitled to be released on ground that government must be deemed to have commuted his sentence to 14 years. Sat Pal* v. *State of Haryana*, (1992) 4 SCC 172: 1992 SCC (Cri) 866: AIR 1993 SC 1218.

Bench Strength 2. Coram: **Kuldip Singh** and *K. Ramaswamy*, JJ. [Date of decision: 19-8-1992]

[6323] — S. 433(c) — "Commutation" — Meaning of — Power to commute sentence — Held, exclusively vests with the appropriate Government — "Appropriate Government", meaning of — Said power how to be exercised, stated — *Thus, on facts, order of High Court enhancing fine to Rs 15,000 in commutation of sentence of imprisonment and directing that on deposit of the said amount and intimation thereof to the appropriate Government, the State Government might formalise the matter by passing an order under S. 433(c), held, not justified — Hence, set aside*

In the instant case, accused *P* was sentenced to rigorous imprisonment for 2 years with a fine of Rs 500 and imprisonment for 3½ years with a fine of Rs 1000 under Section 7 and Section 13(2) of the Prevention of Corruption Act, 1988 respectively. Both the sentences were directed to run concurrently. *P* filed an appeal before the High Court for commutation of sentence on the grounds (*i*) that he was on the verge of retirement, (*ii*) that he had faced the ordeal of trial for 11 years, and (*iii*) that he was not a previous convict. The High Court held that no useful purpose would be served in requiring *P* to undergo imprisonment at that belated stage. Thus, the High Court enhanced the fine to Rs 15,000 in commutation of sentence of imprisonment and directed that on the deposit of the said amount and intimation of the same to the appropriate Government, the State Government might formalize the matter by passing an appropriate order under Section 433 CrPC.

The only question raised in the instant appeal was whether the High Court acted within the framework of law in exercising power available under Section 433(*c*) CrPC.

Setting aside the order of the High Court,

Held :

"Commutation" is in essence the alteration of a sentence of one kind into a sentence of less severe kind. The powers of commutation exclusively vest with the appropriate Government. The expression "appropriate Government" means the Central Government in cases where the sentence or order relates to the matter to which the executive power of the Union extends, and the State Government in other cases. The powers conferred upon the appropriate Government under Section 433 have to be exercised reasonably and rationally keeping in view the reasons germane and relevant for the purpose of law, mitigating circumstances and/or commiserative facts necessitating the commutation and factors like interest of the society and public interest. (Paras 14 and 10)

The order of the High Court is set aside. It is open to the accused to move the appropriate Government for such relief as is available in law. It would be at the sole discretion of the appropriate Government to exercise the power conferred on it in accordance with law. (Para 16). *State (Govt. of NCT of Delhi)* v. *Prem Raj*, (2003) 7 SCC 121: 2003 SCC (Cri) 1586.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 5-8-2003]

41st Report of the Law Commission, referred to

Delhi Admn. (now NCT of Delhi) v. Manohar Lal, (2002) 7 SCC 222: 2002 SCC (Cri) 1670; State of Punjab v. Kesar Singh, (1996) 5 SCC 495: 1996 SCC (Cri) 1034, relied on

[6324] — Ss. 433(c) and (d) — Reduction sentence — If warranted — Age of appellant and time since incident took place — *Plea that sentence of appellants, particularly Appellant 2 aged about 81 years who had already undergone five months' RI, may be reduced — In the facts and circumstances of the case and that incident had taken place almost two decades ago, held, it is a fit case for reduction of sentences*

The order of conviction passed against all the appellants is maintained. However, the sentence of two months' RI awarded to Appellants 1 and 3 is set aside and instead they are sentenced to pay a fine of Rs 20,000 each within six weeks, failing which they will undergo RI for a period of one month. Similarly, the sentence of three years' RI awarded by the trial court to Appellant 2 is reduced to RI for one year. He shall also be liable to pay a fine of Rs 20,000 within six weeks and in default will undergo further RI for a period of one month. The amount(s) of fine so recovered shall be paid in equal proportion to all who were injured in the incident. (Paras 23 and 24). *Ashok Kumar Chaudhary* v. *State of Bihar*, (2008) 12 SCC 173: AIR 2008 SC 2436: (2008) 66 AIC 13 (SC): 2008 Cri LJ 3030.

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 5-5-2008]

— S. 433(d) *See also* Ss. 433(c) & (d)

[6325] — S. 433(d) — Addition of colouring matter to chillies powder per se would make the article adulterated — Conviction maintained — *But sentence of six months' RI reduced to three months' simple imprisonment enabling the appellant to approach the State Government under S. 433(d) CrPC for conversion of simple imprisonment to fine — Adulteration possibly done to please the customer's eye, the Supreme Court directed the State Government to release the appellant on charging of Rs 2000 as fine in addition to fine of Rs 1000 imposed by the lower courts — Prevention of Food Adulteration Act, 1954, Ss. 2(ia)(j), 7/16 and Appendix B, Item A.05.05.01*. *Badri Prasad* v. *State of M.P.*, 1995 Supp (4) SCC 682: 1996 SCC (Cri) 79.

Bench Strength **3**. Coram: *M.M. Punchhi*, *Faizan Uddin* and *K. Jayachandra Reddy*, JJ. [Date of decision: 24-1-1995]

Limited to its facts in Delhi Admn. v. Manohar Lal, (2002) 7 SCC 222

[6326] — S. 433(d) — Commutation of sentence — Maintainability — *High Court, while upholding conviction of respondent-accused under Ss. 7 and 16, PFA Act, 1954, commuting his sentence of six months' RI, awarded by trial court, to fine of Rs 6000 and directing appropriate Government for formalising matter by passing appropriate order under S. 433(d), if amount deposited within particular period — Sustainability — Following* Dayal Singh case, *(2004) 5 SCC 721, sentence as imposed by trial court restored — However, as occurrence took place nearly three decades back, directions given, that if respondent-accused moves appropriate Government for commuting sentence of imprisonment, same shall be considered in the proper perspective — Prevention of Food Adulteration Act, 1954, Ss. 7 and 16* (Paras 4 and 5). *State of Rajasthan* v. *Jagdish Prasad*, (2009) 12 SCC 646.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 29-4-2009]

Dayal Singh v. State of Rajasthan, (2004) 5 SCC 721: 2004 SCC (Cri) 1715, followed

[6327] — S. 433(d) — Offence of selling adulterated ice cream — Sentence — *High Court imposing sentence of six months' simple imprisonment and to pay a fine of Rs 1000 — Offence committed in 1984 — Held, this would be an appropriate case for commutation of sentence where almost a decade has passed — Appellant directed to deposit in trial court Rs 6000 as fine in commutation of imprisonment and to move the State Government for appropriate orders under S. 433(d) — Prevention of Food Adulteration Act, 1954, Ss. 7 and 16*. *N. Sukumaran Nair* v. *Food Inspector*, (1997) 9 SCC 101: 1997 SCC (Cri) 608.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-1-1995]

Limited to its facts in Delhi Admn. v. Manohar Lal, (2002) 7 SCC 222

[6328] — S. 433(d) — Commutation of sentence — *Executive discretion, being part of residuary sovereign power of the State, held, is to be exercised reasonably and rationally in the interests of the society and public interest having regard to the fact situation of the particular case — Where legislature has prescribed a minimum sentence for an offence, appropriate authority must exercise its power under S. 433 with great circumspection — Held, High Court in exercise of revisional jurisdiction had no power to itself decide to commute the sentence imposed under Ss. 16/7 of Prevention of Food Adulteration Act and direct the convict to deposit in trial court a specified sum as fine and inform the Government of such deposit for formalising the matter by passing appropriate order under S. 433(d) — Supreme Court in N. Sukumaran Nair v. Food Inspector, (1997) 9 SCC 101 and Santosh Kumar v. Municipal Corpn., (2000) 9 SCC 151 has not laid down any such law in this regard — Prevention of Food Adulteration Act, 1954, Ss. 16/7 and 2(ia), (j)*

The respondent was convicted for an offence under Section 16 read with Section 7 for violation of Sections 2(*ia*), (*a*), (*j*) of the Prevention of Food Adulteration Act by the Magistrate and was sentenced to simple imprisonment for one year, in addition to a fine of Rs 2000, in default of payment of which to undergo a further imprisonment for one month. In appeal the Additional Sessions Judge sustained the conviction. As regards the respondent's claim for benefit of Section 433(*d*) CrPC, the appellate court took the view that the power to commute the sentence thereunder vests with the State Government and it was not possible to adopt the course taken in *Badri Prasad* v. *State of M.P.*, 1995 Supp (4) SCC 682 by the Supreme Court in exercise of its inherent powers. The sentence imposed by the trial court was also thus confirmed. In the revision petition filed before the High Court, the respondent's conviction was not challenged. In respect of the sentence, adverting to the certificate of the Director, Central Food Laboratory, wherein it was found stated that the colouring matter was not injurious to health and placing reliance upon the decision of the Supreme Court in *Santosh Kumar* v. *Municipal Corpn.*, (2000) 9 SCC 151, wherein a direction was issued by the Supreme Court to the Government under Section 433 CrPC, benefit of Section 433(*d*) CrPC was claimed for the respondent. Taking into account the same and the concession said to have been made by the counsel for the State, the High Court extended the benefit of commutation of sentence, as envisaged under Section 433(*d*) CrPC and directed the respondent to deposit in the trial court Rs 20,000 as fine, in commutation of the sentence of imprisonment and inform the Government of such deposit, for formalising the matter by passing appropriate orders under Section 433(*d*) CrPC. It was also ordered that on deposit of the fine amount, the sentence of imprisonment imposed shall stand suspended.

Allowing the appeal by the State,

Held :

Apparently, the High Court was merely swayed by considerations of judicial comity and propriety and failed to see that merely because the Supreme Court has issued directions in some other cases, to deal with the fact situation in those other cases, in the purported exercise of its undoubted inherent and plenary powers to do complete justice, keeping aside even technicalities, the High Court, exercising statutory powers under the criminal laws of the land, could not afford to assume to itself the powers or jurisdiction to do the same or similar things. The High Court and all other courts in the country were no doubt ordained to follow and apply the law declared by the Supreme Court, but that does not absolve them of the obligation and responsibility to find out the ratio of the decision and ascertain the law, if any, so declared from a careful reading of the decision concerned and only thereafter proceed to apply it appropriately, to the cases before them. Considered in that context, in decisions in *Sukumaran*, (1997) 9 SCC 101 and *Santosh Kumar*, (2000) 9 SCC 151 neither any law had been declared nor any principle or question of law decided or laid down. In those cases the Supreme Court merely proceeded to give certain directions to dispose of the matter in the special circumstances noticed by it and the need felt therein to give such a disposal. The same could not have been mechanically adopted as a general formula to dispose of, as a matter of routine, all cases coming before any or all the courts as a universal and invariable solution in all such future cases. The High Court had no justifying reason to disturb the conclusion of the first appellate court, in this regard. (Para 5)

That apart, from the nature and content of the order passed by the High Court in this case, it could be seen that no discretion or liberty whatsoever has been left with the State Government to exercise powers under Section 433(*d*) CrPC at its discretion which was part of the residuary sovereign power of the State. Not only has the High Court decided to commute but issued a mandatory direction to the Government with no discretion or liberty left with it, except to "formalise the same", on payment of the fine amount specified by the Court. This is nothing but assuming powers where there are none for the High Court and where the statute concerned specifically entrusts it only to the appropriate Government. (Para 6)

Even the appropriate Government may not, as a matter of routine course, indulge in exercise of such powers at its sweet will, pleasure and whim or fancy. The powers conferred upon the appropriate Government under Section 433 CrPC have to be exercised in accordance with rules and established principles — reasonably and rationally, keeping in view the reasons germane and relevant for the purpose of law under which the conviction and sentence has been imposed, commiserative facts necessitating the commutation, and the interests of the society and public interest. The exercise of any power vested by the statute in a public authority is to be always viewed as in trust, coupled with a duty to exercise the same in the larger public and societal interest, too. When the legislature concerned has chosen to mandate for the imposition of a minimum sentence in a given situation, the responsibility of the appropriate Government becomes all the more greater and power under Section 433 CrPC, may have to be exercised with great circumspection. Otherwise, the legislative will might become a mere dead letter at the whim of the executive. (Para 7)

However, this judgment shall not be construed to take away the benefit, if any, already given to an accused, purporting to follow the earlier decisions, as has been done in this case. To some extent, this situation seems to have arisen due to a misunderstanding of the impact of the two judgments, noticed above, and the reporting of such cases as though they constituted any precedent for future guidance. So far as the case on hand is concerned, it has been represented that the accused has remitted the sum of Rs 20,000 as stipulated by the High

Court and treating this and such cases where already orders have been passed by courts, at least, the appropriate Government would do well to grant relief to the accused concerned. If, in any case, it is considered by the Government, in its discretion, not advisable to do so, it is always open to the Government concerned to either move the very court or the appellate revisional forum to modify the orders so as to leave the matter to the sole discretion of the appropriate Government, to be exercised in accordance with law. (Para 8). *Delhi Admn.* v. *Manohar Lal*, (2002) 7 SCC 222: 2002 SCC (Cri) 1670: AIR 2002 SC 3088.

Bench Strength 2. Coram: **Doraiswamy Raju** and *Shivaraj V. Patil*, JJ. [Date of decision: 29-8-2002]

N. Sukumaran Nair v. Food Inspector, Mavelikara, (1997) 9 SCC 101: 1997 SCC (Cri) 608; Santosh Kumar v. Municipal Corpn., (2000) 9 SCC 151: 2000 SCC (Cri) 1184; Badri Prasad v. State of M.P., 1995 Supp (4) SCC 682: 1996 SCC (Cri) 79, limited

State of Punjab v. Kesar Singh, (1996) 5 SCC 495: 1996 SCC (Cri) 1034, relied on

***Impliedly distinguished** in Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767*

[6329] — S. 433(d) — Commuting simple imprisonment to fine — Sustainability — *Appellant charged and convicted under S. 7 r/w S. 16(1) of the Prevention of Food Adulteration Act for selling spurious chilli powder and sentenced to six months' SI and fine of Rs 1000 — High Court not finding any scope for interference, however increasing the fine to Rs 5000 and allowing the appellant to approach the appropriate Government under S. 433 CrPC — Dismissing the appeal, held, that appellant may challenge the order of the appropriate Government passed under S. 433 CrPC — Prevention of Food Adulteration Act, 1954, Ss. 7 and 16(1). Satya Narayan Agarwal* v. *State of Assam*, (2007) 9 SCC 156: (2007) 3 SCC (Cri) 99: (2007) 55 AIC 155 (SC): 2007 Cri LJ 3733.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 26-4-2007]

N. Sukumaran Nair v. Food Inspector, (1997) 9 SCC 101: 1997 SCC (Cri) 608; Santosh Kumar v. Municipal Corpn., (2000) 9 SCC 151: 2000 SCC (Cri) 1184, relied on

[6330] — S. 433(d) — Commutation of sentence — Food adulteration — *Food article viz. groundnut oil on analysis found not to contain any foreign substance or anything injurious to health and found to be adulterated solely on ground that its constituents fell below the standard very marginally — Appellant convicted under S. 16(1)(a) r/w S. 7(i) of Prevention of Food Adulteration Act and sentenced to 6 months' RI and fine of Rs 2000 — Having regard to the nature of the offence, held, this would be an appropriate case for commutation of sentence under S. 433(d) — Hence appellant directed to deposit in trial court Rs 10,000 in commutation of sentence of imprisonment within 6 months* (Paras 5 and 6). *Santosh Kumar* v. *Municipal Corpn.*, (2000) 9 SCC 151: 2000 SCC (Cri) 1184: AIR 2000 SC 3416: 2000 Cri LJ 2777.

Bench Strength 2. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 31-1-2000]

N. Sukumaran Nair v. Food Inspector, (1997) 9 SCC 101: 1997 SCC (Cri) 608, followed

Limited to its facts in Delhi Admn. v. Manohar Lal, (2002) 7 SCC 222

— S. 433-A *See* Ss. 354(3), 366 and 433-A
See also Ss. 413, 414, 418 and 433 & 433-A and Ch. XXXII (Ss. 413 to 435)
See also Ss. 427(2) and 433-A
See also Ss. 432, 433 & 433-A
See also Ss. 432, 433, 433-A and 306
See also Ss. 432 & 433-A
See also Ss. 432, 433-A, 389, 482
See also Ss. 433, 432 and 433-A
See also Ss. 433 and 433-A
See also Ss. 433, 433-A & 434 and 413, 414 & 418
See also Ss. 433, 433-A, 434, 413, 414, 418, 366, 368 and 371
See also Ss. 433(b) & 433-A

[6331] — S. 433-A — Constitutionality — Whether a legislative fraud — *Assuming that IPC (Amendment) Bill passed by Rajya Sabha read with CrPC (Amendment) Bill intended to provide an integrated scheme of legislation to the effect that S. 433-A was to apply only to those convicted of capital offence, held, failure to pass the IPC (Amendment) Bill by Lok Sabha while passing the CrPC (Amendment) Act, 1978 had not rendered S. 433-A a legislative fraud or colourable legislation — IPC (Amendment) Bill having not become a law, plain language of S. 433-A cannot be read down or interpreted with the changes proposed by that Bill*

It may be assumed that the Criminal Procedure Code (Amendment) Bill and the Indian Penal Code (Amendment) Bill were intended to provide an integrated scheme of legislation, in that S. 433-A was expected to apply to exceptionally heinous offences falling within the definition of 'capital offence' once the Indian Penal Code (Amendment) Bill became law. Section 433-A was, therefore, expected to deny premature release before completion of actual 14 years of incarceration to only those limited convicts convicted of a capital offence, i.e., an exceptionally heinous crime specified in the second part of the proposed S. 302, IPC. But failure on the part of the Lok Sabha to pass the IPC (Amendment) Bill had not rendered the enactment of CrPC (Amendment) Act, 1978 by which S. 433-A was introduced in the Code, a 'legislative fraud' or 'colourable exercise of legislative power' on the ground that S. 433-A was got introduced on the statute book by deception. Whether or not the connecting Indian Penal Code (Amendment) Bill ought to have been cleared was a matter left to the wisdom of the Lok Sabha. Merely because the Criminal Procedure Bill was made law and the Indian Penal Code (Amendment) Bill was passed by the Rajya Sabha did not obligate the Lok Sabha to clear it. The Lok Sabha could have its own views on the proposed Indian Penal Code amendments. It may agree with the executive's policy reflected in the Bill, with or without modifications, or not at all. Merely because in the subsequent instructions issued by the letter of July 10, 1979 and the accompanying note the Joint Secretary had interlinked the two Bills, the Lok Sabha was under no obligation to adopt the measure as such representation could not operate as estoppel against it. If both the Bills had become law, it would have been justified to assert that in understanding or construing one legislation or the other, the scheme common to both must be kept in view and be permitted to interact. But where the linkage does not exist on account of the Indian Penal Code (Amendment) Bill not having become law, S. 433-A cannot be read down to apply to only those classes of capital offences to which it would have applied had the said Bill been passed by the Lok Sabha in the terms in which it was approved by the Rajya Sabha. The language of S. 433-A is clear and unambiguous and does not call for extrinsic aid for its interpretation. Reading down or interpreting S. 433-A with the aid of the changes proposed by the Indian Penal Code (Amendment) Bill would tantamount to treating the provisions of the said Bill as forming part of the Indian Penal Code which is clearly impermissible. To put such an interpretation with the aid of such extrinsic material would result in violence to the plain language of S. 433-A. (Paras 8, 7, 9 and 10). *Ashok Kumar* v. *Union of India*, (1991) 3 SCC 498: 1991 SCC (Cri) 845: AIR 1991 SC 1792: (1991) 3 Crimes 185: 1991 Cri LJ 2483.

Bench Strength 3. Coram: **A.M. Ahmadi**, *P.B. Sawant* and *S.C. Agrawal*, JJ. [Date of decision: 10-7-1990]

[6332] — S. 433-A — Exclusion of Ss. 432 and 433(a) by S. 433-A, held, would not affect power under Arts. 72 and 161 — *Where government's grant of power is guided by proper rules or schemes framed in exercise of power under Art. 72 or Art. 161, that will override Art. 433-A*

Per Chandrachud, C.J. and Bhagwati and Krishna Iyer, JJ. (Koshal, J. concurring)

Although power under Art. 72 or Art. 161, which is constitutional and that under Ss. 432 and 433(*a*), which is statutory, may be similar but they are not the same or identical. The two powers differ in their source, substance and strength. The constitutional power is untouchable and unapproachable and cannot suffer the vicissitudes of simple legislative processes. Therefore, S. 433-A cannot be invalidated as indirectly violative of Arts. 72 and 161. What the Code gives, it can take, and so, an embargo on Ss. 432 and 433(*a*) is within the legislative power of Parliament.

Undoubtedly, S. 433-A does not and cannot affect the pardon power under Art. 72 or 161 and therefore, notwithstanding S. 433-A the President and the Governor continue to exercise the power of commutation and release under the aforesaid articles. In exercising this power the Governor or the President act and must act not on their own judgment but in accordance with the aid and advice of their council of ministers. But all public power, including constitutional power, shall never be exercisable arbitrarily or mala fide and, ordinarily, guide-lines for fair and equal execution are guarantors of the valid play of power. The power being of the greatest moment cannot be a law unto itself but must be informed by the finer canons of constitutionalism spelt out in *R.D. Shetty* and *Punnan Thomas cases*. All power, whatever its source, must in its exercise anathematise arbitrariness, and obey standards and guide-lines intelligible and intelligent and integrated with the manifest purpose of the power. Hence the power to pardon, commute or remit is subject to the wholesome creed that guide-lines should govern the exercise even of Presidential power. The court, if it finds frequent misuse of this power may have to investigate the discrimination. Therefore, the proper thing to do is to make rules for its own guidance in the exercise of the pardon power keeping, or course, a large residuary power to meet special situations or sudden developments. This will exclude the vice of discrimination. Such rules of remission may be effective guide-lines of a recommendatory nature, helpful to government to release the prisoner by remitting the remaining term.

Until fresh rules are made in keeping with experience gathered, current social conditions and accepted penological thinking, the present remission and release schemes may usefully be taken as guide-lines under Arts. 72/161 and orders for release passed. The Government is not at fault if in some intractably savage delinquents, S. 433-A is itself treated as a guide-line for exercise of Arts. 72/161.

These observations are recommendatory to avoid a hiatus, but it is for Government, Central or State, to decide whether and why the current Remission Rules should not be survive until replaced by a more wholesome scheme.

Per Fazal Ali, J. (concurring)

There is no real inconsistency between S. 433-A and Arts. 72 and 161. In cases where S. 433-A applies, no question of reduction of sentence arises at all unless the President of India or the Governor chooses to exercise their wide powers under Art. 72 or Art. 161 of the Constitution which also have to be exercised according to sound legal principles. While exercising powers under Arts. 72 and 161, neither the President, who acts on the advice of the council of ministers, nor the State Government is likely to overlook the object, spirit and philosophy of S. 433-A so as to create a conflict between the legislative intent and the executive power. It cannot be doubted as a proposition of law that where a power is vested in a very high authority, it must be presumed that the said authority would act properly and carefully after an objective consideration of all the aspects of the matter. *Maru Ram* v. *Union of India*, (1981) 1 SCC 107: 1981 SCC (Cri) 112: AIR 1980 SC 2147: (1981) 1 SCR 1196.

Bench Strength **5**. Coram: *Y.V. Chandrachud, C.J.*[1] and *P.N. Bhagwati*[1], **V.R. Krishna Iyer**[1], **S. Murtaza Fazal Ali**[2] and **A.D. Koshal**[3], JJ. [Date of decision: 11-11-1980]

[6333] — S. 433-A — Reiterated, power of President of India under Art. 72 or of Governor under Art. 161, cannot be restricted by S. 433-A CrPC — *Constitution of India, Arts. 72 and 161*. *Samjuben Gordhanbhai Koli* v. *State of Gujarat*, (2010) 13 SCC 466.

Bench Strength **2**. Coram: *Markandey Katju* and *T.S. Thakur*, JJ. [Date of decision: 7-10-2010]

[6334] — S. 433-A — Held, does not violate Art. 14 — *Classification based on gravity of crime and need for deterrent punishment*

Per Chandrachud, C.J. and Bhagwati and Krishna Iyer, JJ.

There is an initial presumption of constitutionality of a legislation. Unless one reaches far beyond unwisdom to absurdity, irrationality, colourability and the like, the court must keep its hands off.

Deterrence is a valid punitive component of sentencing. So a measure of minimum incarceration of 14 years envisaged in S. 433-A for the gravest class of crimes like murder cannot be castigated as so outrageous as to be utterly arbitrary and violative of rational classification between lifers and lifers and as so blatantly barbarous as to be irrational enough to be struck down as ultra vires. Time has not, perhaps, come to exclude deterrence and even public denunciation altogether. Even the submission that no penal alibi justifies a prisoner being kept behind the bars if by his conduct, attainments and proven normalisation, he has become fit to be a free citizen, cannot spell unconstitutionality. Though the uniform infliction of a 14 year minimum on the transformed and the unkempt is an unkind disregard for redemption inside prison, to overcome the constitutional hurdle much more material, research results and specialist reports, are needed. Even for correctional therapy a long hospitalisation in prison may be needed.

The classification of persons included under S. 433-A is not based on an irrational differentia unrelated to the punitive end of social defence. The classification cannot be castigated as one capricious enough to attract the lethal consequence of Art. 13 read with Art. 14.

Per Fazal Ali, J.

Section 433-A is actually a social piece of legislation which by one stroke seeks to prevent dangerous criminals from repeating offences and by the other protects the society from harm and distress caused to innocent persons. The dominant purpose and avowed object of the legislature in introducing S. 433-A is to secure a deterrent punishment for heinous offences committed in a dastardly, brutal or cruel fashion or offences committed against the defence or security of the country and the section confines its application only to those categories of offences. As the Parliament by enacting S. 433-A has in its wisdom rejected the reformative character of punishment in respect of offences contemplated by it for the time being in view of the prevailing conditions in our country, courts cannot interfere in this sphere.

Per Koshal, J.

The argument based on the object of reformation having to be in the forefront of the legislative purposes behind punishment must be held to be fallacious. In the first place, there is no evidence that all or most of the criminals who are punished are amenable to reformation. Secondly, it is outside the scope of the inquiry undertaken by the court into the vires of the provisions contained in S. 433-A to find out the extent to which the object of reformation is sought to be achieved. Thirdly, under the Penal Code the severity of each punishment sanctioned by the law is directly proportional to seriousness of the offence for which it is awarded. This is strongly indicative of reformation not being the foremost object sought to be achieved by the penal provisions adopted by the legislature. *Maru Ram* v. *Union of India*, (1981) 1 SCC 107: 1981 SCC (Cri) 112: AIR 1980 SC 2147: (1981) 1 SCR 1196.

Bench Strength 5. Coram: *Y.V. Chandrachud, C.J.*[1] and *P.N. Bhagwati*[1], **V.R. Krishna Iyer**[1], **S. Murtaza Fazal Ali**[2] and **A.D. Koshal**[3], JJ. [Date of decision: 11-11-1980]

[6335] — S. 433-A — Held, does not violate Art. 20(1)

Per Chandrachud, C.J. and Bhagwati and Krishna Iyer, JJ. (Fazal Ali and Koshal, JJ. concurring)

Section 302, IPC or other like offence fixes the sentence to be life imprisonment and 14 years' imprisonment under S. 433-A is never heavier than life term. Remission vests no right to release when sentence is life imprisonment. No greater punishment is inflicted by S. 433-A than the law annexed originally to the crime. Nor is any vested right to remission cancelled by compulsory 14-year jail life, since a life sentence is a sentence for life. *Maru Ram* v. *Union of India*, (1981) 1 SCC 107: 1981 SCC (Cri) 112: AIR 1980 SC 2147: (1981) 1 SCR 1196.

Bench Strength 5. Coram: *Y.V. Chandrachud, C.J.*[1] and *P.N. Bhagwati*[1], **V.R. Krishna Iyer**[1], **S. Murtaza Fazal Ali**[2] and **A.D. Koshal**[3], JJ. [Date of decision: 11-11-1980]

[6336] — S. 433-A — Held, falls under Entry of List III in Schedule VII to the constitution and within legislative competence of Parliament — *Even assuming that State legislature has competence to enact such law under Entry 4 of List II in Sch. VII in case of repugnancy, Central law would prevail*

Per Chandrachud, C.J. and Bhagwati and Krishna Iyer, JJ (Fazal Ali and Koshal, JJ., concurring)

Parliament has competency to pass S. 433-A, CrPC since it falls under Entry 2 of List III as a cognate provision integral to remission and commutation, as it sets limits to the power conferred by the preceding two sections. Even if the State passed laws for remission and short-sentencing, in case of repugnancy S. 433-A would prevail. *Maru Ram* v. *Union of India*, (1981) 1 SCC 107: 1981 SCC (Cri) 112: AIR 1980 SC 2147: (1981) 1 SCR 1196.

Bench Strength 5. Coram: *Y.V. Chandrachud, C.J.*[1] and *P.N. Bhagwati*[1], **V.R. Krishna Iyer**[1], **S. Murtaza Fazal Ali**[2] and **A.D. Koshal**[3], JJ. [Date of decision: 11-11-1980]

[6337] — S. 433-A — Held, overrides all other laws which reduce or remit the term of life sentence referred to under — *Nature and scope of the non-obstante clause in S. 433-A — Absence of words 'or any other law in force' in the clause — Effect — Constitution of India, Arts. 246 and 254*

The argument is that the non-obstante clause covers only S. 432 and significantly omits the common phraseology 'or any other law in force' and, therefore, all other provisions of law which reduce or remit the length of the incarceration prevail over S. 433-A. In particular, the Prison Rules made by the State under S. 59 of the Prisons Act and local short-sentencing laws will diminish the length of prison tenancy of all the lifers, despite the command of S. 433-A.

Held :

Per Chandrachud, C.J. and Bhagwati and Krishna Iyer, JJ. (Fazal Ali and Koshal, JJ. concurring)

To read down S. 433-A to give overriding effect to the Remission Rules of the States would render the purposeful enactment of S. 433-A a futility. Therefore, notwithstanding the non-obstante clause in S. 433-A, the Remission Rules and like provisions stand excluded so far as 'lifers' punished for capital offences are concerned (except when applied under Arts. 72 and 161).

Moreover, a non-obstante clause cannot whittle down the wide import of the principal pArt. If the enacting part is clear, the non-obstante clause cannot cut down its scope.

Sentencing is a judicial function and whatever may be done in the matter of executing that sentence in the shape of remitting, commuting or otherwise abbreviating, the executive cannot alter the sentence itself. Remission cannot detract from the quantum or quality of sentence or its direct and side-effects except to the extent of entitling the prisoner to premature freedom if the deduction following upon the remission has that arithmetic effect. But in case of life imprisonment the term being indeterminate, remissions lead nowhere and do not entitle a prisoner to release. Imprisonment for life lasts until the last breath and whatever be the length of remission earned, the prisoner can claim release only if the remaining sentence is remitted by Government. Hence, the remission rules do not militate against S. 433-A; the petitioners must suffer 14 years' imprisonment till an order for release is made under S. 432 or Arts. 72/161 of the Constitution. *Maru Ram* v. *Union of India*, (1981) 1 SCC 107: 1981 SCC (Cri) 112: AIR 1980 SC 2147: (1981) 1 SCR 1196.

Bench Strength 5. Coram: *Y.V. Chandrachud, C.J.*[1] and *P.N. Bhagwati*[1], **V.R. Krishna Iyer**[1], **S. Murtaza Fazal Ali**[2] and **A.D. Koshal**[3], JJ. [Date of decision: 11-11-1980]

[6338] — S. 433-A — Held, prospective in operation — *Not applicable to person convicted by sentencing court before this provision came into force or to person acquitted by trial Court before its coming into force but convicted by appellate Court after its enforcement*

Per Chandrachud, C.J. and Bhagwati and Krishna Iyer, JJ. (Fazal Ali and Koshal, JJ. concurring)

Every person who has been convicted by the sentencing court before December 18, 1978, shall be entitled to the benefits accruing to him from the remission scheme or short-sentencing project as if S. 433-A did not stand in his way. So also if the sentence of death is commuted after December 18, 1978, such person shall not be released unless he spends 14 years in jail.

When A person is acquitted by trial Court before S. 433-A came into force and is convicted in appeal, it follows that the appellate Court has exercised its power in the place of the original court and the guilt, conviction and sentence must be substituted for and shall have retroactive effect from the date of judgment of the trial Court. The appellate conviction must relate back to the date of the trial Court's verdict and substitute it. In this view, even if the appellate Court reverses an earlier acquittal rendered before S. 433-A came into force but allows the appeal and convicts the accused, after S. 433-A came into force, such person will also be entitled to the benefit of the remission system prevailing prior to S. 433-A. An appeal is a continuation of an appellate judgment as a replacement of the original judgment.

It follows, by the same logic, that short-sentencing legislations, if any, will entitle a prisoner to claim release thereunder if his conviction by the court of first instance was before S. 433-A was brought into effect. *Maru Ram* v. *Union of India*, (1981) 1 SCC 107: 1981 SCC (Cri) 112: AIR 1980 SC 2147: (1981) 1 SCR 1196.

Bench Strength **5**. Coram: *Y.V. Chandrachud, C.J.*[1] and *P.N. Bhagwati*[1], **V.R. Krishna Iyer**[1], **S. Murtaza Fazal Ali**[2] and **A.D. Koshal**[3], JJ. [Date of decision: 11-11-1980]

[6339] — S. 433-A — Not applicable to persons convicted and sentenced by trial court prior to its coming into force. *Suklal Hansda* v. *State of W.B.*, (1986) 4 SCC 433: 1986 SCC (Cri) 497.

Bench Strength **3**. Coram: *P.N. Bhagwati, R.S. Pathak* and *A.N. Sen*, JJ. [Date of decision: 3-3-1983]

Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112, followed

[6340] — S. 433-A — Policy underlying — Prisoners covered by S. 433-A constitute a single class

One who could have been visited with the extreme punishment of death but on account of the sentencing court's generosity was sentenced to the lesser punishment of imprisonment for life and another who actually was sentenced to death but on account of executive generosity his sentence was commuted under S. 433(*a*) for imprisonment for life have been treated under S. 433-A as belonging to that class of prisoners who do not deserve to be released unless they have completed 14 years of actual incarceration. Thus the effect of S. 433-A is to restrict the exercise of power under Ss. 432 and 433 by the stipulation that the power will not be so exercised as would enable the two categories of convicts referred to in S. 433-A to freedom before they have completed 14 years of actual imprisonment. This is the legislative policy which is clearly discernible from the plain language of S. 433-A of the Code. Such prisoners constitute a single class and have, therefore, been subjected to the uniform requirement of suffering at least 14 years of internment. (Para 11). *Ashok Kumar* v. *Union of India*, (1991) 3 SCC 498: 1991 SCC (Cri) 845: AIR 1991 SC 1792: (1991) 3 Crimes 185: 1991 Cri LJ 2483.

Bench Strength **3**. Coram: **A.M. Ahmadi**, *P.B. Sawant* and *S.C. Agrawal*, JJ. [Date of decision: 10-7-1990]

[6341] — S. 433-A — Prospective in operation — Convicts whose death sentence commuted to life imprisonment prior to December 18, 1978 when S. 433-A was introduced — *Held, will be entitled to consideration for release by government as per rules or executive instruction then prevailing and mandatory minimum of 14 years' actual imprisonment under S. 433-A will not operate against them — Punjab Jail Manual, Para 516-B — Memorandum No. 1331-6JJ-71/39656 dated November 10, 1971 — Memorandum No. 403-6JJ-76/3456 dated January 30, 1976 — Letter No. 43/15783-JJ(2) dated February 27, 1984 — Prisons Act, 1894, S. 59. State of Haryana* v. *Ram Diya*, (1990) 2 SCC 701: 1990 SCC (Cri) 426: AIR 1990 SC 1336: (1990) 3 Crimes 35.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 10-4-1990]

Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112; Sant Ram v. Union of India, decided on December 10, 1980, followed

[6342] — S. 433-A (*ins.* by Act 45 of 1978, S. 32) — Temporal applicability — Prospective or retrospective — *Held, S. 433-A as well as short-sentencing policy would apply prospectively — Further held, remission rules/short-sentencing* *policies could be taken as guidelines for exercise of power under Arts. 72 and 161 of the Constitution, and in such eventuality such remission rules would override S. 433-A — Constitution of India, Arts. 72 and 161*

Section 433-A CrPC and the short-sentencing policy would apply prospectively. The life convicts who had been sentenced prior to 18-12-1978 i.e. date of enforcement of amendment would not come within the purview of the provisions of Section 433-A CrPC. Remission rules/short-sentencing policies could be taken as guidelines for exercise of power under Article 72 or 161 of the Constitution and in such an eventuality, remission rules will override Section 433-A CrPC. (Paras 22 and 39). *State of Haryana* v. *Jagdish*, (2010) 4 SCC 216.

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and *J.M. Panchal* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 22-3-2010]

[6343] — Ss. 433-A, 432 and 433 — Prisoner is not entitled to be released under remission rules unless his sentence is remitted under S. 432 which is subject to limitation under S. 433-A — *S. 433-A restricts exercise of powers under Ss. 432 and 433 but is itself subject to the overriding powers under Arts. 72/161 of the Constitution of India — Rajasthan Prisons (Shortening of Sentences) Rules, 1958*

Where a person has been sentenced to imprisonment for life the remissions earned by him during his internment in prison under the relevant remission rules have a limited scope and must be confined to the scope and ambit of the said rules and the convict is bound in law to serve the entire life term in prison until the sentence is remitted under S. 432, in which case the remission would be subject to limitation of S. 433-A of the Code, or constitutional power has been exercised under Art. 72 and 161 of the Constitution. The constitutional power under Arts. 72 and 161 would override the statutory power contained in Ss. 432 and 433 and the limitation of S. 433-A of the Code as well as the power conferred by Ss. 54 and 55, IPC. This power has to be exercised by the President/Governor on the advice of his Council of Ministers. (Paras 15 and 16)

Though Arts. 72 and 161 make use of two expressions 'remissions' with regard to punishment and 'remit' in relation to sentence but it is not proper to express any opinion as to the content and amplitude of these two expressions in the abstract in the absence of a fact-situation. (Para 18)

The hypothetical question whether it was permissible in law to grant conditional premature release to a life convict even before completion of 14 years of actual imprisonment, which release would tantamount to the prisoner serving time for the purpose of S. 433-A need not be answered without being fully aware of the nature of conditions imposed for release. In each case, the question whether the grant pf conditional premature release answers the test laid down by the Supreme Court in *Maru Ram case* (SCC page 153, para 71) would depend on the nature of the conditions imposed and the circumstances in which the order is passed and is to be executed. No general observation can be made. (Para 19). *Ashok Kumar* v. *Union of India*, (1991) 3 SCC 498: 1991 SCC (Cri) 845: AIR 1991 SC 1792: (1991) 3 Crimes 185: 1991 Cri LJ 2483.

Bench Strength **3**. Coram: **A.M. Ahmadi**, *P.B. Sawant* and *S.C. Agrawal*, JJ. [Date of decision: 10-7-1990]

Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112; Bhagirath v. Delhi Administration, (1985) 2 SCC 580: 1985 SCC (Cri) 280; Gopal Vinayak Godse v. State of Maharashtra, AIR 1961 SC 600: (1961) 1 Cri LJ 736, harmonised and affirmed

[6344] — Ss. 433-A, 432 and 433 — Life convicts — Premature release of — Government policy/instructions in force at the time of conviction by the trial court not applicable — Held, instead the policy decision or instructions which were in force at the time their case came up for consideration will apply — *Remission does not vest right to be released prematurely — Rule or scheme made by the Government for early release of the life convict to be treated as guidelines for exercising clemency power under Art. 161 of the Constitution — Life convict already undergoing the sentence for a period mentioned in the remission scheme has only a right to have his case put up by the prison authorities before the authorities concerned for considering his case under Art. 161 — To ensure that the life convict does not loose benefit of any remission scheme, the date on which convict's case is required to be put up before the Governor should be treated as relevant date with reference to which date his case is to be considered — Constitution of India, Arts. 72 and 161*

By earning remissions a life convict does not acquire a right to be released prematurely. But if the Government has framed any rule or made a scheme for early release of such convicts then those rules or schemes will have to be treated as guidelines for exercising its power under Article 161 of the Constitution. (Para 4)

No life convict can validly contend that his case for premature release should be considered according to the government policy/instructions that were in force on the date on which he came to be convicted as he acquired a right to get remissions as declared and to be released accordingly. If according to the government policy/instructions in force at the relevant time the life convict has already undergone the sentence for a period mentioned in the policy decision/instructions, then the only right which he can be said to have acquired is the right to have his case put up by the prison authorities in time before the authorities concerned for considering exercise of power under Article 161 of the Constitution. Ordinarily, when an authority is called upon to exercise its powers that will have to be done consistently with the legal position and the government decision/instructions prevalent at that time. However, in order to see that a life convict does not lose any benefit available under the remission scheme which has to be regarded as the guideline, it would be just and proper to direct the State Government to treat the date on which his case is/was required to be put up before the Governor under Article 161 of the Constitution as the relevant date with reference to which their cases are to be considered. (Para 5). *State of Haryana* v. *Balwan*, (1999) 7 SCC 355: 1999 SCC (Cri) 1193: AIR 1999 SC 3333.

Bench Strength **2**. Coram: **G.T. Nanavati** and *S.N. Phukan*, JJ. [Date of decision: 2-9-1999]

Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112; Gopal Vinayak Godse v. State of Maharashtra, AIR 1961 SC 600: (1961) 3 SCR 440, relied on

***Limited and dissented from** in State of Haryana v. Bhup Singh, (2009) 2 SCC 268*

[6345] — Ss. 433-A, 433(a) and 5 — Life imprisonment under Army Act — Bar under S. 433-A on release before completion of fourteen years of imprisonment — Applicability — *In absence of a specific provision in Army Act similar or contrary to S. 433-A, the bar under S. 433-A, held, applicable to a convict under the Army Act — Penal Code, 1860, S. 302 — Army Act, 1950, Ss. 69, 177 and 179 to 190*

The respondent was awarded life imprisonment and was dismissed from service by the General Court Martial after being tried for the offence under Section 302 IPC and under Section 69 of the Army Act, 1950. Although he had remained in actual custody for less than 14 years, the High Court, taking into consideration 4 years' remission earned by him in the jail, held that his period of imprisonment exceeded 14 years and, therefore, directed him to be released immediately.

Allowing the Central Government's appeal,

Held :

In the present case, the respondent was convicted under Section 69 of the Army Act, 1950 for the offence of murder. It is true that the Army Act is a special Act, inter alia, providing for investigation, trial and punishment for the offences mentioned therein by a special procedure. Section 177 empowers the Central Government to make rules in respect of prisons and prisoners. Sections 179 to 190 provide for pardon, remissions and suspension of the sentence. There is no specific provision similar to Section 433-A CrPC or contrary to it. Hence, Section 433-A CrPC would operate in the field and a prisoner who is undergoing sentence of imprisonment for life and is convicted for an offence for which death is one of the punishments provided by law or where a sentence of death imposed on a person has been commuted under Section 433 CrPC to imprisonment for life, has to serve at least 14 years of imprisonment excluding remissions earned in jail. As the respondent has not completed 14 years of actual imprisonment, the order passed by the High Court has to be quashed and set aside. (Paras 7 and 9). *Union of India* v. *Sadha Singh*, (1999) 8 SCC 375: 1999 SCC (Cri) 1442: AIR 1999 SC 3833.

Bench Strength **2**. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 25-10-1999]

Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112, followed

Ajit Kumar v. Union of India, 1987 Supp SCC 493: 1988 SCC (Cri) 101, distinguished

[6346] — Ss. 433-A and 433(a) — Power to commute death sentence — Applicability of S. 433-A — Release of prisoners condemned to death, if amounts to interference with the due and proper course of justice — *Constitution of India, Art. 161*

The power to commute a sentence of death is independent of Section 433-A. The restriction under Section 433-A comes into operation only after the power under Section 433 is exercised. (Para 11)

The release of prisoners condemned to death in exercise of powers conferred under Section 433-A of the Code and Article 161 of the Constitution does not amount to interference with the due and proper course of justice, as the power of the High Court to pronounce upon the validity, propriety and correctness of the conviction and sentence remains unaffected. Powers under Article 161 can be exercised before, during or after trial. By reducing the sentence, the authority concerned does not thereby modify the judicial sentence. The fact that the sentence was remitted by the appropriate Government or that on account of certain remissions which he earned under the jail rules or under some order of general amnesty, the person was released earlier, does not affect disqualifications incurred, if any. (Para 10). *State (Govt. of NCT of Delhi)* v. *Prem Raj*, (2003) 7 SCC 121: 2003 SCC (Cri) 1586.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 5-8-2003]

[6347] — Ss. 433-A, 432 and 433 — Life convicts — Remission of sentence — Power of State in respect of — Scope — Power of court to direct remission (instead of a direction to the State to consider or reconside a case for remission) — Unavailability of — *In a writ petition filed by respondents questioning policy decision of State Government whereby their cases for remission were not considered, High Court by impugned judgment directing remission and hence their release — Unsustainability — Impugned judgment modified directing appellant State to consider cases of respondents in terms of* Mahender Singh case, *(2007) 13 SCC 606, having regard to the policy decision as was applicable on the date on which they were convicted and not on the basis of a subsequent policy decision — Constitution of India — Art. 226* (Paras 2, 4, 6 and 11). *State of Haryana* v. *Bhup Singh*, (2009) 2 SCC 268.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 18-12-2008]

State of Haryana v. Balwan, (1999) 7 SCC 355: 1999 SCC (Cri) 1193, dissented from

State of Haryana v. Mahender Singh, (2007) 13 SCC 606: (2009) 1 SCC (Cri) 221, applied

[6348] — Ss. 433-A, 432 and 433 — Remission of sentence (of life convicts) — Rules/Policy applicable — Date with respect to which to be determined — *Held, right to ask for remission of sentence by a life convict would be under the law as was prevailing on the date on which the judgment of conviction and sentence was passed — Clarified, that date on which life convict's case is to be put up before Governor for clemency under Art. 161 is not the relevant date* — Balwan case, *(1999) 7 SCC 355 limited in this regard* (Paras 7, 9 and 10). *State of Haryana* v. *Bhup Singh*, (2009) 2 SCC 268.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 18-12-2008]

State of Haryana v. Balwan, (1999) 7 SCC 355: 1999 SCC (Cri) 1193, limited and dissented from

State of Haryana v. Mahender Singh, (2007) 13 SCC 606: (2009) 1 SCC (Cri) 221, considered

[6349] — S. 433-A — Accused alleged to be a child not tried separately under Children Act — No material to establish accused a child at the commission of offence — *Offence under Ss. 302/149 IPC, committed by a boy of 14 years age — Trial conducted by Sessions Court challenged before High Court on ground of it being not conducted by the Children's Court envisaged to be set up under S. 5 of Bihar Children Act, 1982 — In view of nothing being there to establish the existence of Children's Court when offence was committed or tried and in absence of any positive evidence to determine the age of offender so as to attract the provisions of said Act, Supreme Court finding it impossible to undertake such an inquiry at this stage — Extrapolation of age at the time of occurrence from age mentioned in judgment of Sessions Court not by itself enough — Rejecting the appeal, appellant permitted to approach State Government for commutation of sentence under S. 433-A, Criminal Procedure Code — Penal Code, 1860 — Ss. 302/149 — Bihar Children Act, 1982 (54 of 1982), Ss. 2(d) and 5 — Children Act, 1960, S. 24. Kalinath Munda* v. *State of Bihar*, (2001) 9 SCC 228: 2001 SCC (Cri) 1568.

Bench Strength 2. Coram: *M.M. Punchhi* and *Sujata V. Manohar*, JJ. [Date of decision: 12-3-1996]

[6350] — S. 433-A — Terrorist activity — *Accused belonging to a criminal gang — Murder of a person belonging to a rival gang within the campus of a government hospital — Indiscriminate firing resulting in death of two policemen also who were on guard duty there — Accused in his confession not stating that he himself had fired any gunshot and instead stating that he was asking his associate to go back from the hospital without firing — Held on facts, though accused committed act of terrorism but it is not a fit case for imposing death sentence — Hence death sentence awarded by Designated Court modified to imprisonment till rest of life — Penal Code, 1860 — S. 302*

Accused 6, who has confessed his involvement in the crime including the crimes committed by him previously, has specifically stated that he asked his companion to go back from the hospital without firing. He has not confessed that he had fired any shot during the incident. In this set of circumstances, even though it is held that it was an act of terrorism committed by the accused, this would not be a fit case for imposing death sentence. However, considering the confessional statement as a whole coupled with the other evidence and the terror created by the accused, the conviction is confirmed but the sentence is modified from death penalty to imprisonment for life — till rest of life. Considering the heinous act of terrorism and brutal murder of two Police Constables who were on duty to guard the deceased, even though it is held that this would not be a fit case for imposing death sentence, it is directed that the accused will not be entitled to any commutation or premature release under Section 433-A of the Criminal Procedure Code, Prisoners

Act, Jail Manual or any other statute and the Rules made for the purpose of commutation and remissions. (Paras 65 and 69). *Jayawant Dattatraya Suryarao* v. *State of Maharashtra*, (2001) 10 SCC 109: AIR 2002 SC 143: 2002 Cri LJ 226.

Bench Strength 2. Coram: **M.B. Shah** and *R.P. Sethi*, JJ. [Date of decision: 5-11-2001]

Subash Chander v. Krishan Lal, (2001) 4 SCC 458: 2001 SCC (Cri) 735; Shri Bhagwan v. State of Rajasthan, (2001) 6 SCC 296: 2001 SCC (Cri) 1095; Bhagirath v. Delhi Admn., (1985) 2 SCC 580: 1985 SCC (Cri) 280; Zahid Hussein v. State of W.B., (2001) 3 SCC 750: 2001 SCC (Cri) 631, relied on

Followed *in Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767*

[6351] — S. 433-A — Premature release of prisoner — *Though there is no right to be prematurely released but when Government has framed rules, scheme or guidelines in that behalf prisoner has right to have his case put up before prison authorities for considering the same in exercise of power under Art. 161 in accordance with those rules, schemes or guidelines — Though police report was called for on several points for considering prisoner's prayer for early release, police only reported about the prisoner's chances of committing crime again and on that basis prisoner's prayer rejected — Relevant aspects having not been taken into account, held, Government failed to consider the prisoner's case as per relevant rules and guidelines and hence its order rejecting prayer for premature release liable to be quashed — Constitution of India, Arts. 161, 21, 32 — W.B. Jail Code, Rr. 591(4) and 591(29)*

Sub-rules (4) and (29) of Rule 591 of the West Bengal Rules relating to premature release of a life convict run as follows:

"(4) In considering the cases of prisoners submitted to it under sub-rules (1) and (2), the State Government shall take into consideration — (*i*) the circumstances in each case, (*ii*) the character of the convict's crime, (*iii*) his conduct in prison, and (*iv*) the probability of his reverting to criminal habits or instigating others to commit crime. If the State Government is satisfied that the prisoner can be released without any danger to the society or to the public it may take steps for issue of orders for his release under Section 401 of the Code of Criminal Procedure, 1898.

(29) Every case in which a convict, who has not received the benefit of any of the foregoing rules, is about to complete a period of 20 years of continued detention including remission earned, if any, shall be submitted three months before such completion by the Superintendent of the Jail in which the convict is for the time being detained, through the Inspector General, for orders of the State Government. If the convict's jail records during the last three years of his detention are found to be satisfactory the State Government may remit the remainder of his sentence."

All the "life convicts" in the present case have completed continued detention of 20 years including remission earned. To consider their prayer for premature release, a police report was called for on the following points:

(*i*) Whether the offence is an individual act of crime without affecting the society at large.

(*ii*) Whether there is any chance of future recurrence of committing crime.

(*iii*) Whether the convict has lost his potentiality in committing crime.

(*iv*) Whether there is any fruitful purpose of confining this convict any more.

(*v*) Socio-economic condition of the convict's family.

Though the police report did not cover all the above points, the prayer of "life convicts" for premature release was rejected mainly on the ground of objections by police about the chances of the petitioners committing crime again. They filed writ petitions before the Supreme Court alleging that though they are entitled to premature release under the relevant rules, their prayer was rejected by the Government on extraneous consideration.

Allowing the writ petitions,

Held :

Life sentence is nothing less than lifelong imprisonment and by earning remissions a life convict does not acquire a right to be released prematurely; but if the Government has framed any rule or made a scheme for early release of such convicts then those rules or schemes will have to be treated as guidelines for exercising its power under Article 161 of the Constitution and if according to the government policy/instructions in force at the relevant time the life convict has already undergone the sentence for the period mentioned in the policy/instructions, then the only right which a life convict can be said to have acquired is the right to have his case put up by the prison authorities in time before the authorities concerned for considering exercise of power under Article 161 of the Constitution. When an authority is called upon to exercise its powers under Article 161 of the Constitution that will have to be done consistently with the legal position and the government policy/instructions prevalent at that time. (Para 3)

In the present case the Government did not consider the prayer for premature release as per the Rules. Thus the orders of the Government suffer from infirmities and are liable to be quashed. (Para 7)

Therefore, all the orders of the Government are set aside and the authorities are directed to reconsider the cases for premature release of all "life convicts" who have approached the Supreme Court by filing the present writ petitions as per relevant rules/guidelines within a period of one month from the receipt of this order. (Para 8). *Laxman Naskar* v. *Union of India*, (2000) 2 SCC 595: 2000 SCC (Cri) 509: AIR 2000 SC 986: 2000 Cri LJ 1471.

Bench Strength **2**. Coram: *G.T. Nanavati* and **S.N. Phukan**, JJ. [Date of decision: 15-2-2000]

[6352] — S. 433-A — Any G.O. passed before the decision in Maru Ram must be construed according to that decision — Maru Ram case *only clarified the law — Assumption in deciding Cri. A. No. 247 of 1981 not wrong. State of A.P.* v. *G.M. Morey*, (1982) 2 SCC 436: 1982 SCC (Cri) 464: AIR 1982 SC 1195: 1982 Cri LJ 1571.

Bench Strength **3**. Coram: **O. Chinnappa Reddy**, *A.P. Sen* and *R.B. Misra*, JJ. [Date of decision: 4-5-1982]

[6353] — S. 433-A — Punjab Government G.O. dt. 14-8-2002 — Interpretation — Dowry death — Sentence — Remission — Entitlement to — *Government Order dt. 14-8-2002 Pt. A related to "remission of balance of sentence of imprisonment for life as on 15-8-2002" — Benefit under Pt. A excluded in respect of "offences under S. 304-B IPC" — Pt. A of G.O., held, is wholly inapplicable in this case, where sentence was seven years' RI and not life imprisonment — Pt. B of G.O. relates to special remission of one year to prisoners who have been convicted by courts of criminal jurisdiction in State of Punjab and confined in jail as on 15-8-2002 — Exclusion list did not refer to offences under S. 304-B IPC — Hence, special remission of one year was available to convict sentenced to seven years' RI under S. 304-B IPC — Supreme Court, while disposing of the criminal appeal [*Dharam Chand case, *(2008) 15 SCC 513], overlooked the fact that benefit of remission under Pt. B of G.O. was in fact available to Accused 1 and 2 — Judgment modified accordingly — Constitution of India, Art. 137 — Penal Code, 1860, S. 304-B* (Paras 8 to 10). *Reshma Devi* v. *State of Punjab*, (2010) 12 SCC 121.

Bench Strength **2**. Coram: **R.V. Raveendran** and *D.K. Jain*, JJ. [Date of decision: 25-8-2010]

Dharam Chand v. State of Punjab, (2008) 15 SCC 513: (2009) 3 SCC (Cri) 1107, modified

[6354] — S. 433-A — Applicability — *Respondent life convict, after serving 11½ years' imprisonment, filing writ petition before High Court seeking his premature release alleging delay in disposal of mercy petition — High Court after considering State's explanation for the delay passing order of respondent's release on bail with the condition that in case of dismissal of his mercy petition, he will have to surrender — Held, S. 433-A attracted — High Court's bail order not an interim order but a final order of release, and respondent, having served less than 14 years of imprisonment, not entitled to premature release. State of Punjab* v. *Babu Singh*, (1991) 3 SCC 18: 1991 SCC (Cri) 562.

Bench Strength **2**. Coram: *L.M. Sharma* and *J.S. Verma*, JJ. [Date of decision: 16-4-1991]

[6355] — S. 433-A — Applicability — Does not cover those convicted prior to December 18, 1978 — *G.O. dated October 30, 1980 providing that except the prisoners sentenced for life who are "governed by S. 433-A", all other convicts who have undergone a total sentence of five years as on October 31, 1980 to be released — Life convicts convicted before December 18, 1978 are not 'governed' by S. 433-A and if they have undergone five years' sentence, held would be entitled to be released by virtue of the G.O. — Andhra Pradesh G.O. Ms. No. 557, Home (Prisons C) Department dated October 30, 1980, Cl. (a). G.M. Morey* v. *Govt. of A.P.*, (1982) 2 SCC 433: 1982 SCC (Cri) 462: AIR 1982 SC 1163: 1982 Cri LJ 1249.

Bench Strength **2**. Coram: **O. Chinnappa Reddy** and *R.B. Misra*, JJ. [Date of decision: 26-3-1982]

Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112: (1981) 1 SCR 1196, explained & applied

[6356] — S. 433-A — Case prior to coming into force of — Yet looking at the fact and that all the accused had served more than 14 years imprisonment, Government should consider their release (Para 4). *Jayaram Shiva Tagore* v. *State of Maharashtra*, 1991 Supp (2) SCC 677: AIR 1991 SC 1735: 1991 Cri LJ 2192.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and *K. Jayachandra Reddy*, JJ. [Date of decision: 7-12-1990]

[6357] — S. 433-A — Claim of premature release on completion of minimum actual imprisonment prescribed under

No one has got a vested right to claim premature release on the ground that he has suffered the minimum actual imprisonment as prescribed under S. 433-A because a sentence of 'imprisonment for life' is incarceration until death, that is, for the remaining period of convicted person's actual life. *State of Haryana* v. *Ram Diya*, (1990) 2 SCC 701: 1990 SCC (Cri) 426: AIR 1990 SC 1336: (1990) 3 Crimes 35.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 10-4-1990]

[6358] — S. 433-A — Held, does not ban parole and does not exclude U.P. Prisoners' Release on Probation Act, 1938 (U.P. Act 8 of 1938)

Per Chandrachud, C.J. and Bhagwati and Krishna Iyer, JJ. (Fazal Ali and Koshal, JJ. dissenting)

Section 433-A does not obligate *continuous* fourteen years in jail and so parole is permissible. The period spent in open jail, house detention, etc. or on parole is as much imprisonment for computation of 14 years under S. 433-A. The Prison Administration should liberalise parole to prevent pent-up tension and sex perversion.

The U.P. Prisoners' Release on Probation Act, 1938, will survive S. 433-A for two reasons. Firstly Government may resort to the statutory scheme, not qua law but as guide-line. Secondly, the expression 'prison' and 'imprisonment' must receive a wider connotation and include any place notified as such for detention purposes. Therefore, the U.P. Act enabling limited enlargement under licence will be effective as legislatively sanctioned imprisonment of a loose and liberal type and such licensed enlargement will be reckoned for the purpose of the 14-year duration. Similar other statutes and rules will enjoy similar efficacy. *Maru Ram* v. *Union of India*, (1981) 1 SCC 107: 1981 SCC (Cri) 112: AIR 1980 SC 2147: (1981) 1 SCR 1196.

Bench Strength **5**. Coram: *Y.V. Chandrachud, C.J.*[1] and *P.N. Bhagwati*[1], **V.R. Krishna Iyer**[1], **S. Murtaza Fazal Ali**[2] and **A.D. Koshal**[3], JJ. [Date of decision: 11-11-1980]

[6359] — S. 433-A — Not applicable where detention effected under S. 10-A of A.P. Borstal Act, 1925. *State of A.P.* v. *Vallabhapuram Ravi*, (1984) 4 SCC 410: 1984 SCC (Cri) 635: AIR 1985 SC 870.

Bench Strength **2**. Coram: **E.S. Venkataramiah** and *Sabyasachi Mukharji*, JJ. [Date of decision: 14-9-1984]

[6360] — S. 433-A — Life convict transferred to Borstal School under S. 10-A — Held, entitled to be released after serving the maximum period of detention of 5 years or on his attaining 23 years as prescribed under S. 8 — *He cannot thereafter be retransferred to serve the remaining period of sentence of imprisonment — S. 433-A, CrPC would not apply in case of release of such a detenu — Words 'as if' and "the whole or any part of the unexpired residue of his sentence" — Constitution of India, Art. 254 and Schedule VI, List III, Entries 2 and 4 — Andhra Pradesh Borstal Schools Act, 1925 (5 of 1926), Ss. 10-A and 8*

Per Venkataramiah, J.

A person detained in a Borstal School under S. 10-A has to be released after he has served the full term 5 years of detention or on his completing 23 years of age. He cannot be retransferred thereafter to prison. Such a retransfer would defeat the very object and purpose of the Act of providing for detention of young offenders in Borstal School for the purpose of reformation and rehabilitation of such offenders. The words 'as if' appearing in the second sentence in S. 10-A make it a deeming provision which should be carried to its logical end. Although there is some apparent contradiction between the words 'as if' and the words "the whole or any part of the unexpired residue of his sentence" in S. 10-A, having regard to the object of the legislation and the meaning of the words 'as if', all the privileges available to an offender detained under S. 8 should be extended to a prisoner who is directed to be transferred to a Borstal School under S. 10-A. Apart from S. 8, which prescribes the maximum period of detention, there are other provisions as well, such as Ss. 13-A, 19-C, 21-A, which are applicable to a person transferred under S. 10-A. Section 433-A, CrPC would not operate where a person is detained by an order under S. 10-A of the Act. Section 433-A of the Code was introduced not to set at naught provisions like S. 10-A of the Act which dealt with a special class of offenders like adolescent offenders but only to regulate capricious and arbitrary decisions under S. 432 of the Code and the remission rules sometimes reducing the sentence of imprisonment for life imposed on persons who had been convicted of capital offences but had been sentenced to imprisonment for life to short periods like five to six years.

Section 14 is the only provision in the Act which authorises the State Government to shift a person who is in a Borstal School to a prison but in that case also the period of imprisonment that can be substituted by the State Government in the place of the period of detention cannot exceed five years in any event. Such shifting is possible only where there is an adverse report against him by the Superintendent of the Borstal School and in absence of such a report, as in the present case, there is no legal way in which he can be sent back to prison to satisfy the requirements of S. 433-A of the Code.

The Act which is a local law prevails on all the provisions of the Code including S. 433-A as there is no provision which excludes the operation of the Act which deals with Borstal institutions. Although in view of the non obstante clause in S. 433-A, the remission rules which are traceable to S. 432 cannot prevail over S. 433-A; but in the instant case reliance is placed on an independent statute which specially deals with the case of a small section of persons, namely adolescent offenders, traceable to the legislative power derived from the expressions 'prisons' and 'Borstal institutions' in Entry 4 of the State List. If in the case of such offenders, the State Government makes an order under S. 10-A of the Act directing their detention in a Borstal School, then they cease to be persons undergoing imprisonment for life but become detenus in a Borstal School. Section 433-A refers to a person who is actually undergoing imprisonment. But detention ordered under the Act is not imprisonment and Borstal School is not a prison. Merely because S. 5 of the Act has made the Prisons Act, 1894 and Prisoners Act, 1900 applicable to Borstal School regarding matters not otherwise provided for, that does not make it a prisoner its inmates prisoners.

Therefore, the argument that by reason of Art. 254 of the Constitution, the Act should yield in favour of a later Central legislation which is repugnant to the Act would not arise because there would be no such repugnancy at all. If S. 433-A of the Code is kept out of the way, S. 10-A of the Act should be interpreted in the same way in which it was understood all along. So construed a person who is detained under S. 10-A of the Act in a Borstal School would have to be released on his attaining 23 years of age.

Per Mukharji, J.

In the present case the expression used by the State Government in its order under S. 10-A reads "to serve the unexpired portion of the sentence till he attains the age of 23". If literally read as a consequence of the deeming provision, one should deem the above expression to be the sentence passed by the court at the time of passing the original sentence instead of the one actually passed. The anomaly is obvious and should be avoided either by altering the language of S. 10-A or the State Government be more specific while passing any order under S. 10-A. *State of A.P.* v. *Vallabhapuram Ravi*, (1984) 4 SCC 410: 1984 SCC (Cri) 635: AIR 1985 SC 870.

Bench Strength 2. Coram: **E.S. Venkataramiah** and *Sabyasachi Mukharji*, JJ. [Date of decision: 14-9-1984]

Kunwar Bahadur v. State of U.P., 1980 Supp SCC339: 1981 SCC (Cri) 275, relied on

Bondili Jagannath Singh v. Government of A.P., (1983) 2 APLJ 262; In re T. Munirathnam Reddi, AIR 1955Andh 118: 1955 Andh WR 53: 1955 Cri LJ 917; In re Krishnaswami,AIR 1949 Mad 109 (I): ILR 1949 Mad 354: (1948) 2 Mad LJ 115: 50Cri LJ 115 and In re Periaswami Asari, AIR 1949 Mad 223: (1948) 2 Mad LJ 452: 61 Mad LW 777: 50 Cri LJ 240, approved

In re Ganpati, 1983 Cri LJ 509: 1982 Mad LW (Cri) 217, overruled

Maru Ram v. Union of India, (1981) 1 SCC 107:1981 SCC (Cri) 112, considered

[6361] — S. 433-A — 'Imprisonment for life' — *Means imprisonment for the full span of life — Penal Code, 1860 — Ss. 57 and 54*

The expression 'imprisonment for life' must be read in the context of S. 45, IPC. So read it would ordinarily mean imprisonment for the full or complete span of life. The provision in S. 57 that imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years is for the purpose of working out the fraction of the terms of punishment. If such a provision had not been made it would have been impossible to work out the fraction of an indefinite term. (Para 12). *Ashok Kumar* v. *Union of India*, (1991) 3 SCC 498: 1991 SCC (Cri) 845: AIR 1991 SC 1792: (1991) 3 Crimes 185: 1991 Cri LJ 2483.

Bench Strength 3. Coram: **A.M. Ahmadi**, *P.B. Sawant* and *S.C. Agrawal*, JJ. [Date of decision: 10-7-1990]

Gopal Vinayak Godse v. State of Maharashtra, AIR 1961 SC 600: (1961) 3 SCR 440: (1961) 1 Cri LJ 736, affirmed

Followed *in Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767*

[6362] — Ss. 433-A and 5 — Rules regarding remission of sentence are special law but S. 433-A being a 'specific provision to the contrary' would prevail over that special law by virtue of S. 5 — *[Per Chandrachud, C.J. and Bhagwati and Krishna Iyer, JJ. (Fazal Ali and Koshal, JJ. concurring)]. Maru Ram* v. *Union of India*, (1981) 1 SCC 107: 1981 SCC (Cri) 112: AIR 1980 SC 2147: (1981) 1 SCR 1196.

Bench Strength 5. Coram: *Y.V. Chandrachud, C.J.*[1] and *P.N. Bhagwati*[1], **V.R. Krishna Iyer**[1], **S. Murtaza Fazal Ali**[2] and **A.D. Koshal**[3], JJ. [Date of decision: 11-11-1980]

[6363] — Ss. 433-A and 57 — Sentence of "imprisonment for life" — *Ordinarily means sentence of imprisonment for whole of the remaining period of the convicted person's natural life — Rules framed under Prisons Rules do not substitute a lesser sentence for a sentence for life — For release of a prisoner on expiry of a particular term, an appropriate order of the Government is necessary* (Paras 20 to 23). *Shri Bhagwan* v. *State of Rajasthan*, (2001) 6 SCC 296: 2001 SCC (Cri) 1095: AIR 2001 SC 2342.

Bench Strength 2. Coram: *M.B. Shah* and **K.G. Balakrishnan**, JJ. [Date of decision: 10-5-2001]

Dalbir Singh v. State of Punjab, (1979) 3 SCC 745: 1979 SCC (Cri) 848; Subash Chander v. Krishan Lal, (2001) 4 SCC 458; State of M.P. v. Ratan Singh, (1976) 3 SCC 470: 1976 SCC (Cri) 428; Maru Ram v. Union of India, (1981) 1 SCC 107: 1981 SCC (Cri) 112; Laxman Naskar v. State of W.B., (2000) 7 SCC 626: 2000 SCC (Cri) 1431, relied on

— S. 434 *See* Ss. 366, 415, 433, 434 & 435

See also Ss. 432 and 434

See also Ss. 433, 433-A & 434 and 413, 414 & 418

See also Ss. 433, 433-A, 434, 413, 414, 418, 366, 368, 371

— S. 435 *See* Ss. 366, 415, 433, 434 & 435

— Ch. XXXIII (Ss. 436 to 450) *See* S. 167(2) proviso and Ch. XXXIII (Ss. 436 to 450)

— S. 436 *See also* S. 496, Criminal Procedure Code, 1898, pp. 1272 et. seq. in Vol. 2

— S. 436 *See* Ss. 2(c) and 436

See also Ss. 167(5) [as amended by S. 4 of W.B. Act 24 of 1988], 436, 437, 204, 205, 206 and 161

See also Ss. 482, 436 and 81

[6364] — S. 436 — Bail — Principles for granting — *Should not ordinarily be refused*

The basic rule is to grant bail except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences, or intimidating witnesses and the like. The gravity of the offence involved which is likely to induce the petitioner to avoid the course of justice as well as the heinousness of the crime should also be taken into account by the Court. Any possibility of absconding or evasion or other abuse can be taken care of by a direction that the petitioner should report himself before the police station once every fortnight. *State of Rajasthan* v. *Balchand*, (1977) 4 SCC 308: 1977 SCC (Cri) 594: AIR 1977 SC 2447: 1978 Cri LJ 195.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *N.L. Untwalia*, JJ. [Date of decision: 20-9-1977]

[6365] — Ss. 436, 2, 81 and Sch. I — Right to claim bail in bailable offences — Nature and scope of — *Held, the said right is an absolute and indefeasible right — Therefore, if accused is prepared, court/police officer concerned is bound to release him on bail — In bailable offences there is no question of discretion in granting bail as the words of S. 436 are imperative*

The respondent filed a complaint case against the appellant-accused on the ground that the appellant-accused gave a defamatory interview against him on a TV channel. When the appellant-accused approached the Magistrate for grant of bail, the same was granted the very same day without hearing the respondent complainant by noticing that the offences alleged to have been committed were bailable offences under Sections 499 and 500 IPC. The High Court in a Section 482 CrPC petition filed by the respondent complainant cancelled the bail of the appellant-accused on the ground that the principles of natural justice had not been followed in as much as the complainant was not heard on the issue of grant of bail. Aggrieved thereagainst, the appellant-accused invoked the remedy under Article 136 of the Constitution of India.

Allowing the appeal,

Held :

The bail granted to the appellant for alleged commission of bailable offence could not have been cancelled by the High Court on the ground that the respondent complainant was not heard by the Magistrate while granting bail and that the principles of natural justice were violated. Principles of natural justice are not a "mantra" to be applied in a vacuum in all cases. The question as to what extent, the principles of natural justice are required to be complied with, will depend upon the facts of the case. They are not required to be complied with when it will lead to an empty formality. Therefore, the order of the High Court cancelling the bail granted to the appellant is hereby set aside and the order passed by the Magistrate is restored. (Paras 19 to 21)

The right to claim bail granted by Section 436 CrPC in a bailable offence is an absolute and indefeasible right. In bailable offences there is no question of discretion in granting bail as the words of Section 436 are imperative. As soon as it appears that the accused person is prepared to give bail, the police officer or the court before whom he offers to give bail, is bound to release him on such terms as to bail as may appear to the officer or the court to be reasonable. It would even be open to the officer or the court to discharge such person on his executing a bond as provided in Section 436 instead of taking bail from him. (Paras 10 and 9)

The only choice available to the officer or the court is as between taking a simple recognizance of the accused and demanding security with surety. The persons contemplated by Section 436 cannot be taken into custody unless they are unable or willing (*sic* unwilling) to offer bail or to execute personal bonds. There is no manner of doubt that bail in a bailable offence can be claimed by the accused as of right and the officer or the court, as the case may be, is bound to release the accused on bail if he is willing to abide by reasonable conditions which may be imposed on him. (Para 10). *Rasiklal* v. *Kishore*, (2009) 4 SCC 446.

Bench Strength **2**. Coram: *R.V. Raveendran* and **J.M. Panchal**, JJ. [Date of decision: 20-2-2009]

State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364: 1996 SCC (L&S) 717; Karnataka SRTC v. S.G. Kotturappa, (2005) 3 SCC 409: 2005 SCC (L&S) 484, relied on

[6366] — Ss. 436, 389, 437, 441 and 445 — Bail includes with or without sureties — *Amount of bond court should insist upon — Propriety of demanding large sums from those of ordinary means — Propriety of insisting that surety be from the same district*

The Court, under the Code of Criminal Procedure, can enlarge on his own bond *without sureties*, a person undergoing incarceration for a non-bailable offence either as under-trial or as convict who has appealed or sought special leave.

The power of the Supreme Court to enlarge a person during the pendency of the Special Leave Petition or of an appeal is very wide under Or. 21, R. 27. And these guidelines, which prevail with the Supreme Court when granting suspension of sentence must, in a broad sense, have relevance to what the Code indicates except where special circumstances call for a different course. Bearing in mind the need for liberal interpretation in areas of social justice, individual freedom and indigent's rights, it must be held that bail covers both release on one's own bond with or without surety.

When sureties should be demanded and what sum should be insisted upon are dependent on variables. It shocks one's conscience to ask a mason to furnish sureties for Rs 10,000.

The law does not prescribe sureties from outside. The law does not prescribe geographical discrimination implicit in asking for sureties from the Court district. Article 14 of the Constitution protects all Indians qua Indians within the territory of India. *Moti Ram* v. *State of M.P.*, (1978) 4 SCC 47: 1978 SCC (Cri) 485: AIR 1978 SC 1594: 1978 Cri LJ 1703.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *D.A. Desai*, JJ. [Date of decision: 24-8-1978]

[6367] — Ss. 436, 2, 81 and Sch. I — Terms/Conditions (security and surety) of bail in bailable offence — Extent of discretion available — *Held, only choice available to the officer or the court concerned is as between taking a simple recognizance of the accused and demanding security with surety*

The only choice available to the officer or the court is as between taking a simple recognizance of the accused and demanding security with surety. The persons contemplated by Section 436 cannot be taken into custody unless they are unable or willing (*sic* unwilling) to offer bail or to execute personal bonds. There is no manner of doubt that bail in a bailable offence can be claimed by the accused as of right and the officer or the court, as the case may be, is bound to release the accused on bail if he is willing to abide by reasonable conditions which may be imposed on him. (Para 10). *Rasiklal* v. *Kishore*, (2009) 4 SCC 446.

Bench Strength **2**. Coram: *R.V. Raveendran* and **J.M. Panchal**, JJ. [Date of decision: 20-2-2009]

State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364: 1996 SCC (L&S) 717; Karnataka SRTC v. S.G. Kotturappa, (2005) 3 SCC 409: 2005 SCC (L&S) 484, relied on

[6368] — Ss. 436 to 450 — Bail — Principles and considerations for granting or refusing

The granting or refusing of bail is in the discretion of the court and the following guidelines have been laid down by the Supreme Court for the exercise of the discretion. Deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. The nature of the charge is a vital factor and the nature of the evidence is also pertinent. The severity of the punishment to which the accused may be liable if convicted also bears upon the issue. Another relevant factor is whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being. The Court has also to consider the likelihood of the applicant interfering with the witnesses for the prosecution or otherwise polluting the process of justice. It is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail. However, it makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded into custody. If public justice is to be promoted, mechanical detention should be demoted. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible.

Police exaggerations of prospective misconduct of the accused if enlarged must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and police prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the Court into a complacent refusal. Further, there are cases where parties suffer 3-4 years in prison before their case comes up for trial which may sometimes end in acquittal and therefore, a circumstance of some consequence, when considering a motion for bail is the period in prison already spent and the prospect of the appeal being delayed for hearing. If the State takes up a flexible attitude it may be possible to permit long spells of parole under controlled conditions so that fear, that the full freedom if bailed out might be abused, may be eliminated. At the same time, heavy bails from poor men is obviously wrong.

The ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding — if that be so — of innocence has been recorded by one Court.

In the present case, it is a fact that the petitioners have been acquitted along with others in the trial Court although that acquittal has been set aside in the High Court. There is no suggestion that during the time they were on bail — and they were on bail during the pendency of the trial and when the appeal was pending in the High Court — they abused the trust reposed by the Court allowing them to be at large. Moreover, four of the fellow-accused have already been enlarged on bail by this Court and an attempted cancellation thereof has been rebuffed. The petitioners have suffered imprisonment around a year and a reasonable prediction of the time of bearing of the appeal may take us to a few years ahead. The magistrate's report of the conduct of the petitioners while in jail is not uncomplimentary. The potentiality of community peace being disturbed should, however, be obviated by proper safeguards, because the village is factious and the petitioners are activists in one faction. Such safeguards could be imposed by allowing them to enter the village on one day in a week only after report to the police and compelling them to report to the police when they are departing from the village the next day. Therefore, the petitioners should be allowed to be enlarged on bail on their own bond to appear and receive sentence in the event of adverse verdict from this Court. *Gudikanti Narasimhulu* v. *Public Prosecutor, High Court of A.P.*, (1978) 1 SCC 240: 1978 SCC (Cri) 115: AIR 1978 SC 429: 1978 Cri LJ 502.

Bench Strength 1. Coram: **V.R. Krishna Iyer**, J. [Date of decision: 6-12-1977]

[6369] — Ss. 436, 437 and 439 — Bail — Nature and exercise of judicial discretion in the exercise of — Principles and considerations before the Court — *CrPC, 1898, Ss. 496 to 502*

The petitioners should be granted bail. All the petitioners are the entire male members of a family and all of them are in jail. Their defence in the Supreme Court may therefore be jeopardised. Nothing was indicated that during the five years when the petitioners had been out of prison pending appeal in the High Court there had been any conduct on their part suggestive of disturbing the peace of the locality, threatening any one in the village or otherwise thwarting the life of the community or the course of justice. Moreover, when the High Court entertained the appeal the State did not press for their custody for apprehended abscondence or menace to justice. The episode of murder itself is attributed as the outcome of a faction fight or feud between the two clans in the village. The petitioners, however, must be subjected to two conditions, namely, that they shall not enter the village which is alleged to be the hotbed of clan clashes and they should report at the local police station once every week. *Babu Singh* v. *State of U.P.*, (1978) 1 SCC 579: 1978 SCC (Cri) 133: AIR 1978 SC 527: 1978 MLJ (Cri) 465: (1978) 2 SCR 777: 1978 Cri LJ 651.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *D.A. Desai*, JJ. [Date of decision: 31-1-1978]

[6370] — Ss. 436, 437 and 439 — Grant of bail by Magistrate — Interference by High Court — When warranted

It is ordinarily for the Magistrate to consider as to whether a case for grant of bail has been made out or not, the High Court, therefore, may not be correct in observing, that valid grounds exist for granting bail to the petitioners. Similarly, the High Court should not have, for all intent and purport, issued the direction for grant of exemption from personal appearance. Such a matter undoubtedly shall be left for consideration before the Magistrate. The Magistrate is expected to exercise his jurisdiction in a fair and judicious manner. The impugned directions are set aside and the matters are remitted to the High Court for consideration of the application filed before it by the parties afresh on merit. (Paras 43 and 44)

The jurisdiction of the High Court under Section 482 is limited. It can interfere with an order of summoning an accused by the Magistrate inter alia in the event if a finding is arrived at that the accused were being prosecuted mala fide and/or even if the allegations contained in the FIR are given face value and taken to be correct in their entirety, no case has been made out for taking cognizance of the offence. It is furthermore made clear that the parties hereto may approach the High Court in Criminal Miscellaneous Application No. 518 of 2008. Allegations of mala fide made against the State may also be gone into. The High Court can pass any such interim order as it may think fit and proper. (Paras 32, 34 and 41). *Manoj Narain Agrawal* v. *Shashi Agrawal*, (2009) 6 SCC 385.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 15-4-2009]

Arun Shankar Shukla v. State of U.P., (1999) 6 SCC 146: 1999 SCC (Cri) 1076; Hamida v. Rashid, (2008) 1 SCC 474: (2008) 1 SCC (Cri) 234; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Ruchi Agarwal v. Amit Kumar Agrawal, (2005) 3 SCC 299: 2005 SCC (Cri) 719, relied on

[6371] — S. 436 — Right to bail — Delay in trial should not affect — Undertrial prisoner — Trial courts' slackness in accelerating the process during trial stage even where accused are languishing in prisons for long years as undertrials deprecated — *Accused continuing in jail as undertrial for more than seven years due to trial court's insensitivity to take swift action by adopting appropriate trial procedures — Trial court adopting an archaic practice during evidence-taking stage by disposing of objections raised by defence regarding admissibility of some documents after hearing both the parties at length and then stopping the trial for long just to enable the defence to challenge that order before High Court — Bail not granted to accused — Held, no further time need be granted to trial court to complete the trial — It is for the trial court to complete it as early as possible — But accused should not be deprived of his right to move for bail on account of the delay — Bail application would be disposed of by the court concerned on its own merits — Constitution of India — Art. 21. Bipin Shantilal Panchal* v. *State of Gujarat,* (2001) 3 SCC 1: 2001 SCC (Cri) 417: AIR 2001 SC 1158: 2001 Cri LJ 1254.

Bench Strength 3. Coram: **K.T. Thomas**, *R.P. Sethi* and *B.N. Agrawal*, JJ. [Date of decision: 22-2-2001]

[6372] — S. 436 — Bail — Juvenile accused — *On a prima facie satisfaction, that the accused was a juvenile on the date of the offence direction issued to release him on bail subject to further enquiry regarding his age — Juvenile Justice (Care and Protection of Children) Act, 2000, S. 7-A* (Paras 3 and 4). *Abdul Rab* v. *State of Bihar,* (2008) 17 SCC 475.

Bench Strength 2. Coram: *Altamas Kabir* and *Markandey Katju*, JJ. [Date of decision: 25-8-2008]

[6373] — Ss. 436, 437, 440, 441 and 442 — Speedy trial — Cases relating to various types of offences pending in criminal courts for long periods — *Undertrials languishing in jail for long periods directed to be released on conditions laid down in the order — Guidelines and directions for disposal of other category of cases, whether instituted on police report or private complaint, also issued — These directions shall be valid for all the States and Union Territories and would apply not only to pending cases but also to future cases — However, they are not applicable to certain class of cases mentioned in the order — But they should be tried on a priority basis — Courts trying criminal cases directed to take appropriate action without any delay — Constitution of India — Arts. 21 and 32. Common Cause, A Registered Society* v. *Union of India,* (1996) 4 SCC 33: 1996 SCC (Cri) 589: AIR 1996 SC 1619.

Bench Strength 2. Coram: **B.P. Jeevan Reddy** and *S.B. Majmudar*, JJ. [Date of decision: 1-5-1996]

Partly overruled *in P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578*

See also *State v. Dr. Narayan Waman Nerukar, (2002) 7 SCC 6*

Held overruled *in Shankerlal v. State of Rajasthan, (2005) 12 SCC 330*

Clarified *in Supdt. of Police, Karnataka Lokayukta v. B. Srinivas, (2008) 8 SCC 580*

[6374] — Ss. 436 and 437 — Bail — Order granting or refusing, should not normally contain elaborate reasoning in support of the order

As embedded in the criminal jurisprudence obtaining in this country, courts exercising bail jurisdiction normally do and should refrain from indulging in elaborate reasoning in their orders in justification of grant or non-grant of bail. For, in that manner, the principle of "presumption of innocence of an accused" gets jeopardized; and the structural principle of "not guilty till proved guilty" gets destroyed, even though all sane elements have always understood that such views are tentative and not final, so as to affect the merit of the matter. *Kashi Nath Roy* v. *State of Bihar,* (1996) 4 SCC 539: 1996 SCC (Cri) 789: AIR 1996 SC 3240.

Bench Strength 2. Coram: *M.M. Punchhi* and *K.T. Thomas*, JJ. [Date of decision: 18-4-1996]

[6375] — Ss. 436, 437, 438, 439 and 482 — Arrest — When warranted — *Held, not a must in all cases of cognizable offences — Police officer in such cases must be guided by and act according to the principles laid down in* Joginder Kumar case, *(1994) 4 SCC 260 — Constitution of India — Arts. 21 and 22* (Para 8). *Lal Kamlendra Pratap Singh* v. *State of U.P.,* (2009) 4 SCC 437.

Bench Strength 2. Coram: *Markandey Katju* and *V.S. Sirpurkar*, JJ. [Date of decision: 23-3-2009]

Joginder Kumar v. State of U.P., (1994) 4 SCC 260: 1994 SCC (Cri) 1172, applied

Amarawati v. State of U.P., 2005 Cri LJ 755 (All), approved

[6376] — Ss. 436, 437, 438, 439 and 482 — Interim bail pending disposal of bail application — Grant of — Principles to be followed — Absence of provision for anticipatory bail — Effect — *In State of U.P. where State Amendment* *had omitted S. 438, held, judgment of Allahabad High Court in* Amarawati case, *2005 Cri LJ 755 (All), to be followed by all courts in letter and spirit — Copy of instant judgment directed to be sent to Registrar General of Allahabad High Court for onward circulation to Judges of High Court and all District Judges in the State — In present case, considering that charge-sheet had been filed and cognizance had been taken, High Court's refusal to quash FIR filed against appellant for committing offences under Ss. 467, 468, 471, 420, 409 and 218 IPC, not interfered with — Directions, however, issued to trial court to grant interim bail to appellant pending final disposal of his bail application if so applied for and deemed fit — Penal Code, 1860, Ss. 467, 468, 471, 420, 409 and 218* (Paras 7 to 10). *Lal Kamlendra Pratap Singh* v. *State of U.P.*, (2009) 4 SCC 437.

Bench Strength 2. Coram: *Markandey Katju* and *V.S. Sirpurkar*, JJ. [Date of decision: 23-3-2009]

Amarawati v. State of U.P., 2005 Cri LJ 755 (All), approved and directed to be followed in letter and spirit

[6377] — Ss. 436, 437, 440 and 441 — Bail system as prevalent oppressive and discriminatory against the poor — *Courts and the police must abandon the antiquated practice of release only against bond with sureties and permit release on personal bond — Other possible considerations for such pre-trial release pointed out — Factors for determining accused's roots in the community listed*

Per Bhagwati, J.

It is a travesty of justice that the poor, because the bail procedure is beyond their meagre means, have to suffer long years in pre-trial detention. Risk of monetary loss is not the only deterrent against fleeing from justice. The antiquated procedure perpetuated by the new Code which insists on a bond with a monetary obligation invariably supported by sureties whose solvency must be proved, operates very harshly against the poor, being beyond their means. They are exploited, suffer deprivation and losses and are unable to defend themselves. The discriminatory nature of the bail system becomes all the more acute by reason of the mechanical way in which it is customarily operated. Hence to eliminate the evil effects of poverty and assure fair and just treatment to the poor in the administration of justice, it is imperative that the bail system should be thoroughly reformed so that it should be possible for the poor, as easily as the rich, to obtain pre-trial release without jeopardising the interests of justice.

Parliament would do well to consider whether it would not be more consonant with the ethos of our Constitution that instead of risk of financial loss, other relevant considerations such as family ties roots in the community, job security, membership of stable organisations etc., should be the determinative factors in grant of bail and the accused should in appropriate cases be released on his personal bond without monetary obligation, subject to penalty in case of breach.

But even under the law as it stands today the courts must abandon the antiquated concept under which pre-trial release is ordered only against bail with sureties. The new insight into the subject of pre-trial release which has been developed in socially advanced countries and particularly the United States should now inform the decisions of Indian courts in regard to pre-trial release. To determine whether the accused has his roots in the community several factors may be considered (*see* para 4). If the Court is satisfied on a consideration of such factors that the accused has his ties in the community and there is no substantial risk of non-appearance, the accused may, as far as possible, be released on his personal bond. Of course, if facts are brought to the notice of the court which go to show that having regard to the condition and background of the accused his previous record and the nature and circumstances of the offence there may be a substantial risk of his non-appearance at the trial, the court may not release the accused on his personal bond and may insist on bail with sureties.

But even while releasing the accused on personal bond it is necessary to caution the court that the amount of the bond which it fixes should not be based merely on the nature of the charge. The decision as regards the amount of the bond should be an individualised decision depending on the individual financial circumstances of the accused and the probability of his absconding. Moreover when the accused is released on his personal bond, it would be very harsh and oppressive if he is required to satisfy the court regarding his solvency. An enquiry into his solvency can become a source of great harassment to him and often results in denial of bail and deprivation of liberty and should not, therefore, be insisted upon as a condition of acceptance of the personal bond.

What has been stated here in regard to the court must apply equally in relation to the police while granting bail.

On the peculiar facts and circumstances of the case all prisoners named in the newspaper should be released forthwith on their personal bond. *Hussainara Khatoon (I)* v. *State of Bihar*, (1980) 1 SCC 81: 1980 SCC (Cri) 23: AIR 1979 SC 1360 (Order: 1979 Cri LJ 1036: 1980 MLJ (Cri) 76.

Bench Strength 3. Coram: **P.N. Bhagwati**[1], **R.S. Pathak**[2] and *A.D. Koshal*[1], JJ. [Date of decision: 12-2-1979]

[6378] — S. 436 — Evasion of duty or prohibitions — Offence under S. 135(1)(ii), Customs Act, 1962 — Nature of — Bailable or not — *Held, offence committed under amended S. 135(1)(ii) is a bailable offence — Hence, Magistrate could grant bail — Customs Act, 1962, S. 135(1)(ii). Avinash Bhosale* v. *Union of India*, (2007) 14 SCC 325.

Bench Strength 2. Coram: *P.P. Naolekar* and *R.V. Raveendran*, JJ. [Date of decision: 27-8-2007]

[6379] — S. 436 — Bail — Fodder scam in Bihar — *Petitioner a former Chief Minister — Where charge-sheet already submitted and no investigation pending against him, bail granted to Dr. Jagannath Mishra subject to certain conditions. Jagannath Mishra (Dr.)* v. *CBI*, (1998) 9 SCC 611.

Bench Strength 3. Coram: *M.K. Mukherjee, S.P. Kurdukar* and *K.T. Thomas*, JJ. [Date of decision: 13-10-1997]

[6380] — S. 436 — Bail application meriting grant of bail — Rejection of — If by itself an act of judicial misconduct — Judicial acts of such nature — Grant of bail — *Rejection of first bail application followed by grant of bail on second application which contained no fresh grounds — In such circumstances, even if it was found that in the first instance itself the bail ought to have been granted, in the absence of material to reflect on the Judge's reputation, integrity, good faith or devotion to duty or any corrupt motive on his part, omission to grant bail in the first instance, held would not constitute misconduct*

The appellant was a judicial officer. In a departmental enquiry, he was found guilty of certain charges and consequently, his services were terminated. The charges, inter alia, pertained to orders of bail granted in certain cases. In two of these cases, according to the enquiry officer, bail ought to have been granted on the very first application, but it was granted on the second application although the second application contained no fresh grounds. The appellant challenged unsuccessfully before the High Court his termination on the ground that none of the acts he was charged of, constituted mis- conuct.

Allowing his appeal,

Held :

Inferences have been drawn by the enquiry officer only on the basis that either the applications had been rejected at earlier stage for grant of bail or such applications ought to have been granted at the first stage itself. However, no specific material was brought on record to show or prove that there were any mala fide or extraneous reasons on the part of the appellant in passing the orders. (Para 4)

That there was possibility on a given set of facts to arrive at a different conclusion is no ground to indict a judicial officer for taking one view and that too for alleged misconduct for that reason alone. The enquiry officer has not found any other material, which would reflect on his reputation or integrity or good faith or devotion to duty or that he had been actuated by any corrupt motive. At best, he might say that the view taken by the appellant was not proper or correct. (Para 7). *P.C. Joshi* v. *State of U.P.*, (2001) 6 SCC 491: 2001 SCC (L&S) 984: AIR 2001 SC 2788.

Bench Strength 2. Coram: **S. Rajendra Babu** and *Doraiswamy Raju*, JJ. [Date of decision: 8-8-2001]

Union of India v. A.N. Saxena, (1992) 3 SCC 124: 1992 SCC (L&S) 861: (1992) 21 ATC 670; Union of India v. K.K. Dhawan, (1993) 2 SCC 56: 1993 SCC (L&S) 325: (1993) 24 ATC 1; Ishwar Chand Jain v. High Court of Punjab & Haryana, (1988) 3 SCC 370: 1988 SCC (L&S) 797: 1988 Supp (1) SCR 396, followed

[6381] — Ss. 436, 437 and 439 — Bail — Second application for bail when first is dismissed, held, is maintainable

An order refusing an application for bail does not necessarily preclude another on a later occasion giving more materials, further developments and different considerations. While the Court should set store by the circumstance that the bail application was once rejected it cannot be said that the Court is barred from second consideration at a later stage. *Babu Singh* v. *State of U.P.*, (1978) 1 SCC 579: 1978 SCC (Cri) 133: AIR 1978 SC 527: 1978 MLJ (Cri) 465: (1978) 2 SCR 777: 1978 Cri LJ 651.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *D.A. Desai*, JJ. [Date of decision: 31-1-1978]

[6382] — Ss. 436, 437 and 439 — Successive application of bail, after cancellation of earlier bail — *Factors to be considered — Conduct of accused on being re-imprisoned after cancellation of bail — Held, in normal course it is expected that such accused would not behave in a manner that would give room for prosecution to contend that he had been misusing facilities available to him in law* *while he is in jail* (Para 8). *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2005) 3 SCC 284: 2005 SCC (Cri) 705: AIR 2005 SC 972: 2005 Cri LJ 1441.

Bench Strength 2. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 14-2-2005]

[6383] — Ss. 436 & 437(5) and 439(2) — Accused enlarged on bail by court — Rearrest when permissible — *Held, such accused cannot be rearrested soon thereafter without apprising such Court specially when no disclosure was made to that Court before it granted bail that investigation for any other offence was then pending against the accused — Rearrest illegal. Uday Chand* v. *Sk. Mohd. Abdullah, Chief Minister, J&K*, (1983) 2 SCC 417: 1983 SCC (Cri) 529.

Bench Strength 3. Coram: *Y.V. Chandrachud, C.J.* and *A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 12-3-1981]

[6384] — Ss. 436 and 437 — Bail — Grant of — Parameters for — Culpable homicide or murder — *Bail granted to accused-Respondent 2 by High Court primarily on the ground that co-accused was released on bail and his case at most would fall under S. 304 Pt. II IPC and not under S. 302 IPC — Accused-Respondent 2 along with his father (co-accused) involved in daylight cold-blooded murder of his elder brother — Dispute regarding distribution of property — After getting bail Respondent 2 and his father threatening and assaulting appellant (wife of deceased) physically to finish the case — Held, no reason was indicated by High Court as to what was the relevance of grant of bail to the co-accused ignoring that Respondent 2 was the alleged assailant who fired the gun and killed the deceased — Conclusions by High Court that there was no motive or there was a sudden quarrel appear to have been arrived at without any discussion and/or without reference to any particular material — Impugned order set aside and matter remitted to High Court for considering bail application afresh, keeping in view the principles delineated — Penal Code, 1860 — Ss. 302/304 Pt. II* (Paras 2, 3 and 15). *Sudha Verma* v. *State of U.P.*, (2007) 12 SCC 507: (2008) 3 SCC (Cri) 275: (2007) 58 AIC 218 (SC): (2007) 6 All LJ 157.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 24-8-2007]

Gajanand Agarwal v. State of Orissa, (2007) 4 SCC 343; Omar Usman Chamadia v. Abdul, (2004) 13 SCC 234: 2005 SCC (Cri) 157; V.D. Chaudhary v. State of U.P., (2005) 12 SCC 304: (2006) 1 SCC (Cri) 560; Imran Ali v. Habibullah, (2007) 12 SCC 506; State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21: 2005 SCC (Cri) 1960 (2), relied on

[6385] — S. 436 and Ch. V (Ss. 41 to 60) — Arrest — Bail application — Non-compliance with Supreme Court's directions relating to arrest issued in *D.K. Basu* v. *State of W.B.*, (1997) 1 SCC 416 and *Joginder Kumar* v. *State of U.P.*, (1994) 4 SCC 260 — Plea in respect of — *Held, in the normal course should have been made in the bail application, especially when the same was drafted and filed by a lawyer — Hence the said plea made later on in the instant writ petitions and contempt petitions, held on facts, was not correct*

Petitioner 1 was produced in the Court of Magistrate on the same day of her arrest. She applied for bail before the Magistrate concerned. She did not state anything nor did she make any grievance before the said Magistrate regarding non-compliance with the directions issued in the aforesaid two cases, though her bail application was drafted and filed by a lawyer. If the plea taken now in the writ petitions was correct, in normal course grievance regarding the same should have been made on that very day when she was produced before the Magistrate especially when the legal aid and advice of a counsel was available to her. (Para 13). *Rajkumari* v. *SHO, NOIDA*, (2003) 11 SCC 500: 2004 SCC (Cri) 196: AIR 2003 SC 4693.

Bench Strength 2. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 19-9-2003]

[6386] — Ss. 436 to 439 and 446-A — High Court's orders regarding grant or cancellation of bail or anticipatory bail final — *Appeal before Supreme Court under Art. 136 against such orders ordinarily not entertainable — Constitution of India — Art.136. Jagdish* v. *Harendrajit Singh*, (1985) 4 SCC 508: 1986 SCC (Cri) 1.

Bench Strength 2. Coram: *P.N. Bhagwati, C.J.* and *Ranganath Misra*, J. [Date of decision: 31-10-1985]

— S. 436-A *See also* Ss. 437, 436-A and 439

[6387] — S. 436-A — Not retrospective — Consolidation of cases, therefore, cannot be granted under Art. 142 of Constitution of India — Consolidation of cases and trial in one court by retrospective application of S. 436-A CrPC without any express provision for the same — Permissibility — Exercise of power under Art. 142 — Scope of interference in criminal matters — *Held, the Supreme Court cannot direct an authority to act contrary to law even if it has ample jurisdiction to pass orders under Art. 142 for doing complete justice (between the parties in any case or matter) — Penal Code, 1860, Ss. 406, 409, 420 and 120-B — Negotiable Instruments Act, 1881, S. 138 — Constitution of India, Arts. 142, 32 and 21*

As many as forty-eight pending cases in six different States had been instituted by different depositors and investors against the writ petitioner in his capacity as ex-MD and ex-Director of the company concerned for commission of offences punishable under Sections 406, 409 and 420 read with Section 120-B IPC and Section 138 of the NI Act. The petitioner as an undertrial prisoner remained in jail for more than ten years (i.e. since August 1998) before he approaching the Supreme Court under Article 32 for enforcement of fundamental rights guaranteed under Articles 14, 19, 20 and 21.

Allowing the appeal partly,

Held:

The petitioner deserves some relief. Although various cases are pending in different courts, the hard reality that the petitioner is in jail since more than ten years cannot be lost sight of. If the petitioner comes out of jail he may be able to make arrangement for repayment of amount and also to defend cases registered against him. On the overall facts and circumstances, the ends of justice would be served if appropriate court is directed to release him on bail on his executing a bond to the satisfaction of such court and the arresting officer. Assurance/undertaking of the writ petitioner-accused required to be filed for appearance in the court proceedings, surrender of passport (if any) to the police till final disposal of the case and liberty to the court concerned and the investigating agency to take required action if the petitioner misuses the liberty granted herein. (Paras 24, 31 and 32)

So far as consolidation of cases and trial of all the cases in one court is concerned such relief cannot be granted. Even in exercise of inherent powers the Supreme Court cannot direct an authority to act contrary to law even if it has ample jurisdiction to pass orders under Article 142 of the Constitution for doing complete justice between the parties in any case or matter. No retrospective effect has been given to Section 436-A CrPC. (Paras 31, 27 and 30). *Pramod Kumar Saxena* v. *Union of India*, (2008) 9 SCC 685: (2008) 3 SCC (Cri) 866: (2008) 70 AIC 4 (SC).

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 19-9-2008]

V.K. Sharma v. Union of India, (2000) 9 SCC 449: 2001 SCC (Cri) 467; State of Punjab v. Rajesh Syal, (2002) 8 SCC 158: 2002 SCC (Cri) 1867, relied on

V.K. Sharma v. Union of India, (2000) 9 SCC 449: 2001 SCC (Cri) 467, held overruled

Section 437 — Bail in non-bailable offences

Synopsis

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— **S. 437** *See* Ss. 157 & 155 and 41 to 44 & 46 and Ss. 437 to 439

See also Ss. 167 proviso (a) [as stood prior to 1978 amendment] 170 and 437

See also Ss. 167(2), 57, 437 and 439

See also Ss. 167(2) proviso, 437 and 4

See also Ss. 167(2) proviso, 437 and 439

See also Ss. 167(5) (as amended by S. 4 of W.B. Act 24 of 1988), 436, 437, 204, 205, 206 and 161

See also Ss. 231, 242, 244, 309 and 437 & 439
See also Ss. 389 and 437
See also Ss. 389, 437 and 439
See also Ss. 436, 389, 437, 441 and 445
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See also Ss. 436 to 450
See also Ss. 436 to 439 and 446-A
See also Ss. 436, 437, 438, 439 and 482
See also Ss. 436, 437 and 439
See also Ss. 436, 437, 440 & 441
See also Ss. 436, 437, 440, 441 and 442
See also Ss. 438 and 437
See also Ss. 438, 437 & 438 and 2(h), 155 to 157 and 41 to 44 & 46
See also Ss. 438 and 437 & 439
See also Ss. 438, 437 & 439 and 41 to 44 & 46
See also Ss. 439 & 437
See also Ss. 439, 437 and 389
See also Ss. 482 and 437
— S. 437(1) *See* Ss. 167(2) & 437(5), (1) and (2)
See also Ss. 437(5), (1) & (2) and 167(2)
— S. 437(1)(i) *See* Ss. 439 and 437(1)(i)
See also Ss. 439 and 437(1)(i) & (ii)
— S. 437(1)(ii) *See* Ss. 439 and 437(1)(i) & (ii)
— S. 437(2) *See* Ss. 167(2) & 437(5), (1) and (2)
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— S. 437(4) *See* Ss. 437(1), (4) & (5) and 439(1) & (2)
See also Ss. 437(1) & (4) and 439(1)
— S. 437(5) *See* Ss. 167(2) & 437(5), (1) and (2)
See also Ss. 167(2) proviso, 437(5), 439(2), 57 and 173
See also Ss. 167(2), proviso (a), 309(2), 437(5), 439(2), 441, 442(1) and 444
See also Ss. 436 & 437(5) and 439(2)
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See also Ss. 439(2) and 437(5)
See also Ss. 439(2), 438 and 437(5)
— S. 437(6) *See* Ss. 437(1) & (6)
See also Ss. 482 and 197, 173, 309, 437(6) and 468

(1) Generally

[6388] — Ss. 437 and 439 — Bail — Concept and purpose of. *Aslam Babalal Desai* v. *State of Maharashtra*, (1992) 4 SCC 272: 1992 SCC (Cri) 870: AIR 1993 SC 1.
Bench Strength 3. Coram: **A.M. Ahmadi**[1], **M.M. Punchhi**[2] and **K. Ramaswamy**[3], JJ. [Date of decision: 15-9-1992]

[6389] — S. 437 — Bail — Role of, in protection of right to personal liberty — Essence of function involved in grant of bail, and measures to ensure proper performance thereof — *Held, exercise of said jurisdiction requires maintaining of perfect balance between two conflicting interests viz. sanctity of individual liberty and interest of society — Hence, it should be entrusted to judicial officers with some experience and good track record — High Courts advised to periodically organise (through their Judicial Academies) workshops, symposiums, seminars and lectures for orientation of judicial officers and police officers in respect of importance of, and method of balancing of, said conflicting interests — Direction given for periodical evaluation of performance of judicial officers concerned on the basis of cases decided by them — Constitution of India, Arts. 21 and 22*

Just as liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order. Both are equally important. (Para 84)

A large number of undertrials are languishing in jail for a long time even for allegedly committing very minor offences. This is because Section 438 CrPC has not been allowed its full play. The Constitution Bench in *Sibbia case*, (1980) 2 SCC 565 clearly mentioned that Section 438 CrPC is extraordinary because it was incorporated in CrPC, 1973 and before that other provisions for grant of bail were Sections 437 and 439 CrPC. It is not extraordinary in the sense that it should be invoked only in exceptional or rare cases. Some courts of smaller strength have erroneously observed that Section 438 CrPC should be invoked only in exceptional or rare cases. (Para 85)

According to the Report of the National Police Commission, when the power of arrest is grossly abused and clearly violates the personal liberty of the people, as enshrined under Article 21 of the Constitution, then the courts need to take serious notice of it. When conviction rate is admittedly less than 10%, then the police should be slow in arresting the accused. The courts considering the bail application should try to maintain fine balance between the societal interest vis-à-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent court. (Para 86)

(1) Bail in non-bailable offences — Generally *(contd.)*

The complaint filed against the accused needs to be thoroughly examined including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. The court should also examine the fact whether there is any family dispute between the accused and the complainant and the complainant must be clearly told that if the complaint is found to be false or frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law. (Para 87)

The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court. (Para 88)

It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage. (Paras 89 and 90)

Society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests, namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand, absolute adherence to the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty. (Para 1)

Exercise of jurisdiction under Section 438 CrPC is an extremely important judicial function of a Judge and must be entrusted to judicial officers with some experience and good track record. Both the individual and society have vital interest in orders passed by the courts in anticipatory bail applications. (Para 119)

It is imperative for the High Courts through their judicial academies to periodically organise workshops, symposiums, seminars and lectures by the experts to sensitise judicial officers, police officers and investigating officers so that they can properly comprehend the importance of personal liberty vis-à-vis social interests. They must learn to maintain fine balance between the personal liberty and the social interests. The performance of the judicial officers must be periodically evaluated on the basis of the cases decided by them. In case, they have not been able to maintain balance between personal liberty and societal interests, the lacunae must be pointed out to them and they may be asked to take corrective measures in future. Ultimately, the entire discretion of grant or refusal of bail has to be left to the judicial officers and all concerned must ensure that grant or refusal of bail is considered basically on the facts and circumstances of each case. (Paras 120 and 121). *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength 2. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, relied on

[6390] — Ss. 437 and 439 — Detention of person accused of non-bailable offences during pendency of trial — Held, not violative of Art. 21 — "Personal liberty" — Right to, of prisoners and undertrials — Incarceration of persons charged with non-bailable offences during pendency of trial — *Held, is permissible under the criminal laws, unless enlarged on bail in accordance with law — Hence, held, such detention cannot be questioned as violative of Art. 21 since the same is authorised by law — Constitution of India — Art. 21*

Personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non-bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non-bailable offences are entitled to bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied, for reasons to be recorded, that in spite of the existence of a prima facie case there is a need to release such persons on bail where fact situations require it to do so. (Para 18). *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2005) 2 SCC 42: 2005 SCC (Cri) 489: AIR 2005 SC 921: (2005) 27 AIC 717 (SC): (2005) 2 Guj LR 921: 2005 Cri LJ 944.

Bench Strength **3**. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *P.K. Balasubramanyan*, JJ. [Date of decision: 18-1-2005]

Jayendra Saraswathi Swamigal v. State of T.N., (2005) 2 SCC 13, clarified

[6391] — Ss. 437 and 439 — Bail — Jurisprudence of (Paras 6 to 8). *Vaman Narain Ghiya* v. *State of Rajasthan*, (2009) 2 SCC 281.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 12-12-2008]

A.K. Gopalan v. State of Madras, AIR 1950 SC 27, relied on

(2) Ss. 437 and 439 — Relative scope

[6392] — Ss. 437 and 439(1) & (2) — Bail — Nature and relative scope of the sections — Ss. 497 and 498 CrPC, 1898, compared

Section 437(1), Criminal Procedure Code, 1973 takes care of the situation arising out of an accused being arrested by the police and produced before a Magistrate. While S. 497(1), Criminal Procedure Code of the old Code, in terms, refers an accused being "brought before a Court", S. 437(1), Criminal Procedure Code uses the expression "brought before a Court other than the High Court or a Court of Session". This change does not affect the true legal position. What has been the rule of production of accused person after arrest by the police under the old Code has been made explicitly clear in S. 437(1) of the new Code by excluding the High Court or the Court of Session. There is no provision in the Code whereby the accused is for the first time produced after initial arrest before the Court of Session or before the High Court.

The principle underlying S. 437 is towards granting of bail except in cases where there appear to be reasonable grounds for believing that the accused has been guilty of an offence punishable with death or imprisonment for life and also when there are valid reasons to justify the refusal of bail. From sub-section (1) to sub-section (7) the change is from 'reasonable grounds for believing the accused guilty' to 'reasonable grounds for believing the accused not guilty'. At the stage of S. 437(1) the limited enquiry before the Magistrate relates to materials for basing the suspicion.

Since the Sessions Judge or the High Court will be approached by an accused only after refusal of bail by the Magistrate, it is not possible to hold that the mandate of the law of bail under S. 437, Criminal Procedure Code for the Magistrate, namely, considerations of likelihood of the accused being guilty of an offence punishable with death or imprisonment for life, will be ignored by the High Court or the Sessions Judge.

Under S. 439(1) the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail. The overriding considerations in granting bail which are common both in the case of S. 437(1) and S. 439(1), of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice, of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many variable factors, cannot be exhaustively set out. Of these, on the two paramount considerations viz. likelihood of the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring a fair trial of the case in a Court of Justice, due and proper weight should be bestowed. *Gurcharan Singh* v. *State (Delhi Admn.)*, (1978) 1 SCC 118: 1978 SCC (Cri) 41: AIR 1978 SC 179: 1978 Cri LJ 129.

Bench Strength **2**. Coram: **P.K. Goswami** and *V.D. Tulzapurkar*, JJ. [Date of decision: 6-12-1977]

(3) Matters at large/Orders/Directions that may be passed

[6393] — Ss. 437, 439, 438 and 389 — Jurisdiction of court while deciding bail application — Scope of — Determination of civil disputes — *Held, said jurisdiction does not extend to decide civil disputes as between the parties* (Para 3). *Mahesh Chandra* v. *State of U.P.*, (2006) 6 SCC 196: (2006) 3 SCC (Cri) 23.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 1-5-2006]

(4) Grounds for bail — Generally

See also Section 437, '(5) Grounds for bail in murder cases', and

'(6) Grounds for bail — Particular offences', below

[6394] — S. 437 — Grant of bail in case of non-bailable offence — Nature and scope — Reasonable grounds — Connotation of — Limitations for grant of bail — *Held, such limitations come only when the question of granting bail on merit arises — Limitations stipulated in the said provision are cumulative and not alternative — Satisfaction contemplated, regarding innocence of the accused, to be based on reasonable grounds — "Reasonable grounds" mean something more than prima facie grounds — It contemplates substantial probable cause for believing that the accused is not guilty of the offence alleged and is not likely to commit any offence while on bail — Such embargo, further held, has been envisaged in view of the deleterious nature of the offence, public interest and tendency of the persons involved in such crimes to pursue their activities with greater vigour and make hay when at large — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 37(1)(b)* (Paras 9 to 12). *Narcotics Control Bureau* v. *Dilip Pralhad Namade*, (2004) 3 SCC 619: 2004 SCC (Cri) 916: 2004 Cri LJ 1815.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 18-3-2004]

Union of India v. Thamisharasi, (1995) 4 SCC 190: 1995 SCC (Cri) 665, considered and relied on

[6395] — Ss. 437 and 439 — Bail — Grant of — Basic considerations normally weighed by the courts for granting bail in non-bailable offences — *Held the same, are (1) nature and seriousness of the offence (2) character of the evidence (3) reasonable apprehension of witness being tampered with and, (4) reasonable possibility of the presence of the accused not being secured at the trial* (Para 10). *Gokul Bhagaji Patil* v. *State of Maharashtra*, (2007) 2 SCC 475: (2007) 1 SCC (Cri) 597: (2007) 49 AIC 27 (SC): 2007 Cri LJ 776.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **D.K. Jain**, JJ. [Date of decision: 8-12-2006]

Chenna Boyanna Krishna Yadav v. State of Maharashtra, (2007) 1 SCC 242, relied on

[6396] — Ss. 437 and 439 — Bail — Grant of — Propriety of — Gravity of the offence ignored — Instead mitigating factors considered — Matter treated in a cursory manner — Cancellation of bail — Effect of long passage of time — *31 minor girls rescued from houses of some of respondent-accused — Bail granted to respondent-accused by impugned judgment on ground that: (i) no specific role was assigned to them, nor was there any description of their activities in statements of witnesses recorded under S. 161 CrPC, (ii) statements of witnesses were not recorded under S. 164 CrPC which would have given weight to their testimony, and (iii) there was no specific evidence regarding inducing or taking a specific person for the sake of prostitution — Held, High Court was not correct in dealing with the matter in such a cursory manner — Further held, recording of statements of girls under S. 164 CrPC was not necessary — However, considering the fact that respondent-accused had been granted bail long time back, and in some cases trials also had been concluded, cancellation of bail not ordered — Immoral Traffic (Prevention) Act, 1956, Ss. 3, 5, 6, 7 & 9 — Penal Code, 1860, Ss. 323, 504, 506, 117, 366-A & 373. Guria, Swayam Sevi Sansthan* v. *State of U.P.*, (2009) 15 SCC 75.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 31-7-2009]

Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124, relied on

[6397] — Ss. 437 and 439 — Bail — Grant of — Relevant considerations for reiterated — *Held, the same are (1) nature of accusation, severity of punishment in case of conviction and nature of supporting evidence, (2) reasonable apprehension of tampering with witness and apprehension of threat to complainant, (3) prima facie satisfaction of the court in support of the charge — Reasons to be given while granting bail — Respondents booked under Unlawful Activities (Prevention) Act, 1967, Arms Act, 1959 and Penal Code, 1860 — Bail granted by High Court observing that charge-sheet did not disclose as to what were the imputations of acts done by respondents under Arms Act and other offences but relevant considerations as stated above, not kept in view — High Court's bail order set aside — Unlawful Activities (Prevention) Act, 1967, Ss. 10, 13, 18 and 20 — Arms Act, 1959, Ss. 3 and 4 — Penal Code, 1860, Ss. 353, 34 and 120-B* (Paras 5 and 8). *State of Maharashtra* v. *Dhanendra Shriram Bhurle*, (2009) 11 SCC 541: (2009) 3 SCC (Cri) 1480: AIR 2009 SC 1706: (2009) 76 AIC 197 (SC): 2009 Cri LJ 1546: (2009) 2 All LJ 124.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 11-2-2009]

Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688; Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977; Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118: 1978 SCC (Cri) 41; Lokesh Singh v. State of U.P., (2008) 16 SCC 753, relied on

[6398] — Ss. 437, 438 and 439 — Magistrate's power to grant bail in case of non-bailable offence — *Magistrate can grant bail only when there is no reasonable ground to believe that the accused is guilty of offence punishable with sentence of death or life imprisonment, unless the accused is covered by the provisos to S. 437(1) — Factors to be kept in mind while granting bail — Merely because accused was initially granted anticipatory bail under S. 438 for a lesser offence (under Ss. 306 and 398-A IPC), that would not entitle him to grant of a regular bail under S. 437 when later he was found to be involved in a graver offence like murder under S. 302 — Held, Magistrate erred in granting bail under S. 437 when accused was charged with offence under S. 302*

A case was registered against Respondent 2 under Sections 306 and 498-A IPC. After the investigating officer recorded statements of the witnesses under Section 161 CrPC, the respondent-accused moved an application for grant of anticipatory bail under Section 438 CrPC. The Addl. Sessions Judge granted interim bail observing that if on facts a case under Section 302 IPC is made out against the accused, the State shall be at liberty to arrest him. Subsequently, a charge-sheet was filed against the respondent under Sections 302, 406 and 498-A IPC by the investigating agency and he was directed to appear before the Metropolitan Magistrate. As he failed to appear in that court, non-bailable warrants were issued against him. In the meanwhile the respondent filed a criminal miscellaneous application under Section 482 CrPC in the High Court without impleading the appellant (deceased's father) as a party. The High Court kept the order of the Magistrate in abeyance. In his petition filed in the High Court, the accused suppressed the fact that a charge-sheet under Section 302 had been filed against him. Notice to the appellant was issued but in the meantime the respondent moved an application under Section 438 of the Code for anticipatory bail before the Additional Sessions Judge for which no order was passed and direction was issued to the accused to first appear before the Magistrate by a Single Judge of the High Court by passing a telegraphic order to the effect "having considered the case before me I am of the opinion that no ground has been made for cancellation of bail".

Allowing the appeal,

Held :

In the instant case while exercising the jurisdiction, apparently under Section 437 of the Code, the Metropolitan Magistrate appears to have completely ignored the basic principles governing the grant of bail. The mere initial grant of anticipatory bail for lesser offence, did not entitle the respondent to insist for regular bail even if he was subsequently found to be involved in the case of murder. Neither Section 437(5) nor Section 439(1) of the Code was attracted. There was no question of cancellation of bail earlier granted to the accused for an offence punishable under Sections 498-A, 306 and 406 IPC. With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime. Instead of referring to the grounds which entitled the respondent-accused the grant of bail, the Magistrate adopted a wrong approach to confer on him the benefit of liberty on allegedly finding that no grounds were made out for cancellation of bail. Despite the involvement of important questions of law, the High Court failed in its obligation to adjudicate the pleas of law raised before it and dismissed the petition of the appellant by a one-sentence order. The orders of the Magistrate as also of the High Court being contrary to law are liable to be set aside. (Paras 9 and 10)

The proviso to Section 437(1) is an enabling provision which confers jurisdiction upon a court, other than the High Court and the Court of Session, to release a person on bail despite the fact that there appears reasonable ground for believing that such person has been guilty of an offence punishable with death or imprisonment for life. Even though there is no legal bar for a Magistrate to consider an application for grant of bail to a person who is arrested for an offence exclusively triable by a Court of Session yet it would be proper and appropriate that in such a case the Magistrate directs the accused person to approach the Court of Session for the purposes of getting the relief of bail. Even in a case where any Magistrate opts to make an adventure of exercising the powers under Section 437 of the Code in respect of a person who is suspected of the commission of such an offence, arrested and detained in that connection, such Magistrate has to specifically negate the existence of reasonable ground for believing that such an accused is guilty of an offence punishable with the sentence of death or imprisonment for life. In a case where the Magistrate has no occasion and in fact does not find that there were no reasonable grounds to believe that the accused had not committed the offence punishable with death or imprisonment for life he shall be deemed to be having no jurisdiction to enlarge the accused on bail. (Paras 5 and 6)

(4) Grounds for bail — Generally *(contd.)*

Powers of the Magistrate, while dealing with the applications for grant of bail, are regulated by the punishment prescribed for the offence in which the bail is sought. Generally speaking if punishment prescribed is for imprisonment for life and death penalty and the offence is exclusively triable by the Court of Session, the Magistrate has no jurisdiction to grant bail unless the matter is covered by the provisos attached to Section 437 of the Code. The limitations circumscribing the jurisdiction of the Magistrate are evident and apparent. Assumption of jurisdiction to entertain the application is distinguishable from the exercise of the jurisdiction. (Para 7)

The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and other similar considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt. (Para 8). *Prahlad Singh Bhati* v. *NCT of Delhi*, (2001) 4 SCC 280: 2001 SCC (Cri) 674: AIR 2001 SC 1444: 2001 Cri LJ 1730.

Bench Strength **2**. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 23-3-2001]

[6399] — Ss. 437 and 438 — Bail — Grant of — Court's satisfaction about reasonable grounds — Factors to be considered — Supreme Court's interference with order granting bail when called for — *TADA, 1987, S. 29(8)(b)*

In view of the assertions made by the respondent earlier, it was necessary for the court to consider the further materials collected by the investigating agency by recording statements of witnesses. The court below misdirected itself in refusing to look into such statements and concluding that it was a case for granting bail taking into account only the position held by the respondent in the party.

The matter regarding grant or refusal of bail calls for judicious exercise of discretion by the court on merits. Where the offence is of a serious nature the court has to decide the question of grant of bail in the light of such considerations as the nature and seriousness of the offence, character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of presence of the accused not being secured at the trial and the reasonable apprehension of witness being tampered with, the larger interest of the public or such similar other considerations.

The Supreme Court would not ordinarily interfere with the discretion of the lower court in granting or refusing bail but in cases where bail has been granted on irrelevant considerations, such as the status or influence of the person accused and regardless of the nature of the accusation and relevancy of materials on record, the Court would not hesitate to interfere for the ends of justice. In the present case the Designated Court clearly erred in disposing of the application for bail. The order of the Designated Court granting bail has, therefore, to be set aside, without prejudice to the respondent's right to move the Designated Court at any subsequent stage. *State of Maharashtra* v. *Anand Chintaman Dighe*, (1990) 1 SCC 397: 1990 SCC (Cri) 142: AIR 1990 SC 625: 1990 Cri LJ 788.

Bench Strength **2**. Coram: *A.M. Ahmadi* and **M. Fathima Beevi**, JJ. [Date of decision: 16-1-1990]

[6400] — Ss. 437 and 439 — Grant or refusal of bail — Factors to be considered, restated

The matters to be considered in an application for bail are (*i*) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (*ii*) nature and gravity of the charge; (*iii*) severity of the punishment in the event of conviction; (*iv*) danger of the accused absconding or fleeing, if released on bail; (*v*) character, behaviour, means, position and standing of the accused; (*vi*) likelihood of the offence being repeated; (*vii*) reasonable apprehension of the witnesses being tampered with; and (*viii*) danger, of course, of justice being thwarted by grant of bail. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. (Para 18). *State of U.P.* v. *Amarmani Tripathi*, (2005) 8 SCC 21: 2005 SCC (Cri) 1960 (2): AIR 2005 SC 3490: (2005) 123 DLT 362: 2005 Cri LJ 4149.

Bench Strength **2**. Coram: **Ashok Bhan** and *R.V. Raveendran*, JJ. [Date of decision: 26-9-2005]

Prahlad Singh Bhati v. NCT of Delhi, (2001) 4 SCC 280: 2001 SCC (Cri) 674; Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118: 1978 SCC (Cri) 41; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977, relied on

***Followed in** Gobarbhai Naranbhai Singala v. State of Gujarat, (2008) 3 SCC 775*

[6401] — Ss. 437 and 439 — When bail may be taken in case of non-bailable offences — *Bail may be granted in such cases, held, if court concerned comes to the conclusion that prosecution has failed to establish a prima facie case against accused and/or if the court is satisfied, for reasons to be recorded, that in spite of existence of a prima facie case there is a need to release such persons on bail where fact situations require the court to do so*

Persons accused of non-bailable offences are entitled to bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied, for reasons to be recorded, that in spite of the existence of a prima facie case there is a need to release such persons on bail where fact situations require it to do so. (Para 18). *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2005) 2 SCC 42: 2005 SCC (Cri) 489: AIR 2005 SC 921: (2005) 27 AIC 717 (SC): (2005) 2 Guj LR 921: 2005 Cri LJ 944.

Bench Strength **3**. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *P.K. Balasubramanyan*, JJ. [Date of decision: 18-1-2005]

[6402] — Ss. 437 and 439 — Non-bailable offences — Bail — Necessary considerations while grant of

The considerations which normally weigh with the court in granting bail in non-bailable offences are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case. (Para 9). *State of Gujarat* v. *Salimbhai Abdulgaffar Shaikh*, (2003) 8 SCC 50: AIR 2003 SC 3224.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 8-9-2003]

State v. Jagjit Singh, AIR 1962 SC 253: (1962) 1 Cri LJ 215; Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118: 1978 SCC (Cri) 41, relied on

[6403] — Ss. 437 and 439 — Grant of bail in cases involving non-bailable offences — Considerations to be weighed by court reiterated — *Applicability of prohibition contained in S. 437(1)(i) to S. 439, not considered — On facts, held, prima facie a strong case has been made out for grant of bail to appellant-petitioner — Hence bail granted, on certain terms*

Allowing the appeal and granting bail,

Held :

The considerations which normally weigh with the court in granting bail in non-bailable offences basically are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case. (Para 16)

A prima facie strong case has been made out for grant of bail to the petitioner. The appeal is accordingly allowed and the impugned order of the High Court is set aside. However, till the submission of the charge-sheet in court, the petitioner shall not visit the Mutt premises. He shall also surrender his passport before the CJM. (Para 17). *Jayendra Saraswathi Swamigal* v. *State of T.N.*, (2005) 2 SCC 13: 2005 SCC (Cri) 481: AIR 2005 SC 716: 2005 Cri LJ 883: (2005) 116 DLT 354: (2005) 99 Cut LT 644: (2005) 1 KLT 471.

Bench Strength **3**. Coram: *R.C. Lahoti*, *C.J.* and **G.P. Mathur** and *P.P. Naolekar*, JJ. [Date of decision: 10-1-2005]

State v. Jagjit Singh, (1962) 3 SCR 622: AIR 1962 SC 253: (1962) 1 Cri LJ 215; Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118: 1978 SCC (Cri) 41, followed

Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977, distinguished

***Clarified in** Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005) 2 SCC 42*

[6404] — Ss. 437 and 439 — Factual considerations for rejection of bail under S. 439 — *Confessing witnesses declared hostile, likelihood of accused S and N fleeing being residents of border districts, and allegation of accused persons' capability in influencing other witnesses — Effect — High Court, Sessions Court and SDJM rejecting bail, upheld — However, on the ground of ill health of accused S, timely medical help directed*

There was reason for not releasing the appellants on bail more so when the trial was at a precarious stage. It was admitted that some witnesses who were the witnesses for conspiracy and had been examined had to be declared hostile. The prosecution had expressed that the appellants were

(4) Grounds for bail — Generally *(contd.)*

politically influential and financially strong and were capable of influencing the witnesses. The appellants *S* and *N* were the residents of Baragaon District which was a border district and, therefore, there was every likelihood of their fleeing from the judicial process. However, in view of the plea regarding the ill health of *S* timely medical help was directed to be made available to him. (Paras 10, 9 and 13). *Narayan Ghosh* v. *State of Orissa*, (2008) 3 SCC 693: (2008) 2 SCC (Cri) 723: AIR 2008 SC 1159: 2008 Cri LJ 1625.

Bench Strength **2**. Coram: *S.B. Sinha* and **V.S. Sirpurkar**, JJ. [Date of decision: 4-2-2008]

Jayendra Saraswathi Swamigal v. State of T.N., (2005) 2 SCC 13: 2005 SCC (Cri) 481, distinguished

[6405] — Ss. 437 and 439 — Grant of bail — Application of mind — Factors to be considered by court restated — Criminal antecedents though not conclusive yet are relevant — Reasons for prima facie conclusion for grant of bail must be recorded by court

It is necessary for the courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

2. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

3. Prima facie satisfaction of the court in support of the charge. (Para 6)

Any order dehors such reasons suffers from non-application of mind. (Para 7)

Looked at from the above angle, the grant of bail to the respondents does not appear to be in order. Accordingly, the order of the High Court granting bail to the respondents is set aside. (Para 10). *State of Maharashtra* v. *Sitaram Popat Vetal*, (2004) 7 SCC 521: 2004 SCC (Cri) 1971: AIR 2004 SC 4258.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 23-8-2004]

Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688; Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528, relied on

[6406] — Ss. 437 and 439 — Grant of bail — Considerations — Relevance of criminal history-sheet of accused — *High Court granting bail to accused charged under Ss. 302/149 etc. IPC solely on ground that only a single firearm injury was sustained by deceased — Criminal history-sheet of accused showing that accused were involved in a series of crimes, including murder — Held, considering this fact, High Court was not justified in granting bail. Narender Kumar Sharma* v. *Manoj Chowdhary*, (2005) 13 SCC 171: (2006) 2 SCC (Cri) 131.

Bench Strength **2**. Coram: *H.K. Sema* and *B.N. Srikrishna*, JJ. [Date of decision: 30-9-2005]

[6407] — Ss. 437 and 439 — Grant of bail — Considerations for

In cases of undertrials charged with the commission of an offence or offences the court is generally called upon to decide whether to release him on bail or to commit him to jail. This decision has to be made, mainly in non-bailable cases, having regard to the nature of the crime, the circumstances in which it was committed, the background of the accused, the possibility of his jumping bail, the impact that his release may make on the prosecution witnesses, its impact on society and the possibility of retribution, etc. *State of Maharashtra* v. *Buddhikota Subha Rao*, 1989 Supp (2) SCC 605: 1990 SCC (Cri) 126: AIR 1989 SC 2292: 1989 Cri LJ 2317.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *K.N. Saikia*, JJ. [Date of decision: 29-9-1989]

[6408] — Ss. 437 and 439(2) — Grant or refusal of bail — Cumulative effect of the circumstances must be considered — *In facts and circumstances of the case, order of High Court granting bail to the respondents not sustainable*

In the present case the High Court came to the conclusion that it could not be said that no prima facie case was made out against the respondents. The High Court then, however, found that there was no risk of winning over of witnesses or tampering with their evidence because the only incriminating material i.e. the dying declaration had been made in the presence of doctors, lawyers and police officers. This, in the facts and circumstances of the case, was not adequate reason to release the respondents on bail.

The cumulative effect of the dying declarations, the statements under S. 164 CrPC of the two security men, the fact that the deceased was set afire within the premises of the mill, the dispute as to the mill between the deceased and her father and brother on the one hand and the respondents on the other hand, and the cruelty and heinousness of the crime lead to the conclusion that this is a case where bail ought not to have been given to the respondents and where the Supreme Court under Art. 136 must intervene and set aside the order of the High Court. *State of Orissa* v. *Rajendra Prasad Bharadia*, (1994) 5 SCC 146: 1994 SCC (Cri) 1372.

Bench Strength 2. Coram: *J.S. Verma* and **S.P. Bharucha**, JJ. [Date of decision: 13-5-1994]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, followed

[6409] — Ss. 437 and 438 — Bail — Grant of — Factors to be considered — *TADA, 1987 (28 of 1987), S. 29(8)(b)*

There are no hard and fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the court. Where the offence is of serious nature the court has to decide the question of grant of bail in the light of such considerations as the nature and seriousness of offence, character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of presence of the accused not being secured at the trial and the reasonable apprehension of witness being tampered with, the larger interest of the public or such similar other considerations. *State of Maharashtra* v. *Anand Chintaman Dighe*, (1990) 1 SCC 397: 1990 SCC (Cri) 142: AIR 1990 SC 625: 1990 Cri LJ 788.

Bench Strength 2. Coram: *A.M. Ahmadi* and **M. Fathima Beevi**, JJ. [Date of decision: 16-1-1990]

[6410] — S. 437 — Bail — Grant of — Guidelines for exercise of discretion involved in — *No invariable rule or formula can be laid down — Discretion has to be exercised as per guidelines laid in Supreme Court case-law keeping all the relevant facts and circumstances in view*

The Supreme Court in its decisions has laid down broad guidelines which the courts must bear in mind while dealing with an application for grant of bail. None of the said decisions lay down any invariable rule for grant of bail on completion of a specified period of detention in custody. Indeed in a discretionary matter, like grant or refusal of bail, it would be impossible to lay down any invariable rule or evolve a straitjacket formula. The court must exercise its discretion having regard to all the relevant facts and circumstances. What the relevant facts and circumstances are, which the court must keep in mind, has been laid down in a large number of decisions which are well known. It is, therefore, futile to attempt to lay down any invariable rule or formula in such matters. (Para 9). *Surinder Singh* v. *State of Punjab*, (2005) 7 SCC 387: 2005 SCC (Cri) 1674: 2005 Cri LJ 4119.

Bench Strength 2. Coram: **B.P. Singh** and *S.H. Kapadia*, JJ. [Date of decision: 6-9-2005]

Kashmira Singh v. State of Punjab, (1977) 4 SCC 291: 1977 SCC (Cri) 559, relied on

[6411] — S. 437 — Bail — Grant of — Grounds for — Delay in trial — TADA case — *Petitioner in jail for more than 12 years — Bail refused to him assuming that trial would commence at an early date — Absence of regular TADA Court — Hence, some more time required to commence the trial — On such facts, Supreme Court granting bail to the petitioner on certain stringent conditions — TADA, 1987 — Constitution of India — Art.136* (Paras 2 and 3). *Babba* v. *State of Maharashtra*, (2005) 11 SCC 569.

Bench Strength 2. Coram: *K.G. Balakrishnan* and *Tarun Chatterjee*, JJ. [Date of decision: 18-4-2005]

[6412] — S. 437 — Bail — Case against appellants based on FIR lodged by the complainant whereas counter-case based on FIR lodged by the second appellant — *Though both the cases investigated but final report laid only in one case — On facts, held, appellants must be released on bail on each of them executing a bond in a sum of Rs 25,000 with solvent sureties. Bashishth Singh* v. *State of Bihar*, (2002) 10 SCC 384: AIR 2002 SC 487.

Bench Strength 2. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 26-2-2001]

[6413] — Ss. 437 and 439 — Bail — Relevant factors to be considered before grant of, stated

Among the other circumstances of the case, the factors which are required to be considered by the court before granting bail are (*a*) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, (*b*) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and (*c*) prima facie satisfaction of the court in support of the charge. (Para 11). *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2004) 7 SCC 528: 2004 SCC (Cri) 1977: AIR 2004 SC 1866: 2004 Cri LJ 1796.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 12-3-2004]

Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688; Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124, relied on

See also Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005) 2 SCC 42

[6414] — Ss. 437 and 439 — Medical condition of accused — Consideration of, in grant of bail

The plea that the respondent had undergone a cardiac operation and needed constant medical attention is not sufficient to order his bail. The prison authorities will arrange for proper treatment of the respondent whenever the need for it arises. *State* v. *Jaspal Singh Gill*, (1984) 3 SCC 555: 1984 SCC (Cri) 444: AIR 1984 SC 1503: 1984 Cri LJ 1211.

Bench Strength 1. Coram: **E.S. Venkataramiah**, J. [Date of decision: 25-6-1984]

(4) Grounds for bail — Generally *(contd.)*

[6415] — Ss. 437 and 439 — Medical condition of accused — Consideration of, in grant of bail — Relief that may granted — *Though accused directed to be given specialised treatment in reputed mental hospital (in Ranchi) outside the State where trial was being held and accused was in custody (Bihar), grant of bail denied* (Paras 3 and 5). *Bibhuti Nath Jha* v. *State of Bihar*, (2005) 12 SCC 286.

Bench Strength **2**. Coram: *Ashok Bhan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 14-2-2005]

[**Ed.**: *See also* (1984) 3 SCC 555]

[6416] — S. 437 — Bail — Trial delayed — Undertrial prisoner — Trial of accused, taken into custody five years ago, not indicating any substantial progress, nor likely in future — *Having regard to the dilatory progress of the proceedings against the accused, incarceration of accused for further period, held, could not be permitted — Trial Judge to release the accused imposing such conditions as he deems fit — Constitution of India — Art. 21*. *Satya Brat Gain* v. *State of Bihar*, (2000) 9 SCC 398: 2001 SCC (Cri) 406: AIR 2000 SC 1925: 2000 Cri LJ 2296.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 10-1-2000]

[6417] — S. 437 — When should bail be refused — Where allegation of tampering of evidence on behalf of accused is made, court should test its veracity and if it is not found to be concocted, court should not grant bail

There were serious allegations of tampering of evidence on behalf of the accused persons. But the learned Judge did not either consider or test the same. One of the salutary principles in granting bail is that the court should be satisfied that the accused being enlarged on bail will not be in a position to tamper with the evidence. When allegations of tampering of evidence are made, it is the duty of the court to satisfy itself whether those allegations have basis (they can seldom be proved by concrete evidence) and if the allegations are not found to be concocted it would not be a proper exercise of jurisdiction in enlarging the accused on bail. *Shahzad Hasan Khan* v. *Ishtiaq Hasan Khan*, (1987) 2 SCC 684: 1987 SCC (Cri) 415: AIR 1987 SC 1613.

Bench Strength **2**. Coram: *M.P. Thakkar* and *K.N. Singh*, JJ. [Date of decision: 28-4-1987]

[6418] — Ss. 437, 439 and 482 — Grant of bail and gravity of offence — *Charges relating to offence of passing on Defence secrets to foreign agency punishable under Official Secrets Act — Bail application made by accused-respondent during investigation rejected by Additional Sessions Court — But High Court under S. 482 going into merits and granting bail to accused while refusing the same to co-accused on ground of insufficient material to sustain conviction of the accused, though trial against the accused had not yet commenced — Held on facts, charges against the accused prima facie made out and High Court not justified in the larger interest of the State in enlarging the accused on bail — Official Secrets Act, 1923, Ss. 3, 5 and 9 r/w Penal Code, 1860 — S. 120-B*

The court before granting bail in cases involving non-bailable offences particularly where the trial has not yet commenced should take into consideration various matters such as the nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses, being tampered with, the larger interests of the public or the State and similar other considerations. The Court should exercise a greater degree of care in enlarging on bail an accused who is charged with the offence punishable under S. 3 of the Official Secrets Act when it relates to military matters.

On facts, a prima facie case appears to have been made out against the respondent. The alleged offences are of very grave and serious nature which relate to security of the State inasmuch as espionage and intelligence were utilised to pass on information regarding military plans, equipment, technical advances etc. of our country to another. The allegations made by the prosecution suggest that the respondent and the persons accused along with him are person of easy conscience insofar as the interest and security of the country are concerned. The current situation in the country is such that it can easily be exploited by unscrupulous men to their own or to some foreign power's advantage. These aspects of the case have not been considered by the High Court. While dismissing the bail application of a co-accused, who was also his employee, the High Court had relied on the Supreme Court's decision in *Jagjit Singh case* but did not even refer to that decision while granting bail to the respondent. Moreover, the circumstances of this case are such that the question whether the case of criminal conspiracy had been made out or not should have been left to be decided by the trial court at the end of the trial on a consideration of the entire evidence adduced in the case. In the circumstances, the High Court should not have enlarged the respondent on bail in the larger interests of the State. *State* v. *Jaspal Singh Gill*, (1984) 3 SCC 555: 1984 SCC (Cri) 444: AIR 1984 SC 1503: 1984 Cri LJ 1211.

Bench Strength **1**. Coram: **E.S. Venkataramiah**, J. [Date of decision: 25-6-1984]

[6419] — Ss. 437 and 319 — Petitioner arrested on the basis of FIR but when prosecution filed the charge-sheet no charge-sheet was filed against him and even so petitioner continuing in custody and his prayer for bail rejected — *Held, rejection of petitioner's application for bail not justified — S. 319 not attracted. Madan Lal* v. *State of Punjab*, (2002) 9 SCC 473.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 15-12-1999]

[6420] — Ss. 437 and 374(2) — Long pendency of trial with no prospects of early hearing — Bail during pendency of appeal justified — *Dowry death and cruelty to woman by husband or in-laws — Where appellant, convicted and sentenced to 7 years' RI under S. 304-B and 2 years' RI under S. 498-A, IPC had been in custody for more than three years and there was no likelihood of early hearing of appeal, appellant directed to be released on bail — Penal Code, 1860 — Ss. 304-B and 498-A* (Para 3). *Shailendra Kumar* v. *State of Delhi*, (2000) 4 SCC 178: 2000 SCC (Cri) 795: AIR 2000 SC 3404 (2): 2000 Cri LJ 2452.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 13-1-2000]

[6421] — Ss. 437 and 439 — Bail — Considerations permissible — Plea that efficacious conduct of defence not possible without accused being on bail — Application for bail on ground of — Held, such a consideration is impermissible

It was then submitted that since the appellant is not on bail, he cannot conduct his defence effectively. If this argument is to be accepted, then logically in every case bail has to be granted. This contention cannot be accepted. (Para 23). *Rajesh Ranjan Yadav* v. *CBI*, (2007) 1 SCC 70: (2007) 1 SCC (Cri) 254: AIR 2007 SC 451: 2007 Cri LJ 304: (2006) 48 AIC 1 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 16-11-2006]

[6422] — Ss. 437 and 439 — Bail — Grant of — Accused languishing in jail since long time without commencement of the trial — Despite suppression of certain facts in bail application by the appellant's counsel, in view of the circumstances of the case, Supreme Court releasing the appellant on bail — *Constitution of India — Art. 21 — Penal Code, 1860, Ss. 307 and 395 r/w 149. Vivek Kumar* v. *State of U.P.*, (2000) 9 SCC 443: 2001 SCC (Cri) 416: AIR 2000 SC 3406 (2): 2000 Cri LJ 2774: 2000 All LJ 1470.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 4-1-2000]

[6423] — Ss. 437 and 439 — Bail — Grant of — Considerations — Age of accused — *Accused aged seventy-nine years and seventy-six years — Bail opposed on the ground that the accused were not available for investigation, that it was a case of misappropriation of huge amount and for the purpose of investigation the custody of the accused was required — Accused submitting that they were never called by the investigating agency for the purpose of investigation and that they were ready and willing to cooperate with the investigation — Considering the facts and circumstances of the case, bail granted to accused subject to certain conditions — Constitution of India, Art. 136* (Para 5). *Pandurang Baliramji Kharad* v. *State of Maharashtra*, (2004) 13 SCC 521.

Bench Strength **2**. Coram: *Shivaraj V. Patil* and *B.N. Srikrishna*, JJ. [Date of decision: 25-10-2004]

[6424] — Ss. 437 and 439 — Bail — Grant of, in non-bailable offence — Relevant considerations — Gravity and nature of offence — *Held, the same must be one of the considerations for grant of bail in such offences — Penal Code, 1860 — S. 302* (Para 4). *State* v. *Eslian*, (2006) 9 SCC 785: (2006) 3 SCC (Cri) 399.

Bench Strength **2**. Coram: *H.K. Sema* and *R.V. Raveendran*, JJ. [Date of decision: 28-4-2006]

[6425] — Ss. 437 and 439 — Bail, grant of — Factors that may considered — Period of incarceration/delay in trial — *Held, though mere period of incarceration and/or likelihood of delays in conclusion of trial are not by themselves singly or conjointly enough for grant of bail, yet both these factors may be taken into consideration* (Para 16). *Chenna Boyanna Krishna Yadav* v. *State of Maharashtra*, (2007) 1 SCC 242: (2007) 1 SCC (Cri) 329: 2007 Cri LJ 782: (2007) 50 AIC 637 (SC).

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **D.K. Jain**, JJ. [Date of decision: 8-12-2006]

[6426] — Ss. 437 and 439 — Bail when not to be granted — Impeding progress of trial — Past conduct of accused showing that if he were released on bail he would certainly tamper with evidence and threaten witnesses — *This was clear from the fact that a number of witnesses had already turned hostile, many of them during the period when accused was on bail — Held, conduct of respondent-accused clearly indicates that enlarging him on bail would impede progress of trial, hence releasing him would not be in the larger interests of justice — Hence allowing the appeal, bail granted by High Court cancelled* (Paras 44 and 46). *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2005) 2 SCC 42: 2005 SCC (Cri) 489: AIR 2005 SC 921: (2005) 27 AIC 717 (SC): (2005) 2 Guj LR 921: 2005 Cri LJ 944.

Bench Strength **3**. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *P.K. Balasubramanyan*, JJ. [Date of decision: 18-1-2005]

(4) Grounds for bail — Generally *(contd.)*

[6427] — Ss. 437 & 439 — Refusal to grant bail — Grounds — Apprehension of abscondence, appellant being from another State — *Refusal to grant bail merely on ground that appellant hailing from another State may abscond from the jurisdiction of the court granting bail, held, not justified — For ensuring his participation in trial court some conditions can be imposed — Conditional bail granted. Sanjay* v. *State of Gujarat*, (2002) 10 SCC 403: 2003 SCC (Cri) 1534.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 12-3-2001]

[6428] — Ss. 437, 436-A and 439 — Undertrial having been in judicial custody longer than maximum punishment imposable for the offence he was charged with, held, deserves to be released on bail subject to certain conditions (Para 14). *Gokul Bhagaji Patil* v. *State of Maharashtra*, (2007) 2 SCC 475: (2007) 1 SCC (Cri) 597: (2007) 49 AIC 27 (SC): 2007 Cri LJ 776.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **D.K. Jain**, JJ. [Date of decision: 8-12-2006]

[6429] — Ss. 437, 439 and 102 — Bail — Grant of — Relevant considerations — Nature and seriousness of offence (accusations of spying and leakage of Defence information) — Character of evidence — Ease of securing presence of accused — *Some Defence personnel, both serving and retired, arrested in connection with leakage of Defence information — Pen drive recovered from one of them showed that respondent, who was a private person, had received commission between 0.5 to 1.5% on supply of equipment to Defence — There was, however, no direct evidence linking respondent with leakage of Defence information — On facts found that pen drive handed over by Defence authorities to CBI was not tamper-proof inasmuch as it was not sealed, and Defence authorities themselves had made several copies of data in the pen drive — Moreover, several restrictions had been imposed under FERA and Passports Act against respondent in another case and therefore securing his presence in the trial in the present case was not difficult — Bail granted by High Court therefore upheld — Evidence Act, 1872, Ss. 3, 65-A and 65-B — Information Technology Act, 2000, S. 4 — Official Secrets Act, 1923, Ss. 3(1)(c), 5 and 13* (Paras 25, 26, 31 and 32). *CBI* v. *Abhishek Verma*, (2009) 6 SCC 300.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dr. M.K. Sharma**, JJ. [Date of decision: 6-5-2009]

State v. Jaspal Singh Gill, (1984) 3 SCC 555: 1984 SCC (Cri) 444, relied on

Govt. of (NCT of Delhi) v. Jaspal Singh, (2003) 10 SCC 586: 2004 SCC (Cri) 933, distinguished

[6430] — Ss. 437 and 439 — Bail — Rejection of bail application by High Court — Propriety — Cases of appellants more serious than those of co-accused released on bail — *Allegation that one C, MD of a Bank (Appellant 1) and other Directors of the Bank siphoned off the funds of the Bank by bogus loans and fictitious letters of credit in names of their friends, relatives, associates, companies, either without any security or with wholly inadequate security — Such fraudulent transactions aggregating to more than Rs 50 crores — Contention by appellant-accused that: (1) one* **R**, *a share-broker, who according to the appellants was the real beneficiary was released on bail by the Supreme Court; (2) even though the charge-sheet was filed long back on 22-1-2003 but charges had not been framed and trial was likely to be protracted, hence failure to grant bail would amount to detention by way of punishment; and (3) even if prima facie case was established, where presence of accused was readily available for trial and there was no likelihood of the accused tampering with evidence as investigation had been completed, the accused should not be detained — Held, cases of appellants cannot be compared with others who had been released on bail — Cases of appellants were more serious than that of other Directors except* **C** — *Besides, one or two Directors had been released on ground of old age and medical problems while the other Directors were released after they repaid the entire dues — Moreover, case of* **R** *was different as he was not directly involved in defrauding the Bank — Having regard to the huge amounts involved in the systematic fraud, there was danger of the appellants absconding, if released on bail, or attempting to tamper with evidence by pressurising witnesses — Hence, interference with High Court's order refusing bail uncalled for as grant of relief sought may thwart the course of justice* (Paras 2, 5, 6 and 7). *Himanshu Chandravadan Desai* v. *State of Gujarat*, (2005) 13 SCC 234: (2006) 2 SCC (Cri) 143: AIR 2006 SC 179: 2006 Cri LJ 136: (2006) 101 Cut LT 385.

Bench Strength **2**. Coram: *S.B. Sinha* and **R.V. Raveendran**, JJ. [Date of decision: 16-11-2005]

[6431] — Ss. 437 and 439 — Grant of bail to accused when bail already denied to co-accused for cogent reasons — *Cancellation, held on facts, called for. State* v. *Jaspal Singh Gill*, (1984) 3 SCC 555: 1984 SCC (Cri) 444: AIR 1984 SC 1503: 1984 Cri LJ 1211.

Bench Strength **1**. Coram: **E.S. Venkataramiah**, J. [Date of decision: 25-6-1984]

[6432] — Ss. 437 to 439 — Grant of bail — "Fodder scam" case — Co-accused already granted bail — Appellant having been in custody for 14

months, nearly 8 months having elapsed since Supreme Court rejected his last bail application — *Given these facts and that other accused in said case, who had been in custody for about six months or more, having been released on bail, appellant also granted bail — Constitution of India — Art. 136. Shashi Bhushan Jaruhar* v. *State of Bihar*, (2005) 11 SCC 457.

Bench Strength 2. Coram: *P. Venkatarama Reddi* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 13-5-2005]

[**Ed.**: *See also* (2005) 11 SCC 453.]

[6433] — Ss. 437 to 439 — Grant of bail — "Fodder scam" case — Co-accused already granted bail — Appellant having been in custody for 15 months, nearly 8 months having elapsed since Supreme Court rejected his last bail application — *Given these facts and that other accused in said case, who had been in custody for about six months or more, having been released on bail, appellant also granted bail — Constitution of India — Art. 136. Shiv Nandan Prasad* v. *State of Jharkhand*, (2005) 11 SCC 453.

Bench Strength 2. Coram: *P. Venkatarama Reddi* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 13-5-2005]

[**Ed.**: *See also* (2005) 11 SCC 457.]

[6434] — Ss. 437 and 439 — Bail — Grant of — Police not seeking production of appellant in any of 24 cases registered against him — *Affidavit filed by sister of appellant in May 2004 that in none of the 24 cases registered against the appellant for the period from the year 1980 to 2002 the police had applied for production of the appellant — That averment having not been controverted, despite grant of opportunity, held, it was a fit case for release of appellant on bail pending trial of the case in question* (Para 2). *Raju* v. *State of Gujarat*, (2004) 13 SCC 522.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *P.P. Naolekar*, JJ. [Date of decision: 19-11-2004]

[6435] — Ss. 437 and 439 — Bail to (MP) undertrials/accused after long period of incarceration (six years) — Balancing of right to personal liberty versus interests of society — Factors to be considered — Nature of offence — Conduct of accused in prison, and when on bail when granted on earlier occasions — *Membership of Parliament by accused on four occasions — Stage of investigation, trial reached at the point when bail sought — Held, there is no absolute rule that a long period of incarceration by itself would entitle an undertrial to bail — It would be wholly inappropriate to grant bail when the investigation and trial are nearly over, and allegations against the accused are serious — Further, conduct of appellant-accused was such that he did not deserve bail — He had deliberately used dilatory tactics for delaying the trial — Lastly, it is irrelevant that appellant has been MP four times — The law is no respecter of persons, and is the same for everyone — Day-to-day conduct of trial directed for expeditious conclusion thereof — However, directed that no court was to entertain any further bail application by appellant-accused — Constitution of India, Arts. 136, 21, 105 and 194*

This appeal under Article 136 of the Constitution was filed against the impugned judgment and order dated 27-4-2006 of the High Court by which the appellant's application for bail was dismissed. The appellant's bail application had been rejected earlier on several occasions by the High Court as well as by the Supreme Court. The last order of the Supreme Court dated 3-10-2005 inter alia requested the Sessions Judge to expedite the trial. If the trial was not completed within a period of six months from that order, it was left open to the appellant to renew the bail application. At the time of hearing of this appeal all the prosecution witnesses had been examined and cross-examined, and only the defence witnesses remained to be examined.

The appellant submitted that 60/70 defence witnesses were proposed to be examined and some more defence witnesses on behalf of the other accused were to be examined. Hence, he submitted that it would take a long time to examine these witnesses. That he had been in jail for more than six years and hence he should be released on bail. That if ultimately he was found innocent by the trial court, he would have undergone a long period of incarceration in jail which would be violative of Article 21 of the Constitution.

The State submitted that the appellant himself was at least partly responsible for the delay in the conclusion of the trial because most of the prosecution witnesses were cross-examined by his counsel for several days, mostly by asking irrelevant questions, and these were deliberate dilatory tactics used for delaying the trial so that on that basis the appellant could pray for bail.

Dismissing the appeal,

Held :

None of the decisions cited by the appellant can be said to have laid down any absolute and unconditional rule about when bail should be granted by the court and when it should not. It all depends on the facts and circumstances of each case and it cannot be said that there is any absolute rule that the mere fact that the undertrial/accused has undergone a long period of incarceration by itself would entitle him to be enlarged on bail. (Paras 10 and 12)

(4) Grounds for bail — Generally *(contd.)*

While it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society. (Para 16)

It has been stated that the appellant has been a Member of Parliament on four occasions. This is wholly irrelevant. The law is no respecter of persons, and is the same for everyone. (Para 17)

A perusal of the FIR itself shows that it is a triple murder case, and the incident was committed in broad daylight with sophisticated weapons. It is true that the appellant was not named in the FIR, but it has come in the statement before the Magistrate under Section 164 CrPC of one Ranjan Tiwari that he and other assailants had been hired by the appellant to commit this ghastly crime. Though no comment is sought to be made on the veracity or otherwise of the statement of Ranjan Tiwari and other witnesses, as it may influence the trial, but looking at the allegations against the appellant, both in the statement of Ranjan Tiwari and other witnesses, on the facts and circumstances of the case, it is clear that this is certainly not a case for grant of bail to the appellant, particularly, since the prosecution witnesses have been examined and now the defence witnesses alone have to be examined. It would be wholly inappropriate to grant bail when not only the investigation is over but even the trial is partly over, and the allegations against the appellant are serious. (Paras 18 and 19)

The appellant's conduct as recorded in *Kalyan Chandra Sarkar case*, (2005) 3 SCC 284, [set out in para 13 herein] has been such that he does not deserve bail and the Supreme Court as of now is not inclined to exercise its discretion under Article 136 for granting bail to the appellant. (Paras 13 and 20)

It is made clear that no further application for bail will be considered in this case by any court, as already a large number of bail applications have been rejected earlier, both by the High Court and the Supreme Court. It is directed that the trial court shall ensure that the defence witnesses are examined on a day-to-day basis in accordance with a fixed time schedule so that the trial is completed as expeditiously as possible and the judgment is delivered soon thereafter. (Paras 24 and 25). *Rajesh Ranjan Yadav* v. *CBI*, (2007) 1 SCC 70: (2007) 1 SCC (Cri) 254: AIR 2007 SC 451: 2007 Cri LJ 304: (2006) 48 AIC 1 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 16-11-2006]

State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21: 2005 SCC (Cri) 1960 (2); Prahlad Singh Bhati v. NCT of Delhi, (2001) 4 SCC 280: 2001 SCC (Cri) 674; Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 218: 1978 SCC (Cri) 41; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977; Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688; Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005) 3 SCC 284: 2005 SCC (Cri) 705, relied on

Babu Singh v. State of U.P., (1978) 1 SCC 579: 1978 SCC (Cri) 133; Kashmira Singh v. State of Punjab, (1977) 4 SCC 291: 1977 SCC (Cri) 559; Bhagirathsinh v. State of Gujarat, (1984) 1 SCC 284: 1984 SCC (Cri) 63; Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616: 1996 SCC (Cri) 366; Joginder Kumar v. State of U.P., (1994) 4 SCC 260: 1994 SCC (Cri) 1172, clarified

[6436] — S. 437 — Rejection of bail applications merely on ground that applicants belonged to a particular community or State in which terrorist activity prevailing or that similar applications had been earlier rejected unjustified — *Constitution of India, Art. 136. Jaswant Singh* v. *State of U.P.*, 1988 Supp SCC 567: 1988 SCC (Cri) 913.

Bench Strength **2**. Coram: *A.P. Sen* and *L.M. Sharma*, JJ. [Date of decision: 7-12-1987]

[6437] — S. 437 — Grant of bail in case of non-bailable offence — Non-compliance with the court's order to supply certain documents to the accused — Whether ground for — *Held, accused not entitled to bail in such cases — On facts, held, the High Court erred in transgressing the statutory limitations imposed and allowing bail — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 37(1)(b)* (Paras 9 to 12). *Narcotics Control Bureau* v. *Dilip Pralhad Namade*, (2004) 3 SCC 619: 2004 SCC (Cri) 916: 2004 Cri LJ 1815.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 18-3-2004]

[6438] — S. 437 — Grant of bail — Matters that may be considered — *Post-mortem report indicating absence of external injury, diseased state of viscera and that death was due to shock followed by chronic illness — Held, particularly having regard to the post-mortem report, it is appropriate to enlarge appellant on bail. Ballav Narain* v. *State of Bihar*, (2004) 13 SCC 87.

Bench Strength **2**. Coram: *Shivaraj V. Patil* and *B.N. Srikrishna*, JJ. [Date of decision: 6-12-2004]

[6439] — S. 437 — Bail — On facts allowed — *Plea that presence of accused was necessary for making a search and recovery of certain documents untenable as taking into custody not necessary for that purpose — Order directing her to appear for interrogation passed. Harsh Sawhney* v. *UT (Chandigarh Admn.)*, (1978) 2 SCC 365: 1978 SCC (Cri) 189: AIR 1978 SC 1016: 1978 Cri LJ 774.

Bench Strength **3**. Coram: **V.R. Krishna Iyer**, *Jaswant Singh* and *R.S. Pathak*, JJ. [Date of decision: 20-2-1978]

[6440] — Ss. 437(1) & (6) — Bail in case of non-bailable offence — Paramount consideration should always be whether enlargement on bail would jeopardise the prosecution case — *Where prosecution case relating to commission of offence under S. 120-B r/w S. 420 IPC about 16 years ago not covered by the exception clauses (i) and (ii) of S. 437(1) and examination-in-chief and part of cross-examination of the main witness viz. the complainant was already over and it could not be shown that there was any evidence which could be tampered with or influenced by the accused, held, there was no reasonable basis for High Court's apprehension regarding tampering or influencing by accused — Hence accused-appellants entitled to be released on bail on furnishing bail bonds for Rs 1 lakh each with one surety in like amount and subject to conditions laid down by the Court. Chandraswami* v. *CBI*, (1996) 6 SCC 751: 1997 SCC (Cri) 14: AIR 1997 SC 2575.

Bench Strength **3**. Coram: *A.M. Ahmadi, C.J.* and *J.S. Verma* and *B.N. Kirpal*, JJ. [Date of decision: 7-11-1996]

[6441] — Ss. 437(1) and 439(1) — Bail — Grant of — Necessary considerations — *Held, what the court has to bear in mind while granting bail is what is provided for in S. 437 — Grant of bail on the basis of an assurance of compromise, held, not permissible* (Para 7). *Biman Chatterjee* v. *Sanchita Chatterjee*, (2004) 3 SCC 388: 2004 SCC (Cri) 814: AIR 2004 SC 1699: 2004 Cri LJ 1451.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 10-2-2004]

(5) Grounds for bail in murder cases

See also Section 437, '(4) Grounds for bail — Generally', above

[6442] — S. 437 — Bail — Grounds for — Application by person accused of murder who had already been convicted and sentenced to life imprisonment for another murder — *Absence of reasonable ground for believing that he had not committed the alleged murder — No special reason for grant of bail stated — Matter dealt in cursory manner by High Court — Bail not justified, not even on the medical ground alleged*

Respondent 2 convicted under Section 302 IPC and sentenced to life imprisonment by trial court released on bail by the appellate court. Thereafter, pursuant to an FIR alleging that Respondent 2 along with his companion committed murder of the person who had given evidence against him in the earlier murder case, a case under Section 302 r/w Section 34 IPC registered against him while his co-accused was absconding. Two servants of the deceased in the second incident, in their statements recorded under Section 164, stating to have been present at the time of occurrence but later filing affidavits before trial court denying to have witnessed the incident. On these facts bail application of Respondent 2 rejected by Sessions Court. But subsequent application for bail filed by Respondent 2 before High Court allowed on grounds that investigation of the case had been entrusted to CBI/CID which normally takes about a year in concluding the investigation and that the applicant's claim of ailment was not specifically denied. The High Court granting bail to Respondent 2 in spite of the fact that he had already been convicted and sentenced to life imprisonment and the two eyewitnesses retracted their statements even before commencement of trial. Striking down the grant of bail,

Held :

The High Court has dealt with the matter in a most cursory manner. Bail has been granted ignoring the provisions of Section 437 CrPC. According to that section a person who has been previously convicted of an offence punishable with life imprisonment shall not be released on bail unless there is no reasonable ground for believing that the person has committed the offence and/or there are special reasons to do so. In this case the co-accused is still absconding. Two witnesses have already retracted their statements. There are still eyewitnesses, who have directly connected the 2nd respondent and assigned a specific role to the 2nd respondent in the murder of the deceased. Thus at this stage it could not be said that there is reasonable ground for believing that the 2nd respondent has not committed the offence. No special reasons for granting bail have been indicated by the High Court. The alleged ailment of the 2nd respondent is also not such as required releasing him on bail. The 2nd respondent can always apply to the jail authorities to see that he gets the required medical treatment. (Paras 10 and 11). *Ram Prakash Pandey* v. *State of U.P.*, (2001) 9 SCC 121: AIR 2001 SC 3592.

Bench Strength **2**. Coram: *K.T. Thomas* and **S.N. Variava**, JJ. [Date of decision: 31-8-2001]

(5) Grounds for bail in murder cases *(contd.)*

[6443] — Ss. 437 and 439 — Bail — Grant of — Murder case — Propriety — *Matters at large before High Court — Findings that may be recorded — High Court by impugned judgment while granting bail to Respondent 2 arriving at a definite conclusion about non-possibility of the injuries having been sustained in the manner indicated by the prosecution and ignoring the allegations of suspicion cast over firearm report and medical report — Held, while considering the bail application such a finding should not have been recorded — Penal Code, 1860 — S. 302. Ashok Kumar* v. *State of U.P.*, (2009) 11 SCC 392: (2009) 3 SCC (Cri) 1393: AIR 2009 SC 1921: (2009) 75 AIC 120 (SC): (2009) 3 All LJ 252.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 3-2-2009]

[6444] — Ss. 437 and 439 — Bail — Grant of by High Court — Sustainability — Accused convicted by Sessions Judge under S. 302 IPC and in custody — *High Court rejecting his bail application thrice, but on further application being filed, granting bail, inter alia, on the ground that there was no chance of the appeal being heard in the near future — Held, High Court erred in doing so — Such a ground, by itself, would be no ground for releasing the accused who had not been in custody even for three years — High Court directed to take up all appeals pending under S. 302 IPC, especially those where the accused were not on bail on priority basis and dispose of them expeditiously* (Paras 2 to 4). *Sunil Kumar Sinha* v. *State of Bihar*, (2009) 16 SCC 370.

Bench Strength 3. Coram: *B.N. Kirpal, C.J.* and *K.G. Balakrishnan* and *Arijit Pasayat*, JJ. [Date of decision: 16-9-2002]

[6445] — S. 437 — Bail — Life convict — Guidelines for grant of bail — *Direction given by Punjab & Haryana High Court in* Dharam Pal *v.* State of Haryana, *(2000) 1 Chan LR 74 that "life convicts, who have undergone at least five years of imprisonment of which at least three years should be after conviction, should be released on bail" — Held, is in the nature of guidelines only and does not lay down any invariable rule — It is a discretionary matter for the court which should be exercised having regard to all relevant facts and circumstances of the case — Appellant convicted under Ss. 302/34 IPC and sentenced to life imprisonment — During pendency of his appeal before High Court, application for regular bail was rejected by High Court on ground that appellant's case was not covered by the rule laid down in* Dharam Pal case *as he remained in actual custody after conviction only for two years and five months and he remained on parole for eight months and twelve days — Having regard to the fact that appellant remained in custody for about six years and four months and that his co-accused had been released on bail by High Court, held, appellant deserved to be released on bail*

The High Court of Punjab and Haryana in *Dharam Pal case* laid down guidelines which ought to be kept in mind by the courts dealing with applications for grant of bail in a pending appeal. But, it does not lay down any hard-and-fast rule of universal application. Difficulties may arise if such a direction is treated as an invariable rule in the matter of grant of discretionary relief. The rule laid down in *Dharam Pal case* may be inferentially understood to mean that unless a convict has undergone five years' imprisonment, he should not be released on bail. This would again lead to travesty of justice, because in a given case having regard to the evidence on record and the reasoning of the court convicting the accused, the High Court in an appeal may well be persuaded and justified in granting bail to the appellant even while admitting his appeal. (Paras 12 and 11)

In the present case, the Supreme Court by its interim order dated 12-5-2005 had granted bail to the appellant who had remained in custody for about six years and four months. Apart from the facts and circumstances of the case, there is further fact that the co-accused had been released on bail by the High Court. The interim order made on 12-5-2005 is made absolute. (Para 13). *Surinder Singh* v. *State of Punjab*, (2005) 7 SCC 387: 2005 SCC (Cri) 1674: 2005 Cri LJ 4119.

Bench Strength 2. Coram: **B.P. Singh** and *S.H. Kapadia*, JJ. [Date of decision: 6-9-2005]

Kashmira Singh v. State of Punjab, (1977) 4 SCC 291: 1977 SCC (Cri) 559, relied on

Dharam Pal v. State of Haryana, (2000) 1 Chan LR 74, explained

But see Rajesh Ranjan Yadav v. CBI, (2007) 1 SCC 70

[6446] — Ss. 437 and 439 — Bail — Grant of — Reasons for — Necessity of, particularly in serious cases like murder — *High Court granting bail to respondent-accused charged under Ss. 302, 504 and 506 IPC mechanically without considering the pros and cons of the matter — Held, while granting bail, particularly in serious cases like murder some reasons justifying the grant of bail are necessary — Hence, matter remitted to High Court for deciding the bail application afresh — Penal Code, 1860 — S. 302* (Paras 12 and 13). *Brij Nandan Jaiswal* v. *Munna*, (2009) 1 SCC 678.

Bench Strength 2. Coram: *Tarun Chatterjee* and *V.S. Sirpurkar*, JJ. [Date of decision: 19-12-2008]

[6447] — S. 437 — Murder case — Reasons, held, mandatory for refusing bail — *Accused petitioner in custody since 21-2-1988 even though investigating agency had laid final report — High Court refusing application for bail by non-speaking order — Petitioner permitted to move High Court again and High Court requested to pass reasoned order while disposing of the application — Penal Code, 1860 — S. 302* (Para 2). *Dhruv K. Jaiswal* v. *State of Bihar,* (2000) 10 SCC 84: AIR 2000 SC 209.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah,* JJ. [Date of decision: 19-2-1999]

[6448] — S. 437 — Bail application by person accused of murder — Factors to be considered in granting bail — *Liberty of the accused not the sole concern of the court*

No doubt liberty of a citizen must be zealously safeguarded by court, nonetheless when a person is accused of a serious offence like murder and his successive bail applications are rejected on merit there being prima facie material, the prosecution is entitled to place correct facts before the court. Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution. *Shahzad Hasan Khan* v. *Ishtiaq Hasan Khan,* (1987) 2 SCC 684: 1987 SCC (Cri) 415: AIR 1987 SC 1613.

Bench Strength **2**. Coram: *M.P. Thakkar* and *K.N. Singh,* JJ. [Date of decision: 28-4-1987]

[6449] — S. 437 — Bail application of person accused of murder — Where his earlier successive applications already rejected by court, prosecution's prayer for opportunity to furnish detailed facts and material must be allowed before taking decision on the subsequent application

In this case the Judge refused to grant the prayer for time to file counter-affidavit giving the details of the proceedings pending before the trial court and proceeded to grant bail simply on the ground that the liberty of a citizen was involved which is the case in every criminal case more particularly in a murder case where a citizen who let alone losing his liberty has lost his very life. The first factor which influenced the Judge does not stand since the accused persons obtained adjournment after adjournment on one pretext or the other and they did not allow the court to proceed with the trial, and the second factor regarding delay in trial also cannot be helped if a litigant is encouraged to make half a dozen applications on the same point without any new factor having arisen after the first was rejected. *Shahzad Hasan Khan* v. *Ishtiaq Hasan Khan,* (1987) 2 SCC 684: 1987 SCC (Cri) 415: AIR 1987 SC 1613.

Bench Strength **2**. Coram: *M.P. Thakkar* and *K.N. Singh,* JJ. [Date of decision: 28-4-1987]

[6450] — S. 437 — Refusal of bail — Consideration of seriousness of crime in the facts and circumstances of the case — Bail to person accused of murder — *Occurrence taking place in broad daylight in a busy market place and witnessed by several persons — Accused named in FIR absconding after occurrence but surrendering before court after a month — In view of seriousness of the matter, bail should be refused*

Normally, the Supreme Court does not interfere with bail matters and the orders of the High Court are generally accepted to be final relating to grant or rejection of bail. But in this case the Judge committed serious error in recalling his earlier order and enlarging the respondent on bail. In view of the facts and circumstances of the case the respondent was not entitled to bail if the seriousness of the matter was realised and a judicious approach was made. *Shahzad Hasan Khan* v. *Ishtiaq Hasan Khan,* (1987) 2 SCC 684: 1987 SCC (Cri) 415: AIR 1987 SC 1613.

Bench Strength **2**. Coram: *M.P. Thakkar* and *K.N. Singh,* JJ. [Date of decision: 28-4-1987]

[6451] — Ss. 437 and 439 — Grant of bail — Factors for consideration — Nature and gravity of offence a relevant factor — ***Gulshan Kumar murder case*** — *Evidence regarding payment of money by respondent to contract killers who alleged to have killed the deceased is an incriminating circumstance — Apart from that, other incriminating circumstances also collected by the investigating agency to make out a strong prima facie case against the respondent — Held, High Court erred in granting bail to the respondent*

The circumstance that the accused-respondent had handed over an amount of Rs 25 lakhs to the contract killers (who according to the prosecution committed the murder of Gulshan Kumar) incriminates the respondent in a large way. Apart from that, the Investigating Agency has collected other incriminating materials also against the respondent, to make out a strong prima facie case against him. It is trite that among other considerations which the Court has to take into account in deciding whether bail should be granted in a non-bailable offence is the nature and gravity of the offence. Therefore, the High Court should not have granted bail to the respondent considering the seriousness of the allegations levelled against him, particularly at a stage when the investigation is continuing. *State of Maharashtra* v. *Ramesh Taurani*, (1998) 1 SCC 41: 1998 SCC (Cri) 257: AIR 1998 SC 586: 1998 Cri LJ 855.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *K.T. Thomas*, JJ. [Date of decision: 26-11-1997]

[6452] — Ss. 437 and 439 — Grant of bail — Non-application of mind — Accused charged with murder — *Evidence of eyewitness* ***P****, which was of vital importance to the case, not recorded by trial court — After some adjournments High Court granted bail — On dates of hearing after repeated adjournments accused remained absent on ground, as disclosed by his counsel, that he was arrested in some other case, though details thereof not disclosed before the Court — High Court granted bail on ground that* ***P*** *did not appear before trial court — Held on facts — Grant of bail vitiated by non-application of mind — Accused misused the liberty and unnecessarily prolonged the trial*

An FIR was lodged by the appellant on 14-5-2003 alleging murder of her brother and naming Respondent 2 as the sole accused. One *P* stated to be an eyewitness appeared before the Magistrate concerned and her statement was recorded under Section 164 CrPC. In her statement she specifically stated that the murder was committed by Respondent 2 in her presence. After charge-sheet was filed on 19-11-2004, cognizance of the offence was taken by the Magistrate. Thereafter, the State Government transferred the investigation to CB CID. The order of the State Government was challenged by filing a writ petition before High Court. The High Court quashed the order transferring investigation to CB CID. A bail application was filed by Respondent 2 before the High Court but the same was rejected on 15-3-2005 with the observation that any fresh bail application, if filed, shall be considered after the statements of the appellant and *P* were recorded by the trial court. On 20-6-2005 the appellant's evidence was recorded and she categorically stated that in her presence murder was committed. On 25-8-2005 *P* was also examined and her evidence was recorded by the trial court. The cross-examination was concluded on 5-9-2005. In January 2006 Respondent 2 filed the second bail application before the High Court but the same was rejected reiterating the earlier view that the application for bail could be considered after the evidence of *P* is recorded or if she failed to appear for the purpose of recording her evidence. A certificate issued by Ministry of Health, Ukraine, where *P* was studying, was filed before the trial court, which stated that summer vacation of *P* was during the period between 3-7-2006 and 31-8-2006. In May 2006 Respondent 2 filed the third bail application which was granted by the High Court on 22-5-2006. The High Court noted that the first application was rejected as the witnesses were apprehending danger to their lives and the trial was going to commence and therefore, it was not proper to release the applicant on bail. Second application was moved when there was no significant progress and *P* was not examined. The High Court noted that in spite of adjournments *P* did not appear. According to the High Court the fact that *P* was not appearing though her dates of appearance had been fixed entitled the appellant to be released on bail.

P after coming to India appeared before the Court on 28-7-2006 but on that date Respondent 2 was not represented. Therefore, the court issued a non-bailable warrant and adjourned the matter to 10-8-2006. On 10-8-2006 when the matter was taken up, counsel appearing for Respondent 2 submitted before the Court that Respondent 2 had been arrested in some other case and his absence may be exempted. The trial court rejected the application and adjourned the matter to 21-8-2006 but on that day again Respondent 2 was not present. The counsel appearing for Respondent 2 did not file the details of the case where Respondent 2 was arrested. The matter was adjourned to 21-9-2006 but on that date again Respondent 2 did not appear.

The present appeal was filed before the Supreme Court challenging the High Court's order granting bail to Respondent 2. It was contended on behalf of the appellant that the grant of bail was unwarranted and in any event Respondent 2 has misused the liberty of bail. Although notices on Respondent 1, State and Respondent 2 accused had been served but none appeared to represent them when the matter was taken up.

Allowing the appeal,

Held :

The High Court's order shows complete non-application of mind. The reasoning of the High Court is totally fallacious. The trial court was informed of the fact that *P* was pursuing her studies abroad and would be available to appear as witness during the summer vacation. The fact that the trial court adjourned the matter for a few dates notwithstanding this intimation cannot be a factor to release Respondent 2 who chose not to appear and made a prayer for exemption on the ground that he was in custody in some other case. The details of that case were not furnished to the Court though ample opportunity was granted. The appellant is, therefore, justified in her grievances that there has been misuse of the liberty and that the trial had been unnecessarily prolonged. The evidence of *P* was of vital importance to the case, but she had to go back to pursue her studies. This is a factor which has been lost sight of. The High Court instead has unnecessarily emphasised on the number of adjournments which has no relevance. The order of bail passed by the High Court is not sustainable and is accordingly set aside. (Paras 9 and 12)

Though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the court while passing orders on bail applications, yet a court dealing with the bail application should be satisfied as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course. (Para 9)

There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted, particularly where an accused was charged of having committed a serious offence. It is necessary for the courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are:

1. the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

2. reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

3. prima facie satisfaction of the court in support of the charge. (Para 10)

Any order dehors such reasons suffers from non-application of mind. (Para 11). *Suman Pandey* v. *State of U.P.*, (2007) 12 SCC 364: (2008) 1 SCC (Cri) 394: (2007) 3 All LJ 162: 2007 Cri LJ 1789.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 14-2-2007]

Omar Usman Chamadia v. Abdul, (2004) 13 SCC 234: 2005 SCC (Cri) 157; V.D. Chaudhary v. State of U.P., (2005) 12 SCC 304: (2006) 1 SCC (Cri) 560; Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688; Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977; Chaman Lal v. State of U.P., (2004) 7 SCC 525: 2004 SCC (Cri) 1974; Kamaljit Singh v. State of Punjab, (2005) 7 SCC 226: 2005 SCC (Cri) 1668; Gajanand Agarwal v. State of Orissa, (2006) 12 SCC 131: (2007) 1 SCC (Cri) 568; Anwari Begum v. Sher Mohd., (2005) 7 SCC 326: 2005 SCC (Cri) 1669, relied on

[6453] — Ss. 437 and 439 — Grant of bail — Propriety — Murder case — *On facts, where the accused was charged with murder and the High Court did not look into factum of recovery of weapons and his identification at TI parade, and brushed aside his criminal antecedents as not being of recent past, and based on surmises concluded that a false case had been foisted due to political rivalry, then, the grant of bail was improper and liable to be cancelled*

In the instant case the deceased met homicidal death due to attack by several persons. The High Court has lightly brushed aside the factum of recovery of the weapons and identification at the test identification parade. Its conclusion that political rivalry has a double-edged effect was based on surmises without any material before it to show that a false case had been foisted because of political rivalry. Further, the antecedents of the respondents though noticed were also lightly brushed aside on the ground that they were not of recent past. Even though criminal antecedents are always not determinative of the question whether bail is to be granted, yet their relevance cannot be totally ignored. (Para 9)

Looked at from the above angle, the grant of bail to the respondents does not appear to be in order. Accordingly, the order of the High Court granting bail to the respondents is set aside. (Para 10). *State of Maharashtra* v. *Sitaram Popat Vetal*, (2004) 7 SCC 521: 2004 SCC (Cri) 1971: AIR 2004 SC 4258.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 23-8-2004]

[6454] — Ss. 437 and 439 — Grant of bail, when not justified — Gulshan Kumar murder case — *Several persons arrested — Respondent arrested subsequently — Non-mention of name of respondent in the remand applications presented by investigating agency in respect of persons who were earlier arrested, held, not a justifiable ground for grant of bail to respondent by High Court. State of Maharashtra* v. *Ramesh Taurani*, (1998) 1 SCC 41: 1998 SCC (Cri) 257: AIR 1998 SC 586: 1998 Cri LJ 855.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *K.T. Thomas*, JJ. [Date of decision: 26-11-1997]

[6455] — Ss. 437 and 439(2) — Bail — Grant or refusal of — Discretionary jurisdiction of court should be exercised carefully and cautiously by balancing rights of the accused and interests of society — Court must also indicate brief reasons for granting or refusing bail — *Held on facts, High Court erred in granting bail to only one*

(5) Grounds for bail in murder cases *(contd.)*

accused (respondent) out of several accused facing trial for offences under Ss. 302, 307, 323 r/w Ss. 147, 148 and 149 IPC without indicating any reasons therefor — Application for cancellation of bail, however, sent to Sessions Judge before whom the trial was proceeding

The judgment rendered by the High Court cannot be approved. The provisions of the Criminal Procedure Code confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trials or in appeals against convictions. Since the jurisdiction is discretionary it is required to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In granting or refusing the bail, the courts are required to indicate, maybe very briefly, the reasons for grant or refusal of bail. The jurisdiction is not to be exercised in a casual and cavalier fashion as has been done by the learned Judge in this case. (Paras 7 and 4)

However, in this case it is not necessary to undertake the exercise of going through the police papers and the evidence so far recorded by the trial court to consider the prayer of the complainant for cancellation of bail since it has been informed that the sessions trial in which the accused was enlarged on bail is proceeding with expedition and a major part of the evidence has been recorded. The Sessions Judge, therefore, is directed to consider the present application of the complainant for cancellation of bail on the basis of the police papers and the evidence so far recorded in the case. It is left to the judicious discretion of the learned Sessions Judge to continue the bail or cancel the same after hearing the counsel for the prosecution and the accused. (Paras 7 and 8). *Mansab Ali* v. *Irsan*, (2003) 1 SCC 632: 2003 SCC (Cri) 399: AIR 2003 SC 707.

Bench Strength **2**. Coram: *M.B. Shah* and **D.M. Dharmadhikari**, JJ. [Date of decision: 13-12-2002]

[6456] — Ss. 437(1), (4) & (5) and 439(1) & (2) — Grant of bail after once refusing it — Duty of court to record reasons and to take note of events subsequent to the incident — *On facts, grant found unjustified — Hence, bail cancelled — Voter obstructed from voting at election for the post of Pradhan, Gram Panchayat and that leading to scuffles during polling process — A person trying to rescue the voter, killed on the spot — FIR lodged under S. 302 IPC and the accused persons arrested — Bail refused by trial court, High Court and again by Sessions Court — Accused persons again moving the High Court for grant of bail — Witnesses were allegedly threatened and assaulted and therefore a second FIR was registered under Ss. 323 and 504 IPC — High Court, however, granting the bail and rejecting the application for cancellation thereof — After completing the investigation, police filing charge-sheet but the accused, who were on bail, not appearing before the Magistrate till he issued bailable warrants against them and thus committal getting delayed — In the said circumstances, held, High Court erred in granting bail — It ought to have explicitly stated the reasons of sudden departure in the order of grant as against rejection just about a month ago — The subsequent FIR also ought to have been taken note of — Spending of one year in jail, held, was not a relevant consideration for grant of bail — More so, when the offence charged was that of murder punishable with death or life imprisonment — Total circumstances of the case, held, warranted cancellation of the bail — Penal Code, 1860, Ss. 302, 323 and 504*

The appellant's brother, *A*, was a candidate contesting the election for the post of Pradhan in a Gram Panchayat. During the polling process on 23-6-2000 booth-capturing took place several times. The informant was prevented from casting his vote and that resulted in scuffles. On hearing the cries of the informant, *A* rushed to rescue him but, was himself for the reason of his interference, killed. FIR was lodged, inter alia, under Section 302 IPC and the private respondents herein were, consequently, arrested. Their bail applications were rejected by the trial court and High Court and again by Sessions Court. Thereafter, they again moved the High Court. Between 4-12-2000 and 6-12-2000 the witnesses in the matter were allegedly threatened and assaulted for which an FIR under Sections 323 and 504 IPC was registered by the police on 6-12-2000. After investigation charge-sheet was filed before the Chief Judicial Magistrate. The said co-accused, who had been granted bail, were not attending Court of the Magistrate and appeared only after issuance of bailable warrants against them. On 3-5-2001 the High Court granted bail to both the accused persons. The High Court rejected the application for cancellation of the bail and, therefore, the instant appeal was filed before the Supreme Court

Allowing the appeals,

Held :

Grant of bail though is a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter. (Para 3)

Certain other relevant considerations, which are only illustrative and not exhaustive, are as follows:

(*a*) not only the nature of accusations but the severity of punishment in case of conviction and the nature of the supporting evidence,

(*b*) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant,

(*c*) prima facie satisfaction of the court in support of the charge, and

(*d*) frivolity and genuineness of the prosecution, and it is only the element of genuineness that has to be considered in the matter of grant of bail, and in the event of some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail. (Para 4)

Although the availability of overwhelming circumstances is necessary for an order as regards the cancellation of a bail order, the basic criterion, however, is interference or even an attempt to interfere with the due course of administration of justice and/or any abuse of the indulgence/privilege granted to the accused. The incident occurred at the time when the election was going on and the murder was said to have been committed in broad daylight by reason of interference of the deceased when the informant was prohibited from casting his vote. The situation is rather grave and having regard to the same, the High Court on 29-8-2000 refused the application for bail. (Para 8)

Undoubtedly, considerations applicable to the grant of bail and considerations for cancellation of such an order of bail are independent and do not overlap each other, but in the event of non-consideration of considerations relevant for the purpose of grant of bail and in the event an earlier order of rejection available on the records, it is a duty incumbent on the High Court to explicitly state the reasons as to why the sudden departure in the order of grant as against the rejection just about a month ago. The High Court has not recorded any such reason. The subsequent FIR was on record containing charges under Sections 323 and 504 IPC in which the charge-sheet has already been issued — the court ought to take note of the facts on record rather than ignore them. In any event, the discretion to be used shall always have to be strictly in accordance with law and not dehors the same. The consideration of the period of one year spent in jail cannot be a relevant consideration in the matter of grant of bail, more so by reason of the fact that the offence charged is that of murder under Section 302 IPC having the punishment of death or life imprisonment. (Para 9)

The High Court has committed a manifest error in the matter of grant of bail when public tranquillity was disturbed on the election day and when there was an obstruction to the exercise of a right guaranteed under the Constitution and when there was an existence of crime against the society at large. Irrespective of different factors to be taken note of in regard to the cancellation of the grant of bail, interest of justice seems to be overwhelmingly in favour of the appellant herein in the matter of cancellation of the bail. His elder brother had been brutally murdered and the proceeding was pending before the Sessions Judge. It is during the period when the accused persons were enlarged on bail that another FIR was recorded and the charge-sheet having been filed, the Court ought to have taken a serious note of these factual details. Tampering with the evidence and threatening of the witnesses are two basic grounds for cancellation of bail — both these two factors stand alleged and by reason of subsequent filing of the charge-sheet therein, there should have been some mention of it in the order for grant of bail. The factum of the second charge-sheet has been omitted in its entirety. (Para 10)

The order of the High Court stands set aside and quashed. The bail order as granted by the High Court stands cancelled and the private respondents be rearrested forthwith. (Para 11). *Ram Govind Upadhyay* v. *Sudarshan Singh*, (2002) 3 SCC 598: 2002 SCC (Cri) 688: AIR 2002 SC 1475.

Bench Strength 2. Coram: **U.C. Banerjee** and *Y.K. Sabharwal*, JJ. [Date of decision: 18-3-2002]

Shahzad Hasan Khan v. Ishtiaq Hasan Khan, (1987) 2 SCC 684: 1987 SCC (Cri) 415; Prahlad Singh Bhati v. NCT of Delhi, (2001) 4 SCC 280: 2001 SCC (Cri) 674, relied on

(6) Grounds for bail — Particular offences

See also Section 437, '(4) Grounds for bail — Generally', and

'(5) Grounds for bail in murder cases', above

[6457] — S. 437 — Bail — Grant of — Offences under S. 13, Prevention of Corruption Act as well as Ss. 467, 468 and 120-B IPC — *Appellant in jail for a period of more than one year — No necessity for keeping him as an undertrial prisoner any more — Hence, appellant released on bail imposing certain conditions — Constitution of India — Art. 136* (Para 2). *Sri Ram Choubey* v. *State of Bihar*, (2002) 10 SCC 199: 2004 SCC (Cri) 465: AIR 2002 SC 2338.

Bench Strength 2. Coram: *K.T. Thomas* and *U.C. Banerjee*, JJ. [Date of decision: 3-4-2001]

(6) Grounds for bail — Particular offences *(contd.)*

[6458] — Ss. 437 and 439 — Bail — Rejection of — Grounds for — Sustainability — *Accused charged under S. 7 of Prevention of Corruption Act, 1988 for demanding a bribe of Rs 470 for issue of coal release order, which entailed a maximum punishment of 5 years — Accused in jail for 3 years — Directions of High Court for expeditious disposal of trial not complied with by trial court — High Court rejecting the bail application without going into the facts and circumstances of the case and examining the matter in depth — Only ground for rejection was that the bail application had been rejected five times earlier — Strongly deprecating the practice adopted by High Court, bail granted to the appellant* (Paras 4, 8 and 9). *Bisheshwar Ganjhu* v. *State of Jharkhand*, (2007) 15 SCC 736.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *H.K. Sema*, JJ. [Date of decision: 24-2-2003]

[6459] — S. 437 — Bail — Grant of — Criminal conspiracy — Cheating and falsification of accounts — Embezzlement of amount to the extent of one crore of rupees — Accused languishing in jail for a long time — *Trial court directed to complete the trial within three months else the accused shall be released on bail provided that the delay in conducting the trial is not attributable to the accused — Penal Code, 1860, Ss. 120-B, 468 and 477-A — Constitution of India — Art. 21. Mahesh Kumar Bhawsinghka* v. *State of Delhi*, (2000) 9 SCC 383: 2001 SCC (Cri) 400: 2000 Cri LJ 2786.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 4-1-2000]

[6460] — S. 437 — Bail — Where appellants, charged with misappropriating Rs 75,000 and charged under Ss. 406/420/34 IPC, had been in custody for 9 months and the earlier High Court order was that if trial did not commence within six months, prayer for bail could be renewed, held, case for grant of bail had been made out (Para 4). *Ram Narayan Singh* v. *State of Bihar*, (2000) 9 SCC 55: 2000 SCC (Cri) 1157: AIR 2000 SC 1945.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 13-1-2000]

[6461] — Ss. 437 and 439 — Bail — Fraudulent transactions aggregating to more than Rs 50 crores — *Accused sharebroker, apparently not directly involved in the fraud — Accused directed to be released on bail subject to certain conditions* (Para 3). *Rajendra Kumar Dhanraj Banthia* v. *State of Gujarat*, (2005) 13 SCC 238: (2006) 2 SCC (Cri) 147.

Bench Strength **3**. Coram: *N. Santosh Hegde* and *B.P. Singh*, JJ. [Date of decision: 14-7-2003]

[6462] — Ss. 437 and 439 — Bail — Grant of, whether justified — Free fight between two groups — *Several persons from both the sides caused injuries to the other side and some succumbed to injuries — While several accused received injuries, Respondent 4 did not sustain any injury — Respondent 4 claiming to be a Bank Manager posted at another place and not present at the place and time of occurrence — Eyewitness version that deceased was attacked by several persons — Held, if different persons have been alleged to have caused injuries to the deceased, then on the face of it, it cannot be said with certainty at this stage that it was Respondent 4 who caused injuries to the deceased or was the only person who was responsible for causing injuries resulting in death of the deceased — High Court was, therefore, justified in taking the view that case was made out by Respondent 4 for grant of bail, although other accused persons have been refused bail. Azhar Sah* v. *State of Bihar*, (2008) 5 SCC 82: (2008) 2 SCC (Cri) 518: 2008 Cri LJ 2622.

Bench Strength **2**. Coram: *S.B. Sinha* and **P.P. Naolekar**, JJ. [Date of decision: 4-4-2008]

[6463] — Ss. 437 and 439 — Bail — Offence under S. 326 IPC — Grievous hurt by dangerous weapons or means — Trial delayed — Bail in case of — *Appellant-accused having been in jail for about one year pending appeal against their conviction and punishment of 3 years' imprisonment, and there being no likelihood of the appeal being heard in near future, bail granted — Penal Code, 1860, S. 326. Ganpat Shankar Mhatre* v. *State of Maharashtra*, (2005) 12 SCC 279.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *A.K. Mathur*, JJ. [Date of decision: 4-2-2005]

[6464] — Ss. 437 and 439 — Bail — Cancellation of — Respondent-accused *N* and *A* convicted under S. 304-A r/w S. 36 IPC, while respondent-accused *S* and *G* convicted under Ss. 304-A, 337 and S. 338 r/w S. 36 IPC in *Uphaar tragedy case*, granted bail by High Court — Propriety — *Held, it is well settled that in an appeal against conviction under these sections, the offences being bailable, bail is granted without much ado but, in the facts and circumstances of the present case, especially in view of the conduct of these accused persons after grant of bail during trial, the High Court was not justified in granting bail to them — Impugned order set aside — Directions issued for expeditious disposal of the case — Since Single Judge who was presently hearing the appeals was not in a position to devote full time as he was* *in charge of the original jurisdiction, matter directed to be placed before any other appropriate Judge nominated by the Chief Justice of the Delhi High Court — Further, transferee court directed to hear the appeals on day-to-day basis for the whole day as agreed to by the parties — Penal Code, 1860, Ss. 304-A, 337 and 338 r/w S. 36* (Paras 3, 4, 9, 10, 12 and 13). *Assn. of Victims of Uphaar Tragedy* v. *Gopal Ansal*, (2008) 14 SCC 611.

Bench Strength **2**. Coram: *B.N. Agrawal* and *G.S. Singhvi*, JJ. [Date of decision: 10-9-2008]

[6465] — Ss. 437 and 439 — Bail — Rejection of — Propriety — Case involving smuggling of antiques — *High Court rejecting appellant's second bail application who was alleged to be involved in several nefarious activities of smuggling of antiques, particularly idols, to foreign countries for heavy sums of money — Only distinguishing feature pointed out by appellant for seeking reconsideration of bail application was the order of discharge, which was set aside by High Court — Held, no interference with impugned judgment called for — Ancient Monuments and Archaeological Sites and Remains Act, 1958, Ss. 30 and 25 — Ancient Monuments Preservation Act, 1904, S. 17* (Paras 1, 5 and 12). *Vaman Narain Ghiya* v. *State of Rajasthan*, (2009) 2 SCC 281.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 12-12-2008]

[6466] — Ss. 437 and 439 — Bail under NDPS Act — Approach — *Appeal from an order granting bail and an order directing cancellation of bail, distinguished — Factors to be considered while entertaining an application for cancellation of bail, stated — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 37(2) & (1)*

On 14-8-2004, the luggage of two persons travelling in a bus were searched and 2 kg of contraband (heroin) was recovered. Besides a purported statement that the contraband (heroin) was meant to be delivered to the appellant-accused, no other material was available on record to sustain the charge against the appellant. The designated chemical laboratory reported to the investigating officer that the seized article did not contain any contraband substance. The court, therefore, granted bail to the appellant-accused. A second sample sent to another laboratory reported that the seized sample contained 2.6% of diacetyl morphine (heroin). On the basis of the second test, bail of the appellant-accused, granted earlier, was cancelled. A revision filed thereagainst in the High Court was dismissed by reason of the impugned order.

Allowing the appeal,

Held :

The question, however, as to whether the contraband found came within the purview of the commercial quantity within the meaning of Section 2(*vii-a*) or not is one of the factors which should be taken into consideration by the courts in the matter of grant or refusal to grant bail. It is true that the general principles of grant of bail are not applicable in a case involving the NDPS Act. However, even a distinction is made as regards grant of bail in relation to a commercial quantity and a small quantity. Even, according to the Central Revenue Control Laboratory, New Delhi, only 2.6% of the sample sent was found to be containing heroin. The quantity, thus, alleged to have been recovered from the co-accused persons could be said to be an intermediate quantity and, thus, the rigours of the provisions of Section 37 of the Act relating to grant of bail may not be justified. (Paras 12 and 11)

Narcotic Drugs and Psychotropic Substances Act, 1985 (the Act) although is a self-contained code, the application of the provisions of CrPC, however, either expressly or by necessary implication, have not been excluded. There exists a distinction between an appeal from an order granting bail and an order directing cancellation of bail. While entertaining an application for cancellation of bail, it must be found that the accused had misused the liberty granted to him as a result whereof: (*a*) he has attempted to tamper with evidence; (*b*) he has attempted to influence the witnesses; (*c*) there is a possibility of the accused to abscond and, therefore, there is a possibility that the accused may not be available for trial. (Para 10). *Sami Ullaha* v. *Narcotic Central Bureau*, (2008) 16 SCC 471: AIR 2009 SC 1357: 2009 Cri LJ 1306.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-11-2008]

Ouseph v. State of Kerala, (2004) 4 SCC 446: 2004 SCC (Cri) 1303; E. Micheal Raj v. Narcotic Control Bureau, (2008) 5 SCC 161: (2008) 2 SCC (Cri) 558, relied on

[6467] — Ss. 437 and 439 — Bail under NDPS Act — Cancellation of — Considerations appropriate to the stage — Distinguished from considerations that need to be gone through during trial — *Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 37(2) & (1)*

For the purpose of grant of bail, the court cannot be said to have committed any illegality in relying on the definition of "chemical examiner" in Rule 2(*c*) of the Rules because the authorised laboratory at Neemuch categorically found that the seized substance did not contain any contraband. It is not necessary to consider the matter in depth as to

(6) Grounds for bail — Particular offences *(contd.)*

whether the definition of "chemical examiner" in Rule 2(*c*) of the Rules is exhaustive, but then this is a question involving cancellation of an order of bail. A person's liberty is protected in terms of Article 21 of the Constitution of India. When two views are possible, the view which leans in favour of an accused must be favoured. (Paras 14 and 15)

There exists a difference of opinion insofar as the opinion of the laboratory (Central Revenue Control Laboratory, New Delhi) conducting test of the second sample that it contained 2.6% heroin is concerned. The effect of the said contradictory report must be gone into only at trial. It is not the stage where the court is required to take into consideration that a judgment of conviction is possible to be recorded on the basis of a confessional statement made by an accused. It may be so, but the question is that when the prosecution itself had failed to show that the seized substance contained any narcotic substance or psychotropic substance, the question of reliance on the confession of the accused does not arise; at least at this stage. For the purpose of cancellation of bail, the statutory requirements must be satisfied. The appellant has failed to do so. For the reasons aforementioned, the impugned judgment cannot be sustained which was set aside. (Paras 15 to 19). *Sami Ullaha* v. *Narcotic Central Bureau*, (2008) 16 SCC 471: AIR 2009 SC 1357: 2009 Cri LJ 1306.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-11-2008]

Noor Aga v. State of Punjab, (2008) 16 SCC 417; State of Mauritius v. Khoyratty, (2007) 1 AC 80: (2006) 2 WLR 1330: 2006 UKPC 13; State (Delhi Admn.) v. Sanjay Gandhi, (1978) 2 SCC 411: 1978 SCC (Cri) 223, relied on

[6468] — Ss. 437 and 439 — Bail under NDPS Act — Cancellation of — Overriding considerations — *Seized substance not proved as contraband — Confession under S. 67 of co-accused that substance was heroin — Effect — Held, when the prosecution itself had failed to show that the seized substance contained any narcotic substance or psychotropic substance, the question of reliance on the confession of the accused does not arise*

For the purpose of grant of bail, the court cannot be said to have committed any illegality in relying on the definition of "chemical examiner" in Rule 2(*c*) of the Rules because the authorised laboratory at Neemuch categorically found that the seized substance did not contain any contraband. It is not necessary to consider the matter in depth as to whether the definition of "chemical examiner" in Rule 2(*c*) of the Rules is exhaustive, but then this is a question involving cancellation of an order of bail. A person's liberty is protected in terms of Article 21 of the Constitution of India. When two views are possible, the view which leans in favour of an accused must be favoured. (Paras 14 and 15)

There exists a difference of opinion insofar as the opinion of the laboratory (Central Revenue Control Laboratory, New Delhi) conducting test of the second sample that it contained 2.6% heroin is concerned. The effect of the said contradictory report must be gone into only at trial. It is not the stage where the court is required to take into consideration that a judgment of conviction is possible to be recorded on the basis of a confessional statement made by an accused. It may be so, but the question is that when the prosecution itself had failed to show that the seized substance contained any narcotic substance or psychotropic substance, the question of reliance on the confession of the accused does not arise; at least at this stage. For the purpose of cancellation of bail, the statutory requirements must be satisfied. The appellant has failed to do so. For the reasons aforementioned, the impugned judgment cannot be sustained which was set aside. (Paras 15 to 19). *Sami Ullaha* v. *Narcotic Central Bureau*, (2008) 16 SCC 471: AIR 2009 SC 1357: 2009 Cri LJ 1306.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-11-2008]

Noor Aga v. State of Punjab, (2008) 16 SCC 417; State of Mauritius v. Khoyratty, (2007) 1 AC 80: (2006) 2 WLR 1330: 2006 UKPC 13; State (Delhi Admn.) v. Sanjay Gandhi, (1978) 2 SCC 411: 1978 SCC (Cri) 223, relied on

(7) Proper exercise of discretionary jurisdiction/disposal of bail application

See also under Section 439, below

[6469] — S. 437 — Bail — Application for — Need for consideration on merits — *Bail application rejected by High Court, without considering on merits, on ground that the appellant had intentionally obtained an order from the trial court (court in seisin) to move out of Siwan Jail to take oath as MP at Delhi, when his application for bail was pending before High Court — Contempt proceedings against the appellant as well as the Presiding Officer therefor, pending in the High Court — Held, in these circumstances, the appropriate course to be followed by the High Court would be to decide the contempt proceedings and the application for bail filed by the appellant on merits together or decide the contempt proceedings in the first instance and then take up the application for bail for decision on merits immediately thereafter — Impugned order* *so far as it relates to rejection of appellant's bail set aside but that relating to initiation of contempt proceedings undisturbed* (Paras 3 and 6). *Mohd. Shahabuddin* v. *State of Bihar*, (2004) 13 SCC 565.

Bench Strength 2. Coram: *Shivaraj V. Patil* and *B.N. Srikrishna*, JJ. [Date of decision: 1-11-2004]

[6470] — Ss. 437 and 439 — Bail — Consideration of question of — Examination of material on record — Duty of court — *Held, though a detailed examination of the evidence (material collected by prosecution) is to be avoided but to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary* (Para 22). *State of U.P.* v. *Amarmani Tripathi*, (2005) 8 SCC 21: 2005 SCC (Cri) 1960 (2): AIR 2005 SC 3490: (2005) 123 DLT 362: 2005 Cri LJ 4149.

Bench Strength 2. Coram: **Ashok Bhan** and *R.V. Raveendran*, JJ. [Date of decision: 26-9-2005]

[6471] — S. 437 — Bail — Grant of — Recording evidence — *Bail order earlier set aside by Supreme Court with liberty to move the Designated Court for bail at any subsequent stage — Accordingly fresh bail application moved — Instead of recording any fresh evidence, bail again granted by Designated Court by appreciating the statements of witnesses and material collected at investigation stage — Held on facts, Designated Court grossly erred in foreclosing the trial by pre-judging the evidence which was yet to come on record — In absence of any fresh material justifying release of accused on bail, order granting bail must be set aside. State of Maharashtra* v. *Anand Chintaman Dighe*, (1991) 3 SCC 209: 1991 SCC (Cri) 500: AIR 1991 SC 1603.

Bench Strength 3. Coram: *Ranganath Misra, C.J.* and **Kuldip Singh** and *P.B. Sawant*, JJ. [Date of decision: 2-5-1991]

[6472] — Ss. 437 and 439 — Bail — Grant of — Application of mind by court imperative though detailed reasons unnecessary — *Factors to be considered by court: Whether accused had requisite mens rea and whether he may not be ultimately convicted for offence under the Act, accused's culpability and involvement in commission of an organised crime directly or indirectly and whether having regard to accused's antecedents and other relevant aspects there was probability of his not committing any offence under the Act in future — Court has to record its findings which would be only tentative based on broad probabilities — Where case is based on circumstantial evidence, court should consider whether all the links in the chain of circumstances are complete — Such findings are required to be recorded for the purpose of arriving at an objective finding on the basis of materials on record only for grant of bail and for no other purpose — It should also be kept in mind that the Act does not differentiate between offences entailing life imprisonment and those entailing only one or two years' imprisonment, that some acts of commission or omission on the part of a public servant may attract disciplinary proceedings but not penal provisions and that merely because some allegations have been made against a high-ranking officer which cannot be brushed aside, it is by itself not sufficient to deny him bail — Onus of proof not on accused — Having regard to facts and circumstances of the case (relating to printing of counterfeit stamps and forgery by Telgi), held, it cannot be concluded that appellant, then a Commissioner of Police, prima facie committed offences under Ss. 3(2) and 24 of the Act, hence appellant entitled to bail — Evidence Act, 1872, Ss. 101 and 102 — Maharashtra Control of Organised Crime Act, 1999 (30 of 1999), S. 21(4) and Ss. 3(2) & 24*

One Telgi was arrested and proceeded against for alleged commission of offence of printing counterfeit stamps and forgery in various States including the State of Maharashtra. He was lodged in jail. During the appellant's tenure as Commissioner of Police, Pune, fake stamp papers worth Rs 2.98 lakhs were seized whereupon a first information report was registered under Sections 120-B, 255, 249, 260, 263(*a*) and (*b*), 478, 472 and 474 read with Section 34 IPC but later a proposal was mooted to invoke Section 3 of MCOCA and upon obtaining the opinion of the Senior Public Prosecutor therefor, the same was invoked against the accused T. On the ground of alleged involvement of the appellant in the said case, he was arrested and was remanded to police custody and thereafter to judicial custody. His application for bail was rejected by the Special Court whereupon he filed similar application before the High Court. The role of the appellant was said to be rendition of help and support to organised crime syndicate by certain acts of omission and commission i.e. by rendering help or support to an Assistant Commissioner of Police (Crime Branch), a co-accused when he was Commissioner of Police, Pune and through an API, co-accused while he was the Commissioner of Police, Mumbai. The High Court rejected the bail application of the appellant.

Allowing the appeal,

Held :

The High Court considered the matter from a wrong perspective. Only because the appellant had the power, the same would not by itself lead to a conclusion that he was a privy to the crime. For all

(7) Proper exercise of discretionary jurisdiction/disposal of bail application *(contd.)*

intent and purport, the High Court has placed the onus of proof upon the appellant, which is impermissible. The materials on record show that the High Court may not be entirely correct in coming to the conclusion that the appellant prima facie committed an offence under Section 3(2) as well as Section 24 of the Maharashtra Control of Organised Crime Act, 1999. The order dated 4-11-2004 granting interim bail to the appellant should continue subject to the same conditions. (Paras 51, 62, 81 and 82)

The restrictions on the power of the court to grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all probability the applicant for bail may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of the Maharashtra Control of Organised Crime Act, 1999. A person in a given situation may not do that which he ought to have done. The court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision. (Para 38)

Section 21(4) of the Maharashtra Control of Organised Crime Act, 1999 does not make any distinction between an offence which entails punishment of life imprisonment and an imprisonment for a year or two. It does not provide that even in case a person remains behind the bars for a period exceeding three years, although his involvement may be in terms of Section 24 of the Act, the court is prohibited to enlarge him on bail. Each case, therefore, must be considered on its own facts. The question as to whether he is involved in the commission of organised crime or abetment thereof must be judged objectively. Only because some allegations have been made against a high-ranking officer, which cannot be brushed aside, may not by itself be sufficient to continue to keep him behind the bars although on an objective consideration the court may come to the conclusion that the evidences against him are not such as would lead to his conviction. In case of circumstantial evidence like the present one, not only culpability or mens rea of the accused should be prima facie established, the court must also consider the question as to whether the circumstantial evidence is such whereby all the links in the chain are complete. (Para 43)

It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail. (Para 45)

The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like the Maharashtra Control of Organised Crime Act, 1999 having regard to the provisions contained in Section 21(4) of this Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby. (Para 46). *Ranjitsing Brahmajeetsing Sharma* v. *State of Maharashtra*, (2005) 5 SCC 294: 2005 SCC (Cri) 1057: AIR 2005 SC 2277: 2005 Cri LJ 2533.

Bench Strength 3. Coram: *N. Santosh Hegde*, *B.P. Singh* and **S.B. Sinha**, JJ. [Date of decision: 7-4-2005]

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899; Prakash Kumar v. State of Gujarat, (2005) 2 SCC 409: 2005 SCC (Cri) 518; Abdulla Mohammed Pagarkar v. State (UT, Goa, Daman and Diu), (1980) 3 SCC 110: 1980 SCC (Cri) 546; C. Chenga Reddy v. State of A.P., (1996) 10 SCC 193: 1996 SCC (Cri) 1205; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977; Jayendra Saraswathi Swamigal v. State of T.N., (2005) 2 SCC 13: 2005 SCC (Cri) 481; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005) 2 SCC 42: 2005 SCC (Cri) 489, relied on

Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2004) 4 Bom LR 119, reversed

[6473] — S. 437 — Grant or refusal of bail — Proper mode for — *Held, is the function of court to be discharged judiciously and not arbitrarily* (Para 5). *Suresh Kumar Somabhai Rana* v. *Ashok Kumar Haraklal Mittal*, (2009) 14 SCC 292: (2003) 1 Guj LR 686.

Bench Strength 2. Coram: *M.B. Shah* and *B.N. Agrawal*, JJ. [Date of decision: 1-2-2002]

[6474] — Ss. 437 and 439 — Bail — Grant of by Magistrate in a haste, with oblique motive, in arbitrary exercise of discretion vested in him, by taking into consideration totally irrelevant documents never referred to in complaint at all — *Complaint filed by respondent wife against appellant husband and others under S. 498-A IPC — Appellant surrendering and moving bail application on the same day, which was taken up for hearing by Magistrate on that day itself, thereby enlarging appellant on bail, without hearing either respondent wife or her counsel — As judicial discretion was exercised by Magistrate in an arbitrary manner and with oblique motives, Sessions Court was justified in cancelling the bail — High Court rightly confirmed the same*

The facts of the present case indicate that the appellant himself and others had moved the Sessions Court by way of filing revision for quashing summons issued by the Magistrate and, therefore, the Sessions Judge had called for the record from the court of Judicial Magistrate, First Class. (Para 17)

On 19-10-2002, the appellant had, all of a sudden decided to surrender before the Judicial Magistrate, First Class, and presented a bail application. The Magistrate, found that the record of the case was lying in the Sessions Court with reference to the revision which was filed by the appellant and others. The Magistrate did not think it proper to wait at all and by passing a judicial order called for the record pending in a superior court. (Para 18)

In view of the judicial order passed by the Magistrate, the Registry of the Sessions Court forthwith sent the record of the case to the court of the Judicial Magistrate, First Class. Thereafter, the Magistrate proceeded to hear the bail application submitted by the appellant. (Para 19)

In the order summoning the record, it was nowhere indicated by the Magistrate that the application submitted by the appellant would be heard on the same day i.e. on 19-10-2002. The advocate for the complainant was not put on notice at all and, therefore, could not remain present at the time when the bail application was taken up for hearing. (Para 20)

The Magistrate considered the documents produced by the appellant. After considering those documents, the Magistrate enlarged the appellant on bail. (Para 21)

The undue haste exhibited by the Magistrate as well as his decision to hear the bail application on the same day without hearing the learned counsel for the complainant, compelled the Sessions Judge to draw adverse inferences against the Magistrate. (Para 22)

On the facts and in the circumstances of the case, the Sessions Judge was justified in drawing adverse inferences against the Magistrate and holding that the order granting bail was passed by the Judicial Magistrate for considerations other than judicial. (Para 23)

Hence, the High Court did not commit any error in confirming the order of the Sessions Judge cancelling the bail which was arbitrarily granted to the appellant by the Judicial Magistrate, First Class. (Paras 25 to 27). *Subodh Kumar Yadav* v. *State of Bihar*, (2009) 14 SCC 638: (2009) 80 AIC 74 (SC).

Bench Strength 2. Coram: *R.V. Raveendran* and **J.M. Panchal**, JJ. [Date of decision: 15-7-2009]

State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21: 2005 SCC (Cri) 1960 (2), clarified

[6475] — Ss. 437 and 439 — Bail — Grant of — Considerations for — Restated — Elaborate analysis or exhaustive exploration of merit not to be done (Para 11). *Vaman Narain Ghiya* v. *State of Rajasthan*, (2009) 2 SCC 281.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 12-12-2008]

Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559: 1980 SCC (Cri) 508; State of Maharashtra v. Anand Chintaman Dighe, (1990) 1 SCC 397: 1990 SCC (Cri) 142; State v. Surendranath Mohanty, (1990) 3 OCR 462, relied on

[6476] — Ss. 437 and 439 — Bail — Duty of court while considering application made for — *Held, though detailed examination of the merits of the case is not required, but court to exercise its discretion on the basis of well-settled principles and in a judicious manner and not as a matter of course* (Para 5). *Ajay Kumar Sharma* v. *State of U.P.*, (2005) 7 SCC 507: 2005 SCC (Cri) 1702.

Bench Strength 3. Coram: *Y.K. Sabharwal, B.N. Srikrishna* and *C.K. Thakker*, JJ. [Date of decision: 29-8-2005]

[6477] — Ss. 437 and 439 — Bail — Grant/Refusal of — Reasoned order — Necessity of — *Held, though a reasoned order needs to be passed while disposing of a bail application, yet, it is trite that detailed reasons touching the merit of the matter should not be given, which may prejudice the accused* (Para 16). *Afzal Khan* v. *State of Gujarat*, (2007) 9 SCC 387: (2007) 3 SCC (Cri) 563: AIR 2007 SC 2111: 2007 Cri LJ 3223.

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 17-5-2007]

(7) Proper exercise of discretionary jurisdiction/disposal of bail application *(contd.)*

[6478] — Ss. 437 and 439 — Grant of bail — Court's discretion must be exercised in a judicious manner — Court must be satisfied as to whether a prima facie case made out — *Order granting bail must indicate reasons therefor, particularly where accused is charged of committing serious offence like murder — Any order sans reasons would be vitiated by non-application of mind — Factors to be taken into consideration while dealing with bail application*

The High Court's order shows complete non-application of mind. The reasoning of the High Court is totally fallacious. The trial court was informed of the fact that *P* was pursuing her studies abroad and would be available to appear as witness during the summer vacation. The fact that the trial court adjourned the matter for a few dates notwithstanding this intimation cannot be a factor to release Respondent 2 who chose not to appear and made a prayer for exemption on the ground that he was in custody in some other case. The details of that case were not furnished to the Court though ample opportunity was granted. The appellant is, therefore, justified in her grievances that there has been misuse of the liberty and that the trial had been unnecessarily prolonged. The evidence of *P* was of vital importance to the case, but she had to go back to pursue her studies. This is a factor which has been lost sight of. The High Court instead has unnecessarily emphasised on the number of adjournments which has no relevance. The order of bail passed by the High Court is not sustainable and is accordingly set aside. (Paras 9 and 12)

Though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the court while passing orders on bail applications, yet a court dealing with the bail application should be satisfied as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course. (Para 9)

There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted, particularly where an accused was charged of having committed a serious offence. It is necessary for the courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are:

1. the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

2. reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

3. prima facie satisfaction of the court in support of the charge. (Para 10)

Any order dehors such reasons suffers from non-application of mind. (Para 11). *Suman Pandey* v. *State of U.P.*, (2007) 12 SCC 364: (2008) 1 SCC (Cri) 394: (2007) 3 All LJ 162: 2007 Cri LJ 1789.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 14-2-2007]

Omar Usman Chamadia v. Abdul, (2004) 13 SCC 234: 2005 SCC (Cri) 157; V.D. Chaudhary v. State of U.P., (2005) 12 SCC 304: (2006) 1 SCC (Cri) 560; Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688; Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977; Chaman Lal v. State of U.P., (2004) 7 SCC 525: 2004 SCC (Cri) 1974; Kamaljit Singh v. State of Punjab, (2005) 7 SCC 226: 2005 SCC (Cri) 1668; Gajanand Agarwal v. State of Orissa, (2006) 12 SCC 131: (2007) 1 SCC (Cri) 568; Anwari Begum v. Sher Mohd., (2005) 7 SCC 326: 2005 SCC (Cri) 1669, relied on

[6479] — Ss. 437 and 439 — Order granting or refusing bail — Need for reasons — *Reasons, wherever necessary, may be given only indicating the considerations that may have weighed with the court in passing the order but without prejudicing the case of the parties — High Court while granting bail to respondents in pending appeal before it, passed detailed reasoned order holding that prosecution case has no merit — Held, High Court erred in doing so — Findings recorded in the order granting bail ought to be eschewed when appeal itself is taken up for hearing. Imran Ali* v. *Habibullah*, (2007) 12 SCC 506: (2008) 3 SCC (Cri) 274: (2007) 53 AIC 65 (SC).

Bench Strength 2. Coram: *B.P. Singh* and *H.S. Bedi*, JJ. [Date of decision: 19-3-2007]

[6480] — Ss. 437 and 439(2) — Bail — Grant or refusal of — Discretionary jurisdiction of court should be exercised carefully and cautiously by balancing rights of the accused and interests of society — Court must also indicate brief reasons for granting or refusing bail — *Held on facts, High Court erred in granting bail to only one accused (respondent) out of several accused facing trial for offences under Ss. 302, 307, 323 r/w Ss. 147, 148 and 149 IPC without indicating any reasons therefor — Application for cancellation of bail, however, sent to Sessions Judge before whom the trial was proceeding*

The judgment rendered by the High Court cannot be approved. The provisions of the Criminal Procedure Code confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trials or in appeals against convictions. Since the jurisdiction is discretionary it is required to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In granting or refusing the bail, the courts are required to indicate, maybe very briefly, the reasons for grant or refusal of bail. The jurisdiction is not to be exercised in a casual and cavalier fashion as has been done by the learned Judge in this case. (Paras 7 and 4)

However, in this case it is not necessary to undertake the exercise of going through the police papers and the evidence so far recorded by the trial court to consider the prayer of the complainant for cancellation of bail since it has been informed that the sessions trial in which the accused was enlarged on bail is proceeding with expedition and a major part of the evidence has been recorded. The Sessions Judge, therefore, is directed to consider the present application of the complainant for cancellation of bail on the basis of the police papers and the evidence so far recorded in the case. It is left to the judicious discretion of the learned Sessions Judge to continue the bail or cancel the same after hearing the counsel for the prosecution and the accused. (Paras 7 and 8). *Mansab Ali* v. *Irsan*, (2003) 1 SCC 632: 2003 SCC (Cri) 399: AIR 2003 SC 707.

Bench Strength **2**. Coram: *M.B. Shah* and **D.M. Dharmadhikari**, JJ. [Date of decision: 13-12-2002]

[6481] — Ss. 437(1) & (4) and 439(1) — Grant of bail — Mode of exercise of court's discretion regarding — Held, should be exercised in a judicious manner and not as a matter of course but for cogent reasons — *Factors to be taken into consideration in this regard, however not meant to be exhaustive, restated*

Grant of bail though is a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter. (Para 3)

Certain other relevant considerations, which are only illustrative and not exhaustive, are as follows:

(*a*) not only the nature of accusations but the severity of punishment in case of conviction and the nature of the supporting evidence,

(*b*) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant,

(*c*) prima facie satisfaction of the court in support of the charge, and

(*d*) frivolity and genuineness of the prosecution, and it is only the element of genuineness that has to be considered in the matter of grant of bail, and in the event of some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail. (Para 4). *Ram Govind Upadhyay* v. *Sudarshan Singh*, (2002) 3 SCC 598: 2002 SCC (Cri) 688: AIR 2002 SC 1475.

Bench Strength **2**. Coram: **U.C. Banerjee** and *Y.K. Sabharwal*, JJ. [Date of decision: 18-3-2002]

Shahzad Hasan Khan v. Ishtiaq Hasan Khan, (1987) 2 SCC 684: 1987 SCC (Cri) 415; Prahlad Singh Bhati v. NCT of Delhi, (2001) 4 SCC 280: 2001 SCC (Cri) 674, relied on

(8) Temporary/Interim bail

See also Section 438, below

[6482] — Ss. 437 and 439 — Bail — Temporary bail, as granted to appellant in *C.R. Patil case*, (2005) 11 SCC 119 — Compliance with the hope expressed by the Supreme Court while granting temporary bail — *Appellant fully paying his debt to the claimant Bank under One-Time Settlement Scheme (OTS) and the Bank also furnishing certificate to this effect* — Lavad case *filed against appellant through Official Liquidator of the Bank also withdrawn — Respondent State also expressing no objection to the settlement between the parties — Appellant's properties ordered to be released — Title deeds and documents, if any, also directed to handed back to appellant* (Paras 11 and 13). *C.R. Patil* v. *State of Gujarat*, (2008) 12 SCC 741.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 3-10-2008]

[6483] — Ss. 437 and 439 — Grant of bail — Temporary bail — Considerations involved — Misappropriation/misuse of funds/loans from cooperative societies/banks — *SLPs pending against order of High Court declining to grant bail to petitioner-accused — Accused already having been granted temporary bail by Supreme Court on earlier occasion, term of which had come to an end — No violations of terms and conditions of earlier grant of bail — Petitioners also willing to pay misappropriated amounts, and requesting bail on ground that they would utilise opportunity to enter into meaningful negotiations with respondents, and to do all necessary acts to ensure repayment —*

(8) Temporary/Interim bail *(contd.)*

Held, in such circumstances retention of petitioners would be adverse to interest of the several investors/depositors of the bank, while their release on temporary bail is likely to be of benefit to them — Hence petitioners released on temporary bail and urged that they make a genuine effort to use their liberty to clear their debts — Constitution of India —Art. 136. C.R. Patil v. *State of Gujarat*, (2005) 11 SCC 119: AIR 2005 SC 3117: 2005 Cri LJ 3452.

Bench Strength 3. Coram: *R.C. Lahoti, C.J.* and *C.K. Thakker* and *P.K. Balasubramanyan*, JJ. [Date of decision: 22-7-2005]

[6484] — Ss. 437 and 439 — Grant of interim bail pending regular bail application — Scope — Interim bail pending disposal of bail application — Grant of — *Held, reputation of a person is his valuable asset, and is a facet of his right under Art. 21 — Ordinarily bail application is listed after few days from the date it is applied for since the court concerned gets an opportunity to look into case diary — But till then applicant has to remain in jail and his reputation gets tarnished irreparably even after he is released on bail — Hence, court concerned has discretionary power to grant interim bail pending his regular bail application, which is inherent in its power to grant bail — On facts directed that petitioners' application for interim bail to be considered on same day, provided such application is made — Constitution of India — Art. 21* (Paras 2 and 3). *Sukhwant Singh* v. *State of Punjab*, (2009) 7 SCC 559: (2009) 3 SCC (Cri) 487.

Bench Strength 2. Coram: *Markandey Katju* and *Deepak Verma*, JJ. [Date of decision: 18-5-2009]

Kamlendra Pratap Singh v. State of U.P., (2009) 4 SCC 437: (2009) 2 SCC (Cri) 330; Deepak Bajaj v. State of Maharashtra, (2008) 16 SCC 14, followed

[6485] — Ss. 437 and 439(2) — Grant of provisional bail by Magistrate despite rejection of two earlier bail applications by the High Court — *Held, not only contrary to settled principles of judicial propriety but also contrary to the statutory provision — But since at a later stage Magistrate himself cancelled the bail, no order on application for cancellation of bail need be passed — However, in facts and circumstances of the case, Chief Justice of High Court directed to take action against the said Magistrate on administrative side. Bimla Devi* v. *State of Bihar*, (1994) 2 SCC 8: 1994 SCC (Cri) 472: 1994 Cri LJ 638.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 20-1-1994]

Shahzad Hasan Khan v. Ishtiaq Hasan Khan, (1987) 2 SCC 684: 1987 SCC (Cri) 415, relied on

(9) Successive/repeated bail applications

[6486] — Ss. 437 & 439 — Bail application before High Court — Practice — Judge before whom successive bail applications to be placed — *Where earlier bail applications of the accused already rejected by a Judge of the High Court, subsequent application should also be placed before the same Judge*

The long-standing convention and judicial discipline also required that the respondent's subsequent bail application should have been placed before the same Judge who had passed earlier orders. This convention has its roots in principle. It prevents abuse of process of court inasmuch as an impression is not created that a litigant is shunting or selecting a court depending on whether the court is to his liking or not, and is encouraged to file successive applications without any new factor having cropped up. If successive bail applications on the same subject are permitted to be disposed of by different Judges there would be conflicting orders and a litigant would be pestering every Judge till he gets an order to his liking resulting in the credibility of the court and the confidence of the other side being put in issue and there would be wastage of court's time. Judicial discipline requires that such matters must be placed before the same Judge, if he is available for orders. Recalling of the earlier order in this case would rudely shake the confidence of the parties in the judicial process. *Shahzad Hasan Khan* v. *Ishtiaq Hasan Khan*, (1987) 2 SCC 684: 1987 SCC (Cri) 415: AIR 1987 SC 1613.

Bench Strength 2. Coram: *M.P. Thakkar* and *K.N. Singh*, JJ. [Date of decision: 28-4-1987]

[6487] — S. 437 — Bail — Grant of — Repeated bail applications — Permissibility — Raising of additional points — Consideration of — *Held, on facts, as several bail applications filed by appellant raising almost similar issues were rejected, no case for release on bail made out — However, present bail application is being dealt with as some additional points have been raised — Perusal of orders of trial court shows that defence was procrastinating in the matter and not permitting defence evidence to proceed to its conclusion — Hence, held, although appellant was fully justified in exercising his legal rights but it does not then behove him to say that trial was being unduly delayed — Moreover, appellant's medical papers also do not justify his release on bail even on medical grounds the more so as all facilities are being made available to him by jail authorities* (Paras 2, 8, 9, 10 and

11). *Rajesh Ranjan Yadav* v. *CBI*, (2008) 1 SCC 667: (2008) 1 SCC (Cri) 305: AIR 2008 SC 942: (2008) 63 AIC 192 (SC): 2008 Cri LJ 1033.

Bench Strength **2**. Coram: *S.B. Sinha* and **H.S. Bedi**, JJ. [Date of decision: 30-11-2007]

[6488] — S. 437 — Successive bail applications — Permissibility — *First bail application rejected — Second one is permissible only if it is under changed circumstances*

It is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances the second application would be deemed to be seeking review of the earlier judgment which is not permissible under criminal law. (Para 8)

Thus after rejecting the first application for bail, the impugned order of the High Court allowing the second application, having been passed in violation of the provisions of the Act by ignoring the mandatory requirements of Section 37 and the conditions governing the grant of bail under the Code of Criminal Procedure and is thus not sustainable. (Para 9). *State of M.P.* v. *Kajad*, (2001) 7 SCC 673: 2001 SCC (Cri) 1520: AIR 2001 SC 3317.

Bench Strength **2**. Coram: *M.B. Shah* and **R.P. Sethi**, JJ. [Date of decision: 6-9-2001]

Hari Singh Mann v. Harbhajan Singh Bajwa, (2001) 1 SCC 169: 2001 SCC (Cri) 113, relied on

[6489] — Ss. 437, 439, 300 and Chs. XXIX (Ss. 372 to 394) and XXX (Ss. 395 to 405) — Successive bail applications — When maintainable — Material change in fact or law — Findings of higher court or coordinate Bench — Binding effect of — Res judicata — Applicability — *Held, though principles of res judicata and principles analogous thereto are not applicable in criminal proceedings, still the courts are bound by doctrine of judicial discipline, having regard to the hierarchical system prevailing in the country — Findings of a higher court or coordinate Bench must receive serious consideration at hands of court entertaining a bail application at a later stage when same had been rejected earlier — Due weight to be given to grounds which weighed with former or higher court in rejecting bail application — Further held, ordinarily, issues which had been canvassed earlier would not be permitted to reagitated on the same grounds, as the same would lead to speculation and uncertainty in the administration of justice and may lead to forum hunting — Only exception is if there has been a material change in the fact situation or in law which requires the earlier view being interfered with or has rendered the earlier finding obsolete — This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application — Therefore, in view of guarantee conferred by Art. 21 of the Constitution, it is not open to the aggrieved person to make successive bail applications even on a ground already rejected by the courts earlier, including by the Apex Court of the country — On facts, first respondent making ninth bail application before High Court on ground (and contending the same on appeal before Supreme Court) that grounds (A) non-existence of prima facie case against him, and (B) lack of evidentiary value of a retracted confession of one of the key witnesses against him, had not been considered in the eight prior bail applications rejected either by High Court or Supreme Court — Held, from a perusal of one of the orders of the High Court and one of the Supreme Court, it is clear that said arguments of the respondent were negatived by both Courts — Therefore, counsel for respondent was in error in contending that the said arguments had not been considered previously — This ninth bail application, allowed by the High Court by the impugned order, was made only eleven days of the order of Supreme Court cancelling bail in respondent's eighth bail application — No fresh material, factual or legal had come into existence in the said eleven days, and nor was same pleaded by respondent before High Court — High Court in impugned order has reconsidered the very same two questions [(A) & (B) above] and by substituting its subjective satisfaction practically overruled findings of Supreme Court and High Court recorded in the earlier orders, without even discussing the findings and as if the case was being argued and considered by it for the first time — Approach of High Court to say the least, was irresponsible, contrary to the record and the law — Moreover,* Jayendra Saraswathi *case, (2005) 2 SCC 13 only distinguished the facts obtaining therein from the facts of this case, while referring to* Kalyan Chandra Sarkar *case, (2004) 7 SCC 528 (which denied bail to respondent in his 8th bail application), and did not overrule it — Therefore* Jayendra Saraswathi *case is of no assistance to the respondent-accused in this case — Hence allowing appeal, bail cancelled — Constitution of India, Arts. 144, 141 and 136 — CPC, 1908, S. 11*

The principles of res judicata, and such analogous principles, although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline, having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate Bench must receive serious consideration at the

(9) Successive/repeated bail applications *(contd.)*

hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be reagitated on the same grounds, as the same would lead to speculation and uncertainty in the administration of justice and may lead to forum hunting. The decisions given by a superior forum, undoubtedly, are binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. In such cases if the circumstances then prevailing require that such persons be released on bail, in spite of their earlier applications being rejected, the courts can do so. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, in view of the guarantee conferred on a person under Article 21 of the Constitution, it is not open to the aggrieved person to make successive bail applications even on a ground already rejected by the courts earlier, including the Apex Court of the country. (Paras 19, 18 and 20)

From the order of the High Court dated 5-11-2001 in Crl. Misc. No. 22243 of 2001 it is clear that that Court took into consideration the evidentiary value of the retracted confession and the existence of prima facie case. Therefore, counsel for the respondent was factually in error in contending that the High Court in any of the previous proceedings did not go into the said questions. Apart from the observations made by the High Court in the abovesaid petition from the judgment of the Supreme Court in *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2004) 7 SCC 528, it is clear that the Supreme Court negatived the argument of the respondent about the existence of a prima facie case. (Paras 25, 28 to 30)

The impugned order is pursuant to an application for grant of bail made by the respondent within 11 days of the order made by the Supreme Court cancelling bail in the respondent's 8th bail application. It is also an admitted fact that during these 11 days no fresh material, factual or legal, had come into existence nor has been pleaded by the respondent in the present application for bail before the High Court. A perusal of the impugned order clearly shows that the High Court proceeded to reconsider the very same two questions namely the existence of a prima facie case and the evidentiary value of retracted confession and by substituting its subjective satisfaction practically overruled the findings of the Supreme Court as well as that of the High Court recorded in the earlier orders, without even discussing these findings and as if the case was being argued and considered by the Court for the first time, even though the previous orders of the Supreme Court as well as that of the High Court were on record. The approach of the High Court in the impugned order to say the least was irresponsible, contrary to the records and law. (Paras 34 to 36)

While deciding the cases on facts, more so in criminal cases, the court should bear in mind that each case must rest on its own facts and the similarity of facts in one case cannot be used to bear in mind the conclusion of fact in another case. In the case of *Jayendra Saraswathi*, (2005) 2 SCC 13, the Supreme Court only distinguished the facts of that case from the facts of the present case in hand; and the question of overruling a judgment on facts does not arise unless, of course, the Court is sitting in appeal over the judgment sought to be distinguished. The Supreme Court in *Kalyan Chandra Sarkar case*, (2004) 7 SCC 528, decided the said case on the facts of that case only, so the question of the said case being overruled in another case does not arise. It is clear from the perusal of *Jayendra Saraswathi case* as well as *Kalyan Chandra Sarkar case* that both the cases have been decided by this Court on their individual facts only. It is also a well-established principle that while considering the ratio laid down in one case, the court will have to bear in mind that every judgment must be read as applicable to the particular facts proved or assumed to be true, since the generality of expressions which may be found therein are not intended to be expositions of the whole of the law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. A case is only an authority for what it actually decides, and not what logically follows from it. (Paras 42 and 41). *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2005) 2 SCC 42: 2005 SCC (Cri) 489: AIR 2005 SC 921: (2005) 27 AIC 717 (SC): (2005) 2 Guj LR 921: 2005 Cri LJ 944.

Bench Strength 3. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *P.K. Balasubramanyan*, JJ. [Date of decision: 18-1-2005]

Pandurang v. State of Hyderabad, (1955) 1 SCR 1083: 1955 Cri LJ 572; Quinn v. Leathem, 1901 AC 495: (1900-03) All ER Rep 1: 85 LT 289 (HL); State of Orissa v. Sudhansu Sekhar Misra, (1968) 2 SCR 154: AIR 1968 SC 647; Ambica Quarry Works v. State of Gujarat, (1987) 1 SCC 213, relied on

Jayendra Saraswathi Swamigal v. State of T.N., (2005) 2 SCC 13, clarified

[6490] — Ss. 437 and 439 — Successive bail applications — Ground being agitated in instant bail application (without there being any material change in fact or law) if rejected by Courts earlier — Discovery of — *Held, all the earlier orders rejecting bail need not be considered in this respect — It would be sufficient if any such findings can be found in any one of the earlier orders*

The first respondent, Pappu Yadav, was charged for offences punishable under Sections 302 read with 34, 307 read with 34, 120-B, 302/307 IPC and Section 27 of the Arms Act. The bail application before the High Court out of which this appeal arose was the ninth application in the series of applications filed by the respondent for grant of bail. His earlier applications were either rejected by the High Court or when allowed by the High Court, were set aside by the Supreme Court. Moreover, when his earlier applications were rejected by the High Court the appeals filed by the respondent were dismissed by the Supreme Court, confirming the refusal of the bail.

Barely 11 days after the order of the Supreme Court in *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2004) 7 SCC 528 i.e. on 23-3-2004, which set aside the bail granted by the High Court on the eighth bail application by the respondent, a fresh ninth bail application was filed by the respondent without there being any change in the factual situation, which came to be allowed by the High Court by the impugned order dated 21-9-2004.

Allowing the appeals and setting aside the ninth bail application of the respondent,

Prior to the impugned order, eight attempts made by the respondent-accused to seek bail have proved futile. The appellants have contended that in almost all the proceedings when the bail was refused the Court (the High Court and/or the Supreme Court) had considered the existence of prima facie case and had given a finding in this regard. But it is not necessary to go into all those orders; it will be sufficient if any such findings can be found in any one of those cases for the purpose of disposal of the two issues namely (*A*) the existence of the prima facie case against the accused, and (*B*) the evidentiary value of retracted confession. (Paras 24 and 23). *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2005) 2 SCC 42: 2005 SCC (Cri) 489: AIR 2005 SC 921: (2005) 27 AIC 717 (SC): (2005) 2 Guj LR 921: 2005 Cri LJ 944.

Bench Strength 3. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *P.K. Balasubramanyan*, JJ. [Date of decision: 18-1-2005]

[6491] — Ss. 437 and 439 — Successive bail applications rejected on merits by a common order — Two days later another Judge of High Court granting bail on ground on which earlier application rejected without substantial change in fact-situation — *Held, order not sustainable — Proper course was to place the application before same Judge who disposed of earlier application — Change in fact-situation — What amounts to — Power of Supreme Court to interfere with order granting bail — Constitution of India — Art. 136*

In the present case the successive bail applications were rejected on merits. Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in fact-situation. Change in fact-situation means a substantial change which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. Between two orders there was a gap of only two days and it is nobody's case that during these two days drastic changes had taken place necessitating the release of the respondent on bail. In such a situation the proper course was to direct that the matter be placed before the same Judge who disposed of the earlier applications. Such a practice or convention would prevent abuse of the process of court inasmuch as it will prevent an impression being created that a litigant is avoiding or selecting a court to secure an order to his liking. Such a practice would also discourage the filing of successive bail applications without change of circumstances. Such a practice if adopted would be conducive to judicial discipline and would also save the court's time as judge familiar with the facts would be able to dispose of the subsequent application with despatch. It will also result in consistency.

It is true that ordinarily the Supreme Court does not interfere with an order granting bail but in the facts of the present case judicial discipline will be sacrificed at the altar of judicial discretion if the court refuses to exercise jurisdiction under Art. 136 of the Constitution. *State of Maharashtra* v. *Buddhikota Subha Rao*, 1989 Supp (2) SCC 605: 1990 SCC (Cri) 126: AIR 1989 SC 2292: 1989 Cri LJ 2317.

Bench Strength 2. Coram: **A.M. Ahmadi** and *K.N. Saikia*, JJ. [Date of decision: 29-9-1989]

Shahzad Hasan Khan v. Ishtiaq Hasan Khan, (1987) 2 SCC 684, relied on

[6492] — Ss. 437 and 439 — Bail — Cancellation of — Considerations for — While first bail application of appellant rejected, second granted just after 19 days — *High Court cancelling bail on the*

(9) Successive/repeated bail applications *(contd.)*

ground that when first bail application was rejected on valid grounds, just 19 days after its rejection, appellant had no ground to urge for bail as there was no change in circumstances — Also, whatever grounds were urged in the second bail application, could have been stated in the first bail application and reasons given for grant of bail by the court below in second bail application were in utter violation of settled principles of judicial propriety — Held on facts, as sessions case is pending trial against appellant, directions given to the trial court to complete it within a period of 3 months and, if for any reason, except non-cooperation of accused, trial is delayed beyond that, appellant would be at liberty to move the court below for bail and without being influenced by observations made by High Court in the impugned order, the same would be considered by it on merits and appropriate order shall be passed — Penal Code, 1860 — Ss. 302, 307, 395 and 120-B (Paras 2 and 6). *Akhilesh Kumar Singh* v. *State of U.P.*, (2008) 4 SCC 449: (2008) 2 SCC (Cri) 428: AIR 2008 SC 1680: (2008) 3 All LJ 604: (2008) 64 AIC (SC).

Bench Strength 3. Coram: **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *D.K. Jain*, JJ. [Date of decision: 27-2-2008]

[6493] — Ss. 437 and 439(2) — Successive bail applications — Grant of provisional bail by Magistrate despite rejection of two earlier bail applications by the High Court — *Held, not only contrary to settled principles of judicial propriety but also contrary to the statutory provision — But since at a later stage Magistrate himself cancelled the bail, no order on application for cancellation of bail need be passed — However, in facts and circumstances of the case, Chief Justice of High Court directed to take action against the said Magistrate on administrative side. Bimla Devi* v. *State of Bihar*, (1994) 2 SCC 8: 1994 SCC (Cri) 472: 1994 Cri LJ 638.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **Faizan Uddin**, JJ. [Date of decision: 20-1-1994]

Shahzad Hasan Khan v. Ishtiaq Hasan Khan, (1987) 2 SCC 684: 1987 SCC (Cri) 415, relied on

[6494] — Ss. 437 and 439 — Grant of bail — Bihar Fodder Scam — Special Court refusing bail — Appellants, former Chief Ministers of Bihar, challenging by SLP, the Special Court's order without seeking remedy from High Court — *They were accused in a number of cases connected with Bihar Fodder Scam conspiracy — Bail already granted by Supreme Court in one of the cases on certain conditions and the appellants continuing to abide by those conditions — Appellants already having undergone pre-trial detention (including such detention in other connected cases) for 9 months — Moreover, in an earlier SLP against an order of High Court in respect of some cases including the present one, Supreme Court had stayed the arrest of the appellants till the disposal of SLP — Bail application was also filed along with that SLP but was dismissed after holding that the cases stood transferred to Jharkhand State pursuant to operation of Bihar States Reorganisation Act — In these peculiar circumstances and in view of the interconnection of the case with the facts of the case in which Supreme Court had earlier granted bail to the appellants, the present SLP entertained by Supreme Court — Since various other persons accused in Bihar Fodder Scam who had remained in jail for about six months were already granted bail, the appellants herein also granted bail by Supreme Court subject to certain conditions — Constitution of India — Art. 136 — Penal Code, 1860, S. 120-A — Prevention of Corruption Act, 1988, S. 13* (Paras 6, 7 and 9). *Laloo Prasad* v. *State of Jharkhand*, (2002) 9 SCC 372.

Bench Strength 2. Coram: *K.T. Thomas* and *S.N. Phukan*, JJ. [Date of decision: 14-12-2001]

[6495] — Ss. 437(1), (4) & (5) and 439(1) & (2) — Grant of bail after once refusing it — Duty of court to record reasons and to take note of events subsequent to the incident — *On facts, grant found unjustified — Hence, bail cancelled — Voter obstructed from voting at election for the post of Pradhan, Gram Panchayat and that leading to scuffles during polling process — A person trying to rescue the voter, killed on the spot — FIR lodged under S. 302 IPC and the accused persons arrested — Bail refused by trial court, High Court and again by Sessions Court — Accused persons again moving the High Court for grant of bail — Witnesses were allegedly threatened and assaulted and therefore a second FIR was registered under Ss. 323 and 504 IPC — High Court, however, granting the bail and rejecting the application for cancellation thereof — After completing the investigation, police filing charge-sheet but the accused, who were on bail, not appearing before the Magistrate till he issued bailable warrants against them and thus committal getting delayed — In the said circumstances, held, High Court erred in granting bail — It ought to have explicitly stated the reasons of sudden departure in the order of grant as against rejection just about a month ago — The subsequent FIR also ought to have been taken note of — Spending of one year in jail, held, was not a relevant consideration for grant of bail — More so, when the offence charged was that of murder punishable with death or life imprisonment — Total circumstances of the case, held, warranted cancellation of the bail — Penal Code, 1860, Ss. 302, 323 and 504*

The appellant's brother, *A*, was a candidate contesting the election for the post of Pradhan in a Gram Panchayat. During the polling process on 23-6-2000 booth-capturing took place several times. The informant was prevented from casting his vote and that resulted in scuffles. On hearing the cries of the informant, *A* rushed to rescue him but, was himself for the reason of his interference, killed. FIR was lodged, inter alia, under Section 302 IPC and the private respondents herein were, consequently, arrested. Their bail applications were rejected by the trial court and High Court and again by Sessions Court. Thereafter, they again moved the High Court. Between 4-12-2000 and 6-12-2000 the witnesses in the matter were allegedly threatened and assaulted for which an FIR under Sections 323 and 504 IPC was registered by the police on 6-12-2000. After investigation charge-sheet was filed before the Chief Judicial Magistrate. The said co-accused, who had been granted bail, were not attending Court of the Magistrate and appeared only after issuance of bailable warrants against them. On 3-5-2001 the High Court granted bail to both the accused persons. The High Court rejected the application for cancellation of the bail and, therefore, the instant appeal was filed before the Supreme Court

Allowing the appeals,

Held:

Grant of bail though is a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter. (Para 3)

Certain other relevant considerations, which are only illustrative and not exhaustive, are as follows:

(*a*) not only the nature of accusations but the severity of punishment in case of conviction and the nature of the supporting evidence,

(*b*) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant,

(*c*) prima facie satisfaction of the court in support of the charge, and

(*d*) frivolity and genuineness of the prosecution, and it is only the element of genuineness that has to be considered in the matter of grant of bail, and in the event of some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail. (Para 4)

Although the availability of overwhelming circumstances is necessary for an order as regards the cancellation of a bail order, the basic criterion, however, is interference or even an attempt to interfere with the due course of administration of justice and/or any abuse of the indulgence/privilege granted to the accused. The incident occurred at the time when the election was going on and the murder was said to have been committed in broad daylight by reason of interference of the deceased when the informant was prohibited from casting his vote. The situation is rather grave and having regard to the same, the High Court on 29-8-2000 refused the application for bail. (Para 8)

Undoubtedly, considerations applicable to the grant of bail and considerations for cancellation of such an order of bail are independent and do not overlap each other, but in the event of non-consideration of considerations relevant for the purpose of grant of bail and in the event an earlier order of rejection available on the records, it is a duty incumbent on the High Court to explicitly state the reasons as to why the sudden departure in the order of grant as against the rejection just about a month ago. The High Court has not recorded any such reason. The subsequent FIR was on record containing charges under Sections 323 and 504 IPC in which the charge-sheet has already been issued — the court ought to take note of the facts on record rather than ignore them. In any event, the discretion to be used shall always have to be strictly in accordance with law and not dehors the same. The consideration of the period of one year spent in jail cannot be a relevant consideration in the matter of grant of bail, more so by reason of the fact that the offence charged is that of murder under Section 302 IPC having the punishment of death or life imprisonment. (Para 9)

The High Court has committed a manifest error in the matter of grant of bail when public tranquillity was disturbed on the election day and when there was an obstruction to the exercise of a right guaranteed under the Constitution and when there was an existence of crime against the society at large. Irrespective of different factors to be taken note of in regard to the cancellation of the grant of bail, interest of justice seems to be overwhelmingly in favour of the appellant herein in the matter of cancellation of the bail. His elder brother had been

(9) Successive/repeated bail applications *(contd.)*

brutally murdered and the proceeding was pending before the Sessions Judge. It is during the period when the accused persons were enlarged on bail that another FIR was recorded and the charge-sheet having been filed, the Court ought to have taken a serious note of these factual details. Tampering with the evidence and threatening of the witnesses are two basic grounds for cancellation of bail — both these two factors stand alleged and by reason of subsequent filing of the charge-sheet therein, there should have been some mention of it in the order for grant of bail. The factum of the second charge-sheet has been omitted in its entirety. (Para 10)

The order of the High Court stands set aside and quashed. The bail order as granted by the High Court stands cancelled and the private respondents be rearrested forthwith. (Para 11). *Ram Govind Upadhyay* v. *Sudarshan Singh*, (2002) 3 SCC 598: 2002 SCC (Cri) 688: AIR 2002 SC 1475.

Bench Strength 2. Coram: **U.C. Banerjee** and *Y.K. Sabharwal*, JJ. [Date of decision: 18-3-2002]

Shahzad Hasan Khan v. Ishtiaq Hasan Khan, (1987) 2 SCC 684: 1987 SCC (Cri) 415; Prahlad Singh Bhati v. NCT of Delhi, (2001) 4 SCC 280: 2001 SCC (Cri) 674, relied on

[6496] — Ss. 437(1) & 439(2) and S. 300 — Bail — Repeated bail applications — Order denying bail unsuccessfully challenged before appellate forum (even the Supreme Court) — *However, another Single Judge of the same Court allowing respondent's fresh bail application without adverting to any of the reasons recorded by the Single Judge who declined the bail application — Held, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail — Further held, though res judicata is not applicable to bail applications but repeated filing of such applications without there being any change of circumstances would lead to bad precedents* (Paras 9 and 8). *State of T.N.* v. *S.A. Raja*, (2005) 8 SCC 380: AIR 2005 SC 4462.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *P.P. Naolekar*, JJ. [Date of decision: 26-10-2005]

(10) Conditions for bail

[6497] — S. 437 — Bail — Conditions imposed, if warranted — *Bail granted to appellant with the condition that he shall continue to deposit Rs 1 lakh p.m. by way of repayment after release on bail on the assumption that offence had been committed by him, held, onerous and unwarranted* (Para 3). *Shyam Singh* v. *State*, (2006) 9 SCC 169: (2006) 2 SCC (Cri) 613.

Bench Strength 2. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 11-7-2005]

[6498] — S. 437 — Bail — Unconditional bail — Implicit conditions — *Implicit in every bail is the condition that accused will not tamper with evidence* (Para 7). *Rizwan Akbar Hussain Syyed* v. *Mehmood Hussain*, (2007) 10 SCC 368: (2007) 3 SCC (Cri) 598: (2007) 56 AIC 248 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 18-5-2007]

[6499] — S. 437 — Conditions for bail imposed by Supreme Court — Petitioners not to leave the country — *Condition modified as petitioners not to leave the country unless permitted by the Supreme Court "on such conditions as the Court may impose in that event" — This would imply that each time when the petitioners intend to go abroad, they would have to seek permission of the Supreme Court — Petitioners seeking Court's permission to go abroad on grounds of their work in propagation of Hindu religion and need to take medical advice and treatment abroad — Held, there was no compulsive need for the petitioners to go abroad, hence permission cannot be granted. Chandraswami* v. *CBI*, (1998) 9 SCC 380: 1998 SCC (Cri) 1040: AIR 1998 SC 2679.

Bench Strength 3. Coram: *M.M. Punchi, C.J.* and *S.C. Agrawal* and *B.N. Kirpal*, JJ. [Date of decision: 29-1-1998]

[6500] — Ss. 437, 441(3) and 209(b) — Where case is triable by Sessions Court, Magistrate granting the bail may require the accused to execute a bond for appearance not only before him but also before the Sessions Court

It would avoid hardship to an accused if the Magistrate, while releasing the accused on bail, requires execution of a bond with or without surety,as the case may be, binding the accused not only to appear as and when required before him but also to appear when called upon in the Court of Session. Therefore, in cases triable by Sessions Court the practice followed by the Magistrates of granting bail only during the pendency of the enquiry before them must be discontinued, for, the result of such bail is that when the case is committed to the Sessions Court, the accused is rearrested and brought before that court where he has to apply once again for fresh bail. This causes considerable inconvenience to the accused without any corresponding advantage so far as the administration of criminal justice is concerned. *Free Legal Aid Committee* v. *State of Bihar*, (1982) 3 SCC 378: 1983 SCC (Cri) 53: AIR 1982 SC 1463: 1982 Cri LJ 1943.

Bench Strength 2. Coram: *P.N. Bhagwati* and *A.N. Sen*, JJ. [Date of decision: 10-9-1981]

[6501] — Ss. 437 and 439 — Bail — Imposition of onerous conditions, while granting of — Propriety thereof — *Bail granted with direction to deposit Rs 2,50,000, which was alleged to be the amount misappropriated by the accused and furnishing surety bond of Rs 50,000 — Held, direction to deposit Rs 2,50,000 was not warranted and hence while deleting the same, grant of bail confirmed — Constitution of India — Art. 136* (Paras 3 and 4). *Sk. Ayub* v. *State of M.P.*, (2004) 13 SCC 457.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 27-9-2004]

[6502] — Ss. 437 and 439 — Bail — Grant of, with stringent conditions — Interference with by Supreme Court — When warranted — Financial scam involving huge amount — *High Court by impugned judgment granting bail to Respondent 1 accused of committing fraud of an unprecedented scale to tune of crores of rupees, imposing stringent conditions taking into consideration readiness and willingness on his part to make payment of Rs 2384 lakhs in instalments — Submission by appellant Bank that High Court erred in doing so insofar as it failed to take into consideration that total amount involved in the scam was huge viz. to tune of Rs 107 crores, and that in any event keeping in view offer made by appellant, he should at least be directed to pay Rs 41 crores — Held, power of the superior courts to enlarge an accused on bail is not in dispute — High Court while enlarging the first respondent on bail, taking into consideration the materials on record, had imposed stringent conditions which had not been contravened by him — Even if some contraventions had been made, the same could be brought to the notice of High Court — Further, submission that he may be directed to pay at least a sum of Rs 41 crores cannot be accepted because subject-matter of FIR was only Rs 8 crores — Besides, it is well settled that courts while granting bail cannot impose unreasonable conditions — Thus, in absence of any material brought on record that Respondent 1 had not complied with conditions imposed on him by High Court, impugned judgment cannot be interfered with — Penal Code, 1860, Ss. 406, 409, 420, 467, 471 & 120-B* (Paras 14 to 16). *M.M. Cooperative Bank Ltd.* v. *J.P. Bhimani*, (2009) 8 SCC 727: (2009) 3 SCC (Cri) 937.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 31-7-2009]

Fida Hussain Bohra v. State of Maharashtra, (2009) 5 SCC 150: (2009) 2 SCC (Cri) 624; Ramathal v. Inspector of Police, (2009) 12 SCC 721; I. Glaskasden Grace v. Inspector of Police, (2009) 12 SCC 769, relied on

[6503] — S. 437(3) — Duty of court when bail is granted — Conditions for grant of bail — Held, the court has to ensure that the accused would not abscond and/or that he would not tamper with the evidence or witnesses — *On facts, High Court erred in not applying its mind to the said aspect at all and not making any provisions in respect thereof — Prevention of Terrorism Act, 2002, Ss. 49(7) and 4* (Para 14). *State of T.N.* v. *R.R. Gopal*, (2003) 12 SCC 237.

Bench Strength **2**. Coram: **S.N. Variava** and *H.K. Sema*, JJ. [Date of decision: 26-9-2003]

(11) Cancellation of bail

See also under Section 439

See also Section 437, '(12) Cancellation of bail after charge-sheet filed: Ss. 437(5), 439(2) and S. 167(2)', and

'(13) Cancellation of bail and appeal against order granting bail', below

[6504] — Ss. 437, 438 and 439 — Rejection of bail and cancellation of — Distinction between — *Held, rejection of bail in a non-bailable case at the initial stage and cancellation of bail are required to be considered or dealt with on different basis — Very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail already granted*

It may be true that some of the circumstances, noticed by the High Court in the impugned order viz. no reference to lantern in the spot panchnama or the necessity of cleaning the lantern at 4 p.m. and/or availability of an inverter in the house, etc., could have persuaded the Sessions Judge to take a different view but it cannot be said that the factors which weighed with the Sessions Judge in granting bail were irrelevant to the issue before him, rendering the order as perverse. Moreover, merely because the High Court had a different view on same set of material which had been taken into consideration by the Sessions Judge, in our view, was not a valid ground to label the order passed by the Sessions Judge as perverse. It also appears that the High Court has overlooked the distinction of factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted, which were missing in the instant case. Nothing was brought on record from which it could be inferred that the appellants had not cooperated in the investigations

(11) Cancellation of bail *(contd.)*

or had, in any manner, abused the concession of bail granted to them. (Paras 29 and 30). *Savitri Agarwal* v. *State of Maharashtra*, (2009) 8 SCC 325: (2009) 3 SCC (Cri) 683: (2009) 80 AIC 116 (SC).

Bench Strength **2**. Coram: **D.K. Jain** and *R.M. Lodha*, JJ. [Date of decision: 10-7-2009]

Dolat Ram v. State of Haryana, (1995) 1 SCC 349, relied on

[6505] — Ss. 437 and 439 — Bail — Cancellation of — Reasons for — Necessity — *High Court by impugned order cancelling bail granted to appellants without indicating any reason — Impugned order set aside and matter remitted to High Court for consideration afresh* (Paras 4 to 6 and 13). *Manjit Prakash* v. *Shobha Devi*, (2009) 13 SCC 785: AIR 2008 SC 3032: (2008) 68 AIC 107 (SC): 2008 Cri LJ 3908.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *H.S. Bedi*, JJ. [Date of decision: 18-7-2008]

[6506] — Ss. 437 and 439 — Cancellation of bail when not warranted — Even when bail order suffering from infirmities — Matters to be considered — *Direction for expeditious disposal of trial given instead — Submission that the complainant and independent eyewitnesses were being subjected to threats by Respondent 2 and his supporters and there was hardly any progress in the case which was being tried by Fast Track Court — Relevance — Order-sheet revealing that liberal adjournments had been granted to accused — Trial court directed to take up the matter on continuous basis to be completed within three months — However, considering the fact that accused was on bail for a considerable time, held, it would not be appropriate to cancel the bail, though there was substance in plea that the impugned order granting bail suffered from various infirmities* (Paras 2 and 8 to 11). *Ashok Kumar* v. *State of U.P.*, (2009) 11 SCC 392: (2009) 3 SCC (Cri) 1393: AIR 2009 SC 1921: (2009) 75 AIC 120 (SC): (2009) 3 All LJ 252.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 3-2-2009]

[6507] — Ss. 437 and 439 — Grant of bail by High Court without considering nature and gravity of offence and without recording any reasons — Reversed — *Substantial allegation of serious offence against all five respondent-accused, who had criminal background, of causing death by causing injuries with a weapon like knife to the deceased — Relevance — Held, normally, Supreme Court does not interfere in bail matters and orders of High Court are generally accepted to be final — But, order of High Court in present case is against the established principles of law and also against interest of justice, which has serious impact on society — In such cases if accused are let loose before trial they would get an opportunity to tamper with the evidence by means of their muscle/money power — It is equally true that personal liberty of citizens should not be interfered with without following the procedure of law but if such persons are released on the mere asking, it would affect the administration of criminal justice — Hence, grant of bail, reversed* (Paras 3, 4, 6 and 7). *Suresh Kumar Somabhai Rana* v. *Ashok Kumar Haraklal Mittal*, (2009) 14 SCC 292: (2003) 1 Guj LR 686.

Bench Strength **2**. Coram: *M.B. Shah* and *B.N. Agrawal*, JJ. [Date of decision: 1-2-2002]

Shahzad Hasan Khan v. Ishtiaq Hasan Khan, (1987) 2 SCC 684: 1987 SCC (Cri) 415, relied on

[6508] — Ss. 437 and 439 — Cancellation of bail if warranted — Bombay Bomb Blast case — Charges properly framed — *Accused, an Additional Collector of Customs, alleged to be an associate of the prime accused in bomb blast case — Allegation that he facilitated the smuggling of arms, ammunition, RDX, etc. by not doing Nakabandi at the prearranged point but at some distance therefrom leaving an escape route for the smugglers to carry the goods — Held, alleged act would amount to abetment — Therefore, charges were rightly framed against him — But in the circumstances of the case no case for cancellation of bail made out — TADA, 1987, Ss. 3(3) and 2(1)(a)(iii) — Penal Code, 1860 — S. 120-B. State of Maharashtra* v. *Som Nath Thapa*, (1996) 4 SCC 659: 1996 SCC (Cri) 820: AIR 1996 SC 1744.

Bench Strength **3**. Coram: *A.M. Ahmadi, C.J.* and **B.L. Hansaria** and *S.C. Sen*, JJ. [Date of decision: 12-4-1996]

[6509] — Ss. 437 and 439 — Bail — Cancellation of — Considerations for — While first bail application of appellant rejected, second granted just after 19 days — *High Court cancelling bail on the ground that when first bail application was rejected on valid grounds, just 19 days after its rejection, appellant had no ground to urge for bail as there was no change in circumstances — Also, whatever grounds were urged in the second bail application, could have been stated in the first bail application and reasons given for grant of bail by the court below in second bail application were in utter violation of settled principles of judicial propriety — Held on facts, as sessions case is pending trial against appellant, directions given to the trial court to complete it within a period of 3 months and, if for any reason, except non-cooperation of accused, trial is delayed* *beyond that, appellant would be at liberty to move the court below for bail and without being influenced by observations made by High Court in the impugned order, the same would be considered by it on merits and appropriate order shall be passed— Penal Code, 1860 — Ss. 302, 307, 395 and 120-B* (Paras 2 and 6). *Akhilesh Kumar Singh* v. *State of U.P.*, (2008) 4 SCC 449: (2008) 2 SCC (Cri) 428: AIR 2008 SC 1680: (2008) 3 All LJ 604: (2008) 64 AIC (SC).

Bench Strength 3. Coram: **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *D.K. Jain*, JJ. [Date of decision: 27-2-2008]

[6510] — Ss. 437 and 439 — Cancellation of bail for delaying/protracting trial — Delaying/protracting trial on part of accused — What amounts to — Interference in bail matters — Scope — Fodder Scam cases — *Held (per majority), the liberty of an accused cannot be taken away except in accordance with the established procedure of law under the Constitution, criminal procedure and other cognate statutes — Prayer for cancellation of bail at instance of the petitioners in the present case cannot at all be countenanced since documents on record show that Respondents 4 and 5 (the accused) have never interfered with the conduct of trial or the income tax proceedings, nor does the record show that they were deliberately protracting the trial to take unnecessary adjournments — Constitution of India — Arts. 32 and 21*

Per Balakrishnan, J.

The petitioners could not prove anything that Respondents 4 and 5 have interfered in the course of justice and they misused the privilege of bail extended to them. The petitioners have also no case that they are likely to flee from justice. The petitioners have not made out any case for cancellation of their bail. (Para 28)

Per Lakshmanan, J.

The liberty of an accused cannot be taken away except in accordance with the established procedure of law under the Constitution, criminal procedure and other cognate statutes. The prayer for cancellation of the bail at the instance of the petitioner cannot at all be countenanced. The submission that Respondents 4 and 5 are interfering with the cause of justice so far as conduct of the trial and IT proceedings are concerned and, therefore, the bail granted to them is liable to be cancelled has no merits in view of the various documents and annexures, etc. to the effect that Respondents 4 and 5 have never interfered with the conduct of trial or with the IT proceedings. It is stated that Respondents 4 and 5 are deliberately protracting the trial by taking unnecessary adjournments. Then that itself would be a ground for cancellation of bail. This argument has no substance. It is a fact that the matter was adjourned at the instance of the defence on various occasions. The court itself has adjourned the matter for various reasons. It cannot therefore be held that the delay is solely attributable to Respondents 4 and 5 which cannot be a ground for cancellation of bail when it is not proved that any of the bail conditions has been violated. The delay is attributable to both the prosecution and the defence and also to the Court. Therefore, Respondents 4 and 5 cannot be held responsible for the delay. (Paras 58 and 45). *Rajiv Ranjan Singh 'Lalan' (VIII)* v. *Union of India*, (2006) 6 SCC 613: (2006) 3 SCC (Cri) 125.

Bench Strength 3. Coram: **K.G. Balakrishnan**[1], **Dr. Ar. Lakshmanan**[2] and **S.H. Kapadia**[3], JJ. [Date of decision: 21-8-2006]

[6511] — Ss. 437 and 439 — Bail — Cancellation of — 41 kg heroin recovered from a room in possession of respondent-accused under a leave and licence agreement — *High Court scrutinising the whole matter while passing the impugned order as if the trial itself had been held and expressing the findings in somewhat certain terms — Held, degree of certainty is not to be considered at this stage — Considering the facts and circumstances, and the huge recovery, held, High Court had not exercised its discretion prudently and in accordance with law — Hence, bail granted to the respondent-accused cancelled — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 8(c), 21, 25, 27, 27-A and 29* (Paras 2 to 4). *Narcotics Control Bureau* v. *Ghashiram Kanhyalal Solanki*, (2007) 15 SCC 655.

Bench Strength 2. Coram: *Brijesh Kumar* and *H.K. Sema*, JJ. [Date of decision: 17-1-2003]

(12) Cancellation of bail after charge-sheet filed: Ss. 437(5), 439(2) and S. 167(2)

See also Section 437, '(11) Cancellation of bail', above

[6512] — Ss. 437(5), (1) & (2) and 167(2) — Cancellation of bail — Release on bail under S. 167(2) should be considered as one under S. 437(1) or (2) — *Held, neither mere filing of challan by police subsequent to such release nor dismissal on merits of bail application before release are sufficient grounds for cancellation of the bail*

(12) Cancellation of bail after charge-sheet filed: Ss. 437(5), 439(2) and S. 167(2) *(contd.)*

The power of the Court to cancel bail if it considers it necessary is preserved in cases where a person has been released on bail under S. 437(1) or (2). The fact that before an order was passed under S. 167(2) the bail petitions of the accused were dismissed on merits is not relevant for the purpose of taking action under S. 437(5). As the provisions of Ss. 437(1), (2) and (5) are applicable to a person who has been released under S. 167(2) the mere fact that subsequent to his release a challan has been filed is not sufficient to commit him to custody. The Court before directing the arrest of the accused and committing them to custody should consider if it is necessary to do so under S. 437(5). This may be done by the Court coming to the conclusion that after the challan had been filed there are sufficient grounds that the accused had committed a non-bailable offence and that it is necessary that he should be arrested and committed to custody. It may also order arrest and committal to custody on other grounds as tampering of the evidence or that his being at large is not in the interests of justice. But it is necessary that the Court should proceed on the basis that he has been deemed to have been released under Ss. 437(1) and (2).

In this case the cancellation of the bail on the grounds that subsequently a charge-sheet had been filed and that before the appellants were directed to be released under S. 167(2) their bail petitions were dismissed on merits by the Sessions Court was not justified and therefore, the appellants were ordered to be set at liberty. *Bashir* v. *State of Haryana*, (1977) 4 SCC 410: 1977 SCC (Cri) 608: AIR 1978 SC 55: 1978 Cri LJ 173.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and **P.S. Kailasam**, JJ. [Date of decision: 3-10-1977]

[6513] — Ss. 437(5) and 439(2) — Bail — Cancellation of — Grounds — *Accused persons in criminal proceedings arising out of FIRs relating to transactions in respect of companies floated by them, stating before Supreme Court that huge amounts in their credit were lying with the Stock Exchanges specified, which could be sold for payment to the depositors — They further stating that the said Stock Exchanges had admitted that in their written statements — Misled by this statement, Supreme Court directing the said Stock Exchanges to deposit the said amounts before the Company Judge and subject to certain conditions directing the accused to be released on bail — Moreover, it issuing several directions under Art. 142 with a view to do complete justice to all the parties — However, subsequently, the Stock Exchanges approaching Supreme Court for clarification and/or recalling of that order on the ground that no amount was lying with them in the credit of the accused persons and that, on the other hand, the Stock Exchanges were themselves entitled to realise huge amounts from the accused persons — Accused persons in reply seeking direction for scrutiny of the accounts by a chartered accountant — Such plea of the accused rejected as during consideration of a bail application in a criminal case Supreme Court could not determine a dispute wherefor statutory forums had been created — Since in the absence of availability of a substantial sum with the Stock Exchanges in the credit of the accused persons release of the accused person would not subserve the purpose thereof, the order of grant of bail recalled — Constitution of India — Arts. 137, 136 and 142*

The appellants herein floated various groups of companies. Two criminal cases were initiated against them arising out of various FIRs relating to transactions in respect of two of the said companies. The appellants' bail applications in the said proceedings were rejected. Therefore, the appellants approached the Supreme Court and pleaded that the assets held and possessed by them be sold for payment to the depositors of the companies. They averred that the amounts of Rs 17 crores and Rs 13 crores were lying with the Bombay Stock Exchange and the National Stock Exchange respectively. They added that the amounts lying with the Stock Exchanges stood admitted in their written statements filed in Civil Suit No. 312 of 2002. Consequently, in *Arvind Mohan Johri* v. *State of U.P.*, (2005) 4 SCC 640, the Supreme Court directed the National Stock Exchange and the Bombay Stock Exchange to deposit before the Company Judge the money lying with them in the credit of the appellants. The Supreme Court further directed the appellants to be released on bail. The present applications were filed by the Bombay Stock Exchange and the National Stock Exchange for clarification and/or recalling of that order. Both the said Stock Exchanges contended that the said two contentions of the appellants were not correct. That, in fact, the Stock Exchanges were entitled to realise a huge amount from the appellants. The appellants in their counter-affidavits denied the said contentions of the two Stock Exchanges and pleaded for scrutiny of the accounts by a chartered accountant. They further pleaded for determination of the dispute between the parties.

In such circumstances,

Held :

The order granting bail to the appellants was passed relying on or on the basis of the representation made by them that all endeavours would be made to disburse to the claimants/realise as much amount as possible from the personal and other assets of the appellants by putting them on sale or otherwise. The appellant-accused were directed to be released on the conditions mentioned in the said order and several directions were issued in exercise of the jurisdiction under Article 142 to do complete justice to all the parties. While considering an application for grant of bail in a criminal case, the Supreme Court ordinarily cannot determine a dispute between the parties wherefor forums have been created under the statutes. (Paras 8 and 9)

Moreover, recoveries have been directed to be made by the Stock Exchanges in exercise of their power under the bye-laws governing the parties and several arbitration awards are said to have been passed in favour of the clients/investors and the members of the Stock Exchanges. The parties, therefore, must get their disputes determined in an appropriate forum. (Para 10)

The fact, however, remains that no amount as such is admittedly payable by the applicant Stock Exchanges. In their respective applications, the applicants had stated that they, in fact, would be entitled to realise a huge amount from the appellants. Therefore, it is held that the appellants misled the Supreme Court in passing the order in *Arvind Mohan Johri* v. *State of U.P.*, (2005) 4 SCC 640 by contending that a sum of Rs 17 crores and Rs 13 crores was admittedly lying with the Bombay Stock Exchange and the National Stock Exchange in the shape of bank guarantee money and securities margin money, etc. (Para 11)

Although the prayers made by the applicants herein in their applications were confined to the directions issued against them it is found having regard to the peculiar facts and circumstances of the present case, that if a substantial sum lying with them is not available for disbursement to the claimants, the very purpose for enlarging the appellants herein on bail would not be subserved and therefore the order dated 3-11-2004 passed in *Arvind Mohan Johri case*, (2005) 4 SCC 640 granting bail to the appellants herein should be recalled. Accordingly, the appellants are directed to surrender before the trial court within one week whereupon they may be taken into custody. (Para 12). *Arvind Mohan Johri* v. *State of U.P.*, (2005) 4 SCC 634: 2005 SCC (Cri) 1170: (2005) 127 Comp Cas 389.

Bench Strength **3**. Coram: *N. Santosh Hegde, D.M. Dharmadhikari* and *S.B. Sinha*, JJ. [Date of decision: 4-5-2005]

Clarified in Arvind Mohan Johri v. State of U.P., (2005) 5 SCC 131

[6514] — Ss. 437(5) and 439(2) — Cancellation of bail — Object of — Delay in cancellation — Effect of — *If there is delay, object of cancellation of bail practically loses all its purpose and significance to the greatest prejudice and the interest of the prosecution*

The object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime and if there is delay in such a case the underlying object of cancellation of bail practically loses all its purpose and significance to the greatest prejudice and the interest of the prosecution. It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation. (Para 13). *Panchanan Mishra* v. *Digambar Mishra*, (2005) 3 SCC 143: 2005 SCC (Cri) 660: AIR 2005 SC 1299: 2005 Cri LJ 1721.

Bench Strength **2**. Coram: *Ashok Bhan* and **Dr. Ar. Lakshmanan**, JJ. [Date of decision: 17-1-2005]

[6515] — Ss. 437(5) and 439(2) — Grounds for cancellation of bail

Generally the grounds for cancellation of bail, broadly, are interference or attempt to interfere with the due course of administration of justice, or evasion or attempt to evade the course of justice, or abuse or the liberty granted to him. The due administration of the justice may be interfered with by intimidating or suborning witnesses, by interfering with investigation, by creating or causing disappearance of evidence etc. The course of justice may be evaded or attempted to be evaded by leaving the country or going underground or otherwise placing himself beyond the reach of the sureties. He may abuse the liberty granted to him by indulging in similar or other unlawful acts. Where bail has been granted under the proviso to S. 167(2) for the default of the prosecution in not completing the

(12) Cancellation of bail after charge-sheet filed: Ss. 437(5), 439(2) and S. 167(2) *(contd.)*

investigation in 60 days, after the defect is cured by the filing of a charge-sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed to non-bailable offence and that it is necessary to arrest him and commit him to custody. In the last mentioned case, one would expect very strong grounds indeed. *Raghubir Singh* v. *State of Bihar*, (1986) 4 SCC 481: 1986 SCC (Cri) 511: AIR 1987 SC 149.

Bench Strength 2. Coram: **O. Chinnappa Reddy** and *M.M. Dutt*, JJ. [Date of decision: 19-9-1986]

[6516] — Ss. 437(5), 439(2) and 167(2) proviso — Bail granted under proviso to S. 167(2) — Cancellation of bail after filing of charge-sheet — Factors to be considered — *Factum of dismissal of bail on earlier occasion not relevant — Cancellation different from refusal to grant bail — Cancellation involves review on merits of the decision granting bail*

Per Ahmadi, J.

Bail granted under S. 437(1) or (2) or S. 439(1) can be cancelled under Ss. 437(5) and 439(2) where (*i*) the accused misuses his liberty by indulging in similar criminal activity, (*ii*) interferes with the course of investigation (*iii*) attempts to tamper with evidence or witnesses, (*iv*) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (*v*) there is likelihood of his fleeing to another country, (*vii*) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (*vii*) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. Rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

When the Legislature made it obligatory that the accused shall be released on bail if the charge-sheet is not filed within the outer limit provided by proviso (*a*) to S. 167(2), it manifested concern for individual liberty notwithstanding the gravity of the allegation against the accused. The fact that the bail was earlier rejected or that it was secured by the thrust of proviso (*a*) to S. 167(2) then recedes in the background.

Per Ramaswamy, J.

Merits brought out in the charge-sheet and attending circumstances are relevant, as the bail was granted due to default of the investigating officer without court's adverting to the merits but during investigation some strong prima facie evidence and gravity and magnitude of the crime or the manner in which the crime was committed and other attending circumstances may be relevant as prima facie grounds to have a fresh look to cancel the bail. The grounds for cancellation of the bail in Chapter XXXIII are, dehors the merits in the matter, namely, necessity due to the conduct of the accused and abuse of liberty i.e. obstruction of the smooth investigation or suborning witnesses or attempting to tamper the evidence, threatening the witnesses with dire consequences or making or attempting to remove himself beyond the reach of the court to hamper the smooth trial, etc. are independent of the merits in the matter. Cancellation of the bail would be necessitated by the conduct of the accused himself after the release. The High Court or the Court of Sessions should consider the merits of the case.

Per Punchhi, J. (dissenting)

A compulsive bail order made by a court under S. 167(2) of the Code being one not on merit, when required to be cancelled after the filing of the challan, would not involve any review of a decision made on merit. Such bail is cancellable if the court has reason to entertain the belief that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. *Aslam Babalal Desai* v. *State of Maharashtra*, (1992) 4 SCC 272: 1992 SCC (Cri) 870: AIR 1993 SC 1.

Bench Strength 3. Coram: **A.M. Ahmadi**[1], **M.M. Punchhi**[2] and **K. Ramaswamy**[3], JJ. [Date of decision: 15-9-1992]

Raghubir Singh v. State of Bihar, (1986) 4 SCC 481: 1986 SCC (Cri) 511; State (Delhi Admn.) v. Sanjay Gandhi, (1978) 2 SCC 411: 1978 SCC (Cri) 223, relied on

*Rajnikant Jivanlal Patel v. NCB, New Delhi, (1989) 3 SCC 532: 1989 SCC (Cri) 612, **overruled***

[6517] — Ss. 437(5), 439(2) and 167(2) proviso (a) — Cancellation of bail granted under proviso (a) to S. 167(2) in case of serious offence — Discretion when exercised — *Default of prosecution in filing charge-sheet within prescribed period — Magistrate bound to pass order of bail and communicate the same to accused — However, decision being not on merits, accused has no special right to remain on bail because he has been enlarged under proviso (a) to S. 167(2) — Bail can be cancelled if accused is shown to have committed a serious offence and charge-sheet is filed — On facts, order* *of High Court cancelling bail does not call for any interference — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 21, 23 and 29*

The accused persons were arrested by officers of the Narcotic Control Bureau and sent to judicial custody. They were charge-sheeted under Ss. 21, 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Subsequent to the filing of charge-sheet the Enquiry Magistrate released them on bail on the ground that the prosecution had failed to submit the charge-sheet within ninety days as contemplated under proviso (a) to S. 167(2) of CrPC. The High Court after considering the material on record cancelled the bail order.

Held:

An order of bail granted under proviso (a) to S. 167 CrPC may be cancelled by the court if it comes to the conclusion that there are sufficient grounds that the accused has committed a non-bailable offence and that it is necessary that he should be arrested and committed to custody.

An order for release on bail under proviso (a) to S. 167(2) may appropriately be termed as an order-on-default. Indeed, it is a release on bail on the default of the prosecution in filing charge-sheet within the prescribed period. The right to bail under S. 167(2) proviso (a) thereto is absolute. It is a legislative command and not court's discretion. If the investigating agency fails to file charge-sheet before the expiry of 90/60 days, as the case may be, the accused in custody should be released on bail. But at that stage, merits of the case are not to be examined at all. In fact, the Magistrate has no power to remand a person beyond the stipulated period of 90/60 days. He must pass an order of bail and communicate the same to the accused to furnish the requisite bail bonds.

The accused cannot, therefore, claim any special right to remain on bail. If the investigation reveals that the accused has committed a serious offence and charge-sheet is filed, the bail granted under proviso (a) to S. 167(2) could be cancelled.

In the present case the offences alleged are of serious nature. Therefore, the discretion exercised by the High Court does not call for any interference. *Rajnikant Jivanlal* v. *Narcotic Control Bureau*, (1989) 3 SCC 532: 1989 SCC (Cri) 612: AIR 1990 SC 71.

Bench Strength **1**. Coram: **K. Jagannatha Shetty**, J. [Date of decision: 26-6-1989]

Overruled in Aslam Babalal Desai v. State of Maharashtra, (1992) 4 SCC 272: 1992 SCC (Cri) 870

(13) Cancellation of bail and appeal against order granting bail

See also Section 437, '(11) Cancellation of bail', above

[6518] — Ss. 437 and 439 — Application for cancellation of bail and appeal against order granting bail — Relevant factors to be taken into account while dealing with, distinguished

In an application for cancellation of bail, conduct subsequent to release on bail and the supervening circumstances alone are relevant. But in an appeal against grant of bail, all aspects that were relevant under Section 439 read with Section 437 CrPC, continue to be relevant. However, while considering and deciding the appeals against grant of bail, where the accused has been at large for a considerable time, the post-bail conduct and supervening circumstances will also have to be taken note of. But they are not the only factors to be considered as in the case of applications for cancellation of bail. (Para 17). *State of U.P.* v. *Amarmani Tripathi*, (2005) 8 SCC 21: 2005 SCC (Cri) 1960 (2): AIR 2005 SC 3490: (2005) 123 DLT 362: 2005 Cri LJ 4149.

Bench Strength **2**. Coram: **Ashok Bhan** and *R.V. Raveendran*, JJ. [Date of decision: 26-9-2005]

[6519] — Ss. 437, 439 and 397(3) — Cancellation of bail — When may the Sessions Court and when the High Court be approached for cancellation of bail, pointed out — Matters to be considered before cancelling bail — *Effect of S. 397(3)*

The question of cancellation of bail under S. 439(2) of the new Code is certainly different from admission to bail under S. 439(1). The approach is whether the order granting bail was vitiated by any serious infirmity for which it was right and proper for the High Court, in the interest of justice, to interfere. Ordinarily the High Court will not exercise its discretion to interfere with an order of bail granted by the Sessions Judge in favour of an accused.

Under S. 498(2) of the old Code, a person who had been admitted to bail by the High Court could be committed to custody only by the High Court. Similarly, if a person was admitted to bail by a Court of Session, it was only the Court of Session that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new Code under S. 439(2). Under S. 439(2) of the new Code a High Court may commit a person released on bail under Chapter XXXIII by any Court including the Court of Session to custody, if it thinks appropriate to do so. It must, however, be made clear that a Court of Session cannot

(13) Cancellation of bail and appeal against order granting bail *(contd.)*

cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of trial after an accused person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under S. 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those which already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-à-vis the High Court.

Comparing provisions of S. 397(3) with Ss. 435(1) and (4) of the old Code, the High Court has undoubtedly jurisdiction to entertain the application under S. 439(2), Criminal Procedure Code for cancellation of bail notwithstanding that the Sessions Judge had earlier admitted the appellants to bail.

However there cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.

In the peculiar nature of the case revealed from the allegations and the position of the appellants in relation to the eyewitnesses it was incumbent upon the Sessions Judge to give proper weight to the serious apprehension of the prosecution with regard to tampering with the eyewitnesses, which was urged before him in resisting the application for bail. The matter would have been different if there was absolutely no basis for the apprehension of the prosecution with regard to tampering of the witnesses and the allegation rested only on a bald statement.

The High Court has correctly appreciated the entire position and the Sessions Judge did not at the stage the case was before him. The Supreme Court will not, therefore, be justified under Art. 136 of the Constitution in interfering with the discretion exercised by the High Court in cancelling the bail of the appellants in this case. *Gurcharan Singh* v. *State (Delhi Admn.)*, (1978) 1 SCC 118: 1978 SCC (Cri) 41: AIR 1978 SC 179: 1978 Cri LJ 129.

Bench Strength **2**. Coram: **P.K. Goswami** and *V.D. Tulzapurkar*, JJ. [Date of decision: 6-12-1977]

[6520] — Ss. 437 to 439 — Distinction between appeal from an order granting bail and an order of cancellation of bail — *Correctness or otherwise of the order passed by the appellate court setting aside an order granting bail or an order of cancellation of bail to be considered on the particular facts of each case* (Para 8). *Fida Hussain Bohra* v. *State of Maharashtra*, (2009) 5 SCC 150.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 3-3-2009]

(14) Appeal

See also Section 437, '(13) Cancellation of bail and appeal against order granting bail', above

[6521] — Ss. 437 and 439 — Bail — Appeal against order refusing or granting bail — Held, there is no provision in CrPC in respect thereof (Para 8). *State of Gujarat* v. *Salimbhai Abdulgaffar Shaikh*, (2003) 8 SCC 50: AIR 2003 SC 3224.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 8-9-2003]

(15) Interference by Supreme Court

[6522] — Ss. 437 and 439 — Supreme Court would not entertain a direct application for grant of bail — Petitioner directed to approach High Court. *Ram Autar Shastri Tantrik* v. *State of U.P.*, 1987 Supp SCC 185: 1988 SCC (Cri) 49.

Bench Strength **2**. Coram: *M.P. Thakkar* and *B.C. Ray*, JJ. [Date of decision: 9-1-1987]

[6523] — S. 437 — Supreme Court's interference with grant of bail by High Court when called for — *Constitution of India, Art. 136*

Normally, the Supreme Court does not interfere with bail matters and the orders of the High Court are generally accepted to be final relating to grant or rejection of it.

But interference is called for where the High Court commits serious errors. *Shahzad Hasan Khan* v. *Ishtiaq Hasan Khan*, (1987) 2 SCC 684: 1987 SCC (Cri) 415: AIR 1987 SC 1613.

Bench Strength **2**. Coram: *M.P. Thakkar* and *K.N. Singh*, JJ. [Date of decision: 28-4-1987]

[6524] — Ss. 437, 439 and 173 — Fodder Scam cases — Monitoring of, by Supreme Court — Grant/cancellation of bail — *Bail extended from time to time for a period of six months by Supreme Court to monitor trial — Further need for monitoring, if any — Held, it is not now necessary to do so any further — Hence bail granted by Supreme Court directed to continue for duration of case on* *same terms and conditions — Deliberate protraction of trial or taking of unnecessary adjournments by itself to be a ground for cancellation of bail — Criminal Trial. Lalu Prasad* v. *State of Jharkhand*, (2006) 6 SCC 661: (2006) 3 SCC (Cri) 173.

Bench Strength **3**. Coram: *S.N. Variava, P. Venkatarama Reddi* and *Ashok Bhan*, JJ. [Date of decision: 14-7-2003]

[6525] — Ss. 437 and 438 — Directions of the Supreme Court issued two years back in the matter of grant of bail to undertrial prisoners — Directions to submit report — *Commissioner of Police, Delhi directed to submit a report indicating the impact of directions contained in the said order on general law and order situation — Commissioner also to indicate whether any of the persons released on bail has repeated the offence — Other State Governments/Union Territories to whom notices issued directed to file affidavit indicating present position of various categories of undertrial prisoners and the period of imprisonment undergone by them — Constitution of India — Art. 32. R.D. Upadhyay* v. *State of A.P.*, (1998) 5 SCC 696: 1998 SCC (Cri) 1380: AIR 1999 SC 2183.

Bench Strength **3**. Coram: *S.C. Agrawal, S. Saghir Ahmad* and *M. Srinivasan*, JJ. [Date of decision: 17-3-1998]

[6526] — Ss. 437 and 438 — Bail — Grant of — Court's satisfaction about reasonable grounds — Factors to be considered — Supreme Court's interference with order granting bail when called for — *TADA, 1987, S. 29(8)(b)*

In view of the assertions made by the respondent earlier, it was necessary for the court to consider the further materials collected by the investigating agency by recording statements of witnesses. The court below misdirected itself in refusing to look into such statements and concluding that it was a case for granting bail taking into account only the position held by the respondent in the party.

The matter regarding grant or refusal of bail calls for judicious exercise of discretion by the court on merits. Where the offence is of a serious nature the court has to decide the question of grant of bail in the light of such considerations as the nature and seriousness of the offence, character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of presence of the accused not being secured at the trial and the reasonable apprehension of witness being tampered with, the larger interest of the public or such similar other considerations.

The Supreme Court would not ordinarily interfere with the discretion of the lower court in granting or refusing bail but in cases where bail has been granted on irrelevant considerations, such as the status or influence of the person accused and regardless of the nature of the accusation and relevancy of materials on record, the Court would not hesitate to interfere for the ends of justice. In the present case the Designated Court clearly erred in disposing of the application for bail. The order of the Designated Court granting bail has, therefore, to be set aside, without prejudice to the respondent's right to move the Designated Court at any subsequent stage. *State of Maharashtra* v. *Anand Chintaman Dighe*, (1990) 1 SCC 397: 1990 SCC (Cri) 142: AIR 1990 SC 625: 1990 Cri LJ 788.

Bench Strength **2**. Coram: *A.M. Ahmadi* and **M. Fathima Beevi**, JJ. [Date of decision: 16-1-1990]

[6527] — Ss. 437 and 439 — Interference with order granting bail — After a lapse of one year and ten months, not called for — *Constitution of India — Art. 136. Abhilasha* v. *State of Rajasthan*, (2000) 10 SCC 237.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 8-10-1999]

[6528] — Ss. 437 and 439 — Grant of bail — Bihar Fodder Scam — Special Court refusing bail — Appellants, former Chief Ministers of Bihar, challenging by SLP, the Special Court's order without seeking remedy from High Court — *They were accused in a number of cases connected with Bihar Fodder Scam conspiracy — Bail already granted by Supreme Court in one of the cases on certain conditions and the appellants continuing to abide by those conditions — Appellants already having undergone pre-trial detention (including such detention in other connected cases) for 9 months — Moreover, in an earlier SLP against an order of High Court in respect of some cases including the present one, Supreme Court had stayed the arrest of the appellants till the disposal of SLP — Bail application was also filed along with that SLP but was dismissed after holding that the cases stood transferred to Jharkhand State pursuant to operation of Bihar States Reorganisation Act — In these peculiar circumstances and in view of the interconnection of the case with the facts of the case in which Supreme Court had earlier granted bail to the appellants, the present SLP entertained by Supreme Court — Since various other persons accused in Bihar Fodder Scam who had remained in jail for about six months were already granted bail, the appellants herein also granted bail by Supreme Court subject to certain conditions — Constitution of India — Art. 136 — Penal Code, 1860, S. 120-A — Prevention of Corruption Act, 1988, S. 13* (Paras 6, 7 and 9). *Laloo Prasad* v. *State of Jharkhand*, (2002) 9 SCC 372.

Bench Strength **2**. Coram: *K.T. Thomas* and *S.N. Phukan*, JJ. [Date of decision: 14-12-2001]

(16) Duties of accused after release on bail

[6529] — S. 437 — Accused released on bail not to be required to appear before the court until filing of charge-sheet and issue of process

Whenever an accused is released on bail he need not be required to appear before the court until the charge-sheet is filed and the process is issued by the court. Law does not require the accused to appear before the Magistrate's court every 14 days even though he is on bail. Such practice causes considerable inconvenience to the accused. *Free Legal Aid Committee* v. *State of Bihar,* (1982) 3 SCC 378: 1983 SCC (Cri) 53: AIR 1982 SC 1463: 1982 Cri LJ 1943.

Bench Strength **2**. Coram: *P.N. Bhagwati* and *A.N. Sen*, JJ. [Date of decision: 10-9-1981]

(17) Bail application by juvenile

[6530] — Ss. 437(1) first proviso and 401 — Bail application by a juvenile — Age disputed — Medical opinion regarding age of accused — *Where medical evidence including Age Estimation Report of Medical Board based on radiological examination and other physical characteristics available, held, conflicting evidence regarding date of birth entered in records of two schools in which accused studied unsafe to rely on — Medical opinion preferable to school records in case of conflict between the two. Dayachand* v. *Sahib Singh*, (1991) 2 SCC 379: 1991 SCC (Cri) 438: AIR 1991 SC 930: 1991 Cri LJ 1370: (1991) 2 Crimes 31.

Bench Strength **2**. Coram: *B.C. Ray* and **J.S. Verma**, JJ. [Date of decision: 5-3-1991]

(18) CrPC provisions for bail and Special Statutes

[6531] — S. 437 — Approach of Designated TADA Court in granting bail — It should not mechanically reject prayer for bail — *Should examine each case carefully — TADA, 1987, S. 20(8)*

Section 20(8) in terms places fetters on the power of a Designated Court in granting bail by imposing two conditions. The limitations specified in sub-s. (8) are in addition to those under the Code. In view of these more stringent conditions a Designated Court should carefully examine every case coming before it for finding out whether the provisions of the Act apply or not. Since before granting bail the court is called upon to satisfy itself that there are reasonable grounds for believing that the accused is innocent of the offence and that he is not likely to commit any offence while on bail, the allegations of fact, the police report along with the statements in the case diary and other available materials should be closely examined. A prayer for bail ought not to be rejected in a mechanical manner.

Broadly speaking, the present cases fell into three distinct categories, namely: (1) Cases of communal riots resulting in offences of murder, arson, looting etc. where there were overt acts on the part of persons of one community against the other. (2) Incidents giving rise to acts of physical violence resulting in communal riots due to instigation. (3) Cases connected with trade union activities started at the instance of the management, or at the instance of owners of property to settle private disputes on the allegations that there were acts of physical violence. Normally, such cases have to be dealt with under the ordinary procedure prescribed by the Code, unless offences under Ss. 3 and 4 of the Act are made out. The Designated Courts were under a duty to examine the circumstances closely from this angle. That has not been done. The Designated Courts have not carefully considered that facts and circumstances and have rejected the applications for bail mechanically. Therefore, orders passed by the various Designated Courts are set aside and cases remitted for fresh consideration. *Usmanbhai Dawoodbhai Memon* v. *State of Gujarat*, (1988) 2 SCC 271: 1988 SCC (Cri) 318: AIR 1988 SC 922.

Bench Strength **2**. Coram: **A.P. Sen** and *L.M. Sharma*, JJ. [Date of decision: 14-3-1988]

Usmanbhai Pareedbhai v. State of Gujarat, 1987 Cri LJ 199 (Guj), on facts, reversed

[6532] — Ss. 437, 439 and 167 — Interpretation of proviso to S. 49(7), POTA 2002 — *Held, there appears to be an omission to include "not" between the words "shall" and "apply" and the absence thereof would render the provision absurd or meaningless — Even otherwise, the proviso would mean that after the period of one year the accused can resort to the ordinary bail procedure under CrPC while he would also be at liberty to seek bail under Ss. 49(6) & (7) — Prevention of Terrorism Act, 2002, Ss. 49(7) & (6)*

In Section 49(7), POTA there appears to be an accidental omission or mistake of not including the word "not" after the word "shall" and before the word "apply". Unless such a word is included, the provision will lead to an absurdity or become meaningless. Even otherwise, read appropriately, the meaning of the proviso to Section 49(7) is that an accused can resort to ordinary bail procedure under CrPC after a period of one year. At the same time, the proviso does not prevent such an accused to approach the court for bail in accordance with the provisions of POTA under Sections 49(6) and (7) thereof. Taking into account the complexities of terrorism-related offences and the intention of Parliament in enacting a special law for its prevention, it cannot be said that the additional conditions regarding bail under POTA are unreasonable. The validity of Section 49 is upheld. (Para 70). *People's Union for Civil Liberties* v. *Union of India*, (2004) 9 SCC 580: AIR 2004 SC 456.

Bench Strength **2**. Coram: **S. Rajendra Babu** and *G.P. Mathur*, JJ. [Date of decision: 16-12-2003]

[6533] — S. 437 — Bail — Offence under S. 6 TADA read with Ss. 286, 120-B and 34 IPC r/w S. 9(B), Indian Explosives Act — *Accused in jail for more than 4 years and 8 months except for a period of 2½ months when he was released on parole — Minimum sentence under S. 6 TADA being only 5 years — In the circumstances, accused directed to be released on bail on terms and conditions mentioned in the order — TADA, 1987, Ss. 20(8) and 6. Giani Pratap Singh* v. *State of Rajasthan*, (1995) 5 SCC 591: 1995 SCC (Cri) 992: AIR 1996 SC 74.

Bench Strength **2**. Coram: *A.M. Ahmadi, C.J.* and *S.C. Sen*, J. [Date of decision: 4-9-1995]

[6534] — S. 437 — Bail — Refusal to grant — Sustainability — Terrorism charge — Confession — Retraction of confession — *Charge-sheet filed against appellant showing him an absconding accused along with other accused persons in POTA Special Court in connection with alleged conspiracy to commit murder of Hindu leaders through boys by imparting them training in arms in Pakistan — Confessional statement of appellant recorded but same retracted by appellant after 40 days by sending letter to the court through jail authorities — Bail application moved by appellant rejected by Special Court — High Court took the view that even if confession recorded under S. 32 of POTA was retracted, same could be considered as a piece of evidence at the time of deciding bail application and that Special Court was justified in refusing the bail application — Held, though there is no statutory time fixed for retraction of confession, but it must be done within a reasonable time — Considering the various factual aspects highlighted by trial court and High Court, this cannot be said to be a fit case for grant of bail to appellant — Prevention of Terrorism Act, 2002, S. 32 — Evidence Act, 1872, S. 24. Maulana Naseeruddin Mohd. Haneefuddin* v. *State of Gujarat*, (2007) 12 SCC 545: (2008) 3 SCC (Cri) 299: (2007) 56 AIC 23 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 17-7-2007]

[6535] — S. 437 — Non-bailable offence — Bail, grant of — POTA charges — *Petitioner arrested in connection with the offence related to the Godhra incident which resulted in the death of 59 persons and injuries to 48 others — Petitioner-accused charged under various sections of IPC, POTA, Railways Act and Prevention of Damage to Public Property Act, 1984 — Bail denied by the Special Judge (POTA) as well as the High Court — Held, not a fit case for bail. Moulvi Hussain Ibrahim Umarji* v. *State of Gujarat*, (2004) 3 SCC 444: 2004 SCC (Cri) 829: 2004 Cri LJ 3348.

Bench Strength **3**. Coram: *S. Rajendra Babu, Arun Kumar* and **G.P. Mathur**, JJ. [Date of decision: 17-3-2004]

[6536] — Ss. 437 and 439 — Power of Designated TADA Court to grant bail — *Held, derived neither from S. 20(8) TADA, nor from S. 439 CrPC but from S. 437 CrPC — Scope of that power limited by S. 20(8) TADA as well as S. 437 CrPC — TADA, 1987, Ss. 20(8), (9)*

The source of power of a Designated Court to grant bail is not S. 20(8) of the Act but it only places limitations on such powers. This is implicit by S. 20(9) which in terms provides that the limitations on granting of bail specified in sub-s. (8) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail. Since a Designated Court is "a court other than the High Court or the Court of Session" within the meaning of S. 437 of the Code, the power derived by a Designated Court to grant bail to a person accused of an offence under the Act, if in custody, is derived from the Code. The exercise of the power to grant bail by a Designated Court is not only subject to the limitations contained therein, but is also subject to the limitations placed by S. 20(8) of the Act. It all depends on the scheme of the particular Act as to whether the power of the High Court and the Court of Session to grant bail under Ss. 438 and 439 exists. *Usmanbhai Dawoodbhai Memon* v. *State of Gujarat*, (1988) 2 SCC 271: 1988 SCC (Cri) 318: AIR 1988 SC 922.

Bench Strength **2**. Coram: **A.P. Sen** and *L.M. Sharma*, JJ. [Date of decision: 14-3-1988]

[6537] — Ss. 437 and 439 — Conditions for release on bail — Held, Ss. 20(8) and (9) TADA not violative of Art. 21 — Sub-section (8) is in consonance with S. 437 CrPC and source of power for release on bail is S. 437 and not S. 439 CrPC — *While exercising power court should keep in mind not only liberty of the accused but also the interest of the victims, collective interest of the community and safety of the nation — TADA, 1987, Ss. 20(8) and (9)*

(18) CrPC provisions for bail and Special Statutes *(contd.)*

Per curiam

Sub-section (8) which imposes a complete ban on release on bail against the accused of an offence punishable under this Act minimises or dilutes that ban under two conditions, those being (1) the Public Prosecutor must be given an opportunity to oppose the bail application for such release; and (2) where the Public Prosecutor opposes the bail application the court must be satisfied that the two conditions, namely, (*a*) there are reasonable grounds for believing that the person accused is not guilty of such offence and (*b*) he is not likely to commit any offence while on bail. Sub-section (9) qualifies sub-section (8) to the effect that the above two limitations imposed on grant of bail specified in sub-section (8) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail. If either of the two conditions mentioned therein is not satisfied, the ban operates and the accused person cannot be released on bail but of course it is subject to S. 167(2) as modified by S. 20(4) of the TADA Act in relation to a case under the provisions of TADA Act. The conditions imposed under S. 20(8)(*b*) are in consonance with the conditions prescribed under clauses (*i*) and (*ii*) of sub-section (1) of S. 437 and clause (*b*) of sub-section (3) of that section. Section 439 CrPC cannot be availed of for grant of bail in cases under the TADA Act. The condition that "there are grounds for believing that he is not guilty of an offence", which condition in different form is incorporated in other Acts such as clause (*i*) of S. 437(1) of the Code and S. 35(1) of FERA and 104(1) of the Customs Act, cannot be said to be an unreasonable condition infringing the principle of Art. 21.

No doubt, liberty of a citizen must be zealously safeguarded by the courts; nonetheless the courts while dispensing justice in cases like the one under the TADA Act, should keep in mind not only the liberty of the accused but also the interest of the victim and their near and dear and above all the collective interest of the community and the safety of the nation so that the public may not lose faith in the system of judicial administration and indulge in private retribution.

However, the invocation of the provisions of TADA Act in cases, the facts of which do not warrant, is nothing but sheer misuse and abuse of the Act by the police. Unless, the public prosecutors rise to the occasion and discharge their onerous responsibilities keeping in mind that they are prosecutors on behalf of the public but not the police and unless the Presiding Officers of the Designated Courts discharge their judicial functions keeping in view the fundamental rights particularly of the personal right and liberty of every citizen as enshrined in the Constitution to which they have been assigned the role of sentinel on the *qui vive*, it cannot be said that the provisions of TADA Act are enforced effectively in consonance with the legislative intendment. *Kartar Singh* v. *State of Punjab*, (1994) 3 SCC 569: 1994 SCC (Cri) 899: 1994 Cri LJ 3139.

Bench Strength 5. Coram: **S. Ratnavel Pandian**[1], *M.M. Punchhi*[1], **K. Ramaswamy**[2], *S.C. Agrawal*[1] and **R.M. Sahai**[3], JJ. [Date of decision: 11-3-1994]

Usmanbhai Dawoodbhai Memon v. State of Gujarat, (1988) 2 SCC 271: 1988 SCC (Cri) 318, affirmed

*Bimal Kaur Khalsa v. Union of India, AIR 1988 P&H 95: (1988) 93 Punj LR 189: 1988 Cri LJ 169, **overruled***

Balchand Jain v. State of M.P., (1976) 4 SCC 572: 1976 SCC (Cri) 689; Ishwar Chand v. State of H.P., ILR 1975 HP 569, distinguished

[6538] — Ss. 437 and 439 — Bail — Bombay blast case — *Review Committees constituted by Central and State Governments pursuant to Supreme Court's direction in* Kartar Singh case — *Report submitted by Maharashtra State Review Committee — Considered by Central Review Committee — Matter placed before Designated Court — Designated Court directing Public Prosecutor to file application mentioning names of accused persons and reasons on the basis of which State had no objection for granting them bail — Accordingly application filed before the Designated Court mentioning three categories of accused persons, the third category whereof comprising 12 accused including the appellant who could be released on bail — Application filed by appellant for bail rejected by Designated Court — In appeal before Supreme Court, affidavit filed on behalf of State Government stating that pursuant to order of Designated Court, CBI after carefully scrutinising cases of all accused had taken a policy decision in consultation with Bombay Police that the accused listed in the third category could be released on bail and had instructed Chief Public Prosecutor accordingly — In the circumstances held, the petition should be allowed — Categorisation of accused persons based on relevant factors — Hence appellant directed to be released on bail on stated conditions — Terrorist and Disruptive Activities (Prevention) Act, 1987, Ss. 20(8) & (9) and 15*

As the whole exercise of the Central Review Committee was pursuant to the direction of the Supreme Court in *Kartar Singh case* and the Chief Special Public Prosecutor had filed the petition in question to implement the decision taken by that Committee, supplemented by the decision of the CBI, such a petition did not merit rejection. The Designated Court did not examine the matter in proper perspective. The categorisation of the accused persons in three categories being founded on relevant factors, the classification was rational. The name of the appellant being in Category III, he is ordered to be released on bail. (Para 13)

The fact-situation in which the present appeal is being examined is entirely different from that with which the Supreme Court was seized when on an earlier occasion, this very appellant was before the Court praying for his release on bail, in this very case. So, what was stated then in the case of *Sanjay Dutt* v. *State through CBI*, has ceased to be relevant. (Para 11)

The appellant shall be released on bail, on his furnishing a bond of Rs 5 lakhs with two sureties of like amount to the satisfaction of the Designated Court. The appellant shall surrender his passport immediately after release. He would not hamper the on-going investigation, tamper the evidence, threaten or influence the witnesses. On the happening of any one of these contingencies to the satisfaction of the Designated Court, his bail shall be cancelled. Further, he shall appear before the Designated Court as and when directed. He shall also comply with any other direction of the said court. (Para 14). *Sanjay Dutt* v. *State of Maharashtra*, (1995) 6 SCC 189: 1995 SCC (Cri) 1055.

Bench Strength **3**. Coram: *G.N. Ray*, *N.P. Singh* and *B.L. Hansaria*, JJ. [Date of decision: 16-10-1995]

Sanjay Dutt v. State through CBI, (1994) 6 SCC 86: 1994 SCC (Cri) 1805, distinguished

[6539] — Ss. 437 and 439 — Bail — Grant of — Grounds for consideration — Terrorist activity alleged — *Appellant 1 (resident of Ahmedabad) alleged to have conspired to send some youths from Ahmedabad to Pakistan for obtaining training for carrying out terrorist activities with a view to take revenge of loss of lives and properties caused to the Muslim community in communal riots which had taken place consequent to Godhra massacre, and also huge quantity of arms recovered from him — Appellant 2 (resident of Hyderabad) alleged to have gone to Pakistan for training — Ordinarily, held, a bail application, in a case of this nature, which involves the security of the State should be rejected — Further held, although the complicity of the appellants is difficult to judge at the instant stage, yet, a strong prima facie case had been made out against the appellants — Their release at this juncture may hamper the smooth conduct of trial since main witnesses are yet to be examined — One of the appellants hailed from a different State and hence it may be difficult to secure his presence, if released on bail at this crucial juncture — Bail applications dismissed and Designated Judge directed to conclude the trial as expeditiously as possible and preferably within six months from the date of communication of present order — Penal Code, 1860, Ss. 120-B, 121, 121-A, 122 and 123* (Paras 17 to 21, 2 and 4). *Afzal Khan* v. *State of Gujarat*, (2007) 9 SCC 387: (2007) 3 SCC (Cri) 563: AIR 2007 SC 2111: 2007 Cri LJ 3223.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 17-5-2007]

Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616: 1996 SCC (Cri) 366, considered

[6540] — Ss. 437 and 439 — Refusal to grant bail — TADA and FERA offences — *Charge against petitioner under Ss. 3 and 4 of TADA Act and S. 8(1) of FERA for unauthorisedly dealing in foreign exchange (hawala transaction) and instrumental in transferring huge sums received from different sources to members of militant outfits of J & K for use in terrorist and disruptive activities — While petitioner in judicial custody investigation taken over by CBI — Since investigation still continuing, not necessary for the Court to express any opinion on merits or demerits of the case regarding petitioner's involvement or connection with terrorist and disruptive activities — Having regard to seriousness of the allegations levelled against the petitioner, held, his release on bail at the crucial stage may frustrate the effort of the investigating agencies in collecting evidence — Hence bail application dismissed. Mool Chand* v. *State*, 1991 Supp (2) SCC 101: 1991 SCC (Cri) 1001: AIR 1992 SC 1618.

Bench Strength **1**. Coram: *S. Ratnavel Pandian*, J. [Date of decision: 4-7-1991]

[6541] — Ss. 437, 173(2) and 190(1)(b) — Bail — Conditions for release on, by Designated TADA Court — *Charge-sheet/police report under S. 173(2) CrPC submitted after investigation before Jammu Court — But bail application filed in Srinagar — Release on bail by Designated Court at Srinagar without perusing the charge sheet/police report held, improper — TADA, 1987 — S. 20(8)*

Before a person accused of an offence under TADA is released on bail two conditions must be fulfilled: (*a*) an opportunity must be given to the public prosecutor to oppose the application for such release, and (*b*) the Court must be satisfied that there are reasonable grounds for believing that the said accused is not guilty of such offence. Hence an application for bail filed on behalf of a person who has been accused of an offence punishable under

(18) CrPC provisions for bail and Special Statutes *(contd.)*

the Act has to be examined carefully and cautiously on basis of the charges levelled in the first information report, and the evidence collected in the course of the investigation. The conditions for grant of bail specified under sub-section (8) of S. 20 of the TADA Act are in addition to those under the Code as made explicit by S. 20(9).

In the present case the Designated Court at Srinagar released the respondent on bail without perusing the charge-sheet/police report which had been filed at Jammu. A Police Report submitted after the investigation of an alleged offence is not just mere expression of the opinion of the Investigating Officer having no connection or nexus with the materials collected during the investigation. In view of sub-section (5) of S. 173 when such report is in respect of a case to which S. 170 of the Code is applicable i.e. where it appears to the Investigating Officer "that there is sufficient evidence or reasonable ground ..." the Investigating Officer shall forward to the Magistrate along with the report all documents and the statements recorded under S. 161 of the Code. In fact a Magistrate takes cognizance of an offence under S. 190(1)(*b*) on the basis of such a report. Hence such a report cannot be held to be irrelevant while considering an application for bail under sub-section (8) of S. 20 of the TADA Act as to whether there are reasonable grounds for believing that the accused in question is not guilty of such offence and as such he should be directed to be released. The Designated Court should have perused the charge-sheet/Police Report submitted after the conclusion of the investigation before passing the impugned order. That not having been done the release of the respondent on bail is set aside. Respondent to surrender within three weeks from today.

The Designated Court is directed to hear afresh the bail application and to peruse the charge-sheet/police-report along with the documents and statements recorded, which have been forwarded under sub-section (5) of S. 173 of the Code and to pass an order in accordance with law as early as possible. *Union of India* v. *Mohd. Sadiq Rather*, (1993) 1 SCC 8: 1993 SCC (Cri) 8: AIR 1993 SC 379: 1993 Cri LJ 72.

Bench Strength 3. Coram: *M.H. Kania, C.J.* and *N.M. Kasliwal* and **N.P. Singh**, JJ. [Date of decision: 17-11-1992]

[6542] — Ss. 437 and 439 — Applications for bail/impleadment pending before Supreme Court — Court appropriate to dispose of, in cases where the accused had been charged in regard to POTA as well as non-POTA offences but the POTA offences stood withdrawn by virtue of S. 2(3) — *POTA Special Judges directed to send all such cases to the respective Sessions Judge — Applications for bail/impleadment pending before Supreme Court permitted to be withdrawn with liberty to move the same before the Sessions Judge concerned who would consider the same on merits untrammelled by the observations, if any, made by superior courts in any of such bail applications — Prevention of Terrorism Act, 2002, S. 33 — Prevention of Terrorism (Repeal) Act, 2004 — S. 2(3)* (Paras 4 to 6). *Anusuyaben Sadashiv Jadav* v. *Union of India*, (2009) 2 SCC 45.

Bench Strength 3. Coram: *K.G. Balakrishnan, C.J.* and *R.V. Raveendran* and *Dalveer Bhandari*, JJ. [Date of decision: 1-12-2008]

[6543] — Ss. 437, 438(2) and 439 — Bail — Grant of bail in case of offences under MCOCA — *On facts, allegation against the appellant that being a public servant he not only rendered help and support in the commission of the organised crime as defined in S. 2(1)(e) of MCOCA but knowingly and intentionally aided and abetted the activities of the organised crime syndicate thereby enabling them to carry on their activities — Thus by facilitating the organised crime syndicate in continuing the unlawful activities and deliberately abstaining from taking lawful measures under MCOCA against the syndicate, appellant is alleged to have committed offences punishable under Ss. 3(2) and 24 of MCOCA — Special Judge dismissing his bail application which was confirmed by the High Court — Factors to be considered while granting bail — Held, it would not be appropriate to go into detailed examination of the alleged crime for arriving at a positive finding whether appellant has committed offences under S. 3(2) or S. 24 of MCOCA — What is required to be considered is whether (1) there is a reasonable ground to believe that the appellant is not guilty of the offences he has been charged with under MCOCA (2) that he is not likely to commit an offence under MCOCA while on bail — Purported acts of omission and commission of the appellant, held, may not per se bring the case within ambit of S. 3(2) of MCOCA — However, as the circumstances tend to indicate that as a public servant the appellant failed to take lawful measures under MCOCA, provisions of S. 24 of MCOCA are attracted — As the appellant has been in judicial custody for over 3 years, being the maximum period of sentence under S. 24 of MCOCA, the appellant,* *held, deserves to be released on bail — Hence, order of High Court set aside — However, held, the appellant shall remain bound by all the conditions stipulated in S. 438(2) CrPC — Maharashtra Control of Organised Crime Act, 1999 (30 of 1999), Ss. 2(1)(e) and (d), 3(2), 21(4)(b) and 24*

The appellant was posted as Senior Police Inspector at Mira Road Police Station, Thane District, during the period from 2-6-1999 to 13-5-2000. On or about 15-8-1999, on the basis of some information about printing of fake revenue and postal stamps by a gang, received by Mira Road Police Station, under the charge of the appellant, raids were conducted at certain places. As a result thereof some persons were arrested and case under Sections 257, 260, 420, 467, 468 read with Section 34 of the Penal Code and under Section 55 of the Post Office Act, 1898 was registered against them. An inquiry was conducted by the Additional Superintendent of Police, Thane (Rural) in the manner in which investigation was conducted by the appellant and his team, which revealed that although the printing press, where counterfeit stamps and stamp papers were being printed had been identified but the appellant and his Sub-Inspector, in charge of the case, neither sealed the said premises nor seized the machines; they ensured that Telgi (hereinafter *T*), the kingpin of the organised crime syndicate and the prime accused was not arrested and remained at large till he was arrested by the Karnataka police; and the counterfeit stamps seized in the case were not sent for examination to the Indian Security Press, Nasik. In a nutshell, the allegation against the appellant is that being a public servant he not only rendered help and support in the commission of the organised crime as defined in Section 2(1)(*e*) of MCOCA, he knowingly and intentionally aided and abetted the activities of the organised crime syndicate till 7-6-2002, thereby enabling them to carry on their activities for almost three years. Thus, by helping and facilitating the organised crime syndicate of *T* in continuing unlawful activities and deliberately abstaining from taking lawful measures under MCOCA against *T* and his syndicate, he has committed offences punishable under Sections 3(2) and 24 of MCOCA. Based on these investigations a case was registered against the appellant and some other persons. The appellant, who by then was promoted as Assistant Commissioner of Police, was arrested on 18-10-2003. Taking into consideration the gravity of charges levelled against the appellant the Special Judge dismissed his bail application. The order was affirmed by the High Court. Hence this present appeal.

Allowing the appeal,

Held :

It would not be appropriate at this juncture to go into detailed examination of the alleged crime in order to arrive at a positive finding as to whether or not the appellant has committed offences under Section 3(2) or 24 of MCOCA. What is required to be considered is whether in the light of the circumstances (*i*) there is a reasonable ground to believe that the appellant is not guilty of the two offences he has been charged with under MCOCA, and (*ii*) that he is not likely to commit an offence under MCOCA while on bail. (Para 13)

The purported acts of omission and commission on the part of the appellant may not *per se* bring his case within the ambit of Section 3(2) of MCOCA. Nevertheless, the circumstances do tend to indicate that as a public servant he had failed to take lawful measures under MCOCA, attracting the provisions of Section 24 of MCOCA. Having reached this conclusion and bearing in mind the fact that the appellant has been in judicial custody for over three years, the maximum period of sentence contemplated under Section 24 of MCOCA, the appellant deserves to be released on bail. (Para 14)

The appeal is allowed and the order passed by the High Court is set aside. It is directed that the appellant shall be enlarged on bail on his furnishing a personal bond in the sum of Rs 2 lakhs with two sureties, each in the like amount to the satisfaction of the Special Court, Pune. He shall also remain bound by all the conditions as stipulated in Section 438(2) of the Criminal Procedure Code, 1973. The appellant shall also surrender his passport, if any, before the Special Court, Pune. (Para 15). *Gokul Bhagaji Patil* v. *State of Maharashtra*, (2007) 2 SCC 475: (2007) 1 SCC (Cri) 597: (2007) 49 AIC 27 (SC): 2007 Cri LJ 776.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **D.K. Jain**, JJ. [Date of decision: 8-12-2006]

[6544] — Ss. 437, 438(2) and 439 — Grant of bail — Factors to be considered — MCOCA offences *— Appellant police officers arrested for offences punishable under various sections of IPC read with MCOCA on the allegations of conspiring and abetting or facilitating the organised crime syndicate to carry on their illegal activities — High Court rejecting the bail applications preferred by appellants — Held, what needs to be considered is whether there is a reasonable ground to believe that the appellants are not guilty of the offences they have been charged with and further that they are not likely to commit an offence under MCOCA while on bail — In the instant case, allegations not sufficient*

(18) CrPC provisions for bail and Special Statutes *(contd.)*

to bring offence within the ambit of S. 3(2) of MCOCA — Hence, as maximum punishment provided under S. 24 of MCOCA is 3 years' RI and appellants have already been in judicial custody for over two years, it is a fit case for grant of bail to both the appellants — However, they shall remain bound by all the conditions as stipulated in S. 438(2) CrPC — Penal Code, 1860, Ss. 192, 217, 218 and 263-A — Maharashtra Control of Organised Crime Act, 1999 (30 of 1999), Ss. 2(1)(d), (e), (f), 3(1)(ii), 3(2), (3), (4), 21(4) and 24

The appellants *V* and *G* were police officers, in charge of investigations in a case. As a result of investigations, three charge-sheets were filed against several persons, including one *S* and *T* (Telgi), head of an organised crime syndicate, engaged in unlawful activities relating to printing of counterfeit stamps and other documents and sale thereof. However, subsequently, under the orders of the Supreme Court, investigations in the case were transferred to CBI. As a result of fresh investigations by CBI, cases were registered against the appellants for the offences punishable under various sections of the Penal Code read with the Maharashtra Control of Organised Crime Act, 1999 and they were arrested on the allegations of conspiring and abetting commission or facilitation of the crime with which *S*, *T* and other co-accused were associated. Bail applications preferred by the appellants were rejected by the High Court. Hence these present appeals.

Allowing the appeals,

Held :

What needs to be considered is whether there is a reasonable ground to believe that the appellants are not guilty of the two offences, they have been charged with and further that they are not likely to commit an offence under MCOCA while on bail. (Para 11)

In the light of the roles attributed to the appellants in the charge-sheet, the allegations may not per se be sufficient to bring home an offence falling within the ambit of Section 3(2) of MCOCA. Therefore, bearing in mind the fact that maximum punishment provided under Section 24 of MCOCA is three years' rigorous imprisonment and the appellants have already been in judicial custody for over two years, it is a fit case for grant of bail to both the appellants. (Para 12)

The order passed by the High Court is set aside. It is directed that the appellants shall be enlarged on bail on their furnishing personal bonds in the sum of Rs 50,000 each with two sureties, each in the like amount to the satisfaction of the Special Court, Pune. They shall also remain bound by all the conditions as stipulated in Section 438(2) CrPC. (Para 13). *Dattatray Krishnaji Ghule* v. *State of Maharashtra*, (2007) 4 SCC 113: (2007) 2 SCC (Cri) 205: AIR 2007 SC 1133: (2007) 51 AIC 1 (SC): 2007 Cri LJ 1455.

Bench Strength **2**. Coram: *K.G. Balakrishnan, C.J.* and **D.K. Jain**, J. [Date of decision: 9-2-2007]

[6545] — Ss. 437 and 439 — Grant of bail in case of offences under MCOCA — Limitations under — *Held, provisions of MCOCA having been invoked, in addition to considerations normally weighed by the court in granting bail in non-bailable offences, the limitations imposed under S. 21(4) of MCOCA have to be borne in mind — Maharashtra Control of Organised Crime Act, 1999 (30 of 1999), S. 21(4)* (Para 10). *Dattatray Krishnaji Ghule* v. *State of Maharashtra*, (2007) 4 SCC 113: (2007) 2 SCC (Cri) 205: AIR 2007 SC 1133: (2007) 51 AIC 1 (SC): 2007 Cri LJ 1455.

Bench Strength **2**. Coram: *K.G. Balakrishnan, C.J.* and **D.K. Jain**, J. [Date of decision: 9-2-2007]

Chenna Boyanna Krishna Yadav v. State of Maharashtra, (2007) 1 SCC 242: (2007) 1 SCC (Cri) 329, relied on

[6546] — Ss. 437 and 439 — Bail — Telgi counterfeit stamps and stamp papers case — MCOCA case — *Appellant police officer charged with offences under Ss. 120-B, 216, 218, 221 IPC r/w Ss. 3(2), 3(5), 24 of the Maharashtra Control of Organised Crime Act and Ss. 7, 13(1)(d) of the Prevention of Corruption Act, 1988 — Appellant in jail for more than 3 years, moving application for bail — Special Judge and High Court rejected the application — High Court held that CBI made out prima facie involvement of appellant with Telgi crime syndicate — Appellant already undergone the maximum period of punishment prescribed under S. 24 of MCOC Act — Whether appellant's involvement goes beyond to fall under S. 3(2) of MCOC Act is yet to be decided — Several hundred witnesses to be examined and trial likely to take several years — Having regard to the nature of involvement alleged and role attributed to appellant, even with S. 21(4) of MCOC Act in view, held, this is a fit case for grant of bail to appellant — Maharashtra Control of Organised Crime Act, 1999 (30 of 1999), Ss. 3(2) & (5) and 24 — Prevention of Corruption Act, 1988, Ss. 7, 13(1)(d). Shridhar Sumant Vagal* v. *State of Maharashtra*, (2007) 12 SCC 514: (2008) 3 SCC (Cri) 281: AIR 2007 SC 2592: (2007) 54 AIC 144 (SC).

Bench Strength **2**. Coram: *K.G. Balakrishnan, C.J.* and **R.V. Raveendran**, J. [Date of decision: 22-3-2007]

[6547] — Ss. 437 and 439 — Bail — Application for — Rejection of — Propriety — Appellant arrested in offence relating to counterfeiting stamps/stamp papers (Telgi case) for offences under Ss. 120-B, 255, 34 and 109 IPC r/w Ss. 3(1)(ii), 3(2), 3(5) and S. 4 of MCOC Act, 1999 (30 of 1999) — *Submission that involvement of the appellant was only peripheral rejected — Material prima facie showing that though he was not directly connected with the printing and selling of the fake stamps, he was associated with **T** and had abetted and facilitated the commission of the organised crime, and he had also aided and assisted in the money laundering operations and attempted to interfere with the witnesses on behalf of **T** and his family members — Prima facie material also indicating that the payment for the purchase of printing machine for **T's** illegitimate activities, was routed through appellant — Under S. 3(2) of the MCOC Act, the minimum sentence is five years and the maximum can be imprisonment for life — Hence, no interference with the order of the High Court rejecting the bail application, particularly, having regard to the provisions of S. 21(4) of the MCOC Act called for — Maharashtra Control of Organised Crime Act, 1999 (30 of 1999), Ss. 3(1)(ii), 3(2), 3(5) and 21(4) — Penal Code, 1860, Ss. 120-B, 255, 34 and 109* (Paras 2 and 7 to 9). *Manoj Ramesh Mehta* v. *State of Maharashtra*, (2008) 14 SCC 528.

Bench Strength **3**. Coram: *K.G. Balakrishnan*, *C.J.* and **R.V. Raveendran** and *Dr. M.K. Sharma*, JJ. [Date of decision: 25-11-2008]

[6548] — Ss. 437 and 439 — Bail — Grant of, without specifically considering parameters of S. 37(1)(b), NDPS Act — Held, renders the bail order invalid — *Respondent moving bail application under S. 437 CrPC and S. 37(1)(b)(ii) of NDPS Act, 1985 — Trial court granting bail without specifically considering effect of S. 37 — High Court upholding bail order on the ground that respondent's attendance could be secured on the basis of bail bonds already signed and that respondent's release would enable him to have adequate consultation with lawyer of his choice — Held, bail order unsustainable in law in view of non-compliance with S. 37(1)(b) — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 37(1)(b) and 37(2)* (Paras 5 and 12). *N.R. Mon* v. *Mohd. Nasimuddin*, (2008) 6 SCC 721: (2008) 3 SCC (Cri) 29: AIR 2008 SC 2576: (2008) 2 KLT 1022: (2008) 67 AIC 5 (SC): 2008 Cri LJ 3491.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 16-5-2008]

Union of India v. Gurcharan Singh, (2003) 11 SCC 764; Collector of Customs v. Ahmadalieva Nodira, (2004) 3 SCC 549: 2004 SCC (Cri) 834; Union of India v. Thamisharasi, (1995) 4 SCC 190: 1995 SCC (Cri) 665; Union of India v. Abdulla, (2004) 13 SCC 504: (2006) 1 SCC (Cri) 353; Narcotics Control Bureau v. R. Paulsamy, (2000) 9 SCC 549: 2001 SCC (Cri) 648; Narcotics Control Bureau v. Karma Phuntsok, (2005) 12 SCC 480: (2006) 1 SCC (Cri) 608, relied on

[6549] — Ss. 437 & 309 — Undertrial prisoners — Right to speedy trial — Deprivation of personal liberty without ensuring speedy trial violates Art. 21 — NDPS offences — *Detention of a large number of persons under NDPS Act for a long period without trial — Delay in constitution of Special Courts frustrating the objective of S. 36(1) NDPS Act and S. 309 CrPC — Provisions of bail being strict refusing bail on the one hand and delaying trial of cases on the other is unfair and unreasonable — Undertrial prisoners, except those charged with offences under Ss. 31 and 31-A NDPS Act, languishing in jail for a period exceeding half of the punishment provided under the Act directed to be released on bail — Terms and conditions for their release laid down — State Government directed to set up Review Committees headed by a Judicial Officer to review the cases of undertrials and make recommendations for withdrawal of deserving cases — Notices issued to certain other States also to furnish information to enable the Court to decide if similar action is called for — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 36, 37, 31 and 31-A — Constitution of India — Arts. 21, 14, 19 and 32*

With respect to pending cases it is directed as under:

(*i*) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence he is charged with and where he is charged with more than one offence, the offence providing the highest punishment. If the offence he is charged with prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.

(*ii*) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (*i*) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount.

(18) CrPC provisions for bail and Special Statutes *(contd.)*

(*iii*) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.

(*iv*) Where an undertrial accused is charged with the commission of an offence punishable under Ss. 31 and 31-A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.

The directives in clauses (*i*), (*ii*) and (*iii*) above shall be subject to the following general conditions:

(*i*) The undertrial accused entitled to be released on bail shall deposit his passport with the learned Judge of the Special Court concerned and if he does not hold a passport he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the latter case the learned Special Judge will, if he has reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the undertrial accused;

(*ii*) the undertrial accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under clause (*i*), once in a fortnight in the case of those covered under clause (*ii*) and once in a week in the case of those covered by clause (*iii*), unless leave of absence is obtained in advance from the Special Judge concerned;

(*iii*) the benefit of the direction in clauses (*ii*) and (*iii*) shall not be available to those accused persons who are, in the opinion of the learned Special Judge, for reasons to be stated in writing, likely to tamper with evidence or influence the prosecution witnesses;

(*iv*) in the case of undertrial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner-accused belongs, that the said accused shall not leave the country and shall appear before the Special Court as and when required;

(*v*) the undertrial accused shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge;

(*vi*) the undertrial accused may furnish bail by depositing cash equal to the bail amount;

(*vii*) the Special Judge will be at liberty to cancel bail if any of the above conditions is violated or a case for cancellation of bail is otherwise made out; and

(*viii*) after the release of the undertrial accused pursuant to this order, the cases of those undertrials who have not been released and are in jail will be accorded priority and the Special Court will proceed with them as provided in S. 309 of the Code.

The above directions are intended to operate as one-time directions for cases in which the accused persons are in jail and their trials are delayed. They are not intended to interfere with the Special Court's power to grant bail under S. 37 of the Act. The Special Court will be free to exercise that power keeping in view the complaint of inordinate delay in the disposal of the pending cases. The Special Court will, notwithstanding the directions, be free to cancel bail if the accused is found to be misusing it and grounds for cancellation of bail exist. Lastly, we grant liberty to apply in case of any difficulty in the implementation of this order. *Supreme Court Legal Aid Committee* v. *Union of India*, (1994) 6 SCC 731: 1995 SCC (Cri) 39.

Bench Strength **2**. Coram: **A.M. Ahmadi** and *B.L. Hansaria*, JJ. [Date of decision: 7-10-1994]

[6550] — Ss. 437 and 439 — Bail — Conditions precedent for grant of, postulated in S. 37(1)(b), NDPS Act, held, are mandatory — *Hence, in the absence of satisfaction of the said conditions High Court's order granting bail to an accused charged of offences under Ss. 8/18 of the Act, held, bad — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 37 (as subs. by Act 2 of 1989), 8 and 18*

After the recovery of 5 kg of opium from the tubewell house of the respondent, he was arrested and sent to jail. The Sessions Judge rejected his bail application but the High Court by a non-speaking order directed him to be released on bail. Allowing the Central Government's appeal,

Held :

The legislative mandate contained in the Statement of Objects and Reasons for introducing Bill No. 125 of 1988 which culminated in the incorporation of the amended Section 37 has to be adhered to and followed. In a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting deathblow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37(1)(*b*) are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Hence, the High Court's order has to be set aside. (Paras 6 to 9). *Union of India* v. *Ram Samujh*, (1999) 9 SCC 429: 1999 SCC (Cri) 1522.

Bench Strength 2. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 30-8-1999]

Durand Didier v. UT, Goa, (1990) 1 SCC 95: 1990 SCC (Cri) 65, relied on

[6551] — Ss. 437 & 439 — Bail — Grant of, when not justified — Offences under NDPS Act — *Respondent charged for offences under S. 20(b) as well as under S. 25 of NDPS Act, maximum punishment for which being 10 years' imprisonment — Bail can be granted only when ingredients of S. 37 of NDPS Act are fulfilled — Bail earlier granted cancelled subsequently by Special Judge and thereafter two applications for bail rejected — High Court without considering these aspects, held, erred in granting bail to respondent by noticing some irrelevant matters such as respondent having telephone and ration card etc. — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 37, 20(b) & 25* (Para 5). *CBI* v. *Dhan Singh*, (2003) 9 SCC 248.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *H.K. Sema*, JJ. [Date of decision: 13-3-2003]

[6552] — Ss. 437 and 167(2) — S. 437(1) — Compared with S. 37 NDPS Act — Applicability of proviso to S. 167(2), CrPC, 1973 — Held, not excluded by any of the provisions of NDPS Act — *Person arrested for commission of an offence under NDPS Act can claim release on bail on the expiry of total period specified in proviso to S. 167 CrPC if the complaint is not filed within that period — S. 37 not inconsistent with S. 167(2) CrPC — S. 37(1)(b) applies only when question of granting bail arises on merits and not when grant of bail is automatic on account of default in filing complaint within the specified period — Limitations on granting of bail specified under S. 37(1) NDPS Act are in addition to limitations provided under S. 437 CrPC and they do not exclude applicability of the proviso to S. 167(2) — Distinction between S. 437(1)(i) CrPC and S. 37(1)(b) NDPS Act — S. 37 NDPS Act is more stringent — Provisions of S. 20 TADA Act and S. 37 NDPS Act compared — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 37, 36-A, 36-C and 51*

The limitations on granting of bail specified in clause (*b*) of sub-section (1) of Section 37 come in only when the question of granting bail arises on merits. By its very nature the provision is not attracted when the grant of bail is automatic on account of the default in filing the complaint within the maximum period of custody permitted during investigation by virtue of sub-section (2) of Section 167 CrPC. The only fact material to attract the proviso to sub-section (2) of Section 167 is the default in filing the complaint within the maximum period specified therein to permit custody during investigation and not the merits of the case which till the filing of the complaint are not before the court to determine the existence of reasonable grounds for forming the belief about the guilt of the accused. It cannot be said that this belief can be formed during investigation by reference to the contents of the case diary even before the charge-sheet has been filed. This is fallacious. Till the complaint is filed the accused is supplied no material from which he can discharge the burden placed on him by Section 37(1)(*b*) of the NDPS Act. (Para 10)

Sub-section (2) of Section 167 CrPC has been expressly applied by Section 36-A of the Act and the scheme of the Act is that the provisions of the Code would apply except where there is any inconsistent provision in this Act in relation to arrests made under this Act. It is this context in which Section 37(1)(*b*) has to be construed wherein are specified the limitations on granting of bail. (Para 11)

The limitation on the power to release on bail in Section 437 CrPC is in the nature of a restriction on that power, if reasonable grounds exist for the belief that the accused is guilty. On the other hand, the limitation on this power in Section 37 of the NDPS Act is in the nature of a condition precedent for the exercise of that power, so that, the accused shall not be released on bail *unless* the court is satisfied that there are reasonable grounds to believe that he is not guilty. Under Section 437 CrPC it is for the prosecution to show the existence of reasonable grounds to support the belief in the guilt of the accused to attract the restriction on the power to grant bail; but under Section 37, NDPS Act it is the accused who must show the existence of grounds for the belief that he is not guilty, to satisfy the condition precedent and lift the embargo on the power to grant bail. This appears to be the distinction between the two provisions which makes Section 37 of the NDPS Act more stringent. (Para 12)

Provision in Section 37 to the extent it is inconsistent with Section 437 of the Code of Criminal Procedure supersedes the corresponding provision in the Code and imposes limitations on granting of bail in addition to the limitations under the Code of Criminal Procedure as expressly provided in sub-section (2) of Section 37. These limitations on granting of bail specified in sub-section (1) of Section 37 are in addition to the limitations under Section 437 of the Code of Criminal Procedure and were enacted only for this purpose; and they do not have the effect of excluding the applicability of the proviso to sub-section (2) of Section 167 CrPC which operates in a different field relating to the total period of custody of the accused permissible during investigation. (Para 13)

Notwithstanding the substitution of Section 37 in the NDPS Act in its present form by Act 2 of 1989 subsequent to the enactment of the TADA Act, there is nothing in Section 37 of the NDPS Act similar to sub-section (4) of Section 20 of the TADA Act even though there is striking similarity of the provision with sub-sections (8) and (9) of Section 20 of the TADA Act. The legislative intent of not excluding the applicability of the proviso to sub-section (2) of Section 167 CrPC in cases of arrest made for commission of offences under the NDPS Act, is quite evident. (Para 15)

It is settled that the court will have no power of remand of an accused to any custody unless the power is conferred by law. The power must, therefore, be traced to some provision of the statute. There is clear mention of Section 167 CrPC in the NDPS Act for the exercise of this power. Ordinarily, there must also be an outer limit prescribed by specification of the total period of permissible remand during investigation. This too is provided in Section 167. To exclude merely this part of Section 167, an express provision in the statute was necessary, assuming there could be conferment of power of remand unlimited in point of time. (Para 16). *Union of India* v. *Thamisharasi*, (1995) 4 SCC 190: 1995 SCC (Cri) 665.

Bench Strength **2**. Coram: **J.S. Verma** and *Sujata V. Manohar*, JJ. [Date of decision: 1-5-1995]

Natabar Parida v. State of Orissa, (1975) 2 SCC 220: 1975 SCC (Cri) 484, relied on

Narcotics Control Bureau v. Kishan Lal, (1991) 1 SCC 705: 1991 SCC (Cri) 265, distinguished

(19) Other issues

[6553] — **S. 437 — Plea or statement made in bail application — Admissibility of in another case relating to such accused** — *Statement about returned candidate's age made in his bail application filed in an earlier criminal case in which the candidate was an accused — On the basis of that statement respondent returned candidate would be below the prescribed age of 25 years at the time of filing of his nomination — Contention that the statement was made by the lawyer without respondent's instructions, held on facts, not acceptable — View that such statements are generally made in the application for obtaining bail, held, also not acceptable as no such presumption can be raised and false statement made before the court cannot be taken lightly — Moreover, a person cannot be allowed to take advantage of his own wrong — In absence of any satisfactory explanation, such statement can be presumed to be correct and binding — Hence court can act on the basis of such statement — Evidence Act, 1872, Ss. 17 to 21 — Constitution of India, Art. 173*

It was contended by the appellant election petitioner that the respondent returned candidate was implicated in a criminal case wherein an application for bail was filed by him or on his behalf before CJM and it had specifically been stated therein that he, thence, was a school-going student being aged about 15 years. However, the advocate who had filed the bail application stated that the Chief Judicial Magistrate did not accept the contention that the respondent was less than 16 years of age on the ground that in the records his date of birth was mentioned as 17 years. Even if the age of the respondent being 17 years as on the date of commission of the offence was to be considered to be correct, he would still not be of the age of 25 years as on the date of filing of the nomination. The High Court observed that it is a common experience that all such pleas are taken for the purpose of obtaining bail and, thus, such a plea cannot be taken seriously for debarring a person as contemplated under Art.173(*b*) of the Constitution of India.

Held :

A person is not expected to take false grounds regarding his age or to make a statement that he had been reading in a school. No presumption in this behalf can be raised as such allegations would be subject to judicial scrutiny. (Para 61)

Even otherwise, making a false statement before the court whether on affidavit or not is not to be treated lightly. The court acts on the basis of the statement made by a party to the lis. Whether such defence has been accepted or not is not of much importance but whether a false statement to the knowledge of the party has been made or not is. In any view of the matter, the court must draw an adverse inference in this behalf against the respondent. (Para 64)

Furthermore, a person should not be permitted to take advantage of his own wrong. He should either stand by his statement made before a court of law or should explain the same sufficiently. In absence of any satisfactory explanation, the court will presume that the statement before a court is correct and binding on the party on whose behalf the same has been made. (Para 65)

As the law stated in *Thiru John case* "a party's admission as defined in Sections 17 to 20, fulfilling the requirements of Section 21 of the Evidence Act, is substantive evidence proprio vigore. An admission, if clearly and unequivocally made, is the best evidence against the party making it and though not conclusive, shifts the onus on to the maker". (Para 63). *Sushil Kumar* v. *Rakesh Kumar*, (2003) 8 SCC 673.

Bench Strength **2**. Coram: *V.N. Khare, C.J.* and **S.B. Sinha**, J. [Date of decision: 16-10-2003]

Thiru John v. Returning Officer, (1977) 3 SCC 540, relied on

[6554] — Ss. 437 and 439 — Bail — Grant of — Challenge to — Locus standi — *Held, the complainant can always question the order granting bail if the said order is not validly passed — It is not as if once a bail is granted by any court, the only way is to get it cancelled on account of its misuse — Bail order can be tested on merits also — On facts held, complainant could question the merits of the order granting bail* (Para 12). *Brij Nandan Jaiswal* v. *Munna*, (2009) 1 SCC 678.

Bench Strength **2**. Coram: *Tarun Chatterjee* and *V.S. Sirpurkar*, JJ. [Date of decision: 19-12-2008]

Section 438 — Anticipatory Bail

Synopsis

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— **S. 438** *See* Ss. 157 & 155 and 41 to 44 & 46 and Ss. 437 to 439
See also Ss. 207, 208, 161 and 438
See also Ss. 436 to 450
See also Ss. 436 to 439 and 446-A
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See also Ss. 482, 439, 438 and 407

— **S. 438(2)** *See* Ss. 437, 438(2) and 439
— **Ss. 438/439** *See* S. 482 and Ss. 438/439

(1) Generally

See also Section 438, '(8) Duration and extent of anticipatory bail', below

[6555] — S. 438 — Anticipatory bail — Concept of — Liberal interpretation of the section in the light of Art. 21 of the Constitution of India

An anticipatory bail is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. A direction under S. 438 is therefore intended to confer conditional immunity from the 'touch' or confinement contemplated by S. 46 of the Code.

In order to meet the challenge of Art. 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail.

Since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of S. 438, especially when not imposed by the legislature. An overgenerous infusion of constraints and conditions which are not to be found in S. 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in S. 438 must be saved, not jettisoned. *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565: 1980 SCC (Cri) 465: AIR 1980 SC 1632: 1980 Cri LJ 1125.

Bench Strength 5. Coram: **Y.V. Chandrachud, C.J.** and *P.N. Bhagwati*, *N.L. Untwalia*, *R.S. Pathak* and *O. Chinnappa Reddy*, JJ. [Date of decision: 9-4-1980]

[6556] — S. 438 — Anticipatory bail — Concept of, explained

The concept of anticipatory bail is that a person who apprehends his arrest in a non-bailable case, can apply for grant of bail to the Court of Session or to the High Court before the arrest. (Para 12). *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength 2. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

[6557] — S. 438 — Anticipatory bail — History and object of S. 438, restated

The 41st Report of the Law Commission recommended for the first time inclusion of a provision for anticipatory bail. Section 438 contemplates an application by a person on an apprehension of arrest in regard to the commission of a non-bailable offence: the object being to relieve a person from unnecessary harassment or disgrace and it is granted when the court is otherwise convinced that there is no likelihood of misuser of the liberty granted since he would neither abscond nor take such step so as to avoid due process of law. (Para 7). *Narinderjit Singh Sahni* v. *Union of India*, (2002) 2 SCC 210: AIR 2001 SC 3810.

Bench Strength 3. Coram: *G.B. Pattanaik*, **U.C. Banerjee** and *S.N. Variava*, JJ. [Date of decision: 12-10-2001]

[6558] — S. 438 — Anticipatory bail — Court's power to grant or refuse — Nature of — Held, it is discretionary

It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant on finding new material or circumstances at any point of time. (Para 96)

The intention of the legislature is quite clear that the power of grant or refusal of bail is entirely discretionary. (Para 97). *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength 2. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, followed

[6559] — Ss. 438 and 437 — Anticipatory bail — Scope and ambit of — Six principles regarding, laid down in *Sibbia case*, (1980) 2 SCC 565, reiterated — *Constitution of India, Art. 21*

Gurbaksh Singh Sibbia case, (1980) 2 SCC 565, laid down the following principles with regard to anticipatory bail:

(*a*) Section 438(1) is to be interpreted in the light of Article 21 of the Constitution of India.

(*b*) Filing of FIR is not a condition precedent to exercise of power under Section 438.

(*c*) Order under Section 438 would not affect the right of police to conduct investigation.

(*d*) Conditions mentioned in Section 437 cannot be read into Section 438.

(*e*) Although the power to release on anticipatory bail can be described as of an "extraordinary" character this would "not justify the conclusion that the power must be exercised in exceptional cases only". Powers are discretionary to be exercised in the light of the circumstances of each case.

(*f*) Initial order can be passed without notice to the Public Prosecutor. Thereafter, notice must be issued forthwith and question ought to be re-examined after hearing. Such ad interim order must conform to requirements of Section 438 and suitable conditions should be imposed on the applicant. (Para 109). *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength **2**. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, reiterated

Joginder Kumar v. State of U.P., (1994) 4 SCC 260: 1994 SCC (Cri) 1172, referred to

Law Commission Reports, 41st Report, referred to

[6560] — S. 438 — Anticipatory bail — Nature and scope of — Extraordinary/Special power for grant of, given to higher echelons of judicial service i.e. a Court of Session and a High Court — Rationale for, stated

Section 438 CrPC makes special provision for granting "anticipatory bail" which was introduced in 1973. The expression "anticipatory bail" has not been defined in CrPC. Anticipatory bail means a bail in anticipation of arrest. The expression "anticipatory bail" is a misnomer inasmuch as it is not as if bail presently granted is in anticipation of arrest. Where a competent court grants "anticipatory bail", it makes an order that in the event of arrest, a person shall be released on bail. The power of granting "anticipatory bail" is extraordinary in character and only in exceptional cases where it appears that a person is falsely implicated or a frivolous case is launched against him or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" that such power may be exercised. Thus, the power is "unusual in nature" and is entrusted only to the higher echelons of judicial service i.e. a Court of Session and a High Court. (Paras 23 to 26). *Union of India* v. *Padam Narain Aggarwal*, (2008) 13 SCC 305: (2008) 231 ELT 397.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 3-10-2008]

Balchand Jain v. State of M.P., (1976) 4 SCC 572: 1976 SCC (Cri) 689, relied on

Law Commission of India, Forty-eighth Report, Vol. 6, p. 13, Para 31, relied on

[6561] — S. 438 — Anticipatory bail — Provision as to — Object behind enactment of, restated [*Per Markandey Katju, J.*]

The provision for anticipatory bail was introduced in CrPC because it was realised by Parliament in its wisdom that false and frivolous cases are often filed against some persons and such persons have to go to jail because even if the first information report is false and frivolous a person has to obtain bail, and for that he has to first surrender before the Magistrate, and his bail application is heard only after several days (usually a week or two) after giving notice to the State. During this period the applicant has to go to jail. Hence even if such person subsequently obtains bail his reputation may be irreparably tarnished. The reputation of a person is a valuable asset for him just as in law the goodwill of a firm is an intangible asset. (Para 52). *Som Mittal* v. *Govt. of Karnataka*, (2008) 3 SCC 753: (2008) 1 SCC (L&S) 895: (2008) 2 SCC (Cri) 73: AIR 2008 SC 1126: (2008) 2 LLN 690: (2008) 65 AIC 187 (SC): 2008 Cri LJ 1610.

Bench Strength **2**. Coram: **H.K. Sema**[1] and **Markandey Katju**[2], JJ. [Date of decision: 29-1-2008]

[6562] — S. 438 — Object of, restated

The object of Section 438 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the courts concerned while entertaining a petition for grant of anticipatory bail and the fact of taking cognizance or filing of a charge-sheet cannot by itself be construed as a prohibition against the grant of anticipatory bail. The courts i.e. the Court of Session, High Court or Supreme Court have the necessary power vested in them to grant anticipatory bail in non-bailable offences under Section 438 CrPC even when cognizance is taken or a charge-sheet is filed provided the facts of the case require the court to do so. (Para 7). *Bharat Chaudhary* v. *State of Bihar*, (2003) 8 SCC 77: 2003 SCC (Cri) 1953: AIR 2003 SC 4662.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 8-10-2003]

(1) Anticipatory Bail — Generally *(contd.)*

[6563] — S. 438 and Statement of Objects and Reasons — Legislative history of S. 438 and object of providing anticipatory provision therein, restated (Paras 9 to 11, 13 and 14). *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength 2. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

Law Commission Reports, 41st Report, Para 39.9 and 31st Report, Para 31, referred to

[6564] — S. 438 — Measures to avoid curtailment of personal liberty — Six suggestions, albeit illustrative ones and not exhaustive, given which might dispense with necessity to curtail personal liberty of accused — *Constitution of India — Art. 21*

Observed :

In case, the State considers the following suggestions in proper perspective then perhaps it may not be necessary to curtail the personal liberty of the accused in a routine manner. These suggestions are only illustrative and not exhaustive:

(*1*) Direct the accused to join the investigation and only when the accused does not cooperate with the investigating agency, then only the accused be arrested.

(*2*) Seize either the passport or such other related documents, such as, the title deeds of properties or the fixed deposit receipts/share certificates of the accused.

(*3*) Direct the accused to execute bonds.

(*4*) The accused may be directed to furnish sureties of a number of persons which according to the prosecution are necessary in view of the facts of the particular case.

(*5*) The accused be directed to furnish undertaking that he would not visit the place where the witnesses reside so that the possibility of tampering of evidence or otherwise influencing the course of justice can be avoided.

(*6*) Bank accounts be frozen for small duration during the investigation. (Para 117). *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength 2. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

Pokar Ram v. State of Rajasthan, (1985) 2 SCC 597: 1985 SCC (Cri) 297; N. Meera Rani v. Govt. of T.N., (1989) 4 SCC 418: 1989 SCC (Cri) 732; Rameshwar Shaw v. District Magistrate, Burdwan, AIR 1964 SC 334: (1964) 1 Cri LJ 257: (1964) 4 SCR 921; Vijayalaxmi Cashew Co. v. CTO, (1996) 1 SCC 468; Union of India v. K.S. Subramanian, (1976) 3 SCC 677: 1976 SCC (L&S) 492; State of U.P. v. Ram Chandra Trivedi, (1976) 4 SCC 52: 1976 SCC (L&S) 542; Palanikumar v. State, (2007) 4 CTC 1 (Mad), cited

[6565] — Ss. 438, 437 & 2(h), 155 to 157 and 41 to 44 & 46 — Arrest — Remedies against — Anticipatory order restraining arrest — Power of court to pass — Nature of direction that can be passed under S. 438 — Condition precedent for operation of S. 438 — Remedy open to applicant making prayer for anticipatory order restraining arrest — *Held, legality of a proposed arrest cannot be gone into in an application under S. 438, and the court cannot pass an interim order restraining the arrest of the applicant while the application for anticipatory bail is pending — This is the case as the condition precedent for the operation of a direction under S. 438 is arrest of the accused — Rationale behind the same discussed, it being that an order restraining arrest would amount to an interference in the investigation, which was not permissible under S. 438 — Clarified, however, that such an applicant, after surrendering to custody, could file an application in terms of S. 437 or 439, as the case may be*

Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code. (Para 19)

Therefore, (even though no application for protection in terms of Section 438 is pending) what the appellant can do after surrendering to custody is to file an application in terms of Section 437 or 439, as the case may be. Even otherwise, the direction which a court can issue under Section 438 of the

Code is that in the event of arrest of an accused on an accusation of committing a non-bailable offence, he shall be released on bail subject to such conditions as the court may deem fit to impose. An application under Section 438 of the Code can be moved only by a person who has not already been arrested. Once he is arrested, his remedy is to move the court concerned either under Section 437 or Section 439 of the Code. In the very nature of the direction which the court can issue under Section 438 of the Code, it is clear that the direction is to be issued only at the pre-arrest stage. The provisions cannot be invoked after arrest of the accused. The direction becomes operative only after arrest. The condition precedent for the operation of the direction issued is arrest of the accused. This being so, the irresistible inference is that while dealing with an application under Section 438 of the Code the court cannot restrain arrest. (Para 18)

While upholding the rejection of the prayer in terms of Section 438 CrPC, no opinion is expressed on the merits of the case. (Para 20). *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303: 2005 SCC (Cri) 933: AIR 2005 SC 1057: (2005) 117 DLT 686: (2005) 2 Mah LJ 259: 2005 Cri LJ 1706.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 21-2-2005]

[6566] — S. 438 — Anticipatory bail — Grant of, and duration for which to be granted — Proper course of action for court — *After evaluating averments and accusation available on record, if anticipatory bail is to be granted, held, interim bail should be granted and notice should be issued to Public Prosecutor — After hearing him, court may either reject anticipatory bail application or confirm grant of anticipatory bail — It may also impose conditions for grant of anticipatory bail — If the liberty granted by court is misused then at the instance of Public Prosecutor or complainant, court can cancel or modify conditions of anticipatory bail — Anticipatory bail can be cancelled even on finding of new material or circumstances at any point of time — Anticipatory bail granted should ordinarily be continued till trial of the case — In the present case, applicant although allegedly involved in murder case, High Court's order refusing him anticipatory bail, held, not sustainable — Appellant directed to join investigation and cooperate with investigator — Further directed that in case of arrest, he should be released on bail on personal bond as specified — General Clauses Act, 1897, S. 21 — CrPC, 1973 — S. 438*

The appellant belonged to a political party. According to the FIR, one *S*, the candidate of a rival party for the State Assembly election, came to the village and met his party workers. When they were about to leave, supporters of the appellant suddenly appeared, challenged *S* and shouted in favour of the appellant. Some of them fired from their pistols to kill *S* and his party workers which resulted in instant death of one person. They also assaulted certain other supporters of *S*. According to the FIR, about eight days earlier, the appellant had visited the village and instigated his party workers to beat the opponents and do whatever they liked. The High Court declined to grant anticipatory bail to the appellant and therefore, he had filed the present appeal by special leave.

Opposing the appeal, the respondents contended that in murder cases custodial interrogation was necessary.

Allowing the appeal and granting anticipatory bail,

Held:

There is no justification for reading into Section 438 CrPC the limitations mentioned in Section 437 CrPC. The plentitude of Section 438 must be given its full play. There is no requirement that the accused must make out a "special case" for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 CrPC to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail. (Paras 91 and 93)

The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case. (Para 94)

(1) Anticipatory Bail — Generally *(contd.)*

The order granting anticipatory bail for a limited duration and thereafter directing the accused to surrender and apply for regular bail is contrary to the legislative intention and the judgment of the Constitution Bench in *Sibbia case*, (1980) 2 SCC 565. (Para 95)

It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant on finding new material or circumstances at any point of time. (Para 96)

The intention of the legislature is quite clear that the power of grant or refusal of bail is entirely discretionary. (Para 97)

The court which grants the bail has the right to cancel the bail according to the provisions of the General Clauses Act; but ordinarily after hearing the Public Prosecutor when the anticipatory bail order is confirmed then the benefit of the grant of the bail should continue till the end of the trial of that case. Section 438 CrPC does not mention anything about the duration to which a direction for release on bail in the event of arrest can be granted. The order granting anticipatory bail is a direction specifically to release the accused on bail in the event of his arrest. Once such a direction of anticipatory bail is executed by the accused and he is released on bail, the court concerned would be fully justified in imposing conditions including a direction of joining the investigation. (Paras 98 and 100)

In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail. (Para 102)

The court must bear in mind that at times the applicant would approach the court for grant of anticipatory bail on mere apprehension of being arrested on accusation of having committed a non-bailable offence. In fact, the investigating agency concerned may not otherwise arrest that applicant who has applied for anticipatory bail but just because he makes an application before the court and gets the relief from the court for a limited period and thereafter he has to surrender before the trial court and only thereafter his bail application can be considered and the life of anticipatory bail comes to an end. This may lead to disastrous and unfortunate consequences. The applicant who may not have otherwise lost his liberty loses it because he chose to file application of anticipatory bail on mere apprehension of being arrested on accusation of having committed a non-bailable offence. No arrest should be made because it is lawful for the police officer to do so. The existence of power to arrest is one thing and the justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. (Para 103)

The restriction imposed in *Salauddin case*, (1996) 1 SCC 667 that anticipatory bail should be granted only for a limited period and on the expiry of that duration the accused released on anticipatory bail must submit himself to custody and only thereafter can apply for regular bail is contrary to the basic intention and spirit of Section 438 CrPC. It is also contrary to Article 21 of the Constitution. The test of fairness and reasonableness is implicit under Article 21 of the Constitution of India. Directing the accused to surrender to custody after the limited period of anticipatory bail amounts to deprivation of his personal liberty. It is unreasonable to lay down strict, inflexible and rigid rules for exercise of such discretion by limiting the period of which an order under Section 438 could be granted. (Paras 104, 106 and 107)

Once the anticipatory bail is granted then the protection should ordinarily be available till the end of the trial unless the interim protection by way of the grant of anticipatory bail is curtailed when the anticipatory bail granted by the court is cancelled by the court on finding fresh material or circumstances or on the ground of abuse of the indulgence by the accused. (Para 108)

In view of the clear declaration of law laid down by the Constitution Bench in *Sibbia case* it would not be proper to limit the life of anticipatory bail. Therefore, the clear declaration of the law by the Constitution Bench, the life of the order under Section 438 CrPC granting bail cannot be curtailed. (Paras 123 and 138)

In the present case, the impugned judgment and order of the High Court declining anticipatory bail to the appellant cannot be sustained and is consequently set aside. The appellant is directed to join the investigation and fully cooperate with the investigating agency. In the event of arrest the appellant shall be released on bail on his furnishing a personal bond in the sum of Rs 50,000 with two sureties in the like amount to the satisfaction of the arresting officer. (Paras 141 and 142). *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength **2**. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465; Maneka Gandhi v. Union of India, (1978) 1 SCC 248, followed

Hyman v. Rose, 1912 AC 623, 631, cited

Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667: 1996 SCC (Cri) 198; K.L. Verma v. State, (1998) 9 SCC 348: 1998 SCC (Cri) 1031; Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933; Sunita Devi v. State of Bihar, (2005) 1 SCC 608: 2005 SCC (Cri) 435; Naresh Kumar Yadav v. Ravindra Kumar, (2008) 1 SCC 632: (2008) 1 SCC (Cri) 277, held, per incuriam

[6567] — S. 438 — Admissions made by accused in anticipatory bail — Admissibility — *Evidence Act, 1872, S. 5*

The question as to admissions made in an application for anticipatory bail were binding on the accused, being a matter of inference, can also be urged during trial. The other and further remedies as pointed out can be resorted to as also invocation of the provisions of Section 319 CrPC at the stage of trial is also permissible in law, if an appropriate case is made out therefor. It is clarified that any observations by higher courts should not prejudice either party and the Magistrate should consider the matter on its own merit if the issue of further investigation again arises in future. (Paras 26 and 27). *Kishan Lal* v. *Dharmendra Bafna*, (2009) 7 SCC 685: (2009) 3 SCC (Cri) 611: 2009 Cri LJ 3721: (2009) 81 AIC 141 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 21-7-2009]

[6568] — S. 438 — Direction given under, for grant of bail to person apprehending arrest — Question of constitutionality not decided — *Constitution of India — Art. 32. Ghanshyam Dass Jain* v. *State of U.P.*, (1982) 3 SCC 389(1): 1983 SCC (Cri) 62(1).

Bench Strength **2**. Coram: *V.D. Tulzapurkar* and *A.N. Sen*, JJ. [Date of decision: 27-4-1981]

[6569] — S. 438 — Restoration of provision as to anticipatory bail in State concerned — Recommendation made to State Government/State Legislature by Supreme Court — Binding effect, if any — *Per Markandey Katju, J., although such a recommendation [pertaining to restoration of a deleted statutory provision in this case] is not binding on State Government/State Legislature, it should be seriously considered and not simply ignored — Court usually makes recommendation when it feels that public is facing some hardship — Such recommendation should, therefore, be given respect and serious consideration — Constitution of India — Arts. 226, 32, 136, 50 and 245*

No doubt the recommendation of a court is not binding on the State Government/State Legislature but still it should be seriously considered, and not simply ignored. The court usually makes a recommendation when it feels that the public is facing some hardship. Such recommendation should, therefore, be given respect and serious consideration. (Para 56)

Therefore, a strong recommendation is made to the U.P. Government to immediately issue an ordinance to restore the provision for anticipatory bail in U.P. by repealing Section 9 of U.P. Act 16 of 1976, and empowering the Allahabad High Court as well as the Sessions Courts in U.P. to grant anticipatory bail. (Paras 57 and 53). *Som Mittal* v. *Govt. of Karnataka*, (2008) 3 SCC 753: (2008) 1 SCC (L&S) 895: (2008) 2 SCC (Cri) 73: AIR 2008 SC 1126: (2008) 2 LLN 690: (2008) 65 AIC 187 (SC): 2008 Cri LJ 1610.

Bench Strength **2**. Coram: **H.K. Sema**[1] and **Markandey Katju**[2], JJ. [Date of decision: 29-1-2008]

[6570] — S. 438 — Anticipatory bail — Provision as to — Deletion of, in State of U.P. — Restoration of — Recommendation made by Supreme Court for — *Deletion of said provision leading to filing of thousands of writ petitions and S. 482 CrPC applications every year in the High Court concerned for stay of petitioner's arrest and/or quashing of FIR — This unnecessarily increasing workload of High Court — That apart, said deletion causing hardship to public and overcrowding in jails — Problems caused would be obviated by restoring the provision for anticipatory bail in State of U.P. — Hence, Supreme Court [Markandey Katju, J.] making a strong recommendation to U.P. Government to immediately issue an ordinance to restore the provision for anticipatory bail*

In U.P. provision for anticipatory bail has been deleted while it continues to exist in all other States in India, even in terrorist affected States. The result is that thousands of petitions under Section 482 CrPC are filed every year in the Allahabad High Court praying for stay of arrest or for quashing the FIR, because in the absence of the provision of anticipatory bail many persons who are innocent cannot get anticipatory bail even though the FIR filed against them may be frivolous and/or false. Even if such persons get regular bail under Section 439 CrPC, before that they will have to go to jail, and thus their reputation in society may be irreparably tarnished. (Paras 39, 50 and 45)

(1) Anticipatory Bail — Generally *(contd.)*

Thus the deletion of the provision for anticipatory bail in U.P. is unnecessarily increasing the workload of the High Court and adding to the arrears, apart from the hardship to the public, and overcrowding in jails. The problem will be obviated by restoring the provision for anticipatory bail in the State concerned. (Paras 45, 54, 55 and 49)

The Allahabad High Court had on several occasions requested the State Government of U.P. to issue an ordinance immediately to restore the provision for anticipatory bail but all its requests seem to have fallen on deaf ears. It seems that there is an impression in some quarters that if the provision for anticipatory bail is restored crimes will increase. This is a specious argument, since it has not made much difference to the crime position in the States where the provision for anticipatory bail exists, even in terrorist affected States. *Som Mittal* v. *Govt. of Karnataka*, (2008) 3 SCC 753: (2008) 1 SCC (L&S) 895: (2008) 2 SCC (Cri) 73: AIR 2008 SC 1126: (2008) 2 LLN 690: (2008) 65 AIC 187 (SC): 2008 Cri LJ 1610.

Bench Strength **2**. Coram: **H.K. Sema**[1] and **Markandey Katju**[2], JJ. [Date of decision: 29-1-2008]

[6571] — S. 438 — Does not form an integral part of Art. 21 — *Anticipatory bail provided for the first time under the new code is concerned with the Sessions Court and High Court and cannot be claimed as a matter of right. State of M.P.* v. *Ram Kishna Balothia*, (1995) 3 SCC 221: 1995 SCC (Cri) 439: AIR 1995 SC 1198: (1995) 1 KLT 535: 1995 MPLJ 303: 1995 Cri LJ 2076.

Bench Strength **2**. Coram: *B.P. Jeevan Reddy* and **Sujata V. Manohar**, JJ. [Date of decision: 6-2-1995]

[6572] — Ss. 438 and 42 — Arrest — Arrest of person applying for anticipatory bail, when such arrest becomes imperative — Necessity of recording reasons in case diary emphasised — *Such reasons should be recorded before arrest, and in exceptional cases immediately after arrest, so that court may have opportunity to properly consider case for grant or refusal of bail — Importance of fundamental right to personal liberty pointed out — Constitution of India, Arts. 22 and 21*

Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under Section 438 CrPC should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations. (Para 126)

No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case. (Para 111)

The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(*i*) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(*ii*) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(*iii*) The possibility of the applicant to flee from justice;

(*iv*) The possibility of the accused's likelihood to repeat similar or other offences;

(*v*) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(*vi*) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(*vii*) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;

(*viii*) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(*ix*) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(*x*) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail. (Para 112)

Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record. These factors are by no means exhaustive but they are only illustrative. (Paras 113 and 114)

Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case. (Para 116)

In case the arrest is imperative, according to the facts of the case, in that event, the arresting officer must clearly record the reasons for the arrest of the accused before the arrest in the case diary, but in exceptional cases where it becomes imperative to arrest the accused immediately, the reasons be recorded in the case diary immediately after the arrest is made without loss of any time so that the court has an opportunity to properly consider the case for grant or refusal of bail in the light of reasons recorded by the arresting officer. (Para 118). *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength **2**. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, followed

Joginder Kumar v. State of U.P., (1994) 4 SCC 260: 1994 SCC (Cri) 1172, referred to

National Police Commission Reports, 3rd Report, cited

[6573] — S. 438 — Provision for anticipatory bail — Whether S. 9 of U.P. Act 16 of 1976 omitting S. 438 of Criminal Procedure Code, 1973 violative of Arts. 19, 14 and 21 — *Held, matter should be referred to a larger Bench — Constitution of India — Arts. 19, 14 and 21 — Criminal Procedure Code (U.P. Amendment) Act, 1976 (16 of 1976), S. 9. Jagat Prasad* v. *State of U.P.*, (1998) 8 SCC 632: 1998 SCC (Cri) 1724.

Bench Strength **2**. Coram: *G.N. Ray* and *B.L. Hansaria*, JJ. [Date of decision: 8-8-1996]

[*Note:* But see *Kartar Singh* v. *State of Punjab*, (1994) 3 SCC 569 where a Bench of five Judges has upheld the constitutionality of Section 9 of the Code of Criminal Procedure (U.P. Amendment) Act, 1976 (16 of 1976).]

[6574] — S. 438 — Multiple cases — Grant of bail in one case — Effect — Entitlement to bail in all cases if arises — *In the present case, the writ petitioners charged with offences at different places in different States though were granted bail in one case could not avail of the benefit thereof due to incarceration on account of production warrant in another case — Such a situation, held, not ipso facto violative of Art. 21 — In absence of material to substantiate the allegation of infraction of Art. 21, relief of release on bail by a blanket order refused — However, in view of the right under Art. 21 to speedy trial, Central Government directed to evolve a formula or procedure for early conclusion of the trial — Penal Code, 1860, Ss. 420, 406, 409, 407, 120-B, 467, 468 & 471 — Prevention of Corruption Act, 1947, Ss. 5(2) & (1)(d) — Negotiable Instruments Act, 1881, S. 138 — Constitution of India — Art. 21*

Admittedly, the protection of personal liberty stands expanded to make the right to life under Article 21 more meaningful, the language of the article itself records an exception indicating thereby that a person may be deprived of his liberty in accordance with the procedure established by law and it is in this sphere the courts will scrupulously observe as to whether the alleged violation of Article 21 stands differently and contra as regards the procedure established by law and in the event it is not so done, it would be a plain exercise of judicial power to grant redress to the petitioner. While there is no difficulty in appreciating the grievance and grant of relief in a given case but facts are too insufficient however, to come to a conclusion as regards the infraction of Article 21. Production warrants have been spoken of without any details whatsoever therefor — the reason offered is that the petitioners, in fact, are not in the know of things being behind the prison bars and it starts pouring in from all parts of the country and in the factual backdrop, it is a well-nigh impossible to come to a finding as regards the infraction of Article 21. In any event the liberty of the petitioners cannot be said to have been trifled with in the absence of due process of law. Deprivation, if any, cannot be claimed to be not in accordance with due process of law. (Para 50)

It cannot be held that an accused involved in large number of criminal cases in different parts of the country, if is not able to be released from custody even on getting bail orders in some cases, itself would tantamount to violation of the right of a citizen under Article 21 of the Constitution. The object of Article 21 is to prevent encroachment upon personal liberty by the executive save in accordance with law, and in conformity with the provisions thereof. It is, therefore, imperative that before a person is deprived of his life or personal liberty, the procedure established by law must strictly be followed and must not be departed from, to the disadvantage of the person affected. In each case where a person complains of the deprivation of his life or personal liberty, the Court, in exercise of its constitutional power of judicial review, has to decide whether there is a law authorising such deprivation and whether in the given case, the procedure prescribed by such law is reasonable, fair and just, and not arbitrary, whimsical and fanciful. On account of liberal interpretation of the words "life" and "liberty" in Article 21, the said article has now come to be invoked almost as a residuary right, even to an extent which the founding fathers of the Constitution never dreamt of. Issuance of production warrants by the court and the production of accused in the court, in cases where he is involved is a procedure established by law and consequently, the accused cannot be permitted to complain of infraction of his rights under Article 21. However, in a given case, the court may be justified in directing release of the accused, taking a stock of the entire situation in the case. While, therefore, holding that an accused could maintain a petition under Article 21, it has to be held that the court would not be justified in directing the release of such accused under a blanket order. (Paras 57 and 63)

The right of an accused to have speedy trial is now recognised as a right under Article 21. Even it has been extended to investigation of offences against child offenders. The procedural fairness required by Article 21, including the right to a speedy trial, has, therefore to be observed throughout and to be borne in mind. (Para 58)

Therefore, while no relief is granted herein to the accused persons, the Central Government should evolve certain formula or procedure, so that the accused will not complain of undue harassment on account of protraction of their cases and the persons deceived who have filed complaints, will be satisfied with the early conclusions of the trial. (Para 58). *Narinderjit Singh Sahni* v. *Union of India*, (2002) 2 SCC 210: AIR 2001 SC 3810.

Bench Strength **3**. Coram: *G.B. Pattanaik*, **U.C. Banerjee** and *S.N. Variava*, JJ. [Date of decision: 12-10-2001]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, followed

Sheela Barse (I) v. Union of India, (1986) 3 SCC 632: 1986 SCC (Cri) 352, relied on

JVG Group of Companies, Re, WP (Crl.) No. 256 of 1999, decided on 28-3-2000 (quoted in Para 1) and Kuber Group of Companies, Re, WPs (Crl) Nos. 72-75 of 2000, decided on 5-5-2000 (quoted in Para 2) overruled on this point

(2) Regular bail vis-à-vis anticipatory bail

[6575] — Ss. 438 and 437 & 439 — Considerations for grant of anticipatory bail vis-à-vis regular bail — *Relevant considerations for granting anticipatory bail — Differ from those for granting other kinds of bail — On facts, held, grant of anticipatory bail not justified*

Relevant considerations governing the court's decision in granting anticipatory bail under S. 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal. Some of the relevant considerations for granting anticipatory bail are the nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State". Status in life, affluence or otherwise, are hardly relevant considerations while examining the request for granting anticipatory bail. *Pokar Ram* v. *State of Rajasthan*, (1985) 2 SCC 597: 1985 SCC (Cri) 297: AIR 1985 SC 969: 1985 Cri LJ 1175.

Bench Strength **3**. Coram: *V.D. Tulzapurkar*, **D.A. Desai** and *A.P. Sen*, JJ. [Date of decision: 17-4-1985]

[6576] — Ss. 438, 439 and 46(1) — Distinction between anticipatory bail and regular bail, restated — *Conditional immunity from touch and arrest as envisaged under S. 46(1) in case of anticipatory bail, reiterated*

The distinction between an ordinary order of bail and an order under Section 438 CrPC is that whereas the former is granted after arrest, and therefore means release from custody of the police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest. Section 46(1) CrPC, which deals with how arrests are to be made, provides that in making an arrest the police officer or other person making the same would actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. The order under Section 438 is intended to confer conditional immunity from the touch as envisaged by Section 46(1) or any confinement. (Para 6). *Naresh Kumar Yadav* v. *Ravindra Kumar*, (2008) 1 SCC 632: (2008) 1 SCC (Cri) 277: AIR 2008 SC 218: (2008) 1 KLT 839.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 23-10-2007]

Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933, relied on

[6577] — Ss. 438 and 437 — Relative scope — Reiterated, there is no justification for reading into S. 438 the limitations mentioned in S. 437 — *The plentitude of S. 438 must be given its full play — There is no requirement that accused must make out a "special case" for exercise of the power to grant anticipatory bail — This virtually reduces salutary power conferred by S. 438 to a dead letter*

There is no justification for reading into Section 438 CrPC the limitations mentioned in Section 437 CrPC. The plentitude of Section 438 must be given its full play. There is no requirement that the accused must make out a "special case" for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 CrPC to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail. (Paras 91 and 93)

In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail. (Para 102)

The court must bear in mind that at times the applicant would approach the court for grant of anticipatory bail on mere apprehension of being arrested on accusation of having committed a non-bailable offence. In fact, the investigating agency concerned may not otherwise arrest that applicant who has applied for anticipatory bail but just because he makes an application before the court and gets the relief from the court for a limited period and thereafter he has to surrender before the trial court and only thereafter his bail application can be considered and the life of anticipatory bail comes to an end. This may lead to disastrous and unfortunate consequences. The applicant who may not have otherwise lost his liberty loses it because he chose to file application of anticipatory bail on mere apprehension of being arrested on accusation of having committed a non-bailable offence. No arrest should be made because it is lawful for the police officer to do so. The existence of power to arrest is one thing and the justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. (Para 103)

The restriction imposed in *Salauddin case*, (1996) 1 SCC 667 that anticipatory bail should be granted only for a limited period and on the expiry of that duration the accused released on anticipatory bail must submit himself to custody and only thereafter can apply for regular bail is contrary to the basic intention and spirit of Section 438 CrPC. It is also contrary to Article 21 of the Constitution. The test of fairness and reasonableness is implicit under Article 21 of the Constitution of India. Directing the accused to surrender to custody after the limited period of anticipatory bail amounts to deprivation of his personal liberty. It is unreasonable to lay down strict, inflexible and rigid rules for exercise of such discretion by limiting the period of which an order under Section 438 could be granted. (Paras 104, 106 and 107)

Once the anticipatory bail is granted then the protection should ordinarily be available till the end of the trial unless the interim protection by way of the grant of anticipatory bail is curtailed when the anticipatory bail granted by the court is cancelled by the court on finding fresh material or circumstances or on the ground of abuse of the indulgence by the accused. (Para 108)

In view of the clear declaration of law laid down by the Constitution Bench in *Sibbia case* it would not be proper to limit the life of anticipatory bail. Therefore, the clear declaration of the law by the Constitution Bench, the life of the order under Section 438 CrPC granting bail cannot be curtailed. (Paras 123 and 138)

In the present case, the impugned judgment and order of the High Court declining anticipatory bail to the appellant cannot be sustained and is consequently set aside. The appellant is directed to join the investigation and fully cooperate with the investigating agency. In the event of arrest the appellant shall be released on bail on his furnishing a personal bond in the sum of Rs 50,000 with two sureties in the like amount to the satisfaction of the arresting officer. (Paras 141 and 142). *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength **2**. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, followed

Hyman v. Rose, 1912 AC 623, 631, cited

Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667: 1996 SCC (Cri) 198; K.L. Verma v. State, (1998) 9 SCC 348: 1998 SCC (Cri) 1031; Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933; Sunita Devi v. State of Bihar, (2005) 1 SCC 608: 2005 SCC (Cri) 435; Naresh Kumar Yadav v. Ravindra Kumar, (2008) 1 SCC 632: (2008) 1 SCC (Cri) 277, held, per incuriam

(2) Regular bail vis-à-vis anticipatory bail *(contd.)*

[6578] — Ss. 438, 437 and 439 — Anticipatory bail — Duration for which to be granted — Following Constitution Bench in *Sibbia case*, (1980) 2 SCC 565, held, grant of anticipatory bail for limited period is illegal — When order of anticipatory bail is confirmed after hearing Public Prosecutor, held, ordinarily its benefit should continue till end of trial — *Grant of anticipatory bail for a limited period coupled with requirement to submit to custody thereafter and then seek, if at all, regular bail, held, violative of S. 438 — Such order would also be unreasonable and therefore, violative of Art. 21 of Constitution which enshrines test of fairness and reasonableness — Constitution of India, Art. 21 — CrPC, 1973, Ss. 438, 437 and 439.* (Paras 141 and 142). *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength 2. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465; Maneka Gandhi v. Union of India, (1978) 1 SCC 248, followed

Hyman v. Rose, 1912 AC 623, 631, cited

Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667: 1996 SCC (Cri) 198; K.L. Verma v. State, (1998) 9 SCC 348: 1998 SCC (Cri) 1031; Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933; Sunita Devi v. State of Bihar, (2005) 1 SCC 608: 2005 SCC (Cri) 435; Naresh Kumar Yadav v. Ravindra Kumar, (2008) 1 SCC 632: (2008) 1 SCC (Cri) 277, held, per incuriam

[6579] — Ss. 438 and 439 — "Custody" and "move" — Held, a person who is under the control of the court or is in the physical hold of an officer with coercive power is in "custody" for the purpose of S. 439 CrPC — *Further held, it must be taken to be a compendious expression referring to the events on the happening of which the Magistrate can entertain bail petition of accused — "Move" comprehends all things necessary to be done by a litigant to obtain an order of the court directing the relief sought — Hence held, unless the applicant is in custody, his making an application under S. 439 CrPC will not confer any jurisdiction on the court to which such application is made — Further held, the view regarding extension of time to "move" the higher court as culled out from the decision in* K.L. Verma case *shall be treated as per incuriam, as no reference was made to the prescription in S. 439 requiring the accused to be in custody Words and Phrases* (Paras 14 to 18). *Sunita Devi* v. *State of Bihar*, (2005) 1 SCC 608: 2005 SCC (Cri) 435: AIR 2005 SC 498: (2004) 115 DLT 517: (2005) 2 Guj LR 1096: (2005) 1 KLT 748: (2005) 2 Mah LJ 534.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2004]

Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667: 1996 SCC (Cri) 198, considered

K.L. Verma v. State, (1998) 9 SCC 348: 1998 SCC (Cri) 1031, held per incuriam

[6580] — Ss. 438 and 439 — Regular bail after surrender before trial court after grant of limited duration anticipatory bail — Need for disposal on the same day, emphasised — *Request for direction for no adjournment on ground of non-availability of records if the accused-respondents proposed to surrender three days in advance, allowed — State giving an undertaking accordingly — Constitution of India — Art. 21*

The State had undertaken that all relevant records should be produced before the court dealing with the bail application and no adjournment would be asked for on the ground of non-availability of records if the respondent-accused intimate the date on which they propose to surrender three days in advance. If an application for bail would be moved, the court concerned would do well to dispose of it on the day it is filed. (Para 8). *Naresh Kumar Yadav* v. *Ravindra Kumar*, (2008) 1 SCC 632: (2008) 1 SCC (Cri) 277: AIR 2008 SC 218: (2008) 1 KLT 839.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 23-10-2007]

(3) Maintainability of application

[6581] — S. 438 — Principles for invoking — 'Reasons to believe' — Meaning of — *Application for invoking the section should disclose specific facts and events and should not be vague — Court should not issue blanket orders and should apply its own mind — It can be invoked prior to arrest — FIR need not be filed before it is invoked — Previous notice to Public Prosecutor not necessary*

The use of the expression 'reason to believe' in S. 438(1) shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief'. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Such belief must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. Specific events and facts must be disclosed by the applicant in order to enable the court to judge the reasonableness of his belief.

A blanket order i.e. an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be had, should not generally be passed. Such a blanket order is bound to cause serious interference with the functions of the police.

If an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned under S. 437 of the Code, as and when an occasion arises.

The filing of an FIR is not a condition precedent to the exercise of the power under S. 438.

Anticipatory bail can be granted even after an FIR is filed, so long as the applicant has not been arrested.

But the provisions of S. 438 cannot be invoked after the arrest of the accused.

An order of bail can be passed under S. 438(1) without notice to the Public Prosecutor. But notice should issue to the Public Prosecutor or the Government Advocate forthwith and the question of bail should be re-examined in the light of the respective contentions of the parties. The ad interim order too must conform to the requirements of the section and suitable conditions should be imposed on the applicant even at that stage.

Regarding time-limit, if any, for anticipatory bail, the court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of an FIR in respect of the matter covered by the order. The applicant may in such cases be directed to obtain an order of bail under S. 437 or 439 of the Code within a reasonably short period after the filing of the FIR as aforesaid. But this need not be followed as an invariable rule. The normal rule should be not to limit the operation of the order in relation to a period of time.

In short the courts should strike a balance between the individual's right to personal freedom and the investigational rights of the police. *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565: 1980 SCC (Cri) 465: AIR 1980 SC 1632: 1980 Cri LJ 1125.

Bench Strength 5. Coram: **Y.V. Chandrachud**, **C.J.** and *P.N. Bhagwati*, *N.L. Untwalia*, *R.S. Pathak* and *O. Chinnappa Reddy*, JJ. [Date of decision: 9-4-1980]

[6582] — S. 438 — Anticipatory bail — In case involving bailable offences — *Petition under S. 438, by person accused of having committed bailable offence, not maintainable. Joginder* v. *State of Haryana*, (2008) 10 SCC 138.

Bench Strength 2. Coram: *Dr. Arijit Pasayat* and *H.S. Bedi*, JJ. [Date of decision: 8-9-2008]

[6583] — S. 438 — Anticipatory bail — Person who may apply for — Stage at which application may be made — *Application for anticipatory bail, held, can be moved by a person who has not been arrested and a direction thereunder can be issued by court only at pre-arrest stage to the effect that in the event of his arrest he shall be released on bail* (Para 7). *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303: 2005 SCC (Cri) 933: AIR 2005 SC 1057: (2005) 117 DLT 686: (2005) 2 Mah LJ 259: 2005 Cri LJ 1706.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 21-2-2005]

[6584] — S. 438 — Provision for anticipatory bail under — Applicability — Bailable offences — *Held, S. 438 not applicable in case of a bailable offence. R.K. Krishna Kumar* v. *State of Assam*, (1998) 1 SCC 474: 1998 SCC (Cri) 406: AIR 1998 SC 530: 1998 Cri LJ 848: (1998) 92 Comp Cas 14.

Bench Strength 2. Coram: **M.K. Mukherjee** and *K.T. Thomas*, JJ. [Date of decision: 3-12-1997]

[6585] — S. 438 — Anticipatory bail — Provision for — Applicability — Held, not applicable to persons already inside the prison after arrest for cognizable offences

Section 438 CrPC is made applicable only in the event of there being an apprehension of arrest. The petitioners in the writ petitions herein are all behind the prison bars upon arrest against all cognizable offences, and therefore, the question of relieving the petitioners from unnecessary disgrace and harassment would not arise. Therefore, and since no infraction can be identified, the petition cannot be sustained as regards the issue of anticipatory bail under Section 438. (Paras 51 and 52). *Narinderjit Singh Sahni* v. *Union of India*, (2002) 2 SCC 210: AIR 2001 SC 3810.

Bench Strength 3. Coram: *G.B. Pattanaik*, **U.C. Banerjee** and *S.N. Variava*, JJ. [Date of decision: 12-10-2001]

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899; Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, (1994) 6 SCC 731: 1995 SCC (Cri) 39, distinguished

Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616: 1996 SCC (Cri) 366; R.D. Upadhyay v. State of A.P., (1996) 3 SCC 422: 1996 SCC (Cri) 519; "Common Cause" A Registered Society v. Union of India, (1996) 4 SCC 33: 1996 SCC (Cri) 589, considered

[6586] — Ss. 438, 437 & 439 and 41 to 44 & 46 — Arrest — Remedies against — Application for anticipatory bail under S. 438 — Stage at which may be moved — *Held, said application can be moved only at the pre-arrest stage, that is, only by a person who has not already been arrested — Once he is arrested, however, (an application not having*

(3) Maintainability of application *(contd.)*

been made or allowed under S. 438) his remedy lies under S. 437 or S. 439 (Para 18). *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303: 2005 SCC (Cri) 933: AIR 2005 SC 1057: (2005) 117 DLT 686: (2005) 2 Mah LJ 259: 2005 Cri LJ 1706.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 21-2-2005]

[6587] — Ss. 438 and 173 — Anticipatory bail — Grant of, after challan has been filed in criminal court — Permissibility — Relevance of defence taken, that dispute purely of civil nature — *Held, S. 438 contains a salutary provision which has been introduced to prevent deprivation of personal liberty — It cannot be jettisoned on technicalities such as challan having been filed, anticipatory bail cannot be granted — Court must exercise its discretion judiciously — Anticipatory bail can be granted at any time so long the applicant has not been arrested — Anticipatory bail cannot also be denied merely because allegations of cheating and forgery have been made — Further held on facts, High Court could not ignore appellant's plea that dispute between him and complainant regarding sale of specific flats, was purely of civil nature and complainant had already filed suit for specific performance — Penal Code, 1860, Ss. 415, 463 and 467*

There was dispute between appellant and complainant regarding sale of specific flats. The complainant apart from filing suit for specific performance, also got an FIR registered against appellant for alleged commission of offences under Sections 420, 467, 468 and 120-B IPC. Appellant's repeated applications for anticipatory bail were rejected. High Court rejected third application on the ground that challan had already been filed in criminal court.

Allowing the appeal,

Held :

Anticipatory bail can be granted at any time so long as the applicant has not been arrested. When application is made to High Court or Court of Session, it must apply its own mind on the question and decide when the case is made out for granting such relief. The High Court ought not to have left the matter to Magistrate only on the ground that challan has now been presented. There is also no reason to deny anticipatory bail merely because allegation in this case pertains to cheating or forgery of a valuable security. Merits of these issues are to be assessed at the time of trial of accused persons and denial of anticipatory bail only on the ground that the challan has been presented would not satisfy the requirements of Sections 437 and 438 CrPC. High Court is required to exercise its discretion upon examination of facts and circumstances, and to grant anticipatory bail "if it thinks fit". Salutary provision contained in Section 438 was introduced to enable the court to prevent deprivation of personal liberty. It cannot be permitted to be jettisoned on technicalities such as the challan having been presented, anticipatory bail cannot be granted. (Paras 7 to 11)

The defence put forward by appellant cannot be obliterated at this stage itself. Appellant's plea cannot be ignored that dispute between parties is purely of a civil nature. Anticipatory bail is therefore granted to appellant. (Para 12). *Ravindra Saxena* v. *State of Rajasthan*, (2010) 1 SCC 684.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **S.S. Nijjar**, JJ. [Date of decision: 15-12-2009]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, relied on

[**Ed.**: See however *HDFC Bank Ltd.* v. *J.J. Mannan*, (2010) 1 SCC 679, which was decided on 16-12-2009 i.e. next day the present case was decided. In *HDFC Bank case*, the Supreme Court has adopted strict approach regarding grant of anticipatory bail, holding that anticipatory bail should be granted for a limited period to enable the accused to surrender to court and to obtain regular bail. On expiry of limited period, the court granting anticipatory bail should leave it to regular court to consider granting bail by taking into consideration evidence collected as a result of investigation or charge-sheet filed in court.]

[6588] — S. 438 — Anticipatory bail — Registration of a case and entries of case diary not necessary for entertaining an application for grant of — *Mere imminence of a likely arrest on a reasonable belief on an accusation of having committed a non-bailable offence, will be sufficient to invoke that provision. Directorate of Enforcement* v. *Deepak Mahajan*, (1994) 3 SCC 440: 1994 SCC (Cri) 785: AIR 1994 SC 1775: 1994 Cri LJ 2269: (1994) 2 BLJR 912: (1994) 2 An LT(Cri) 173: (1994) 70 ELT 12.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 31-1-1994]

[6589] — S. 438 — Applicability of — Applicability to all non-bailable offences — *Held, not confined to offences punishable with death or imprisonment for life or offences triable exclusively by Court of Session — It also applies to all non-bailable offences — Considerations for grant of anticipatory bail different from considerations for post-arrest bail. State of A.P.* v. *Bimal Krishna Kundu*, (1997) 8 SCC 104: 1997 SCC (Cri) 1245: AIR 1997 SC 3589: 1997 Cri LJ 4056.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 3-10-1997]

Pokar Ram v. State of Rajasthan, (1985) 2 SCC 597: 1985 SCC (Cri) 297; State v. Anil Sharma, (1997) 7 SCC 187: 1997 SCC (Cri) 1039, followed

[6590] — S. 438 — Invocation of, after arrest — *Held, provisions of S. 438 cannot be invoked after arrest* (Para 18). *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303: 2005 SCC (Cri) 933: AIR 2005 SC 1057: (2005) 117 DLT 686: (2005) 2 Mah LJ 259: 2005 Cri LJ 1706.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 21-2-2005]

[6591] — Ss. 438 & 406 — Anticipatory bail — Territorial jurisdiction to grant — *Respondents suspected of giving aid to banned militant groups in Assam — Assam Police wanting to interrogate them for investigation — Whether in such circumstances, Bombay High Court had jurisdiction to entertain the respondents' application for anticipatory bail — Question left open — However, grant of bail by Single Judge of Bombay High Court set aside on a different ground and since for all practical purposes it was necessary that the question of grant of bail be considered by the High Court within whose territorial jurisdiction the alleged offences were committed, respondents' applications for anticipatory bail transferred to Gauhati High Court and directed to be heard by a Division Bench — All future petitions for anticipatory bails in common or related matters referring to such activities committed within the jurisdiction of Gauhati High Court, directed to be heard only by that Division Bench and not by any other court — Unlawful Activities (Prevention) Act, 1967. State of Assam* v. *Dr. Brojen Gogol*, (1998) 1 SCC 397: 1998 SCC (Cri) 403: AIR 1998 SC 143, 144.

Bench Strength 2. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 24-10-1997]

(4) Grounds for bail — Generally

See also Section 438, '(5) Grounds for bail in dowry/cruelty cases', and

'(6) Grounds for bail — Particular offences', below

[6592] — S. 438 — Anticipatory bail — "Reason to believe" — Belief that the applicant may be arrested must be based on reasonable ground(s) capable of being examined — Mere fear or vague apprehension not sufficient

Section 438 CrPC is a procedural provision which is concerned with the personal liberty of an individual who is entitled to plead innocence, since he is not on the date of application for exercise of power under Section 438 CrPC convicted for the offence in respect of which he seeks bail. The applicant must show that he has "reason to believe" that he may be arrested in a non-bailable offence. Use of the expression "reason to believe" shows that the belief that the applicant may be arrested must be founded on reasonable grounds. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Mere "fear" is not "belief" for which reason it is not enough for the applicant to show that he has some sort of vague apprehension that someone is going to make an accusation against him in pursuance of which he may be arrested. Grounds on which the belief of the applicant is based that he may be arrested in non-bailable offence must be capable of being examined. If an application is made to the High Court or the Court of Session, it is for the court concerned to decide whether a case has been made out for granting of the relief sought. (Para 16). *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303: 2005 SCC (Cri) 933: AIR 2005 SC 1057: (2005) 117 DLT 686: (2005) 2 Mah LJ 259: 2005 Cri LJ 1706.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 21-2-2005]

[6593] — S. 438 — Anticipatory bail — Principles for grant of — *Reiterated, no straitjacket formula can be prescribed for universal application, as each case for grant of bail has to be considered on its own merits and in the facts and nuances of each case. Pravinbhai Kashirambhai Patel* v. *State of Gujarat*, (2010) 7 SCC 598.

Bench Strength 2. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 8-7-2010]

State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21: 2005 SCC (Cri) 1960 (2), relied on

Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124; CBI v. Tapan Kumar Singh, (2003) 6 SCC 175: 2003 SCC (Cri) 1305; Animireddy Venkata Ramana v. Public Prosecutor, (2008) 5 SCC 368: (2008) 2 SCC (Cri) 600; State v. Anil Sharma, (1997) 7 SCC 187: 1997 SCC (Cri) 1039; Anil Kumar Tulsiyani v. State of U.P., (2006) 9 SCC 425: (2006) 2 SCC (Cri) 565, considered

[6594] — Ss. 438 and 437 — Anticipatory bail — Grant of — Considerations — Exercise of power under S. 438 — Conditions mentioned in S. 437 if can be read into S. 438 — *Powers of High Court and Sessions Court to grant or refuse bail discretionary to be exercised in the circumstances of each case — No risk involved in exercise of the discretion, being vested in higher courts and subject to appeal and revision — Conditions mentioned in S. 437 cannot be read into S. 438 — S. 438 does not interfere with investigation*

(4) Grounds for bail — Generally *(contd.)*

In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. In fact, there are numerous considerations, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail.

In the evaluation of the consideration whether the applicant is likely to abscond, there can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice.

The question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. Therefore, the High Court and the Court of Session to whom the application for anticipatory bail is made ought to be left free in the exercise of their judicial discretion to grant bail if they consider it fit so to do on the particular facts and circumstances of the case and on such conditions as the case may warrant. Similarly, they must be left free to refuse bail if the circumstances of the case so warrant, on considerations similar to those mentioned in S. 437 or which are generally considered to be relevant under S. 439 of the Code. The judicial discretion granted under S. 438 should not be read down by reading into the statute conditions that are not to be found therein. The courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be meaningful. There is no risk involved in entrusting a wide discretion to the Court of Session and the High Court in granting anticipatory bail because, firstly, these are higher courts manned by experienced persons, secondly, their orders are not final but are open to appellate or revisional scrutiny and above all because, discretion has always to be exercised by courts judicially and not according to whim, caprice or fancy. On the other hand, there is a risk in forceclosing categories of cases in which anticipatory bail may be allowed because life throws up unforeseen possibilities and offers new challenges which have to be met.

There is no warrant for reading into S. 438 the conditions and limitations subject to which bail can be granted under S. 437(1). The expression 'if it thinks fit', which occurs in S. 438(1) in relation to the power of the High Court or the Court of Session, is conspicuously absent in S. 437(1). The High Court, therefore, erred in laying down that the discretion under S. 438 cannot be exercised in regard to offences punishable with death or imprisonment for life unless, the court at the stage of granting anticipatory bail, is satisfied that such a charge appears to be false or groundless. Circumstances may justify grant of anticipatory bail in cases such as criminal breach of trust for which the punishment provided is imprisonment for life, though of course, the court is free to refuse anticipatory bail in any case if there is material before it justifying such refusal.

An order of anticipatory bail does not in any way, directly or indirectly, take away from the police their right to investigate into charges made or to be made against the person released on bail. While granting relief under S. 438(1), appropriate conditions can be imposed under S. 438(2) so as to ensure an uninterrupted investigation. One of such conditions can even be that in the event of the police making out a case of a likely discovery under S. 27 of the Evidence Act, the person released on bail shall be liable to be taken in police custody for facilitating the discovery. Besides, if and when the occasion arises, it may be possible for the prosecution to claim the benefit of S. 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail. When a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact, having a bearing on the charge which may be made against him, he may appropriately be deemed to have surrendered himself to the police. Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody: submission to the custody by word or action by a person is sufficient.

So also there is no warrant for the proposition that where a legitimate case for the remand of the offender to the police custody under S. 167(2) can be made out by the investigating agency, the power under S. 438 should not be exercised.

It is also not proper to hold that in serious cases like economic offences involving blatant corruption at the higher rungs of the executive and political power the discretion under S. 438 of the Code should not be exercised. It is not possible for the court to assess the blatantness of corruption at the stage of anticipatory bail.

It is also not possible to hold that anticipatory bail cannot be granted unless it is alleged and shown that the proposed accusations are mala fide.

Under S. 438 the applicant has undoubtedly to make out a case for the grant of anticipatory bail. But one cannot go further and say that he must make out a 'special case'. A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use.

Nor is one justified in reading the conclusion that the power under S. 438 must be exercised in "exceptional cases only" merely because it is of an extraordinary character. *Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565: 1980 SCC (Cri) 465: AIR 1980 SC 1632: 1980 Cri LJ 1125.

Bench Strength **5**. Coram: **Y.V. Chandrachud, C.J.** and *P.N. Bhagwati, N.L. Untwalia, R.S. Pathak* and *O. Chinnappa Reddy*, JJ. [Date of decision: 9-4-1980]

[6595] — S. 438 — Anticipatory bail — Factors to be taken into consideration for grant of, held, are the gravity of the offence and the need for custodial interrogation — *The mere fact of taking of cognizance or filing of charge-sheet, held, is not by itself a bar against grant of anticipatory bail — Penal Code, 1860, Ss. 504, 498-A and 406 — Dowry Prohibition Act, 1961, Ss. 3 and 4*

The appellants herein were husband and wife. They were accused by their daughter-in-law of offences punishable under Sections 504, 498-A and 406 IPC and Sections 3/4 of the Dowry Prohibition Act. Their application for anticipatory bail under Section 438 CrPC was rejected by the Patna High Court. They filed the instant appeal by special leave. After hearing the parties the Supreme Court was inclined to grant the anticipatory bail but the respondent State raised a legal objection that since the trial court had taken cognizance of the offence, Section 438 could not be used for granting anticipatory bail even by the Supreme Court and the only remedy available to the appellants was to approach the trial court and surrender, and thereafter apply for regular bail under Section 439 CrPC.

Rejecting the State's objection and allowing the appeal,

Held :

The object of Section 438 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the courts concerned while entertaining a petition for grant of anticipatory bail and the fact of taking cognizance or filing of a charge-sheet cannot by itself be construed as a prohibition against the grant of anticipatory bail. The courts i.e. the Court of Session, High Court or Supreme Court have the necessary power vested in them to grant anticipatory bail in non-bailable offences under Section 438 CrPC even when cognizance is taken or a charge-sheet is filed provided the facts of the case require the court to do so. (Para 7). *Bharat Chaudhary* v. *State of Bihar*, (2003) 8 SCC 77: 2003 SCC (Cri) 1953: AIR 2003 SC 4662.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 8-10-2003]

Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667: 1996 SCC (Cri) 198, explained

[6596] — S. 438 — Anticipatory bail — Power to grant — Nature and object — When should be exercised — On facts held, exercise of power not warranted

A complaint was lodged in the Court of CJM against the appellant and others alleging commission of offences under Sections 406, 467, 468, 471 and 420 IPC. The CJM directed the officer in charge of the police station to investigate after taking the petition of complaint as FIR and to submit report before Sub-Divisional Judicial Magistrate. According to the appellant they were victims of a conspiracy. Large number of cases were pending between the parties. Having failed in their attempt to get any relief from the civil courts, allegedly the complainant and his associates falsely instituted the complaint. An application under Section 438 CrPC was filed before the High Court which by the impugned order was rejected. It was submitted on behalf of the appellant that without appreciating the factual background and the points involved in the application under Section 438, the prayer for anticipatory bail should not have been rejected summarily and that a case for interference was made out.

(4) Grounds for bail — Generally *(contd.)*

Disposing of the appeal,

Held :

The present case does not prima facie appear to be one where any order in terms of Section 438 CrPC can be passed. (Para 17)

The power exercisable under Section 438 CrPC is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty, then power is to be exercised under Section 438. The power being of important nature it is entrusted only to the higher echelons of judicial forums i.e. the Court of Session or the High Court. It is the power exercisable in case of an anticipated accusation of non-bailable offence. The object which is sought to be achieved by Section 438 CrPC is that the moment a person is arrested, if he has already obtained an order from the Court of Session or the High Court, he shall be released immediately on bail without being sent to jail. (Para 7)

As observed in *Salauddin case*, (1996) 1 SCC 667, the protection in terms of Section 438 CrPC is for a limited duration during which the regular court has to be moved for bail. Obviously, such bail is bail in terms of Section 439 CrPC, mandating the applicant to be in custody. Otherwise, the distinction between orders under Sections 438 and 439 CrPC shall be rendered meaningless and redundant. In *K.L. Verma case*, (1998) 9 SCC 348 it was observed: "Anticipatory bail may be granted for a duration which may extend to the date on which the bail application is disposed of or even a few days thereafter to enable the accused persons to move the higher court, if they so desire." The expression "or even a few days thereafter" relates to grey areas. If the protective umbrella of Section 438 CrPC is extended beyond what was laid down in *Salauddin case* the result would be clear bypassing of what is mandated in Section 439 CrPC regarding custody. In other words, till the applicant avails remedies up to higher courts, the requirements of Section 439 become dead letter. No part of a statute can be rendered redundant in that manner. (Paras 14, 11 and 15). *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303: 2005 SCC (Cri) 933: AIR 2005 SC 1057: (2005) 117 DLT 686: (2005) 2 Mah LJ 259: 2005 Cri LJ 1706.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 21-2-2005]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465; Balchand Jain v. State of M.P., (1976) 4 SCC 572: 1976 SCC (Cri) 689; Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667: 1996 SCC (Cri) 198; Nirmal Jeet Kaur v. State of M.P., (2004) 7 SCC 558: 2004 SCC (Cri) 1989; Sunita Devi v. State of Bihar, (2005) 1 SCC 608: 2005 SCC (Cri) 435; Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559: 1980 SCC (Cri) 508, relied on

K.L. Verma v. State, (1998) 9 SCC 348: 1998 SCC (Cri) 1031, overruled

Followed in Rekha Patel v. Pankaj Verma, (2008) 4 SCC 17

[6597] — S. 438 — Anticipatory bail — Grant of — Parameters for — Order for anticipatory bail when becomes operative — *Held, anticipatory bail is granted if appellant has "reason to believe" that he may be arrested on accusation of having committed a non-bailable offence — It means "bail in anticipation of arrest" — When a competent court grants anticipatory bail it makes an order that in the event of arrest, a person shall be released on bail — There is no question of release on bail unless a person is arrested — Thus, it is only on arrest that such order becomes operative — Further held, said power being unusual in nature is entrusted only to higher echelons of judicial service i.e. Sessions Court and High Court*

Section 438 of the Code confers on the High Court and the Court of Session, the power to grant "anticipatory bail" if the applicant has "reason to believe" that he may be arrested on accusation of having committed a non-bailable offence. The expression "anticipatory bail" has not been defined in the Code. But it means "bail in anticipation of arrest". The expression "anticipatory bail" is a misnomer inasmuch as it is not as if bail is presently granted by the court in anticipation of arrest. When a competent court grants "anticipatory bail", it makes an order that in the event of arrest, a person shall be released on bail. There is no question of release on bail unless a person is arrested and, therefore, it is only on arrest that the order granting anticipatory bail becomes operative. The power being rather unusual in nature, it is entrusted only to the higher echelons of judicial service i.e. a Court of Session and the High Court. (Paras 14, 15 and 16)

The wide discretionary power conferred by the legislature on the higher echelons in the criminal justice-delivery system cannot be put in the form of straitjacket rules for universal application as the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. A circumstance which, in a given case, turns out to be conclusive, may or may not have any significance in another case. The imposition of unnecessary restrictions on the scope of the section which were not to be found in Section 438 of the Code, could make the provision constitutionally vulnerable, since the right of personal freedom, as enshrined in Article 21 of the Constitution, cannot be made to depend on compliance with unreasonable restrictions. The courts must keep in mind the guidelines while dealing with an application for grant of anticipatory bail laid down by the Constitution Bench in *Gurbaksh Singh case*, (1980) 2 SCC 565. Further, the amendment to Section 438 brought about by the CrPC (Amendment) Act, 2005, which is yet to be enforced is more or less in line with the parameters laid down in *Gurbaksh Singh case*. (Paras 21 to 27). *Savitri Agarwal* v. *State of Maharashtra*, (2009) 8 SCC 325: (2009) 3 SCC (Cri) 683: (2009) 80 AIC 116 (SC).

Bench Strength **2**. Coram: **D.K. Jain** and *R.M. Lodha*, JJ. [Date of decision: 10-7-2009]

Balchand Jain v. State of M.P., (1976) 4 SCC 572: 1976 SCC (Cri) 689, followed

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465; Dolat Ram v. State of Haryana, (1995) 1 SCC 349, relied on

Gurbaksh Singh Sibia v. State of Punjab, AIR 1978 P&H 1: 1978 Cri LJ 20, held, overruled

Balchand Jain v. State of M.P., (1976) 4 SCC 572: 1976 SCC (Cri) 689, held, partly doubted

Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933, partly doubted

[6598] — S. 438 — Anticipatory bail — Purpose of — Nature and extent of order that may be passed — Matters to be considered — *Held, inter alia is to protect a person against harassment or humiliation sought to be achieved by complainant due to grudge or personal vendetta — However, protective mechanism of S. 438 does not imply passing of a blanket order which would exempt an accused from surrendering to court if charge-sheet is filed against him on completion of investigation — Anticipatory bail should be given for a limited period to enable accused to surrender to court and to obtain regular bail — On expiry of limited period, the court granting anticipatory bail should leave it to regular court to consider granting bail by taking into consideration evidence collected as a result of investigation or charge-sheet filed in court — Penal Code, 1860, Ss. 420, 467, 468, 471 and 120-B*

Respondent 1 in his capacity as Managing Director of a company, had taken loan from appellant Bank for purchase of electronic sensor paver finishers from a specified supplier. The appellant Bank after sanctioning loan, drew cheques in the name of specified supplier and handed over cheques to Respondent 1. It was alleged that Respondent 1 instead of making purchases from specified supplier, deposited cheques in a fictitious account and diverted the amount to himself. A complaint was therefore filed for commission of offences under Sections 420, 467, 468, 471 and 120-B of the Penal Code, 1860.

On 3-7-2006, the Single Judge of the High Court granted anticipatory bail to Respondent 1 under Section 438 CrPC on the ground that investigating agency had already seized all relevant and vital documents and had recorded statements of all important witnesses, custodial interrogation of Respondent 1 was therefore not required. The appellant Bank filed present appeal for cancellation of anticipatory bail. One of the grounds taken by Respondent 1 for opposing the appeal was that anticipatory bail was granted on 3-7-2006 and Respondent 1 has never misused the privilege and had in fact cooperated with the investigating agencies all through.

Partly allowing the appeal and modifying the High Court order,

Held :

Section 438 CrPC contemplates arrest at the stage of investigation and provides a mechanism for an accused to be released on bail, should he be arrested during the period of investigation. Once investigation makes out a case against him and he is included as an accused in the charge-sheet, the accused has to surrender to the custody of court and pray for regular bail. On the strength of an order granting anticipatory bail, an accused against whom charge has been framed, cannot avoid appearing before the trial court. A person should not be harassed or humiliated in order to satisfy grudge or personal vendetta of complainant but at the same time, provisions of Section 438 CrPC cannot also be invoked to exempt accused from surrendering to court after investigation is complete and if charge-sheet is filed against him. Such an interpretation would amount to violence to the provisions of Section 438 CrPC, since even though a charge-sheet may be filed against an accused and charge is framed against him, he may still not appear before court at all, even during trial. No blanket order could be passed under Section 438 CrPC to prevent accused from being arrested at all in connection with the case. Anticipatory bail is given for a limited duration to enable accused to surrender and to obtain regular bail. Anticipatory bail should be of limited duration only and primarily on expiry of that duration or extended duration, the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted. (Paras 18 to 20)

(4) Grounds for bail — Generally *(contd.)*

Role of Respondent 1 in the entire episode did not entitle him to relief of anticipatory bail, much less a blanket order of bail. However, that is now a closed chapter but what is of relevance is whether High Court should have worded its order in such a way that it could be interpreted to mean that Respondent 1 was not required to even appear and surrender before court during entire investigation stage and trial. Taking advantage of the same, Respondent 1 has successfully avoided court from very initial stage of investigation and even trial. Such kind of an order is not contemplated under Section 438 CrPC. The order of High Court is modified to the extent that Respondent 1 shall surrender before trial court forthwith and pray for regular bail and trial court shall dispose of the same on merits, in accordance with law, before proceeding further with the trial. (Paras 17 and 22). *HDFC Bank Ltd.* v. *J.J. Mannan*, (2010) 1 SCC 679.

Bench Strength 2. Coram: **Altamas Kabir** and *Deepak Verma*, JJ. [Date of decision: 16-12-2009]

Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933; Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667: 1996 SCC (Cri) 198, relied on

[**Ed.**: See however *Ravindra Saxena* v. *State of Rajasthan*, (2010) 1 SCC 684, which was decided by the Supreme Court one day before the present case i.e. on 15-12-2009. In *Ravindra Saxena case*, the Supreme Court has adopted somewhat liberal approach in granting anticipatory bail whereas in the present case, the Supreme Court has adopted a strict approach.]

[6599] — Ss. 438 and 167 proviso — Anticipatory bail — Considerations for grant or refusal of — Court must exercise its judicial discretion only — Material already collected disclosed 'an accusing finger' against accused — Urea Scam — *Violation of FERA involving huge amount — Release of other accused on bail on failure of investigating agency to complete the investigation within time prescribed under proviso to S. 167 is not a ground for granting anticipatory bail to the respondent particularly when he also contributed to the non-completion of the investigation — High Court not justified in granting anticipatory bail to the respondent when it found that the material already collected disclosed 'an accusing finger' against the respondent — Public Accountability and Vigilance — Urea scam. Directorate of Enforcement* v. *P.V. Prabhakar Rao*, (1997) 6 SCC 647: 1997 SCC (Cri) 978: AIR 1997 SC 3868.

Bench Strength 3. Coram: *M.K. Mukherjee, S.P. Kurdukar* and *K.T. Thomas*, JJ. [Date of decision: 5-8-1997]

[6600] — S. 438 — Anticipatory bail — When should not be granted to bail applicants holding high position and/or wielding considerable influence — Factors to be considered in exercise of discretion by court — *Advantage in custodial interrogation of eliciting more useful information and material should be kept in view — Court has to presume that police officers would conduct the custodial interrogation in a responsible manner without using third-degree methods — Court's approach in dealing with application for anticipatory bail under S. 438 should not be same as that in dealing with regular post-arrest bail applications — On facts held, High Court erred in ignoring the apprehension expressed by CBI that considering the high office held by the applicant and wide influence he could wield, CBI would be subjected to great handicap in interrogating him in case of grant of pre-arrest bail to him*

The respondent is a Member of Legislative Assembly of the State of Himachal Pradesh and was also a Minister of the H.P. State Government for three years. He is son of a former Union Minister for Telecommunications. CBI has been investigating a case against the respondent for offence under Section 13(2) of the Prevention of Corruption Act relating to acquiring wealth far in excess of his known sources of income. According to CBI there was clear cut evidence pointing to transfer of assets to the respondent by his father. While the investigation was in progress the respondent approached the High Court for an anticipatory bail under Section 438 CrPC. The High Court granted the bail reminding itself of the principle that "it is well settled that bail and not jail is a normal rule". The bail was subject to the conditions that he shall not go abroad without prior permission of the Court and shall surrender his passport to CBI. Challenging the High Court's order granting the bail CBI contended that respondent's was a clear case of corruption in high places and that considering the responsible and high office which the respondent held and the wide influence which he could wield and the great handicap which the investigating agency would be subjected to while interrogating a person armed with an order of anticipatory bail, the discretion under Section 438 should never have been exercised in favour of the respondent. After perusing the case-diary file,

Held :

In the present case the High Court has misdirected itself in exercising the discretionary power under Section 438 of the Code by granting a pre-arrest bail order to the respondent.

Custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

The High Court has approached the issue as though it was considering a prayer for granting regular bail after arrest. The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest. At any rate the High Court ought not to have side-stepped the apprehension expressed by the CBI (that the respondent would influence the witnesses). The apprehension was quite reasonable when considering the high position which the respondent held and in the nature of accusation relating to a period during which he held such office. *State rep. by the CBI* v. *Anil Sharma*, (1997) 7 SCC 187: 1997 SCC (Cri) 1039: AIR 1997 SC 3806.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 3-9-1997]

[6601] — S. 438 — Anticipatory bail — Grant of, when not justified — Offence made out based on statement of witness and confession of co-accused — *Leakage of question papers for crucial examination conducted by PSC and Board of Intermediate Education — Statement of witness recorded during investigation and confessional statement of co-accused making out a case of criminal conspiracy against the respondents, owners of a printing press — Held, in the circumstances, High Court not justified in granting anticipatory bail to the respondents*

This is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the High Court. If the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on "the career of millions of students", the High Court should not have persuaded itself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order. *State of A.P.* v. *Bimal Krishna Kundu*, (1997) 8 SCC 104: 1997 SCC (Cri) 1245: AIR 1997 SC 3589: 1997 Cri LJ 4056.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 3-10-1997]

[6602] — S. 438 — Anticipatory bail — Grant of — Considerations — Nature of offence and age of accused — *Considering that offence was under Ss. 308 and 323 IPC and the accused was a student, held on facts, accused should be enlarged on anticipatory bail — Penal Code, 1860, Ss. 308 and 323* (Para 3). *Harpreet Singh* v. *Govt. of NCT of Delhi*, (2005) 11 SCC 551.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *S.B. Sinha*, JJ. [Date of decision: 4-4-2005]

[6603] — Ss. 438, 70 and 82 — Anticipatory bail — Considerations/Grounds — Indispensability of specialised treatment to accused suffering from several ailments (if deprived may lead to death of appellant-accused) and parity (as all forty-nine co-accused had been released on bail) — *Although appellant in disregard of law, not cooperating with investigation, whereby proceedings under Ss. 70 and 82 CrPC initiated, on facts, held, interest of justice would be served if anticipatory bail is granted subject to depositing Rs 40 lakhs with Bank in liquidation — Penal Code, 1860, Ss. 406, 409, 420, 439, 471, 473 and 120-B — Banking Regulation Act, 1949, S. 46*

(4) Grounds for bail — Generally *(contd.)*

An FIR was lodged against the appellant and thirteen other co-accused for alleged commission of offences punishable under Sections 406, 409, 420, 439, 471, 473, 120-B IPC and Section 46 of the Banking Regulation Act, 1949. The impugned order of the High Court rejected the appellant's plea of illness in his second application under Section 438 CrPC on the ground that the appellant, in disregard of law, had neither surrendered before the investigating officer nor extended cooperation in the investigation. Therefore, a proceedings under Sections 70 and 82 CrPC had also been initiated against the appellant.

Allowing the appeal partly,

Held :

On the facts and in the circumstances of the case and, more particularly, having regard to the health of the appellant, interest of justice would be served if the appellant is enlarged on anticipatory bail subject to certain conditions. There are as many as forty-nine accused, who were arrested and each one of them has already been enlarged on bail. According to the report of the government doctor the appellant is severely obese weighing 120 kg and he is not able to do his activities of daily living without at least two assistants. He is absolutely bedridden due to severe osteoarthritis below knee, lumbar canal stenosis, osteoporosis, diabetes and obesity and that he needs special toilet and bathroom. He has danger of having bedsores, pressure sores without specialised treatment and if left untreated, the diseases may lead to his death. Prognosis is not going to improve further due to increasing age and servile changes. (Paras 6 to 8)

The appellant is directed to deposit a sum of Rs 40 lakhs with the Bank in liquidation. (Para 10). *Sureshchandra Ramanlal* v. *State of Gujarat*, (2008) 7 SCC 591: (2008) 3 SCC (Cri) 212: (2008) 67 AIC 14 (SC).

Bench Strength **2**. Coram: *Tarun Chatterjee* and **J.M. Panchal**, JJ. [Date of decision: 15-5-2008]

[6604] — S. 438 — Anticipatory bail — Considerations — Detention of citizen in public interest — *High Court refusing bail on ground that release of the offender was likely to impede investigation even resulting in tampering with prosecution evidence — No interference by the Supreme Court is called for — Wider questions involving Arts. 20(1) and 21 not gone into. K.K. Jerath* v. *UT, Chandigarh*, (1998) 4 SCC 80: 1998 SCC (Cri) 809: AIR 1998 SC 1934.

Bench Strength **2**. Coram: *K.T. Thomas* and **S. Rajendra Babu**, JJ. [Date of decision: 27-3-1998]

[6605] — S. 438 — Anticipatory bail — Grant of — Considerations — Accused a lady and offence less serious — *Considering the facts that the appellant is a lady and the offence involved is a less serious offence, appellant directed to be released on bail on her executing a bond of Rs 10,000 — However, appellant can be questioned by IO under S. 161. Maqsoodan* v. *State of Haryana*, (2002) 10 SCC 97.

Bench Strength **2**. Coram: *K.T. Thomas* and *S.N. Phukan*, JJ. [Date of decision: 5-11-2001]

[6606] — S. 438 — Anticipatory bail — Grant of — Considerations — Grave crimes — *Appellant alleged to be involved in grave crimes including offence under S. 8 of Kerala Abkari Act (which is punishable with imprisonment for a term which may extend to ten years and a fine which shall not be less than Rupees one lakh) granted anticipatory bail on ground of investigating agency's failure to collect material to connect the appellant with the crime — Held, Sessions Court seriously erred in doing so as custodial interrogation of appellant by the investigating agency was necessary — High Court was justified in reversing the order of Sessions Court — Kerala Abkari Act, 1077 (1 of 1077 NE), Ss. 8 & 41-A*

A number of criminal cases were registered as a sequel to the large-scale deaths of persons in what is now known as the liquor tragedy in Kollam District (Kerala). A large number of persons have been permanently incapacitated in the episode. Arrested persons in connection with such cases remained in jail as bail had not been granted to them. The appellant who was described by the investigating agency as one of the kingpins in a series of grave crimes including the offence under Section 8 of the Kerala Abkari Act, apprehended that he would also be arrested in connection with some of those cases, if not in all. Hence, while remaining absconding, he approached the Sessions Court for grant of anticipatory bail. The Sessions Judge who granted the order of anticipatory bail found from the investigation records that there were reasons to presume that the appellant would also be implicated as an accused in the case. Despite serious objections raised by the Public Prosecutor, the Sessions Judge granted the anticipatory bail to the appellant. According to the Sessions Judge "no material could be collected by the investigating agency to connect the petitioner with the crime except the confessional statement of the co-accused". He also observed: "I do not think that any prejudice will be caused to the prosecution in the event of granting anticipatory bail especially when the petitioner has not so far been arrayed as an accused in the case". But the High Court of Kerala, within a month, reversed those orders of the Sessions Judge.

Dismissing the appeals,

Held :

Section 41-A of the Kerala Abkari Act is in pari materia with Section 37 of the Narcotic Drugs and Psychotropic Substances Act. The Supreme Court has held, time and again, that no person who is involved in an offence under that Act shall be released on bail in contravention of the conditions laid down in the said section. If the position is thus in regard to an accused even after arrest, it is incomprehensible how the position would be less when he approaches the court for pre-arrest bail knowing that he would also be implicated as an accused. It is disquieting that a Sessions Judge has chosen to adopt such inane reasoning for granting anticipatory bail in cases involving offences for which the legislature has imposed stringent restrictions even in regard to the grant of regular bail. Custodial interrogation of such an accused is indispensably necessary for the investigating agency to unearth all the links involved in the criminal conspiracies committed by the persons which ultimately led to the capital tragedy. No court can afford to presume that the investigating agency would fail to trace out more materials to prove the accusation against an accused. It is not understandable as to what would have prompted the Sessions Judge to conclude, at this early stage, that the investigating agency would not be able to collect any material to connect the appellant with the crime. The order of the Sessions Judge, blessing the appellant with a pre-arrest bail order, would have remained a bugbear of how the discretion conferred on Sessions Judges under Section 438 CrPC would have been misused. The High Court was justified in reversing the order of the Sessions Court. (Para 7). *Muraleedharan* v. *State of Kerala*, (2001) 4 SCC 638: 2001 SCC (Cri) 795: AIR 2001 SC 1699: 2001 Cri LJ 2187: (2001) 2 KLT 355.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 18-4-2001]

Union of India v. Ram Samujh, (1999) 9 SCC 429: 1999 SCC (Cri) 1522, relied on

(5) Grounds for bail in dowry/cruelty cases

See also Section 438, '(4) Grounds for bail — Generally', above

[6607] — **S. 438 — Anticipatory bail — Considerations for grant of — Dowry death** — *Statement in FIR that appellants, the parents and brother of the husband, were living separately from the deceased and her husband — Factum of separate residence also supported by ration card — Held, these circumstances were relevant for grant of anticipatory bail — Penal Code, 1860, S. 304-B. Dolat Ram* v. *State of Haryana*, (1995) 1 SCC 349: 1995 SCC (Cri) 237: (1994) 3 Crimes 1013: (1995) 32 ACC 149: (1995) 1 Andh LT (Cri) 37.

Bench Strength 2. Coram: *Dr. A.S. Anand* and *M.K. Mukherjee*, JJ. [Date of decision: 24-11-1994]

[6608] — S. 438 — Anticipatory bail — Considerations for grant of — Complainant alleging harassment for bringing insufficient dowry — Protection against arrest sought by appellant in terms of S. 438 — Dismissal by High Court — Sustainability — *Held, on facts, High Court completely acted on materials which did not support the conclusions — Directions given by High Court like recovery of dowry articles, etc. need not have been given while dealing with application under S. 438 — Again, directions for seizing appellant's passport also could not have been given under S. 438 — Hence, relying on parameters highlighted in* Adri Dharan Das case, *(2005) 4 SCC 303, directions given that if appellant surrenders before the court concerned and moves for bail, the application shall be disposed of expeditiously preferably on the date it is filed — Penal Code, 1860, Ss. 498-A and 304-B — Dowry Prohibition Act, 1961, S. 4* (Paras 2, 3, 9 and 12). *Mohinder Kaur* v. *State of Punjab*, (2008) 4 SCC 580: (2008) 2 SCC (Cri) 462: AIR 2008 SC 2068: 2008 Cri LJ 2623.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 14-3-2008]

Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933, relied on

[6609] — S. 438 — Anticipatory bail — Entitlement to — Question as to — Harassment for dowry — Suicide by wife — *Prosecution case that accused were demanding dowry because of which deceased was depressed and ultimately committed suicide — Accused submitting that deceased was a schizophrenic psychotic patient with cyclic depression and was under medical treatment — They producing documents to show that relationship between the wife and her husband and in-laws was cordial — One year before also an attempt to commit suicide was made by deceased — Considering the entire material available on record without expressing any opinion on the same, held, accused entitled to anticipatory bail — Penal Code, 1860, Ss. 304-B, 406 and 498-A r/w S. 34* (Para 9). *M.P. Lohia* v. *State of W.B.*, (2005) 2 SCC 686: 2005 SCC (Cri) 556: AIR 2005 SC 790: 2005 Cri LJ 1416.

Bench Strength 2. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 4-2-2005]

(5) Grounds for bail in dowry/cruelty cases *(contd.)*

[6610] — S. 438 — Anticipatory bail — Petition for, filed by brother of the victim's husband, who had been living separately from the accused husband since long — *Complaint lodged with the police indicating that main allegations relating to offences under Ss. 323 and 498-A IPC were against the husband who is in jail — Held, High Court erred in rejecting the petition for anticipatory bail filed by brother of the main accused on ground that the main allegations were against the petitioner — Hence anticipatory bail granted subject to conditions under S. 438(2). Jageshwar Tanti* v. *State of Bihar,* (2005) 12 SCC 178.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *P.P. Naolekar*, JJ. [Date of decision: 10-1-2005]

[6611] — S. 438 — Anticipatory bail — Cancellation of — Propriety — Alleged dowry related offences — *High Court by impugned judgment cancelling anticipatory bail granted to appellants (mother-in-law, father-in-law, younger brother of father-in-law and husband of deceased) who were accused of committing offences punishable under Ss. 498-A, 304-B r/w S. 34 IPC and Ss. 3 & 4, Dowry Prohibition Act, 1961 — Held, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail already granted — In the instant case, nothing was brought on record from which it could be inferred that appellants had not cooperated in the investigation or had in any manner abused concession of bail granted to them — Hence, impugned order unsustainable and set aside — Penal Code, 1860, Ss. 498-A, 304-B r/w S. 34 — Dowry Prohibition Act, 1961, Ss. 3 and 4*

The High Court by the impugned judgment cancelled the anticipatory bail granted to the appellants (mother-in-law, father-in-law, husband and younger brother of father-in-law of the deceased) who were accused of committing offences punishable under Sections 498-A, 304-B read with Section 34 IPC and Sections 3 and 4, Dowry Prohibition Act, 1961.

It was alleged by the father of the deceased that the appellants were torturing the deceased for not meeting dowry demand of Rs 2 lakhs and earlier on 15-7-2006 she had left her matrimonial home intending to commit suicide because she was unable to bear it. However, on intervention of her relatives she was sent back to her matrimonial home.

On the day of occurrence the father-in-law of the deceased was stated to have heard cries of the deceased and on rushing there he found her burning. He tried to douse the fire and the deceased told him that her child aged about fifteen months was lying in the bathroom with burns. Both of them were rushed to the hospital. The child expired on the same day, while the deceased died ten days later in the hospital. In the two dying declarations recorded by the Executive Magistrate the deceased stated that she and her son caught fire accidentally when she was pouring kerosene oil in the lamp which accidentally fell down.

The Sessions Judge taking into consideration the two dying declarations, statements of the complainant and the witnesses and after perusing the case-diary granted anticipatory bail to the appellants. The High Court by the impugned judgment cancelled the same. Hence, the present appeal.

Allowing the appeal,

Held :

Section 438 of the Code confers on the High Court and the Court of Session, the power to grant "anticipatory bail" if the applicant has "reason to believe" that he may be arrested on accusation of having committed a non-bailable offence. The expression "anticipatory bail" has not been defined in the Code. But it means "bail in anticipation of arrest". The expression "anticipatory bail" is a misnomer inasmuch as it is not as if bail is presently granted by the court in anticipation of arrest. When a competent court grants "anticipatory bail", it makes an order that in the event of arrest, a person shall be released on bail. There is no question of release on bail unless a person is arrested and, therefore, it is only on arrest that the order granting anticipatory bail becomes operative. The power being rather unusual in nature, it is entrusted only to the higher echelons of judicial service i.e. a Court of Session and the High Court. (Paras 14, 15 and 16)

The wide discretionary power conferred by the legislature on the higher echelons in the criminal justice-delivery system cannot be put in the form of straitjacket rules for universal application as the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. A circumstance which, in a given case, turns out to be conclusive, may or may not have any significance in another case. The imposition of unnecessary restrictions on the scope of the section which were not to be found in Section 438 of the Code, could make the provision constitutionally vulnerable, since the right of personal freedom, as enshrined in Article 21 of the Constitution, cannot be made to depend on compliance with unreasonable restrictions. The courts must keep in mind the guidelines while dealing with an application for grant of anticipatory bail laid down by the Constitution Bench in *Gurbaksh Singh case*, (1980) 2 SCC 565. Further, the amendment to Section 438 brought about by the CrPC (Amendment) Act, 2005, which is yet to be enforced is more or less in line with the parameters laid down in *Gurbaksh Singh case*. (Paras 21 to 27)

In the instant case, the High Court committed a serious error in reversing the order passed by the Sessions Judge, granting anticipatory bail to the appellants. The Sessions Judge passed the order after due consideration of the facts and circumstances of the case, in particular, the two dying declarations, one recorded in the presence of the parents of the deceased and the statements of the members of the Women Cell who had dealt with the case when on 15-7-2006, the deceased had left the house with intention to commit suicide and therefore, it cannot be said that the judicial discretion exercised in granting anticipatory bail was perverse or erroneous, warranting interference by the High Court. The order passed by the Sessions Judge was supported by reasons to the extent required for exercise of judicial discretion in the matter of grant of bail. (Para 28)

It may be true that some of the circumstances, noticed by the High Court in the impugned order viz. no reference to lantern in the spot panchnama or the necessity of cleaning the lantern at 4 p.m. and/or availability of an inverter in the house, etc., could have persuaded the Sessions Judge to take a different view but it cannot be said that the factors which weighed with the Sessions Judge in granting bail were irrelevant to the issue before him, rendering the order as perverse. Moreover, merely because the High Court had a different view on same set of material which had been taken into consideration by the Sessions Judge, in our view, was not a valid ground to label the order passed by the Sessions Judge as perverse. It also appears that the High Court has overlooked the distinction of factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted, which were missing in the instant case. Nothing was brought on record from which it could be inferred that the appellants had not cooperated in the investigations or had, in any manner, abused the concession of bail granted to them. (Paras 29 and 30)

Hence, impugned order setting aside anticipatory bail granted to the appellants unsustainable and set aside. (Para 32). *Savitri Agarwal* v. *State of Maharashtra*, (2009) 8 SCC 325: (2009) 3 SCC (Cri) 683: (2009) 80 AIC 116 (SC).

Bench Strength 2. Coram: **D.K. Jain** and *R.M. Lodha*, JJ. [Date of decision: 10-7-2009]

Balchand Jain v. State of M.P., (1976) 4 SCC 572: 1976 SCC (Cri) 689, followed

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465; Dolat Ram v. State of Haryana, (1995) 1 SCC 349, relied on

Gurbaksh Singh Sibia v. State of Punjab, AIR 1978 P&H 1: 1978 Cri LJ 20, held, overruled

Balchand Jain v. State of M.P., (1976) 4 SCC 572: 1976 SCC (Cri) 689, held, partly doubted

Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933, partly doubted

[6612] — S. 438 — Anticipatory bail should not be granted by High Court to a person against whom investigation in connection with dowry death still going on — *Penal Code, 1860, S. 302*. *Samunder Singh* v. *State of Rajasthan*, (1987) 1 SCC 466: 1987 SCC (Cri) 189: AIR 1987 SC 737: 1987 Cri LJ 705.

Bench Strength 2. Coram: **M.P. Thakkar** and *B.C. Ray*, JJ. [Date of decision: 12-1-1987]

[6613] — S. 438 — Bail — Grant of — Propriety — Cruelty and dowry death case — Role of State — *Granted by the High Court without indicating any reasons therefor, despite accused being charged for serious offence under Ss. 498-A, 304-B r/w S. 34 IPC — Said order challenged by the father of the deceased while State remained a silent spectator — Callousness of the State deprecated* (Para 18). *Gajanand Agarwal* v. *State of Orissa*, (2006) 12 SCC 131: (2007) 1 SCC (Cri) 568: AIR 2006 SC 3248: 2006 Cri LJ 4618: (2006) 4 KLT 143: (2006) 46 AIC 1 (SC).

Bench Strength 2. Coram: **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 18-9-2006]

Salim Khan v. Sanjai Singh, (2002) 9 SCC 670: 2003 SCC (Cri) 1524, relied on

[6614] — Ss. 438 and 439 — Anticipatory bail — Grant of — Propriety — Dowry related allegations — *Respondents 1 to 3 filing application under S. 438 CrPC before High Court on apprehension of arrest in a complaint under investigation, on the allegation that because of the dowry demands, the victim committed suicide — Application disposed of with certain directions — Contention of the appellant informant that the parameters to be kept in view, while dealing with an application under S. 438 CrPC, were not kept in view — Further contention, that the respondents were granted bail without*

(5) Grounds for bail in dowry/cruelty cases *(contd.)*

surrender, since the terms for release were stipulated in the order itself— On facts, held, some of the directions given by the High Court are not in accordance with what has been stated in Adri Dharan Das case, *(2005) 4 SCC 303 — Accordingly, the directions need to be modified — As the respondents have already surrendered and have been granted bail in terms of the High Court's direction, they shall surrender before the court concerned and shall move for bail in terms of S. 439 CrPC which shall then be considered in its proper perspective uninfluenced by the disapproval of the Supreme Court of the stipulation of conditions by the High Court— Penal Code, 1860, S. 304-B — Dowry Prohibition Act, 1961, S. 4* (Paras 2 to 4 and 7). *D.K. Ganesh Babu* v. *P.T. Manokaran*, (2007) 4 SCC 434: (2007) 2 SCC (Cri) 345: AIR 2007 SC 1450: 2007 Cri LJ 1827: (2007) 53 AIC 266 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *R.V. Raveendran*, JJ. [Date of decision: 23-2-2007]

Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933, followed

Wharton's Law Lexicon, cited

[6615] — Ss. 438 and 439 — Bail — Grant of — Sustainability — Accused charged under Ss. 498-A, 304-B and 300 IPC for causing dowry death *— High Court granting bail to Respondent 2 second time in spite of Supreme Court nullifying its earlier order granting bail — High Court while doing so not only trying to justify its earlier order granting bail, but also practically recording acquittal of Respondent 2 in each case — Held, while dealing with the bail application, final view is not to be expressed — It was only necessary to indicate reasons for grant of bail and not detailed analysis of the evidence on record, with regard to the nature of the offence and the evidentiary value of the materials on record — High Court lost sight of the fact that it was not dealing with any appeal on merits but was considering a bail application — Even otherwise several irrelevant aspects have been taken into consideration — High Court lightly brushed aside the view of Supreme Court regarding use of non-genuine document by respondent-accused S as a minor circumstance — High Court's order indefensible and hence, set aside* (Paras 2, 13, 14, 25 and 27). *Gajanand Agarwal* v. *State of Orissa*, (2007) 14 SCC 537: (2007) 56 AIC 151 (SC): 2007 Cri LJ 2752.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 12-4-2007]

V.D. Chaudhary v. State of U.P., (2005) 12 SCC 304: (2006) 1 SCC (Cri) 560; Imran Ali v. Habibullah, (2007) 12 SCC 506, relied on

***Followed** in Deepak Singchi v. State of Rajasthan, (2007) 14 SCC 583*

(6) Grounds for bail — Particular offences

See also Section 438, '(4) Grounds for bail — Generally', and

'(5) Grounds for bail in dowry/cruelty cases', above

[6616] — Ss. 438 and 437 & 439 — Application for anticipatory bail moved by a person accused of committing murder by firearm — Court's approach should be cautious and circumspect — *On facts, held, grant of anticipatory bail not justified*

An FIR was lodged alleging that the accused-second respondent caused gunshot injuries to the deceased on August 23, 1983. Amongst others, offence under S. 307, IPC was registered but the accused was not arrested. The deceased later succumbed to his injuries and on receiving that information from the hospital, another offence under S. 302, IPC was added against the accused by the Investigating Officer. Soon thereafter on August 29, 1983 the accused appeared before the Sessions Judge and moved an application under S. 438, CrPC for grant of anticipatory bail. The Sessions Judge granted the bail. The High Court held that a case for cancellation of the bail was not made out.

Held :

No case was made out for granting anticipatory bail in this case. The discretionary power to grant anticipatory bail was exercised sub-silentio as to reasons or on considerations irrelevant or not germane to the determination. The Investigating Officer did not even attempt to arrest the accused though the initial accusation was under S. 307, IPC punishable with imprisonment for life. And as soon as the victim of the assault succumbed to his injuries and an offence under S. 302 was registered, an application for anticipatory bail was made and granted. If such an order is allowed to stand, faith of public in administration of justice is likely to be considerably shaken.

Anticipatory bail to some extent intrudes in the sphere of investigation of crime and the court must be cautious and circumspect in exercising such power of a discretionary nature. Some very compelling circumstances must be made out for granting bail to a person accused of murder by firearm when the investigation is in progress. *Pokar Ram* v. *State of Rajasthan*, (1985) 2 SCC 597: 1985 SCC (Cri) 297: AIR 1985 SC 969: 1985 Cri LJ 1175.

Bench Strength 3. Coram: *V.D. Tulzapurkar*, **D.A. Desai** and *A.P. Sen*, JJ. [Date of decision: 17-4-1985]

[6617] — S. 438 — Murder case — Anticipatory bail — Grant of, and duration for which to be granted — Proper course of action for court — *After evaluating averments and accusation available on record, if anticipatory bail is to be granted, held, interim bail should be granted and notice should be issued to Public Prosecutor — After hearing him, court may either reject anticipatory bail application or confirm grant of anticipatory bail — It may also impose conditions for grant of anticipatory bail — If the liberty granted by court is misused then at the instance of Public Prosecutor or complainant, court can cancel or modify conditions of anticipatory bail — Anticipatory bail can be cancelled even on finding of new material or circumstances at any point of time — Anticipatory bail granted should ordinarily be continued till trial of the case — In the present case, applicant although allegedly involved in murder case, High Court's order refusing him anticipatory bail, held, not sustainable — Appellant directed to join investigation and cooperate with investigator — Further directed that in case of arrest, he should be released on bail on personal bond as specified — General Clauses Act, 1897, S. 21. Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength 2. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465; Maneka Gandhi v. Union of India, (1978) 1 SCC 248, followed

Hyman v. Rose, 1912 AC 623, 631, cited

Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667: 1996 SCC (Cri) 198; K.L. Verma v. State, (1998) 9 SCC 348: 1998 SCC (Cri) 1031; Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933; Sunita Devi v. State of Bihar, (2005) 1 SCC 608: 2005 SCC (Cri) 435; Naresh Kumar Yadav v. Ravindra Kumar, (2008) 1 SCC 632: (2008) 1 SCC (Cri) 277, held, per incuriam

[6618] — S. 438 — Grant of anticipatory bail in murder case when investigation still incomplete not justified. *Kiran Devi* v. *State of Rajasthan*, 1987 Supp SCC 549: 1988 SCC (Cri) 106.

Bench Strength 2. Coram: *M.P. Thakkar* and *B.C. Ray*, JJ. [Date of decision: 3-2-1987]

[6619] — S. 438 — Pre-arrest bail in murder case — Grant of — High Court's satisfaction as to existence of sufficient reasons with the applicant for apprehending arrest, held, is a condition precedent — *Hence, where the applicant for pre-arrest bail in a murder case was neither named in the FIR nor was subsequently made an accused, held, he did not have sufficient reasons to entertain the requisite apprehension — Therefore, his application to High Court for pre-arrest bail during continuance of investigation, held, was premature — Hence, High Court's order granting him pre-arrest bail, set aside* (Para 2). *Jaswantbhai M. Sheth* v. *Anand V. Nagarsheth*, (2000) 10 SCC 7.

Bench Strength 2. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 25-10-1999]

[6620] — Ss. 438 and 439 — Anticipatory bail — Case under Ss. 302/149 IPC — *Names of the appellants included among the suspected persons — Appellants describing deceased as "dreaded" — Refusal of pre-arrest bail — Considering pros and cons of the matter, IO directed to complete the interrogation of the appellants, subsequent to their surrender before the police, as early as possible and release them on bail after completing the interrogation and recovery of material object, if any — IO as well as person aggrieved permitted to proceed for the cancellation of bail if appellants misuse the bail — Penal Code, 1860, S. 302 r/w S. 149. Abdul Hamit Ansari* v. *State of Maharashtra*, 2000 SCC (Cri) 1505: AIR 2000 SC 3541 (1).

Bench Strength 2. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 16-3-2000]

[6621] — S. 438 — Grant of anticipatory bail — Matters to be considered — Anticipatory bail sought by police officer involved in police atrocities/fake encounter case — *Position of said police officer to influence, induce or coerce witnesses — Need for interrogation of said police officer to discover the facts*

In view of the fact that the application for regular bail made by the respondent police officer is pending before the court concerned, it would not be appropriate to go into the various aspects projected. However, the approach made by the Sessions Court in granting anticipatory bail to the respondent, leaves much to be desired. The apprehension that the respondent is in a position to influence, induce or coerce witnesses to desist from furnishing relevant information to the investigating agency cannot be considered to be imaginary and the court ought to have considered that aspect seriously before granting anticipatory bail. The court also should have considered the need put forward for custodial interrogation of the respondent for finding out what exactly happened to the wife of Sohra- buddin, or how she met with her end. Suffice it to say that in the circumstances the said order granting anticipatory bail is set aside leaving the regular bail application of the appellant to be dealt with by the trial court in accordance with law and after taking note of all the relevant aspects. No opinion is expressed on the merits of the impugned application. (Para 5). *State of Gujarat* v. *Narendra K. Amin*, (2008) 13 SCC 594: AIR 2007 SC 2876: (2007) 57 AIC 83 (SC): (2008) 1 Guj LR 205.

Bench Strength 2. Coram: *Tarun Chatterjee* and **P.K. Balasubramanyan**, JJ. [Date of decision: 13-8-2007]

(6) Grounds for bail — Particular offences *(contd.)*

[6622] — S. 438 [as *subs.* in Maharashtra] — Anticipatory bail — Grant and cancellation of — Considerations for dealing with application for grant of — Rape case — *While granting anticipatory bail, held, court must record reasons therefor — Whether accused tampered with evidence should be considered by appropriate authority at appropriate stage — Post-bail conduct of accused and other supervening circumstances should be taken into account while considering application for cancellation of the anticipatory bail — Cases involving serious offences such as one punishable under S. 376 IPC should be allowed to be fully investigated — Prosecutrix being a girl of easy virtue not a relevant consideration — Victims who are lured or coerced for immoral trafficking should be given protection — Accused absconding for a long time, not cooperating with IO, nor complying with the conditions imposed while granting the bail — Held on facts, grant of anticipatory bail by High Court was not justified — Penal Code, 1860 — Ss. 375 and 376*

A girl was lured and while being taken for the purpose of immoral trafficking on 22-4-2007 by the respondent-accused persons comprising police officers, politicians and a businessman, the police arrived and the respondents were taken to police station. The girl was medically examined on the same day and her radiographical (bone) assessment suggested her age to be between 14-16 years. The Municipal Council issued a certificate on 29-5-2007 recording the date of birth of the girl as 28-6-1991 and mentioning name of her father. The date of registration of the said certificate was 4-7-1996 i.e. much before any controversy arose. Three school leaving certificates had also been placed before the court wherein her date of birth was shown as 28-6-1991. The respondents were not named in FIR. However, the girl made several statements thereafter implicating them. She also gave her statement under Section 164 CrPC.

The respondents, having come to know that they have been named by the said girl, absconded. They filed an application for anticipatory bail before the Sessions Judge. The same was dismissed. But the High Court allowed the application for anticipatory bail. The State filed the present appeal against the judgment of the High Court.

The Supreme Court called for a report from SP, CID who in his report pointed out, that the respondent-accused persons had been absconding for a long time and they during the course of interrogation have been giving evasive answers. It was furthermore stated that from the residence of Accused 3, thirteen CDs of blue films and books instigating sex have been seized. It was also submitted that recovery of vehicles used by the respondents from time to time for commission of the offence are yet to be seized and if they are released on bail, they would tamper with evidence.

Allowing the appeal,

Held :

Immoral trafficking is now widespread. Victims, who are lured, coerced or threatened for the purpose of bringing them to the trade should be given all protection. (Para 28)

In an application for cancellation of bail, conduct subsequent to release on bail and the supervening circumstances alone are relevant. But the court while considering an appeal against grant of anticipatory bail would keep in mind the parameters laid down therefor. The matter, however, may be different for deciding an appeal from an order granting bail, where the accused has been at large for a considerable time, in which event, the post-bail conduct and other supervening circumstances will also have to be taken note of. (Para 34)

While granting anticipatory bail, the court must record the reasons therefor. Parameters for grant of anticipatory bail in such a serious offence, being under Sections 376, 376(2)(*g*) IPC, are required to be satisfied. (Paras 28 and 31)

The four factors, which are relevant for considering the application for grant of anticipatory bail, have been set out in Section 438(1) CrPC. There cannot be any direct proof that the respondents have been tampering with evidence, but that question will have to be considered by the appropriate authority at the appropriate stage. Immoral conduct on the part of police officers should not be encouraged. After having come to know that names of the respondents had been taken by the prosecutrix in her supplementary statement, they had been absconding for a long time. Further, the respondents had not scrupulously complied with the conditions imposed upon them. Admittedly, at least on four occasions, some of them were not present. It is not understandable as to how the police officers could go underground. They had been changing their residence very frequently. Although most of them were police officers, their whereabouts were not known. During the aforementioned period attempts had been made even by the person who was taking care of the girl to obtain custody of the girl, but at whose instance, is not known. The mother of the girl, had also affirmed an affidavit in relation to her date of birth showing her to be not a minor on the date of the incident. These may not be acts of voluntariness on their part evidently the evidence is being collected by somebody who intends to save the accused. It, therefore, is a case where no anticipatory bail should have been granted. (Paras 20, 27, 25 and 33)

A mistake in regard to recording of age of the prosecutrix as recorded in the first information report or the first medical document or even in her supplementary affidavit should yield to the public documents which have been produced by the prosecution at this stage. Even before the learned Chief Judicial Magistrate, she disclosed her date of birth to be 28-6-1991. Therefore, even according to that she was below 16 years of age. (Para 32)

It may be true that the date of issuance of the certificates had not been stated, but evidently such certificates had been obtained by the prosecution. It may be true that in the first information report as also in her first supplementary examination, her age was recorded as 18 years, but she had been examined medically. The possibility of her trying to shield herself from prosecution at the time of her arrest and for that purpose disclosing her age to be 18 years cannot be ruled out. (Para 22)

A case of this nature should be allowed to be fully investigated. Once a criminal case is set in motion by lodging an information in regard to the commission of the offence in terms of Section 154 CrPC, it may not always be held to be imperative that all the accused persons must be named in the first information report. It has not been denied nor disputed that the prosecutrix does not bear any animosity against the respondents. There is no reason for her to falsely implicate them. It is also not a case that she did so at the behest of some other person, who may be inimically disposed towards the respondents. The prosecution has disclosed the manner in which she was being taken from place to place which finds some corroboration from the testimonies of the other witnesses and, thus, it can safely be concluded that at least at this stage her evidence should not be rejected outrightly. (Para 30)

So far as the fact that the respondents have not been named in the first information report is concerned, suffice it to say that the first information report may not be encyclop'dic. (Para 23)

The High Court has in regard to the first factor envisaged under the Maharashtra Amendment of Section 438 CrPC proceeded on the basis that the prosecutrix was a girl of easy virtue. This may be so but the same by itself may not be a relevant consideration. (Para 29)

The High Court itself has refused to grant regular bail to the accused against whom charge-sheet has been submitted. The Sessions Judge also did not grant bail to some of the accused persons. If on the same materials, prayer for regular bail has been rejected, there is no reason as to why and on what basis the respondents could be enlarged on anticipatory bail. (Para 36)

In the peculiar facts and circumstances of the case, the High Court ought not to have granted anticipatory bail to the respondents. The impugned judgment, therefore, cannot be sustained which is set aside accordingly. (Para 37). *State of Maharashtra* v. *Mohd. Sajid Husain Mohd. S. Husain*, (2008) 1 SCC 213: (2008) 1 SCC (Cri) 176: AIR 2008 SC 155: (2007) 59 AIC 15 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 10-10-2007]

D.K. Ganesh Babu v. P.T. Manokaran, (2007) 4 SCC 434: (2007) 2 SCC Cri 345; Vinod G. Asrani v. State of Maharashtra, (2007) 3 SCC 633: (2007) 2 SCC (Cri) 129; State of U.P. v. Pappu, (2005) 3 SCC 594: 2005 SCC (Cri) 780, relied on

[6623] — S. 438 — Anticipatory bail — Grant of — Considerations — Allegations of forgery of withdrawal form to withdraw cash — *Allegation against appellant for forging the withdrawal form by converting the figure of Rs 10,000 into Rs 1,00,000 and encashing the same — Photocopy of document apparently showing the figure of one lakh in words also — Therefore, held, prima facie it was for the complainant to show how the words remained on document when he executed the same — On facts, held, the present case was fit for granting pre-arrest bail to appellant. Gama Singh* v. *State of Bihar*, (2002) 10 SCC 263.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 30-10-2000]

[6624] — S. 438 — Anticipatory bail — Electricity pilferage — Appellant-accused willing to deposit the amount of charges of electricity alleged to have been pilfered — *Respondent stating the amount due from appellant to be more than Rs 1 crore — Amount due, when worked out for a period of six months only, crossing the figure of Rs 40 lakhs — Rs 20 lakhs already deposited by appellant pursuant to High Court's order — Considering all aspects, held, appellant could be granted anticipatory bail on a condition that he would remit a sum of Rs 21 lakhs in 3 equal instalments within 6 months. Chakrawarti Prasad* v. *State of Bihar*, (2002) 10 SCC 390.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 4-12-2000]

(6) Grounds for bail — Particular offences *(contd.)*

[6625] — S. 438 — Anticipatory bail — Offence alleged under S. 153-A IPC — Radio jockey accused of deliberately insulting the sentiments of Gorkha/Nepali (chowkidar) community by questioning/doubting one *P*'s victory in a tele-series — *Held, interrogation if at all necessary can be done without taking the accused into custody — Anticipatory bail, therefore, granted on specified conditions — Penal Code, 1860, S. 153-A*

An FIR was lodged under Section 153-A IPC against the appellant-accused, a radio jockey for deliberately insulting the sentiments of "Gorkha/Nepali" community in West Bengal while discussing one *P*'s victory in the tele-series called "Indian Idol" telecasted on Sony Entertainment Television Channel. The appellant was alleged to have stated: "*If chowkidars are the Indian idols (meaning P), then wherefrom we are to obtain chowkidars*." By the impugned order, the High Court rejected the bail application under Section 438 CrPC.

The appellant tendered an apology for any unintentional hurt both through radio broadcast and through his counsel in the Supreme Court and is stated to have got a clarification from *P* that the remarks were not derogatory.

Allowing the appeal,

Held:

On prima facie scrutiny of the material on record and in the backdrop of the facts and circumstances, it is a fit case where the appellant is entitled for the grant of anticipatory bail. There is no satisfactory and convincing reason for custodial interrogation of the appellant for the alleged offence registered against him. The appellant can be interrogated by the investigating officer without taking him in custody. In the event of the arrest of the appellant for the alleged offence, he shall be released on bail subject to stated conditions. (Paras 13 and 14)

The High Court ought not to have made observations that the words spoken by the petitioner squarely attract the provision of Section 153-A IPC and that the same was uttered with necessary mens rea in mind at the preliminary stage of the investigation of the case, which may cause prejudice to the defence of the appellant during the trial of the case. Therefore, the said observations shall not be taken into consideration by the trial court at any stage of the proceedings of the case. (Paras 15 and 10). *Jonathan Nitin Brady* v. *State of W.B.*, (2008) 8 SCC 660: (2008) 3 SCC (Cri) 627.

Bench Strength **2**. Coram: *R.V. Raveendran* and *L.S. Panta*, JJ. [Date of decision: 10-9-2008]

[6626] — S. 438 — Anticipatory bail — Scope and ambit of — FIR against appellants for alleged involvement in misappropriation of stock — *Appellants contending that dispute relates to contractual liability and is of civil nature — Arbitration proceeding in progress — High Court rejecting application under S. 438 CrPC for non-deposit of amount with the complainant as directed earlier while granting conditional interim protection — In appeal counsel for respondent State submitting that it was not a case of civil dispute and criminal proceedings can be pursued even if arbitration proceedings are in progress — Held, High Court has not considered relevant aspects and also not indicated any reasons to direct deposit of the huge amount — Also, ambit of S. 438 CrPC as delineated by the Supreme Court not kept in view — Hence, held, orders of High Court set aside and matter remitted to it for consideration afresh with directions to keep in view the principles relating to S. 438 CrPC in* Adri Dharan Das case, *(2005) 4 SCC 303, and the relevance and applicability of* Bal Kishan Das case, *1991 Supp (2) SCC 412 while dealing with application in terms of S. 438 CrPC* (Paras 2 and 4 to 6). *Sohan Lal Juneja* v. *State of Punjab*, (2006) 12 SCC 433: (2007) 2 SCC (Cri) 90: AIR 2007 SC 136: 2007 Cri LJ 303: (2007) 49 AIC 268 (SC).

Bench Strength **2**. Coram: **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 9-11-2006]

Bal Kishan Das v. P.C. Nayar, 1991 Supp (2) SCC 412: 1991 SCC (Cri) 1055; Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933, relied on

(7) Proper exercise of discretionary jurisdiction/disposal of bail application

[6627] — S. 438 — Bail — Grant of — Scope — Factors to be considered — Need for reasons to be recorded, especially in case of serious offences — *Held, though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided yet a court dealing with the bail application should be satisfied as to whether there is a prima facie case — Court is required to exercise its discretion in a judicious manner and not as a matter of course — Reasons for granting bail need to be indicated, particularly when the accused is charged with a serious offence — On facts held, High Court erred in granting bail without indicating the "peculiar facts and circumstances" therefor, or how the scenario had changed, when several ear-*

lier petitions were rejected (Paras 11 to 15). *Gajanand Agarwal* v. *State of Orissa*, (2006) 12 SCC 131: (2007) 1 SCC (Cri) 568: AIR 2006 SC 3248: 2006 Cri LJ 4618: (2006) 4 KLT 143: (2006) 46 AIC 1 (SC).

Bench Strength 2. Coram: **Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 18-9-2006]

Omar Usman Chamadia v. Abdul, (2004) 13 SCC 234: 2005 SCC (Cri) 157; V.D. Chaudhary v. State of U.P., (2005) 12 SCC 304: (2006) 1 SCC (Cri) 560; Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688; Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977; Chaman Lal v. State of U.P., (2004) 7 SCC 525: 2004 SCC (Cri) 1974; Anwari Begum v. Sher Mohd., (2005) 7 SCC 326: 2005 SCC (Cri) 1669, relied on

[6628] — S. 438 — Anticipatory bail — Grant of, and duration for which to be granted — Proper course of action for court — *After evaluating averments and accusation available on record, if anticipatory bail is to be granted, held, interim bail should be granted and notice should be issued to Public Prosecutor — After hearing him, court may either reject anticipatory bail application or confirm grant of anticipatory bail — It may also impose conditions for grant of anticipatory bail — If the liberty granted by court is misused then at the instance of Public Prosecutor or complainant, court can cancel or modify conditions of anticipatory bail — Anticipatory bail can be cancelled even on finding of new material or circumstances at any point of time — Anticipatory bail granted should ordinarily be continued till trial of the case — In the present case, applicant although allegedly involved in murder case, High Court's order refusing him anticipatory bail, held, not sustainable — Appellant directed to join investigation and cooperate with investigator — Further directed that in case of arrest, he should be released on bail on personal bond as specified — General Clauses Act, 1897, S. 21. Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength 2. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465; Maneka Gandhi v. Union of India, (1978) 1 SCC 248, followed

Hyman v. Rose, 1912 AC 623, 631, cited

Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667: 1996 SCC (Cri) 198; K.L. Verma v. State, (1998) 9 SCC 348: 1998 SCC (Cri) 1031; Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933; Sunita Devi v. State of Bihar, (2005) 1 SCC 608: 2005 SCC (Cri) 435; Naresh Kumar Yadav v. Ravindra Kumar, (2008) 1 SCC 632: (2008) 1 SCC (Cri) 277, held, per incuriam

[6629] — S. 438 — Anticipatory bail — Reasoning of High Court in granting — Objection to application not raised "keenly" — *High Court coming to a conclusion that as there is no objection raised for granting anticipatory bail to Applicants 2 and 3 keenly, their case would be totally different — Held, this does not mean that the appellants had no objection at all — In law either there is an objection or no objection, there cannot be a keen, weak or a strong objection — Matter remanded to be heard afresh* (Paras 6 and 8). *Union of India* v. *Yusuf Razak Dhanani*, (2003) 8 SCC 98: 2003 SCC (Cri) 1963: AIR 2003 SC 4578: (2003) 157 ELT 241.

Bench Strength 2. Coram: *N. Santosh Hegde* and *B.P. Singh*, JJ. [Date of decision: 9-9-2003]

[6630] — S. 438 — Grant of anticipatory bail — Sustainability — Different versions given in three different complaints pertaining to same alleged occurrence — *Besides, allegations with regard to offences under Ss. 395, 397, 467, 468 and 471 IPC sought to be added at later stage of investigation — Held, no interference with grant of anticipatory bail to respondents called for — Constitution of India — Article 136 — Penal Code, 1860, Ss. 395, 397, 467, 468 and 471* (Paras 19 to 21). *Pravinbhai Kashirambhai Patel* v. *State of Gujarat*, (2010) 7 SCC 598.

Bench Strength 2. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 8-7-2010]

State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21: 2005 SCC (Cri) 1960 (2), relied on

Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124; CBI v. Tapan Kumar Singh, (2003) 6 SCC 175: 2003 SCC (Cri) 1305; Animireddy Venkata Ramana v. Public Prosecutor, (2008) 5 SCC 368: (2008) 2 SCC (Cri) 600; State v. Anil Sharma, (1997) 7 SCC 187: 1997 SCC (Cri) 1039; Anil Kumar Tulsiyani v. State of U.P., (2006) 9 SCC 425: (2006) 2 SCC (Cri) 565, considered

[6631] — S. 438 — Bail — Role of, in protection of right to personal liberty — Essence of function involved in grant of bail, and measures to ensure proper performance thereof — *Held, exercise of said jurisdiction requires maintaining of perfect balance between two conflicting interests viz. sanctity of individual liberty and interest of society — Hence, it should be entrusted to judicial officers with some experience and good track record — High Courts advised to periodically organise (through their Judicial Academies) workshops, symposiums, seminars and lectures for orientation of judicial officers and police officers in respect of importance of, and method of balancing of, said conflicting interests — Direction given for periodical evaluation of performance of judicial officers concerned on the basis of cases decided by them — Constitution of India, Arts. 21 and 22. Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength 2. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, relied on

(7) Proper exercise of discretionary jurisdiction/disposal of bail application *(contd.)*

[6632] — S. 438 — Grant of anticipatory bail — High Court must give reasons for exercising its jurisdiction — *Anticipatory bail granted by the High Court in a dowry death case without assigning any reason set aside. Raghuvir Saran Agarwal v. State of U.P.*, (1998) 8 SCC 617: 1998 SCC (Cri) 1613.

Bench Strength 3. Coram: *A.M. Ahmadi, C.J.* and *M.K. Mukherjee* and *K. Venkataswami*, JJ. [Date of decision: 26-2-1996]

[6633] — Ss. 438, 437 and 439 — Bail — Role of, in protection of right to personal liberty — Essence of function involved in grant of bail, and measures to ensure proper performance thereof — *Held, exercise of said jurisdiction requires maintaining of perfect balance between two conflicting interests viz. sanctity of individual liberty and interest of society — Hence, it should be entrusted to judicial officers with some experience and good track record — High Courts advised to periodically organise (through their Judicial Academies) workshops, symposiums, seminars and lectures for orientation of judicial officers and police officers in respect of importance of, and method of balancing of, said conflicting interests — Direction given for periodical evaluation of performance of judicial officers concerned on the basis of cases decided by them — Constitution of India, Arts. 21 and 22*

Just as liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order. Both are equally important. (Para 84)

A large number of undertrials are languishing in jail for a long time even for allegedly committing very minor offences. This is because Section 438 CrPC has not been allowed its full play. The Constitution Bench in *Sibbia case*, (1980) 2 SCC 565 clearly mentioned that Section 438 CrPC is extraordinary because it was incorporated in CrPC, 1973 and before that other provisions for grant of bail were Sections 437 and 439 CrPC. It is not extraordinary in the sense that it should be invoked only in exceptional or rare cases. Some courts of smaller strength have erroneously observed that Section 438 CrPC should be invoked only in exceptional or rare cases. (Para 85)

According to the Report of the National Police Commission, when the power of arrest is grossly abused and clearly violates the personal liberty of the people, as enshrined under Article 21 of the Constitution, then the courts need to take serious notice of it. When conviction rate is admittedly less than 10%, then the police should be slow in arresting the accused. The courts considering the bail application should try to maintain fine balance between the societal interest vis-à-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent court. (Para 86)

The complaint filed against the accused needs to be thoroughly examined including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. The court should also examine the fact whether there is any family dispute between the accused and the complainant and the complainant must be clearly told that if the complaint is found to be false or frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law. (Para 87)

The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court. (Para 88)

It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage. (Paras 89 and 90)

Society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests, namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand, absolute adherence to the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty. (Para 1)

Exercise of jurisdiction under Section 438 CrPC is an extremely important judicial function of a Judge and must be entrusted to judicial officers with some experience and good track record. Both the individual and society have vital interest in orders passed by the courts in anticipatory bail applications. (Para 119)

It is imperative for the High Courts through their judicial academies to periodically organise workshops, symposiums, seminars and lectures by the experts to sensitise judicial officers, police officers and investigating officers so that they can properly comprehend the importance of personal liberty vis-à-vis social interests. They must learn to maintain fine balance between the personal liberty and the social interests. The performance of the judicial officers must be periodically evaluated on the basis of the cases decided by them. In case, they have not been able to maintain balance between personal liberty and societal interests, the lacunae must be pointed out to them and they may be asked to take corrective measures in future. Ultimately, the entire discretion of grant or refusal of bail has to be left to the judicial officers and all concerned must ensure that grant or refusal of bail is considered basically on the facts and circumstances of each case. (Paras 120 and 121). *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength **2**. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, relied on

[6634] — S. 438 — Anticipatory bail — Role of, in protection of right to personal liberty — Sense in which S. 438 CrPC is described as being "extraordinary", clarified — Held, S. 438 CrPC is not extraordinary in the sense that it should be invoked only in exceptional or rare cases — *A great ignominy, humiliation and disgrace is attached to arrest — In cases where court is of considered view that accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided, and anticipatory bail should be granted, which after hearing Public Prosecutor, should ordinarily be continued till end of trial — Constitution of India, Arts. 21, 22 and 19. Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength **2**. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, relied on

[6635] — S. 438 — Discretion of court to grant or refuse anticipatory bail — Manner of exercise of — Factors to be taken into consideration — *Held, said discretion should be exercised with due caution and prudence on the facts and circumstances of the case, without subjecting the discretion to self-imposed limitations — Although no inflexible guidelines or straitjacket formula can be provided in that regard, certain factors and parameters (albeit only illustrative and not exhaustive) laid down which can be taken into consideration while dealing with anticipatory bail. Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength **2**. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, followed

Joginder Kumar v. State of U.P., (1994) 4 SCC 260: 1994 SCC (Cri) 1172, referred to

National Police Commission Reports, 3rd Report, cited

(8) Duration and extent of anticipatory bail

See also Section 438, '(1) Generally', above

[6636] — S. 438 — Anticipatory bail — Reasonable grounds for grant of — Bar against blanket anticipatory bail — *Held, discretionary power conferred by the legislature on higher judiciary cannot be put in a straitjacket formula — Normally, no direction should be issued to the effect that the applicant should be released on bail "whenever arrested for whichever offence whatsoever" — Courts should be cautious that S. 438 CrPC is not misused by the rich and the influential — S. 438 CrPC has been amended by the Code of Criminal Procedure (Amendment) Act, 2005 (though amendment yet not brought into force) which now provides for hearing of the Public Prosecutor before granting an application for anticipatory bail and notice and presence of the applicant in the court seeking anticipatory bail*

Discretionary power conferred by the legislature on higher judiciary cannot be put in a straitjacket formula. Such power must be exercised by the Court keeping in view facts and circumstances of an individual case. The High Court or the Court of Session must apply its own mind to the question and decide whether a case has been made

(8) Duration and extent of anticipatory bail *(contd.)*

out for grant of such relief. If condition precedent laid down in Section 438(1) CrPC is not satisfied and there is no reason to believe that the applicant is likely to be arrested for commission of a non-bailable offence, the Court has no power to grant anticipatory bail. The direction under Section 438(1) CrPC must be clear and specific and not vague and general. (Paras 29, 33 and 34)

Normally, no direction should be issued to the effect that the applicant should be released on bail "whenever arrested for whichever offence whatsoever". Such order should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. An order under Section 438 is a device to secure the individual's liberty, it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations likely or unlikely. "Blanket" order of bail may amount to or result in an invitation to commit an offence or a passport to carry on criminal activities or to afford a shield against any and all types of illegal operations, which, can never be allowed in a society governed by the rule of law. (Paras 35, 38 and 32)

The provision as to anticipatory bail has often been "misused by rich and influential people". Section 438 CrPC has been amended by the Code of Criminal Procedure (Amendment) Act, 2005 which now provides for hearing of the Public Prosecutor before granting an application for anticipatory bail. Sub-sections (1-A) and (1-B) also provide for notice and presence of the applicant in the court seeking anticipatory bail. The said provisions, however, have not been brought into force so far. (Paras 30 and 31). *Union of India* v. *Padam Narain Aggarwal*, (2008) 13 SCC 305: (2008) 231 ELT 397.

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 3-10-2008]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465; Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933, relied on

Malimath Committee on Reforms of Criminal Justice System, relied on

[6637] — S. 438 — Blanket/anticipatory bail in apprehension of offences not yet committed or accusations not yet levelled — Impermissibility *— Respondents 1 and 2 summoned by Customs Authorities under S. 108 of the Customs Act, 1962 — High Court directed Respondents 1 and 2 to appear before the Customs Authorities for recording of statements — High Court further directed the Customs Authorities that if any non-bailable offence is found against the accused persons they shall not be arrested without ten days' prior notice to them — Held, neither S. 438 CrPC nor any other provision of CrPC authorises the grant of blanket anticipatory bail for offences not yet committed or with regard to accusations not so far levelled — Customs Act, 1962, Ss. 108 and 104 — Penal Code, 1860, Ss. 174 and 175*

In proceedings initiated by the Customs Department under the Customs Act, 1962 (the Act), summons were issued to Respondents 1 and 2 for preparing fake shipping bills and obtaining export benefits under Section 80-HHC of the Income Tax Act, 1961. In view of the non-cooperation by the respondents, complaints were filed by the Customs Authorities for commission of offences punishable under Sections 174 and 175 IPC. Applications for anticipatory bail before the Sessions Court were dismissed.

However, the High Court by the impugned order held that since the petitioner-accused had only been summoned under Section 108 of the Customs Act, 1962 to give their evidence in the inquiry, the anticipatory bail applications were premature. The High Court, therefore, directed the respondent-accused to appear before the Customs Authorities concerned. Again, the High Court also directed the Customs Authorities that if any non-bailable offence was found against the accused persons they would not be arrested without ten days' prior notice to them.

Partly allowing the appeal,

Held :

No such order could have been passed nor a direction as to prior notice before effecting arrest could have been issued by the High Court. *Firstly*, the order passed by the High Court was a *blanket* one and sought to grant protection to the respondents in respect of any non-bailable offence. Neither Section 438 CrPC nor any other provision of the Code authorises the grant of blanket anticipatory bail for offences not yet committed or with regard to accusations not so far levelled. *Secondly*, it illegally obstructed, interfered and curtailed the authority of the Customs Officers from exercising their statutory power of arrest by imposing a condition of giving ten days' prior notice, a condition not warranted by law. There is no question of release on bail unless a person is arrested and, therefore, it is only on arrest that the order granting anticipatory bail becomes operative. The respondents were only summoned under Section 108 of the Customs Act, 1962 (the Act) for recording of their statements. The High Court was conscious and mindful of that fact. It, therefore, held that the applications for anticipatory bail, in the circumstances, were premature. They were, accordingly, disposed of by directing the respondents to appear before the Customs Authorities. The High Court, however, did not stop there. It stated that if the Customs Authorities found any non-bailable offence against the applicants (the respondents herein), they would not be arrested without ten days' prior notice to them. The order passed by the High Court to the extent of directions issued to the Customs Authorities is, therefore, liable to be set aside. (Paras 14, 33, 45, 23 and 44). *Union of India* v. *Padam Narain Aggarwal*, (2008) 13 SCC 305: (2008) 231 ELT 397.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 3-10-2008]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, relied on

[6638] — S. 438 — De facto exercise of power under — What amounts to — *Direction by High Court to Magistrate that if he finds that the case is not fit for bail, he must release the accused persons on personal bond and the accused must remain on the same personal bonds till the final disposal of their bail application by Sessions Court — Impropriety of — By issuance of said direction, virtually there had been an exercise of power under S. 438 CrPC, though S. 438 CrPC was not in operation in the State concerned — Even otherwise, in view of* Adri Dharan Das case, *(2005) 4 SCC 303, after surrender of the accused and rejection of his bail application, the relief of the nature granted by the High Court cannot be given — Hence held, High Court's direction not proper — But, since accused already granted bail by Sessions Court, no interference called for — Constitution of India — Art. 226* (Paras 7 to 9). *Rekha Patel* v. *Pankaj Verma*, (2008) 4 SCC 17: (2008) 2 SCC (Cri) 161: (2008) 3 All LJ 592.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *J.M. Panchal*, JJ. [Date of decision: 3-3-2008]

Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933, followed

[6639] — S. 438 — Anticipatory bail — During pendency of application for anticipatory bail court cannot pass interim order not to arrest the applicant

The condition precedent for the operation of the direction issued is arrest of the accused. This being so, the irresistible inference is that while dealing with an application under Section 438 of the Code the court cannot restrain arrest. (Para 18). *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303: 2005 SCC (Cri) 933: AIR 2005 SC 1057: (2005) 117 DLT 686: (2005) 2 Mah LJ 259: 2005 Cri LJ 1706.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 21-2-2005]

[6640] — S. 438 — Anticipatory bail — A blanket order that applicant be released on bail whenever arrested for whichever offence whatsoever cannot be passed

Normally, under Section 438 CrPC a direction should not issue to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever". Such "blanket order" should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. An order under Section 438 CrPC is a device to secure the individual's liberty, it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations likely or unlikely. (Para 16). *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303: 2005 SCC (Cri) 933: AIR 2005 SC 1057: (2005) 117 DLT 686: (2005) 2 Mah LJ 259: 2005 Cri LJ 1706.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 21-2-2005]

[6641] — S. 438 — Anticipatory bail — Held, can be granted only for a limited period — *Grant of unconditional blanket protection is untenable and liable to be set aside — View taken in* K.L. Verma case, *(1998) 9 SCC 348 that "anticipatory bail may be granted for a duration which may extend to the date on which the bail application is disposed of or even a few days thereafter to enable the accused persons to move the higher court" held to be per incuriam — Constitution of India — Art. 141* (Paras 8 to 12 and 18 to 23). *Sunita Devi* v. *State of Bihar*, (2005) 1 SCC 608: 2005 SCC (Cri) 435: AIR 2005 SC 498: (2004) 115 DLT 517: (2005) 2 Guj LR 1096: (2005) 1 KLT 748: (2005) 2 Mah LJ 534.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2004]

K.L. Verma v. State, (1998) 9 SCC 348: 1998 SCC (Cri) 1031, held per incuriam

Balchand Jain v. State of M.P., (1976) 4 SCC 572: 1976 SCC (Cri) 689; Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465; Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667: 1996 SCC (Cri) 198; State v. Ratan Lal Arora, (2004) 4 SCC 590: 2004 SCC (Cri) 1353; Young v. Bristol Aeroplane Co. Ltd., (1944) 2 All ER 293: 1944 KB 718; State of U.P. v. Synthetics and Chemicals Ltd., (1991) 4 SCC 139; Nirmal Jeet Kaur v. State of M.P., (2004) 7 SCC 558: 2004 SCC (Cri) 1989, relied on

[6642] — S. 438 — Following *Sibbia case, (1980) 2 SCC 565, held, grant of anticipatory bail for a limited duration is illegal — Anticipatory bail, after hearing Public Prosecutor to ordinarily continue till end of trial (see Shortnote in detail) — Later smaller Benches not in consonance with Constitution Bench ruling squarely on the issue — Course to*

(8) Duration and extent of anticipatory bail *(contd.)*

be followed by smaller Bench cognizant of the Constitution Bench ruling — Said earlier rulings of smaller Benches being per incuriam for not being in consonance with the Constitution Bench ruling, former not followed and Constitution Bench ruling followed — Constitution of India, Art. 141

It was submitted that the law laid down in para 42 by the Constitution Bench in *Sibbia case*, (1980) 2 SCC 565, that the normal rule is not to limit operation of the order of anticipatory bail, was not taken into account by Benches of the Supreme Court passing subsequent judgments. That the observations made in the said subsequent judgments have been made in ignorance of and without considering the law laid down in para 42 of *Sibbia case* which was binding on them. That in these circumstances, the observations made in the subsequent judgments to the effect that anticipatory bail should be for a limited period of time, must be construed to be per incuriam and the decision of the Constitution Bench be preferred.

Accepting the contention,

Held :

The House of Lords observed that "incuria" literally means "carelessness". In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law" is avoided and ignored if it is rendered *in ignoratium* of a statute or other binding authority. The same has been accepted, approved and adopted by the Supreme Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. (Para 128)

Not only the judgment of a larger strength is binding on a Bench of Judges smaller strength but the judgment of a coequal strength is also binding on a Bench of Judges of coequal strength. (Para 138)

In case there is no judgment of a Constitution Bench or larger Bench of binding nature and if the Court doubts the correctness of the judgments by two or three Judges, then the proper course would be to request the Chief Justice to refer the matter to a larger Bench of appropriate strength. (Para 139)

The views expressed by the Supreme Court in all the judgments referred to herein in paras 124 and 125 have to be reviewed. In these judgments by Benches of smaller strength it has been observed that anticipatory bail should be of limited duration only, and ordinarily on expiry of that duration or standard duration, the court granting the anticipatory bail should leave it to the regular bail court to deal with the matter. This view is clearly contrary to the view taken by the Constitution Bench in *Sibbia case*, (1980) 2 SCC 565. Consequently, the judgments mentioned in paras 124 and 125 of this judgment are per incuriam. In the present case there is a direct judgment of the Constitution Bench of the Supreme Court in *Sibbia case* dealing with exactly the same issue regarding the ambit, scope and object of the concept of anticipatory bail enumerated under Section 438 CrPC. The present Bench is clearly bound to follow the said judgment of the Constitution Bench. Judicial discipline obliges it to follow the said judgment in letter and spirit. (Paras 98, 99, 103, 105, 107, 108, 122 to 127, 140 and 33).

Siddharam Satlingappa Mhetre v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength 2. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

State of Bihar v. Kalika Kuer, (2003) 5 SCC 448; Govt. of A.P. v. B. Satyanarayana Rao, (2000) 4 SCC 262: 2000 SCC (L&S) 486; Union of India v. Raghubir Singh, (1989) 2 SCC 754; Thota Sesharathamma v. Thota Manikyamma, (1991) 4 SCC 312; R. Thiruvirkolam v. Presiding Officer, (1997) 1 SCC 9: 1997 SCC (L&S) 65; Bharat Petroleum Corpn. Ltd. v. Mumbai Shramik Sangha, (2001) 4 SCC 448; Central Board of Dawoodi Bohra Community v. State of Maharashtra, (2005) 2 SCC 673: 2005 SCC (L&S) 246: 2005 SCC (Cri) 546; Official Liquidator v. Dayanand, (2008) 10 SCC 1: (2009) 1 SCC (L&S) 943; Subhash Chandra v. Delhi Subordinate Services Selection Board, (2009) 15 SCC 458: (2010) 2 SCC (L&S) 147, relied on

Young v. Bristol Aeroplane Co. Ltd., 1944 KB 718: (1944) 2 All ER 293 (CA): 1946 AC 163: (1946) 1 All ER 98 (HL); Huddersfield Police Authority v. Watson, 1947 KB 842: (1947) 2 All ER 193 (DC), referred to

Halsbury's Laws of England (4th Edn.) Vol. 26, pp. 297-98, para 578; Wade: Administrative Law, cited

Karmi v. Amru, (1972) 4 SCC 86; Badri Prasad v. Kanso Devi, (1969) 2 SCC 586; Gujarat Steel Tubes Ltd. v. Mazdoor Sabha, (1980) 2 SCC 593: 1980 SCC (L&S) 197; P.H. Kalyani v. Air France, AIR 1963 SC 1756: (1964) 2 SCR 104; D.C. Roy v. M.P. Industrial Court, (1976) 3 SCC 693: 1976 SCC (L&S) 484; State of Karnataka v. Umadevi (3), (2006) 4 SCC 1: 2006 SCC (L&S) 753; S. Pushpa v. Sivachanmugavelu, (2005) 3 SCC 1: 2005 SCC (L&S) 327; Marri Chandra Shekhar Rao v. Seth G.S. Medical College, (1990) 3 SCC 130: (1990) 14 ATC 671; E.V. Chinnaiah v. State of A.P., (2005) 1 SCC 394: (2008) 2 SCC (L&S) 329; Hyman v. Rose, 1912 AC 623, 631, cited

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, followed

Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667: 1996 SCC (Cri) 198; K.L. Verma v. State, (1998) 9 SCC 348: 1998 SCC (Cri) 1031; Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933; Sunita Devi v. State of Bihar, (2005) 1 SCC 608: 2005 SCC (Cri) 435; Naresh Kumar Yadav v. Ravindra Kumar, (2008) 1 SCC 632: (2008) 1 SCC (Cri) 277, held, per incuriam

[6643] — S. 438 — Anticipatory bail — Nature, object, duration and extension — *Held, blanket protection granted under S. 438 is extraordinary in character and should be used in exceptional cases — On expiration of anticipatory bail, question of bail should be left to regular courts — In present case, High Court had wrongly noted that the* *accused persons were not named in the FIR — In fact they were specifically named — Hence, respondents should surrender before the court concerned and seek regular bail*

The informant challenged the impugned order passed by a Single Judge of the High Court disposing of three petitions filed by Respondents 1, 2 and 3, whereby, the prayer for protection in terms of Section 438 CrPC was accepted.

Disposing of the appeal in the terms below,

Held :

The power exercisable under Section 438 CrPC is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty, then power is to be exercised under Section 438. The object which is sought to be achieved by Section 438 CrPC is that the moment a person is arrested, if he has already obtained an order from the Court of Session or the High Court, he shall be released immediately on bail without being sent to jail. It is, therefore, necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted. Anticipatory bail may be granted for a duration which may extend to the date on which the bail application is disposed of or even a few days thereafter to enable the accused persons to move the higher court, if they so desire. The High Court had wrongly noted that the accused persons were not named in the FIR. In fact they were specifically named. The respondents should surrender before the court concerned and should seek regular bail. (Paras 5, 6 and 7). *Naresh Kumar Yadav* v. *Ravindra Kumar*, (2008) 1 SCC 632: (2008) 1 SCC (Cri) 277: AIR 2008 SC 218: (2008) 1 KLT 839.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *L.S. Panta*, JJ. [Date of decision: 23-10-2007]

[6644] — Ss. 438, 437 and 439 — Anticipatory bail — Duration for which to be granted — Following Constitution Bench in *Sibbia case*, (1980) 2 SCC 565, held, grant of anticipatory bail for limited period is illegal — When order of anticipatory bail is confirmed after hearing Public Prosecutor, held, ordinarily its benefit should continue till end of trial — *Grant of anticipatory bail for a limited period coupled with requirement to submit to custody thereafter and then seek, if at all, regular bail, held, violative of S. 438 — Such order would also be unreasonable and therefore, violative of Art. 21 of Constitution which enshrines test of fairness and reasonableness — Constitution of India, Art. 21. Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength **2**. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465; Maneka Gandhi v. Union of India, (1978) 1 SCC 248, followed

Hyman v. Rose, 1912 AC 623, 631, cited

Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667: 1996 SCC (Cri) 198; K.L. Verma v. State, (1998) 9 SCC 348: 1998 SCC (Cri) 1031; Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933; Sunita Devi v. State of Bihar, (2005) 1 SCC 608: 2005 SCC (Cri) 435; Naresh Kumar Yadav v. Ravindra Kumar, (2008) 1 SCC 632: (2008) 1 SCC (Cri) 277, held, per incuriam

[6645] — S. 438 — Anticipatory bail — Period of — Anticipatory bail is given for a limited duration so as to enable the accused to move the regular court for bail in terms of S. 439 — *View that such limited duration may extend to the date on which the bail application is disposed of or even few days thereafter to enable the accused to move the higher court, cannot be accepted* (Paras 11 and 12). *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303: 2005 SCC (Cri) 933: AIR 2005 SC 1057: (2005) 117 DLT 686: (2005) 2 Mah LJ 259: 2005 Cri LJ 1706.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 21-2-2005]

K.L. Verma v. State, (1998) 9 SCC 348: 1998 SCC (Cri) 1031, overruled

Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667: 1996 SCC (Cri) 198; Nirmal Jeet Kaur v. State of M.P., (2004) 7 SCC 558: 2004 SCC (Cri) 1989; Sunita Devi v. State of Bihar, (2005) 1 SCC 608: 2005 SCC (Cri) 435; Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559: 1980 SCC (Cri) 508, relied on

[6646] — S. 438 — Grant of anticipatory bail — Procedure to be followed — Order of anticipatory bail should be of a limited duration — *Ordinarily on expiry of that duration the court granting anticipatory bail should leave it to the regular court to deal with the matter*

When the Court of Session or the High Court is granting anticipatory bail, it is granted at a stage when the investigation is incomplete and, therefore, it is not informed about the nature of evidence against the alleged offender. It is, therefore, necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration, the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted.

(8) Duration and extent of anticipatory bail *(contd.)*

Ordinarily the court granting anticipatory bail should not substitute itself for the original court which is expected to deal with the offence. It is that court which has then to consider whether, having regard to the material placed before it, the accused person is entitled to bail. *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*, (1996) 1 SCC 667: 1996 SCC (Cri) 198: AIR 1996 SC 1042.

Bench Strength **3**. Coram: *A.M. Ahmadi, C.J.* and *S.C. Sen* and *K.S. Paripoornan*, JJ. [Date of decision: 11-12-1995]

[6647] — Ss. 438 and 197 — Order of anticipatory bail does not enure till end of the trial but it must be of a limited duration — Matter of bail should be left to the regular court — *Accused must be given sufficient time to move regular court for bail and in case of refusal by regular court to approach higher court — Grant of anticipatory bail by High Court till 14-10-1996 — Subsequently by another order High Court directing to issue notice on question of sanction under S. 197 — Notice returnable on 1-11-1996 — Held, the High Court not justified to grant stay of further proceedings till decision on question of requirement of sanction under S. 197*

An order of anticipatory bail does not enure till the end of trial but it must be of limited duration as the regular court cannot be bypassed. The limited duration must be determined having regard to the facts of the case and the need to give the accused sufficient time to move the regular court for bail and to give the regular court sufficient time to determine the bail application. In other words, till the bail application is disposed of one way or the other the court may allow the accused to remain on anticipatory bail. To put it differently, anticipatory bail may be granted for a duration which may extend to the date on which the bail application is disposed of or even a few days thereafter to enable the accused persons to move the higher court, if they so desire. It cannot be said that as soon as the accused persons are produced before the regular court the anticipatory bail ends even if the court is yet to decide the question of bail on merits.

In the instant case the proper course for the High Court was to decide on the question of the requirement of sanction and if the High Court could not do so, to have stayed further proceedings till that vital question was answered. *K.L. Verma* v. *State*, (1998) 9 SCC 348: 1998 SCC (Cri) 1031.

Bench Strength **2**. Coram: *A.M. Ahmadi, C.J.* and *J.S. Verma*, J. [Date of decision: 13-10-1996]

Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667: 1996 SCC (Cri) 198, explained and followed

Held to have been decided per incuriam in Nirmal Jeet Kaur v. State of M.P., (2004) 7 SCC 558, Sumitra Devi v. State of Bihar, (2005) 1 SCC 608 and in Sunita Devi v. State of Bihar, (2005) 1 SCC 608

(9) Direction under S. 438, when becomes operative

[6648] — S. 438 — Direction under S. 438, held, becomes operative only after arrest (Para 18). *Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303: 2005 SCC (Cri) 933: AIR 2005 SC 1057: (2005) 117 DLT 686: (2005) 2 Mah LJ 259: 2005 Cri LJ 1706.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 21-2-2005]

(10) Matters at large/Orders/Directions that may be passed

[6649] — S. 438 — Anticipatory bail — Practice and procedure — Observations of court pointing towards the guilt of accused, held, are impermissible at the preliminary stage of the investigation of the case

The High Court ought not to have made observations that the words spoken by the petitioner squarely attract the provision of Section 153-A IPC and that the same was uttered with necessary mens rea in mind at the preliminary stage of the investigation of the case, which may cause prejudice to the defence of the appellant during the trial of the case. Therefore, the said observations shall not be taken into consideration by the trial court at any stage of the proceedings of the case. (Paras 15 and 10). *Jonathan Nitin Brady* v. *State of W.B.*, (2008) 8 SCC 660: (2008) 3 SCC (Cri) 627.

Bench Strength **2**. Coram: *R.V. Raveendran* and *L.S. Panta*, JJ. [Date of decision: 10-9-2008]

[6650] — S. 438 — Interim orders, in anticipatory bail applications — Permissi- bility and scope — Factors to be considered — *Respondent-accused, in anticipatory bail application, after securing ex parte order from High Court which directed that respondents may be released on bail on their appearance before CJM, furnished bail before the CJM — Subsequently, accused filed application before High Court stating that since all accused had furnished regular bail bonds, they need not press the pending petitions, allowed by High Court — High Court dismissed application for cancellation of interim order filed by investigating officer — Held, High Court committed a serious error in passing an ex parte interim order which had the effect of being final as well as granting anticipatory bail for an indefinite period which is impermissible in law — Further held, High Court, committed a manifest error in allowing respondents not to press their application — Before a final order granting anticipatory bail is passed, High Court* *was required to apply its mind not only with regard to stage at which investigation was pending but several other factors including conduct of the accused* (Paras 9 to 12). *Shree Baidyanath Ayurved Bhawan (P) Ltd.* v. *State of Punjab*, (2009) 9 SCC 414.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 4-8-2009]

[6651] — S. 438 — Direction for prior notice to accused before arrest — *Direction of the High Court requiring 3 days' notice prior to the arrest of the respondent — Subsequent directions restraining CBI from acting in pursuance of 3 days' notice given to the respondent — Legality — Held, High Court was not justified in making such orders — CBI was not required to show also the breach of any of the subsequent conditions in addition to giving 3 days' notice — Period of required notice having expired, it is for the CBI to take the decision whether to arrest the respondents or not. CBI* v. *Chandraswami*, (1997) 3 SCC 214: 1997 SCC (Cri) 432.

Bench Strength **2**. Coram: *J.S. Verma* and *B.N. Kirpal*, JJ. [Date of decision: 26-2-1997]

[6652] — S. 438 — Grant of anticipatory bail by High Court — Held, observations made and conclusions reached by High Court absolutely uncalled for — *Hence not to be considered by court while trying the case — Respondents allowed to remain on bail subject to condition that they should cooperate with investigating agency. State* v. *K.K. Jajodia*, 1990 Supp SCC 667: 1991 SCC (Cri) 156.

Bench Strength **2**. Coram: *G.L. Oza* and *S. Natarajan*, JJ. [Date of decision: 4-4-1988]

[6653] — S. 438 — Power under, regarding grant of anticipatory bail to accused — Exercise of — Scope of — Adverse directions issued against appellant police officer on consideration of accused's plea as to his false implication — Propriety of — *Held, while granting anticipatory bail, the High Court was not justified in giving directions for initiating departmental proceeding and launching a criminal prosecution against the appellant — It was also not justified in issuing notice to the appellant as to why compensation be not paid to the accused — These directions could have been given by the Court upon conclusion of trial and not at this juncture — Hence, while confirming the grant of anticipatory bail to accused, the said directions issued against the appellant set aside* (Paras 3 and 4). *ASI Jaswinder Singh* v. *State of Punjab*, (2007) 2 SCC 802: (2007) 1 SCC (Cri) 678.

Bench Strength **2**. Coram: *B.N. Agrawal* and *P.P. Naolekar*, JJ. [Date of decision: 23-11-2006]

[6654] — S. 438 — Prior notice to accused before arrest, held, is unwarranted — *High Court giving direction to Customs Authorities that Respondents 1 and 2 shall not be arrested without ten days' prior notice — Held, is illegal — Such order obstructs, interferes and curtails the authority of the Customs Officers from exercising statutory power of arrest of a person said to have committed a non-bailable offence by imposing a condition of giving ten days' prior notice, a condition not warranted by law — Customs Act, 1962, S. 104*

In proceedings initiated by the Customs Department under the Customs Act, 1962 (the Act), summons were issued to Respondents 1 and 2 for preparing fake shipping bills and obtaining export benefits under Section 80-HHC of the Income Tax Act, 1961. In view of the non-cooperation by the respondents, complaints were filed by the Customs Authorities for commission of offences punishable under Sections 174 and 175 IPC. Applications for anticipatory bail before the Sessions Court were dismissed.

However, the High Court by the impugned order held that since the petitioner-accused had only been summoned under Section 108 of the Customs Act, 1962 to give their evidence in the inquiry, the anticipatory bail applications were premature. The High Court, therefore, directed the respondent-accused to appear before the Customs Authorities concerned. Again, the High Court also directed the Customs Authorities that if any non-bailable offence was found against the accused persons they would not be arrested without ten days' prior notice to them.

Partly allowing the appeal,

Held :

The safeguards/considerations against the abuse of power and the statutory character of Section 104 of the Customs Act, 1962 have to be kept in view while deciding the correctness or otherwise of the directions issued by a Single Judge of the High Court. On the one hand the power to arrest a person by a Customs Officer under Section 104 of the Act is statutory in character and cannot be interfered with, and on the other hand, the power to arrest is circumscribed by objective considerations and cannot be exercised on whims, caprice or fancy of the officer. Such power of arrest can be exercised only in those cases where the Customs Officer has "reason to believe" that a person has been guilty of an offence punishable under Sections 132, 133, 135 or 135-A of the Act. Section 104 of the Act also obliges the Customs Officer to inform the person arrested of the grounds of arrest *as soon as may be*.

(10) Matters at large/Orders/Directions that may be passed *(contd.)*

The law requires such person to be produced before a Magistrate *without unnecessary delay.* "Blanket" order of bail may amount to or result in an invitation to commit an offence or a passport to carry on criminal activities or to afford a shield against any and all types of illegal operations, which, can never be allowed in a society governed by the rule of law. (Paras 36 to 38 and 22). *Union of India* v. *Padam Narain Aggarwal*, (2008) 13 SCC 305: (2008) 231 ELT 397.

Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 3-10-2008]

[6655] — Ss. 438 and 439 — Anticipatory bail — Directions that may be issued — Direction for arrest — *Rejection of, by the High Court, held, was proper — But, direction to investigating officer to arrest the petitioner within twenty-four hours was not sustainable — That matter was under the province of the investigating officer* (Para 2). *D. Prabhakaran* v. *Inspector of Police*, (2005) 12 SCC 399.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 5-1-2005]

M.C. Abraham v. State of Maharashtra, (2003) 2 SCC 649: 2003 SCC (Cri) 628, followed

(11) Practice and Procedure re disposal

[6656] — S. 438 — Anticipatory bail — Grant of, by High Court — Hearing to State to oppose application — Need for — *Respondents, apprehending arrest moving an application for anticipatory bail during vacation — Matter heard by the High Court on the very next day without giving adequate opportunity to the appellants to file objections — Held, procedure adopted by the High Court bad — Matter remanded to High Court to be heard afresh* (Paras 6 to 8). *Union of India* v. *Yusuf Razak Dhanani*, (2003) 8 SCC 98: 2003 SCC (Cri) 1963: AIR 2003 SC 4578: (2003) 157 ELT 241.

Bench Strength 2. Coram: *N. Santosh Hegde* and *B.P. Singh*, JJ. [Date of decision: 9-9-2003]

[6657] — S. 438 — Anticipatory bail — Grant of, without hearing the State concerned or its Director General of Police, held, illegal. *State of Assam* v. *Dr. Brojen Gogol*, (1998) 1 SCC 397: 1998 SCC (Cri) 403: AIR 1998 SC 143, 144.

Bench Strength 2. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 24-10-1997]

(12) Successive/repeated bail applications

[6658] — S. 438 — Anticipatory bail — Subsisting order of Supreme Court restraining arrest on condition that accused join investigation — Law laid down in *Adri Dharan Das*, (2005) 4 SCC 303, if applicable — Fraud/embezzlement case against employees of private bank — *Appellants who were employees of a private bank, apprehending arrest on account of FIR lodged against them for alleged fraud/embezzlement arising out of withdrawal of money and shares belonging to the complainant — Appellants' case was that transaction was purely of civil nature for which arbitration proceedings had already been initiated — Petition filed by appellants was under S. 482 CrPC but in essence it was a prayer for grant of anticipatory bail under S. 438 — There was already a subsisting order of the Supreme Court restraining arrest of the appellants subject to the condition that appellants would join investigation — Held, strictly speaking the order did not fit into the parameters indicated in* Adri Dharan Das case, *but keeping in view that the order was in operation, no variation made in it — Appeal disposed of by giving directions for speedy completion of investigation*

(*1*) The investigation shall be completed within two months unless there is some practical difficulty in completing the same within that period.

(2) The appellants shall, as and when required by the investigating agency, appear before the investigating officer and shall cooperate in the investigation.

(*3*) If any document is asked for, the same shall be supplied unless the appellants are not in possession of the documents.

(*4*) In case the investigating officer feels that non-production of documents as called for has any relevance, that can certainly be taken note of while submitting the final form or the charge-sheet as the case may be. This order shall be operative till the charge-sheet or the final form is filed before the court concerned. (Paras 9 and 10). *Parvinderjit Singh* v. *State*, (2008) 13 SCC 431.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 3-11-2008]

Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933, relied on

[6659] — S. 438 — Grant of anticipatory bail despite rejection of all bail applications by all courts including Supreme Court — Propriety — *Accused granted 8 months' provisional anticipatory bail by High Court to enable him to donate kidney to his ailing father in face of rejection of all his bail applications, including Supreme Court —*

Said order strongly deprecated in backdrop of events, especially as 8 months to donate a kidney belied the truth of the matter — Penal Code, 1860, Ss. 302, 201 and 120-B (Para 13). *Virender Prasad Singh* v. *Rajesh Bhardwaj*, (2010) 9 SCC 171: (2010) 3 SCC (Cri) 1169: 2010 Cri LJ 4275: (2010) 95 AIC 182 .

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 16-8-2010]

Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332: (2009) 2 SCC (Cri) 1047; Ramachandran v. R. Udhayakumar, (2008) 5 SCC 413: (2008) 2 SCC (Cri) 631, relied on

Rubabbuddin Sheikh v. State of Gujarat, (2010) 2 SCC 200: (2010) 2 SCC (Cri) 1006, distinguished on facts

(13) Conditions for bail under

[6660] — S. 438 — Anticipatory bail — Conditions imposed, if onerous — *Condition imposed by High Court while grant of, that the first and the second appellant should deposit Rs 10 lakhs and Rs 5 lakhs respectively — Modification of, by by holding that the said condition, on the facts and circumstances of the present case, was onerous — Appellants directed to furnish a self-bond of Rs 50,000 each and one surety for the like sum each — Further directed to abide by the conditions enumerated in S. 438(2) CrPC — Constitution of India — Art. 136* (Paras 3 and 4). *U. Palaniappan* v. *Sub-Inspector of Police*, (2005) 10 SCC 464: 2005 SCC (Cri) 1586.

Bench Strength 3. Coram: *N. Santosh Hegde*, *S.B. Sinha* and *A.K. Mathur*, JJ. [Date of decision: 14-3-2005]

[6661] — S. 438 — Anticipatory bail — Conditions for grants of — Reasonableness — Fraud alleged regarding sale of property — *Appellant-accused alleged to have conspired and forged encumbrance certificate and impersonated themselves as original owners of house sites, prepared a false sale deed and registered the same in favour of complainant and cheated complainant to the tune of Rs 62,62,000 — High Court granting anticipatory bail on condition that in the event of arrest, appellants shall be enlarged on bail on their depositing title deeds of property worth Rs 20,00,000 standing either in their name or in the name of the third parties and also on their executing a personal bond of Rs 25,000 with two sureties for the like sum — Held, allegations, no doubt were serious and High Court with intention to protect interests of complainant passed impugned order — But, approach of High Court was incorrect as onerous and unreasonable conditions were laid down as condition precedent for grant of anticipatory bail — Matter remitted to High Court to reconsider entire facts of case including gravity of offence alleged and then in light thereof to consider prayer for anticipatory bail* (Paras 3, 5, 11 to 15). *I. Glaskasden Grace* v. *Inspector of Police*, (2009) 12 SCC 769: AIR 2009 SC 1629.

Bench Strength 2. Coram: *S.B. Sinha* and **Dr. M.K. Sharma**, JJ. [Date of decision: 3-3-2009]

Amarjit Singh v. State (NCT of Delhi), (2009) 13 SCC 769; Sandeep Jain v. NCT of Delhi, (2000) 2 SCC 66: 2000 SCC (Cri) 316, considered and relied on

[6662] — S. 438 — Anticipatory bail — Factors to be considered for grant of — Conditions that may be imposed — Fraud alleged regarding sale of property — *High Court granting anticipatory bail to appellant laying down onerous condition of depositing Rs 32 lakhs as condition precedent — Propriety of — Held, High Court proceeded to dispose of prayer for anticipatory bail oblivious of facts of case and contrary to correct legal position with regard to law relating to grant of anticipatory bail — Hence, order passed by High Court set aside and matter remitted for reconsideration in accordance with law — Penal Code, 1860, Ss. 120-B and 420*

A complaint was filed by Respondent 2 contending that the appellants and another person, namely, *K* are legal heirs of one *R* and that they owned a house and that the said house was open and ready for sale. Complainant on behalf of his son-in-law negotiated with *RT*, wife of late *R* and his family members pursuant to which an agreement was entered into on behalf of him/ son-in-law and daughter for consideration of Rs 35.5 lakhs as desired by the accused persons. A sum of Rs 32.5 lakhs was advanced on different dates as a part of sale consideration but accused persons failed to handover the papers and documents relating to the house and handed over only the possession of the house. On enquiry it came to the knowledge of the complainant that the original documents and title deeds had been placed with a Chit Fund where they are required to pay a sum of Rs 8 lakhs including interest amount. It further transpires that the said accused and her late husband executed the sale deed in respect of the said property in 1998. The aforesaid fact of alleged fraudulent transfer of property was concealed. They also allegedly concealed the fact that they received a sum of Rs 11,50,000 from Punjab National Bank by means of pledging the documents and that a decree was passed against the purchasers regarding the pledged properties. It is thus alleged that the accused concealed the real fact and fraudulently received a sum of Rs 32.5 lakhs as sale consideration and thereby cheated the complainant and his son-in-law and his wife. The appellants apprehending arrest in the aforesaid case

(13) Conditions for bail under *(contd.)*

registered under Sections 120-B and 420 IPC filed a petition under Section 438 CrPC seeking anticipatory bail. The High Court passed an order granting anticipatory bail on an onerous condition.

Allowing the appeal,

Held :

The allegations are serious but the same are required to be considered by the Court in accordance with and in the light of correct position of law. It appears that in the facts and circumstances, the High Court passed the impugned order with the intention of protecting the interest of the complainant in the matter. The approach of the High Court was incorrect as under the impugned order a very unreasonable and onerous condition has been laid down by the Court as a condition precedent for grant of anticipatory bail. It is not disclosed from the record that the High Court considered the entire facts of the case in proper perspective and proceeded to dispose of the prayer for anticipatory bail oblivious of the facts of the case and contrary to correct legal position with regard to law relating to grant of anticipatory bail. The High Court should have considered the entire facts of the case including the gravity of the offence alleged and in the light thereof should have considered the prayer for grant of anticipatory bail. In that view of the matter, the entire order passed by the High Court is required to be set aside and the matter to be reconsidered in accordance with law and in terms of observations made herein. (Paras 12, 13 and 16). *Ramathal* v. *Inspector of Police*, (2009) 12 SCC 721: (2009) 77 AIC 215 (SC): 2009 Cri LJ 2271.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dr. M.K. Sharma**, JJ. [Date of decision: 3-3-2009]

Amarjit Singh v. State (NCT of Delhi), (2009) 13 SCC 769; Sandeep Jain v. NCT of Delhi, (2000) 2 SCC 66: 2000 SCC (Cri) 316, relied on

[6663] — S. 438 — Anticipatory bail — Grant of, on unreasonable condition — Impropriety of — *FIR against appellant- accused under Ss. 406/420 IPC — Anticipatory bail granted to him, subject to deposit of Rs 15 lakhs in form of FDR in the name of trial court — Affirmed by High Court — Sustainability — Imposition of such condition, held, unreasonable, hence, set aside — Anticipatory bail granted on modified conditions — Penal Code, 1860, Ss. 406/420*

Having regard to the facts and circumstances of the present case, the imposition of condition to deposit the sum of Rs 15 lakhs in the form of FDR in the trial court is an unreasonable condition and, therefore, the said condition is set aside as a condition precedent for granting anticipatory bail to the appellant-accused. (Para 7)

On the other hand, it is directed that on executing a bond to the tune of Rs 25,000 with two solvent sureties to the satisfaction of the Magistrate concerned, and further that the accused shall make himself available for interrogation whenever is required and the accused should surrender his passport immediately to the Magistrate concerned where the matter is pending and would not leave this country without appropriate permission from the court, he would be entitled to the order granting him anticipatory bail. (Para 8). *Amarjit Singh* v. *State (NCT of Delhi)*, (2009) 13 SCC 769: (2002) 96 DLT 59.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *R.P. Sethi*, JJ. [Date of decision: 8-1-2002]

[6664] — S. 438 — Discretion of court to impose conditions for granting anticipatory bail is a judicial discretion which should be exercised with the object of avoiding possibility of hampering the investigation — *Offence under Ss. 409 and 420 IPC alleged against appellant — Anticipatory bail granted by High Court on certain conditions — Interference of Supreme Court under Art. 136 with the conditions, whether called for — Facts and circumstances of the case, object for which the bail granted and impossibility and/or severity of satisfying the conditions considered and suitable orders issued — Constitution of India — Art. 136*

The accused-petitioner, against whom offence under Sections 420 and 409 r/w Section 120-B IPC was alleged, moved for grant of anticipatory bail. By an order dated 31-1-2000, after taking all relevant facts as well as the undertaking of the accused the High Court granted anticipatory bail in favour of the petitioner subject to depositing Rs 50 crores in three instalments of Rs 20 crores, Rs 15 crores and Rs 15 crores within specified time frame. That order was modified by a subsequent order dated 30-3-2000 for payment of the aforesaid Rs 15 crores by modifying the dates and putting several other conditions as contained in para 18 of the order. The accused, thereafter approached the Supreme Court which stayed operation of the subsequent order on 17-4-2000. By that date a sum of Rs 35 crores had already been paid and a further sum of Rs 15 crores as was required by the High Court remained to be paid. The accused-petitioner contended that when the court exercises jurisdiction under Section 438 CrPC though is entitled to put conditions, but such conditions must be reasonable and judicious and the conditions should not be arbitrary. On behalf of the respondent State it was, on the other hand, contended that bearing in mind the nature of accusation, in fact, no anticipatory bail should have been granted, but the same having been granted the terms and conditions imposed should not be interfered with by the Supreme Court under Article 136.

Disposing of the petitions

Held :

The court while exercising jurisdiction under Section 438 CrPC must bear in mind and be satisfied that the accused will not abscond or otherwise misuse liberty and this can be ascertained from several factors like conduct of the accused in the past, his assets in the country and so on. But, while granting such anticipatory bail, though the court may impose such conditions as it thinks fit, the object of putting conditions should be to avoid the possibility of the person hampering investigation. The discretion of the court while putting conditions should be an exercise of judicial discretion. In an offence under Sections 409 and 420 IPC, the court is certainly not going to recover the alleged amount as a condition to granting of bail. (Para 6)

Since the High Court had directed the payment of the aforesaid money on the basis of the undertaking given by the accused, that part of the order need not be modified and, therefore, the accused would be required to pay the balance sum of Rs 15 crores within a period of four weeks. So far as condition (*b*) imposed in para 18 of the order is concerned, having considered the facts and circumstances of the case in hand and the object for which an accused is granted bail and the impossibility and/or severity of satisfying the said condition, that condition has to be altered by directing that it would be open for the accused to furnish corporate guarantee to the extent mentioned in para 18(*b*) of the aforesaid order to the satisfaction of the Magistrate concerned with whom the case is now pending. The Magistrate should be fully satisfied about the solvency of the corporate guarantee. All other conditions mentioned in para 18 of the aforesaid order would remain operative and the prosecution should take expeditious steps for completing the criminal proceedings. The corporate guarantee as aforesaid should be furnished within eight weeks. (Para 6). *M. Sreenivasulu Reddy* v. *State of T.N.*, (2002) 10 SCC 653.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 18-9-2000]

[6665] — **Ss. 438 and 125 — Anticipatory bail — Grant of, by High Court by imposing condition that accused would pay to the victim daughter-in-law a sum of Rs 2000 per month as maintenance — Propriety of** — *Held, was not proper — Accused who were jeth and jethani (elder brother-in-law and co-sister) of the victim could not be made liable to deposit the said amount for maintenance of victim — While deciding bail application, the court had no jurisdiction to decide civil disputes as between the parties — Hence, matter remitted to High Court for consideration afresh on merit — High Court to pass appropriate order without imposing any condition of the nature imposed herein* (Para 3). *Mahesh Chandra* v. *State of U.P.*, (2006) 6 SCC 196: (2006) 3 SCC (Cri) 23.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 1-5-2006]

[6666] — **Ss. 438 and 437 — Anticipatory bail — Conditions that may be imposed, enumerated — Factors to be considered by court — Irrelevant and unwarranted conditions for release on bail — Sustainability** — *Held, harsh, onerous and excessive conditions which frustrate the very object of anticipatory bail not to be imposed — Subjecting an accused to any condition other than conditions enumerated in the section would be beyond jurisdiction of the court — The conditions which can be imposed by the court while granting anticipatory bail are enumerated in Ss. 438(2) and 437(3) — To subject an accused to any other condition would be beyond jurisdiction of the power conferred on court under S. 438* (Paras 10 to 12). *Munish Bhasin* v. *State (Govt. of NCT of Delhi)*, (2009) 4 SCC 45.

Bench Strength **2**. Coram: *R.V. Raveendran* and **J.M. Panchal**, JJ. [Date of decision: 20-2-2009]

[6667] — **Ss. 438 and 125 — Anticipatory bail — Conditions for release on bail — Whether payment of maintenance to the wife and child could be a precondition for release of accused on bail** — *Held, in a proceeding under S. 438, Court is not justified in awarding maintenance to the wife and child — Subjecting an accused to any condition other than conditions enumerated under the section would be beyond jurisdiction of the court — Maintenance to be decided in appropriate proceedings where the parties adduce evidence as to their respective cases but not in proceedings under S. 438* (Paras 13 and 14). *Munish Bhasin* v. *State (Govt. of NCT of Delhi)*, (2009) 4 SCC 45.

Bench Strength **2**. Coram: *R.V. Raveendran* and **J.M. Panchal**, JJ. [Date of decision: 20-2-2009]

(13) Conditions for bail under *(contd.)*

[6668] — S. 438(2)(i) — Anticipatory bail — Scope — Conditions that may be imposed — *Held, while granting anticipatory bail, court can lay down a condition that accused shall make himself available for interrogation by a police officer as and when required — Purpose of such provision is that anticipatory bail cannot be permitted to be abused — Implicitly, whenever court imposes such a condition and the accused called for interrogation or for certain investigation does not appear before investigating officer, then it will be open for State to move High Court for cancellation of bail — Held, on facts, impugned order granting anticipatory bail requires no interference — However, in case respondents do not cooperate with investigation, then it is always open for State to move an application before High Court for cancellation of bail, which will be decided in accordance with law* (Paras 5, 3 and 4). *State of Punjab* v. *Raninder Singh*, (2008) 1 SCC 564: (2008) 1 SCC (Cri) 301: AIR 2008 SC 609: 2008 Cri LJ 801: (2008) 1 KLT 507 (SC).

Bench Strength 2. Coram: *A.K. Mathur* and *Markandey Katju*, JJ. [Date of decision: 19-11-2007]

(14) Cancellation of bail

[6669] — S. 438 — Cancellation of anticipatory bail — *Grant of anticipatory bail by Sessions Court on irrelevant or extraneous grounds and refusal by High Court to cancel the bail, on facts, causing miscarriage of justice — Supreme Court would interfere and cancel the bail — Constitution of India — Art. 136*

In the present case in order to avoid miscarriage of justice, the Supreme Court must interfere under Art. 136 and cancel the order granting anticipatory bail. Ordinarily, this Court is loath to interfere with the orders granting or refusing bail but it cannot be an insurmountable obstacle in the way of rectifying an order which tends to disclose miscarriage of justice. *Pokar Ram* v. *State of Rajasthan*, (1985) 2 SCC 597: 1985 SCC (Cri) 297: AIR 1985 SC 969: 1985 Cri LJ 1175.

Bench Strength 3. Coram: *V.D. Tulzapurkar*, **D.A. Desai** and *A.P. Sen*, JJ. [Date of decision: 17-4-1985]

[6670] — S. 438 — Anticipatory bail — When may be cancelled — *In present case, appellant granted anticipatory bail by Sessions Judge — Appellant complying with conditions of anticipatory bail and also cooperating with investigation agency — Investigation agency not objecting to relaxation of conditions of bail of appellant before Sessions Judge — Other accused also enjoying benefit of bail — High Court quashing the bail — Sustainability — Held, no ground for setting aside the order granting bail — Liberty given to investigation agency to move Sessions Judge for interrogating appellant either alone or with other accused persons and appellant to comply with such directions, if passed* (Paras 10 to 12). *Fida Hussain Bohra* v. *State of Maharashtra*, (2009) 5 SCC 150.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 3-3-2009]

[6671] — S. 438 — Anticipatory bail — Cancellation of — Propriety — *High Court by impugned order cancelling appellant's anticipatory bail — Nothing brought on record to show that there had been interference, or attempt to interfere with due course of administration of justice by appellant, or concession granted to him had been abused in any manner, or any supervening circumstance had surfaced justifying cancellation of anticipatory bail — Hence, impugned order unsustainable and set aside* (Paras 3, 4 and 6 to 8). *Hazari Lal Das* v. *State of W.B.*, (2009) 10 SCC 652: (2009) 82 AIC 196 (SC).

Bench Strength 2. Coram: *Tarun Chatterjee* and **R.M. Lodha**, JJ. [Date of decision: 8-9-2009]

Dolat Ram v. State of Haryana, (1995) 1 SCC 349: 1995 SCC (Cri) 237, considered and followed

[6672] — S. 438 — Anticipatory bail — Cancellation of — Propriety — Alleged dowry related offences — *High Court by impugned judgment cancelling anticipatory bail granted to appellants (mother-in-law, father-in-law, younger brother of father-in-law and husband of deceased) who were accused of committing offences punishable under Ss. 498-A, 304-B r/w S. 34 IPC and Ss. 3 & 4, Dowry Prohibition Act, 1961 — Held, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail already granted — In the instant case, nothing was brought on record from which it could be inferred that appellants had not cooperated in the investigation or had in any manner abused concession of bail granted to them — Hence, impugned order unsustainable and set aside — Penal Code, 1860, Ss. 498-A, 304-B r/w S. 34 — Dowry Prohibition Act, 1961, Ss. 3 and 4*

The High Court by the impugned judgment cancelled the anticipatory bail granted to the appellants (mother-in-law, father-in-law, husband and younger brother of father-in-law of the deceased) who were accused of committing offences punishable under Sections 498-A, 304-B read with Section 34 IPC and Sections 3 and 4, Dowry Prohibition Act, 1961.

It was alleged by the father of the deceased that the appellants were torturing the deceased for not meeting dowry demand of Rs 2 lakhs and earlier on 15-7-2006 she had left her matrimonial home intending to commit suicide because she was unable to bear it. However, on intervention of her relatives she was sent back to her matrimonial home.

On the day of occurrence the father-in-law of the deceased was stated to have heard cries of the deceased and on rushing there he found her burning. He tried to douse the fire and the deceased told him that her child aged about fifteen months was lying in the bathroom with burns. Both of them were rushed to the hospital. The child expired on the same day, while the deceased died ten days later in the hospital. In the two dying declarations recorded by the Executive Magistrate the deceased stated that she and her son caught fire accidentally when she was pouring kerosene oil in the lamp which accidentally fell down.

The Sessions Judge taking into consideration the two dying declarations, statements of the complainant and the witnesses and after perusing the case-diary granted anticipatory bail to the appellants. The High Court by the impugned judgment cancelled the same. Hence, the present appeal.

Allowing the appeal,

Held :

Section 438 of the Code confers on the High Court and the Court of Session, the power to grant "anticipatory bail" if the applicant has "reason to believe" that he may be arrested on accusation of having committed a non-bailable offence. The expression "anticipatory bail" has not been defined in the Code. But it means "bail in anticipation of arrest". The expression "anticipatory bail" is a misnomer inasmuch as it is not as if bail is presently granted by the court in anticipation of arrest. When a competent court grants "anticipatory bail", it makes an order that in the event of arrest, a person shall be released on bail. There is no question of release on bail unless a person is arrested and, therefore, it is only on arrest that the order granting anticipatory bail becomes operative. The power being rather unusual in nature, it is entrusted only to the higher echelons of judicial service i.e. a Court of Session and the High Court. (Paras 14, 15 and 16)

The wide discretionary power conferred by the legislature on the higher echelons in the criminal justice-delivery system cannot be put in the form of straitjacket rules for universal application as the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. A circumstance which, in a given case, turns out to be conclusive, may or may not have any significance in another case. The imposition of unnecessary restrictions on the scope of the section which were not to be found in Section 438 of the Code, could make the provision constitutionally vulnerable, since the right of personal freedom, as enshrined in Article 21 of the Constitution, cannot be made to depend on compliance with unreasonable restrictions. The courts must keep in mind the guidelines while dealing with an application for grant of anticipatory bail laid down by the Constitution Bench in *Gurbaksh Singh case*, (1980) 2 SCC 565. Further, the amendment to Section 438 brought about by the CrPC (Amendment) Act, 2005, which is yet to be enforced is more or less in line with the parameters laid down in *Gurbaksh Singh case*. (Paras 21 to 27)

In the instant case, the High Court committed a serious error in reversing the order passed by the Sessions Judge, granting anticipatory bail to the appellants. The Sessions Judge passed the order after due consideration of the facts and circumstances of the case, in particular, the two dying declarations, one recorded in the presence of the parents of the deceased and the statements of the members of the Women Cell who had dealt with the case when on 15-7-2006, the deceased had left the house with intention to commit suicide and therefore, it cannot be said that the judicial discretion exercised in granting anticipatory bail was perverse or erroneous, warranting interference by the High Court. The order passed by the Sessions Judge was supported by reasons to the extent required for exercise of judicial discretion in the matter of grant of bail. (Para 28)

It may be true that some of the circumstances, noticed by the High Court in the impugned order viz. no reference to lantern in the spot panch- nama or the necessity of cleaning the lantern at 4 p.m. and/or availability of an inverter in the house, etc., could have persuaded the Sessions Judge to take a different view but it cannot be said that the factors which weighed with the Sessions Judge in granting bail were irrelevant to the issue before him, rendering the order as perverse. Moreover, merely because the High Court had a different view on same set of material which had been taken into consideration by the Sessions Judge, in our view, was not a valid ground to label the order passed by the Sessions Judge as perverse. It also appears that the High Court has overlooked the distinction of factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already

(14) Cancellation of bail *(contd.)*

granted. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted, which were missing in the instant case. Nothing was brought on record from which it could be inferred that the appellan ts had not cooperated in the investigations or had, in any manner, abused the concession of bail granted to them. (Paras 29 and 30)

Hence, impugned order setting aside anticipatory bail granted to the appellants unsustainable and set aside. (Para 32). *Savitri Agarwal* v. *State of Maharashtra*, (2009) 8 SCC 325: (2009) 3 SCC (Cri) 683: (2009) 80 AIC 116 (SC).

Bench Strength **2**. Coram: **D.K. Jain** and *R.M. Lodha*, JJ. [Date of decision: 10-7-2009]

Balchand Jain v. State of M.P., (1976) 4 SCC 572: 1976 SCC (Cri) 689, followed

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465; Dolat Ram v. State of Haryana, (1995) 1 SCC 349, relied on

Gurbaksh Singh Sibia v. State of Punjab, AIR 1978 P&H 1: 1978 Cri LJ 20, held, overruled

Balchand Jain v. State of M.P., (1976) 4 SCC 572: 1976 SCC (Cri) 689, held, partly doubted

Adri Dharan Das v. State of W.B., (2005) 4 SCC 303: 2005 SCC (Cri) 933, partly doubted

[6673] — S. 438 — Recall of anticipatory bail without hearing — *Impugned order set aside and matter remitted to High Court for decision afresh after giving opportunity of hearing to parties — Constitution of India, Art. 136* (Paras 1 and 2). *P. Sundarajan* v. *State*, (2009) 17 SCC 641.

Bench Strength **2**. Coram: *B.N. Agrawal* and *G.S. Singhvi*, JJ. [Date of decision: 3-8-2009]

(15) Interference by Supreme Court

[6674] — S. 438 — Anticipatory bail — Grant of, by High Court — Interference with, by Supreme Court when warranted — *High Court neither considering the detailed order passed by CJM wherein strong prima facie case was found against R, nor the cogent reasons recorded by Sessions Court while declining anticipatory bail, granting anticipatory bail to accused R on ground that he was not found guilty in joint enquiry, conducted by the Commissioner and the DIG on direction of Human Rights Commission — Held, High Court's order not sustainable — R at liberty to file appropriate application under S. 439 CrPC after surrender* (Paras 6 and 7). *Manager Pandey* v. *State of Bihar*, (2004) 13 SCC 458.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 25-10-2004]

[6675] — S. 438 — Anticipatory bail — Grant of — Ground of parity with co-accused — Scope of interference under Art. 136 — *Held, it was a fit case for granting anticipatory bail to appellant, particularly when on similar allegations the remaining two accused had been granted the said benefit — Constitution of India — Art. 136* (Para 2). *Kamaljit Singh* v. *State of Punjab*, (2005) 7 SCC 226: 2005 SCC (Cri) 1668.

Bench Strength **2**. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 11-7-2005]

***Followed** in Deepak Singchi v. State of Rajasthan, (2007) 14 SCC 583*

[6676] — S. 438 — Anticipatory bail — Question as to grant of — Scope of interference under Art. 136 — Genuineness or correctness of documents produced by accused or prosecution — *Supreme Court would not comment upon, at this stage — Said matter is to be considered at the trial — Any expression of opinion on the merits of the case except to the extent of finding out prima facie whether the accused are entitled to anticipatory bail or not, is likely to affect the trial — Hence, considering the entire material available on record without expressing any opinion on the same, held, accused entitled to anticipatory bail — Constitution of India — Art. 136* (Paras 7 to 9). *M.P. Lohia* v. *State of W.B.*, (2005) 2 SCC 686: 2005 SCC (Cri) 556: AIR 2005 SC 790: 2005 Cri LJ 1416.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 4-2-2005]

[6677] — S. 438 — Anticipatory bail granted by Supreme Court — Cancellation of, by the High Court on the ground that the appellant misused the privilege of bail as he had been threatening the informant and other witnesses — Propriety of — *Observation of High Court was based on reports of police officers — The said reports were not clear enough to indicate that the threats were received against the witnesses — Therefore, remitting the matter, held, High Court to re-examine the same in the light of the reports on record and any further report that may be called for by it — Constitution of India — Art. 136* (Para 2). *Bilash Gupta* v. *State of Jharkhand*, (2005) 11 SCC 179.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *A.K. Mathur*, JJ. [Date of decision: 25-4-2005]

[6678] — S. 438 — Direction given by Supreme Court under Art. 32 for grant of bail to persons apprehending arrest — *Question of constitutionality not decided. Ghanshyam Dass Jain* v. *State of U.P.*, (1982) 3 SCC 389(1): 1983 SCC (Cri) 62(1).

Bench Strength **2**. Coram: *V.D. Tulzapurkar* and *A.N. Sen*, JJ. [Date of decision: 27-4-1981]

[6679] — S. 438 — Exercise of power under — Doing of complete justice to parties — Appellant ready and willing to settle contractual dispute wherein allegations of forgery and fraud had been made — Bail granted subject to appellant's appearance before Magistrate within four weeks and filing bail petition — *Directions given to consider petition for exemption from personal appearance on merits — Penal Code, 1860, Ss. 420, 467 and 468 — Constitution of India — Art. 142* (Paras 17 and 18). *Mahesh Chaudhary* v. *State of Rajasthan*, (2009) 4 SCC 439.

Bench Strength **2**. Coram: **S.B. Sinha** and *A.K. Ganguly*, JJ. [Date of decision: 3-3-2009]

(16) Rejection of anticipatory bail — Effect

[6680] — Ss. 438 and 41 — Rejection of anticipatory bail application — Arrest — Permissibility — *Mere rejection of anticipatory bail application of a person is no ground for arresting such person — Accused may or may not be arrested depending upon facts and circumstances and other aspects of the case*

The mere fact that the bail applications of some of the appellants had been rejected is no ground for directing their immediate arrest. In the very nature of things, a person may move the court on mere apprehension that he may be arrested. The court may or may not grant anticipatory bail depending upon the facts and circumstances of the case and the material placed before the court. There may, however, be cases where the application for grant of anticipatory bail may be rejected and ultimately, after investigation, the said person may not be put up for trial as no material is disclosed against him in the course of investigation. The High Court proceeded on the assumption that since petitions for anticipatory bail had been rejected, there was no option open for the State but to arrest those persons. This assumption is erroneous. A person whose petition for grant of anticipatory bail has been rejected may or may not be arrested by the investigating officer depending upon the facts and circumstances of the case, nature of the offence, the background of the accused, the facts disclosed in the course of investigation and other relevant considerations. Therefore, the order dated 10-1-2002, insofar as it directs the arrest of the appellants, must be set aside. (Paras 15 to 16). *M.C. Abraham* v. *State of Maharashtra*, (2003) 2 SCC 649: 2003 SCC (Cri) 628.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **B.P. Singh**, JJ. [Date of decision: 20-12-2002]

State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272; King Emperor v. Khwaja Nazir Ahmad, (1944) 71 IA 203: AIR 1945 PC 18; S.N. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653: 1970 SCC (Cri) 258, relied on

(17) S. 438 and Special Statutes

[6681] — Ss. 438 and 172 — Anticipatory bail — Whether on facts could be granted in a case registered under Ss. 10, 13 Unlawful Activities (Prevention) Act, 1967 and Ss. 120-B, 121, 121-A and 122 IPC — *Some the said provisions of 1967 Act and Penal Code — Some officers of a company meeting top leaders of an unlawful association (ULFA), negotiating with them over their various demands including payment of ransom, and expressing willingness to accept some of the demands — Diary of investigation proceedings showing that the company had funded the said unlawful association and the appellant officers of that company had a role to play in such funding — In such circumstances, held, a prima facie case under S. 10 of 1967 Act made out against the appellants in that they had assisted the operations of the unlawful association but none under S. 13 thereof or under Penal Code made out — Offence under S. 10 of the Act being a bailable one, provision for anticipatory bail, held, not applicable — Unlawful Activities (Prevention) Act, 1967 — Ss. 10, 13, 2(f) & (g) and 3 — Penal Code, 1860 — Ss. 120-B, 121, 121-A and 122. R.K. Krishna Kumar* v. *State of Assam*, (1998) 1 SCC 474: 1998 SCC (Cri) 406: AIR 1998 SC 530: 1998 Cri LJ 848: (1998) 92 Comp Cas 14.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *K.T. Thomas*, JJ. [Date of decision: 3-12-1997]

[6682] — S. 438 — An order for 'anticipatory bail' can be issued even to a person apprehending arrest under R. 184 of the Defence and Internal Security of India Rules, 1971 subject to conditions laid down in R. 184 — *Both provisions consistent as they apply to different situations — S. 438 not superseded by R. 184 — Non obstante clause explained — Defence and Internal Security of India Act, 1971, S. 38*

'Anticipatory bail' is a misnomer. It is not as if bail is presently granted by the Court in anticipation of arrest. When the Court grants 'anticipatory bail', what it does is to make an order that in the event of arrest, a person shall be released on bail. Manifestly there is no question of release on bail unless a person is arrested and, therefore, it is only on arrest that the order granting 'anticipatory bail' becomes operative. It is a power exercisable in case of an anticipated accusation of non-bailable offence and there is no limitation as to the category of non-bailable offence in respect of which the power can be exercised by the appropriate court.

(17) S. 438 and Special Statutes *(contd.)*

Rule 184 commences on a non obstante clause and in its operative part imposes a ban on release on bail of a person accused or convicted of a contravention of the rules or orders made thereunder, if in custody, unless two conditions are satisfied. The rule imposes fetters on the exercise of the power of granting bail under the CrPC, in certain kinds of cases and removes such fetters on fulfilment of the aforesaid two conditions. The non obstante clause at the commencement of the rule also emphasises that the provision in the rule is intended to restrict the power of granting bail under the CrPC, and not to confer a new power exercisable only on certain conditions.

If a person is not in custody but is merely under an apprehension of arrest and he applies for grant of 'anticipatory bail' under S. 438, his case would clearly be outside the mischief of R. 184, because when the Court makes an order for grant of 'anticipatory bail', it would not be directing release of a person who is in custody. It is an application for release of a person in custody that is contemplated by R. 184 and not an application for grant of 'anticipatory bail' by a person apprehending arrest. Section 438 and R. 184 thus operate at different stages, one prior to arrest and the other after arrest and there is no overlapping between these two provisions so as to give rise to a conflict between them. And consequently, it must follow as a necessary corollary that R. 184 does not stand in the way of a Court of Session or a High Court granting 'anticipatory bail' under S. 438 to a person apprehending arrears on an accusation of having committed contravention of any rule or order made under the rules.

But even if R. 184 does not apply in such a case, the policy behind this rule would have to be borne in mind by the Court while exercising its power to grant 'anticipatory bail' under S. 438. That is to say, the Court should not grant 'anticipatory bail' unless a notice has been issued to the prosecution giving it an opportunity to oppose the application and in case the contravention is of a rule or order specially notified in this behalf, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such contravention. But that is not intended to lay down that in no case should an ex parte order of 'anticipatory bail' be made by the Court. There may be facts and circumstances in a given case which may justify the making of an ex parte interim order of 'anticipatory bail' but in such an event, a short-dated notice should be issued and the final order should be passed only after giving an opportunity to the prosecution to be heard in opposition. *Balchand Jain* v. *State of M.P.*, (1976) 4 SCC 572: 1976 SCC (Cri) 689: AIR 1977 SC 366: 1977 Cri LJ 225: (1977) 2 SCR 52.

Bench Strength 3. Coram: **P.N. Bhagwati**[1], *A.C. Gupta*[1] and **S. Murtaza Fazal Ali**[2], **JJ.** [Date of decision: 5-11-1976]

[6683] — S. 438 — Anticipatory bail — Bar to — Constitutionality — Non-applicability of provision for anticipatory bail under S. 438 CrPC in respect of offences under S. 3 SC & ST Act — *Held, not violative of Arts. 14 and 21 having regard to the historical background and the social conditions — Offences enumerated under S. 3 pertain to a separate and special class and denial of anticipatory bail in the circumstances not unreasonable — S. 438 CrPC does not form an integral part of Art. 21 and anticipatory bail provided for the first time under the new Code is concerned with the Sessions Court and High Court and cannot be claimed as a matter of right — Constitution of India — Arts. 14, 21 and 17 — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, S. 18*

Section 18 of the said Act, denying the application of provisions for anticipatory bail to those accused under that Act, cannot be considered as violative of Articles 14 and 21 of the Constitution. (Para 12)

The offences which are enumerated under Section 3(1) arise out of the practice of 'untouchability'. It is in this context that certain special provisions have been made in the Act, including the impugned provision under Section 18. Article 17 forbids practice of untouchability and also provides that enforcement of any disability arising out of 'untouch- ability' shall be an offence punishable in accordance with law. The exclusion of Section 438 CrPC in connection with offences under the Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail as pointed out in the Statement of Objects and Reasons of the Act. In these circumstances, if anticipatory bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form a distinct class by themselves and cannot be compared with other offences. (Para 6)

The submission that while Section 438 is available for graver offences under the IPC, it is not available for even "minor offences" under the Act is not justified. The offences which are enumerated under Section 3 are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the IPC. (Para 10)

Article 21 enshrines the right to live with human dignity, a precious right to which every human being is entitled; those who have been, for centuries, denied this right, more so. Looking to the cautious recommendation of the Law Commission on the basis of which Section 438 was incorporated in the Code, the power to grant anticipatory bail is conferred only on a Court of Session or the High Court. Also, anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of offences cannot be considered as violative of Article 21. (Para 7)

Looking to the historical background relating to the practice of 'untouchability' and the social attitudes which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes, there is justification for an apprehension that if the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences, there is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this context that Section 18 has been incorporated in the Act. It cannot be considered in any manner violative of Article 21. (Para 9). *State of M.P.* v. *Ram Kishna Balothia*, (1995) 3 SCC 221: 1995 SCC (Cri) 439: AIR 1995 SC 1198: (1995) 1 KLT 535: 1995 MPLJ 303: 1995 Cri LJ 2076.

Bench Strength **2**. Coram: *B.P. Jeevan Reddy* and **Sujata V. Manohar**, JJ. [Date of decision: 6-2-1995]

Jai Singh v. Union of India, AIR 1993 Raj 177, approved

[6684] — S. 438 — Anticipatory bail — Scope — Grant of, for offences under taxing statute — Grant of, for offences under Ss. 132, 133, 135 and 135-A of the Customs Act — *Special/statutory power of arrest under S. 104 and objective considerations of protection against arrest and detention, held, have to be kept in view while deciding the correctness or otherwise of anticipatory bail — High Court directed the Customs Authorities that if any non-bailable offence is found against the accused persons they shall not be arrested without ten days' prior notice to them — Such blanket order of bail, held, can never be allowed in a society governed by the rule of law — Customs Act, 1962, Ss. 104, 132, 133, 135 and 135-A — Power of arrest under S. 104 of Customs Act*

In proceedings initiated by the Customs Department under the Customs Act, 1962 (the Act), summons were issued to Respondents 1 and 2 for preparing fake shipping bills and obtaining export benefits under Section 80-HHC of the Income Tax Act, 1961. In view of the non-cooperation by the respondents, complaints were filed by the Customs Authorities for commission of offences punishable under Sections 174 and 175 IPC. Applications for anticipatory bail before the Sessions Court were dismissed.

However, the High Court by the impugned order held that since the petitioner-accused had only been summoned under Section 108 of the Customs Act, 1962 to give their evidence in the inquiry, the anticipatory bail applications were premature. The High Court, therefore, directed the respondent-accused to appear before the Customs Authorities concerned. Again, the High Court also directed the Customs Authorities that if any non-bailable offence was found against the accused persons they would not be arrested without ten days' prior notice to them.

Partly allowing the appeal,

Held :

No such order could have been passed nor a direction as to prior notice before effecting arrest could have been issued by the High Court. *Firstly*, the order passed by the High Court was a *blanket* one and sought to grant protection to the respondents in respect of any non-bailable offence. Neither Section 438 CrPC nor any other provision of the Code authorises the grant of blanket anticipatory bail for offences not yet committed or with regard to accusations not so far levelled. *Secondly*, it illegally obstructed, interfered and curtailed the authority of the Customs Officers from exercising their statutory power of arrest by imposing a condition of giving ten days' prior notice, a condition not warranted by law. There is no question of release on bail unless a person is arrested and, therefore, it is only on arrest that the order granting anticipatory bail becomes operative. The respondents were only summoned under Section 108 of the Customs Act, 1962 (the Act) for recording of their statements.

(17) S. 438 and Special Statutes *(contd.)*

The High Court was conscious and mindful of that fact. It, therefore, held that the applications for anticipatory bail, in the circumstances, were premature. They were, accordingly, disposed of by directing the respondents to appear before the Customs Authorities. The High Court, however, did not stop there. It stated that if the Customs Authorities found any non-bailable offence against the applicants (the respondents herein), they would not be arrested without ten days' prior notice to them. The order passed by the High Court to the extent of directions issued to the Customs Authorities is, therefore, liable to be set aside. (Paras 14, 33, 45, 23 and 44)

The safeguards/considerations against the abuse of power and the statutory character of Section 104 of the Customs Act, 1962 have to be kept in view while deciding the correctness or otherwise of the directions issued by a Single Judge of the High Court. On the one hand the power to arrest a person by a Customs Officer under Section 104 of the Act is statutory in character and cannot be interfered with, and on the other hand, the power to arrest is circumscribed by objective considerations and cannot be exercised on whims, caprice or fancy of the officer. Such power of arrest can be exercised only in those cases where the Customs Officer has "reason to believe" that a person has been guilty of an offence punishable under Sections 132, 133, 135 or 135-A of the Act. Section 104 of the Act also obliges the Customs Officer to inform the person arrested of the grounds of arrest *as soon as may be*. The law requires such person to be produced before a Magistrate *without unnecessary delay*. "Blanket" order of bail may amount to or result in an invitation to commit an offence or a passport to carry on criminal activities or to afford a shield against any and all types of illegal operations, which, can never be allowed in a society governed by the rule of law. (Paras 36 to 38 and 22). *Union of India* v. *Padam Narain Aggarwal*, (2008) 13 SCC 305: (2008) 231 ELT 397.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 3-10-2008]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, relied on

[6685] — S. 438 — Anticipatory bail — Violation of FERA — Court not justified in granting anticipatory bail unless the accused alleges and establishes that he is being unnecessarily harassed by the investigating agency — *Grant of anticipatory bail on ground that the accused was available for interrogation but the prosecution failed to avail of that opportunity, held, improper. Enforcement Officer, TED* v. *Bher Chand Tikaji Bora*, (1999) 5 SCC 720: 1999 SCC (Cri) 1045.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 9-4-1999]

Dukhishyam Benupani, Asstt. Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria, (1998) 1 SCC 52: 1998 SCC (Cri) 261, followed

[6686] — Ss. 438 & 439(2) and 156 — Anticipatory bail — FERA violation involving huge amount — *Grant of anticipatory bail by High Court fixing time and places for interrogation, held, uncalled for — Considerations for pre-arrest bail different from post-arrest bail — Plea that the accused made himself available for interrogation for several days after grant of anticipatory bail or that he is a sick person not sustainable — City Sessions Judge erred in granting anticipatory bail ignoring the fact that the High Court had repeatedly refused to grant any relief to the accused — In view of seriousness of allegations and magnitude of amount involved order granting anticipatory bail is liable to be quashed — FERA, 1973, S. 40*

In the present case it is rather unusual that when the aggrieved party approached the High Court challenging the order passed by a subordinate court the High Court made the position worse for the aggrieved party. The officials of the Directorate are now injuncted by the Division Bench from arresting the respondent and the time and places for carrying out the interrogations were also fixed by the Division Bench. Such kind of supervision on the enquiry or investigation under a statute is uncalled for. Such type of interference would impede the even course of enquiry or investigation into the serious allegations now pending. For what purpose the Division Bench made such interference with the functions of the statutory authorities, which they are bound to exercise under law, is not discernible from the order under challenge. It is not the function of the court to monitor investigation processes so long as such investigation does not transgress any provision of law. It must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences. A blanket order fully insulating a person from arrest would make his interrogation a mere ritual.

Considerations to be weighed with the court while dealing with a prayer for pre-arrest bail order are materially different from a post-arrest bail application.

Plea that the respondent made himself available for interrogation for several days after being armed with an order preventing his arrest is not of much relevance now because that is not an aspect which can be taken advantage of by the respondent in this case. Similarly, the plea that the respondent is a sick person is not enough to claim pre-arrest bail order.

In view of the allegations against the respondent any further loss of time would further impair the effectiveness of the enquiry and/or investigation into those allegations. Considering the nature and seriousness of the allegations as well as largeness of the amount involved. The order of the City Sessions Judge should not remain alive. *Dukhishyam Benupani* v. *Arun Kumar Bajoria*, (1998) 1 SCC 52: 1998 SCC (Cri) 261: AIR 1998 SC 696: (1998) 91 Comp Cas 413: 1998 Cri LJ 841.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 28-11-1997]

[6687] — Ss. 438 & 439 and Sch. I, Pt. II — Offences Railway Property Act — All the offences under said Act, held, are not bailable *— Discretion to decide whether an offence is bailable or not is with the officer concerned, which is statutorily prescribed — View of the High Court to the contrary clearly erroneous — Such discretion is controlled by the prescription regarding forming of opinion as regards sufficiency of material or otherwise — Further held, except for S. 5 of the Act, Sch. I of CrPC applies, which makes all offences punishable with imprisonment for three years and upwards but not more than seven years, cognizable and non-bailable — Railway Property (Unlawful Possession) Act, 1966, Ss. 8, 3 and 5*

The issue in the instant case was whether an application under Section 438 CrPC could be filed in respect of offences contemplated under the provisions of the Railway Property (Unlawful Possession) Act, 1966. The Single Judge of the Gauhati High Court, after referring to Section 8 of the 1966 Act, held that the offences under the said Act were bailable. The Union of India challenged the said judgment by filing the instant appeal. It submitted that the High Court had not kept in view the provisions contained in Section 8 in the proper perspective. The High Court erroneously held that the accused had a right to get bail provided he was willing to offer surety/security. The High Court observed that only when the accused is not in a position to provide security or surety then only he can be sent to the Magistrate having jurisdiction.

Allowing the appeal,

Held :

Under proviso to Section 8(2) three situations are envisaged. Two of the three situations are relatable to clause (*a*) of the proviso. If the officer of the force is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person he shall: (*a*) either admit him to bail to appear before a Magistrate having jurisdiction in the case, or (*b*) forward him in custody to such Magistrate. There are two options given to the officer to form opinion i.e. whether there is sufficient evidence or reasonable ground of suspicion against the accused person. It nowhere deals with the right of the accused to get bail. The third category is contemplated by clause (*b*) of the proviso. This category deals with a case where there is absence of sufficient evidence or reasonable ground of suspicion. In such case the officer concerned has the power to release the accused person on his executing bonds. Therefore, the High Court was not justified in holding that all the offences under the Act are bailable. Such view is contrary to the provisions contained in Section 8 of the Act. (Para 8)

The High Court's interpretation that the direction that can be given by the officer having jurisdiction of the case is a corollary of the accused's right to get bail is clearly erroneous. It has been observed that the discretion to decide whether the offence is bailable or not cannot be left to the discretion of the officer. The view overlooks the clear language of the proviso and the jurisdiction to exercise the discretion is statutorily provided. The exercise of such discretion is also controlled by the prescription regarding forming of opinion as regards sufficiency of material or otherwise. (Para 6)

The controversy can be looked at from another angle. In Schedule I of CrPC, offences are classified. Part I deals with offences under the Indian Penal Code and Part II deals with "classification of offences against other laws". Undisputedly, the present case is covered by Part II. While classifying offences on the basis of punishments prescribed for offences punishable with imprisonment for three years and upwards but not more than seven years, it is provided that the offences shall be cognizable and non-bailable. However, an exception has been made by Section 5 of the Act, making the offence non-cognizable. Except that exception, Schedule I of CrPC applies. Under Section 3 of the Act for the first offence the imprisonment may extend up to five years and for subsequent offences also similar term is fixed. Only for special and adequate reasons to be recorded the minimum can be one year and two years respectively. (Para 7). *Union of India* v. *State of Assam*, (2004) 7 SCC 474: 2004 SCC (Cri) 1951.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Prakash Prabhakar Naolekar*, JJ. [Date of decision: 10-9-2004]

Section 439 — Special powers of Sessions Court and High Court re Bail

— **S. 439** *See also* S. 498, Criminal Procedure Code, 1898, pp. 1274 et seq. in Vol. 2

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— **S. 439** *See* Ss. 4 and 439

See also Ss. 157 & 155 and 41 to 44 & 46 and Ss. 437 to 439

See also Ss. 167(2), 57, 437 and 439

See also Ss. 167(2) proviso, 437 and 439

See also Ss. 231, 242, 244, 309 and 437 & 439

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See also Ss. 389 and 439

See also Ss. 436 to 450

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See also Ss. 437, 439, 300 and Chs. XXIX (Ss. 372 to 394) and XXX (Ss. 395 to 405)

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See also Ss. 438 and 437 & 439

See also Ss. 438, 437 & 439 and 41 to 44 & 46

See also Ss. 438 & 439

See also Ss. 438, 439 and 46(1)

See also Ss. 438 & 439 and Sch. I, Pt. II

See also Ss. 482 and 439

See also Ss. 482, 439, 438 and 407

— **S. 439(1)** *See* Ss. 437 and 439(1) & (2)

See also Ss. 437(1), (4) & (5) and 439(1) & (2)

See also Ss. 437(1) & (4) and 439(1)

See also Ss. 437(1) and 439(1)

— **S. 439(2)** *See* Ss. 167(2) proviso, 437(5), 439(2), 57 and 173

See also Ss. 167(2) proviso (a), 309(2), 437(5), 439(2), 441, 442(1) and 444

See also Ss. 436 to 450

See also Ss. 436 & 437(5) and 439(2)

See also Ss. 437 and 439(1) & (2)

See also Ss. 437 and 439(2)

See also Ss. 437(1), (4) & (5) and 439(1) & (2)

See also Ss. 437(1) & 439(2) and 300

See also Ss. 437(5) & 439(2)

See also Ss. 437(5), 439(2) and 167(2) proviso

See also Ss. 437(5), 439(2) and 167(2) proviso (a)

See also Ss. 438 and 439(2)

See also Ss. 438 & 439(2) and 156

(1) Generally

[6688] — S. 439 — Bail — Right of appellant to pray for, as and when he intends to — High Court cannot debar him from exercising his right for any period (one year in this case) — *High Court may or may not entertain the bail petition but it cannot prevent an accused from seeking him release on bail. Manjoor Khan* v. *State of Bihar,* (1998) 8 SCC 368: 1998 SCC (Cri) 1541.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *K.T. Thomas*, JJ. [Date of decision: 19-8-1997]

[6689] — S. 439 — Grant of bail — Liberty of person accused of an offence vis-à-vis interest of society — Balancing of — *Held, liberty of an individual is precious and is to be zealously protected by courts — Nonetheless, such a protection cannot be absolute in every situation — Valuable right of liberty of an individual and interest of society in general has to be balanced — Liberty of a person accused of an offence would depend upon exigencies of the case — It is possible that in a given situation, collective interest of community may outweigh right of personal liberty of individual concerned* (Para 15). *Masroor* v. *State of U.P.*, (2009) 14 SCC 286: (2009) 3 CTC 90 (SC).

Bench Strength **2**. Coram: **D.K. Jain** and *R.M. Lodha*, JJ. [Date of decision: 27-4-2009]

Shahzad Hasan Khan v. Ishtiaq Hasan Khan, (1987) 2 SCC 684: 1987 SCC (Cri) 415, relied on

[6690] — S. 439 — Bail — Role of, in protection of right to personal liberty — Essence of function involved in grant of bail, and measures to ensure proper performance thereof — *Held, exercise of said jurisdiction requires maintaining of perfect balance between two conflicting interests viz. sanctity of individual liberty and interest of society — Hence, it should be entrusted to judicial officers with some experience and good track record — High Courts advised to periodically organise (through their Judicial Academies) workshops, symposiums, seminars and lectures for orientation of judicial officers and police officers in respect of importance of, and method of balancing of, said conflicting interests — Direction given for periodical evaluation of performance of judicial officers concerned on the basis of cases decided by them — Constitution of India, Arts. 21 and 22.* (Paras 120 and 121). *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength **2**. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, relied on

[6691] — Ss. 439 & 437 — Bail application — Order passed by Administrative Judge of High Court during inspection to Sessions Judge to consider bail application of accused and enlarge him on bail — Propriety — High Court's power of superintendence and control over subordinate courts — Scope of — Whether it authorises the "Inspecting Judges" of High Court to transact any judicial work which is in the domain of subordinate courts — *Administrative Judge of High Court during the course of inspection passing order to Sessions Judge to consider the bail application of appellant and enlarge him on bail — Propriety of — Held, power under Art. 227 is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority — Powers under Arts. 227 and 235 not to be exercised to interfere with judicial functions of subordinate courts — Protection of independence of subordinate courts in the discharge of their judicial functions, emphasised — Held, under the aforesaid articles the High Court cannot direct the subordinate court to pass a judicial order in a particular manner as that would amount to interfering with the independence of subordinate judiciary — In this view, stating the powers and functions of Inspecting Judge, held, a High Court Judge during the course of inspection has no power to pass any judicial order in individual cases pending in subordinate courts — During inspection he cannot pass any order on interim applications, such as bail petitions or transfer applications or applications for interim injunction, howsoever justified they may be — If any bail application is received by Inspecting Judge, the proper course would be to send the said application without commenting on merits of case to the court concerned to pass appropriate orders — Constitution of India, Arts. 227, 235 & 50*

The appellant was arrested and remanded to judicial custody in a case under the provisions of the Prevention of Corruption Act and IPC. The appellant moved an application for bail, but the same was rejected. The appellant moved another bail application on 24-4-2003 before the Sessions Judge, which was fixed for hearing on 5-5-2003. Meanwhile, on 29-4-2003 the Administrative Judge of the High Court concerned came for annual inspection to the District and Sessions Court concerned. The said Judge also visited jail as part of the inspection programme. The appellant moved an application for bail during the course of inspection. The Inspecting Judge noticed the police officers as representative of the prosecution, and since they had no objection to the granting of bail to the appellant, the

(1) Special powers of Sessions Court and High Court re Bail — Generally *(contd.)*

said Judge, considering that the co-accused had been enlarged on bail and the appellant was in jail for the last seven months, passed an order directing the Sessions Judge to look into the application of the appellant and enlarge him on bail as his trial was likely to take some time before it was concluded. Pursuant to the said order, the appellant was released on bail by the Sessions Judge. Thereafter, on a complaint being made to the Chief Justice of the High Court alleging mala fides on the part of the Sessions Judge in granting bail to the appellant, the Chief Justice called for the proceedings and directed that the entire matter be placed before the very same Administrative Judge on the judicial side. The *de facto* complainant reiterated her allegation and sought for cancellation of bail granted to the appellant. The Administrative Judge held that while passing the order of bail, the Sessions Judge had not discussed the matter on merit and, therefore, the said order was set aside. Hence, the present appeal.

Before the Supreme Court it was submitted that the Judges of the High Court are vested with the power of superintendence and control over all courts and tribunals subordinate to the High Court under Article 227, and as part of such constitutional power, the Inspecting Judges have the right and duty to consider the bail applications during inspection. It was also contended that the power of superintendence and control over the subordinate courts is conferred on the High Court under Article 235 of the Constitution and therefore the Inspecting Judge was fully justified under certain circumstances to entertain the bail petitions or transfer applications and direct the District Judges or other courts to pass appropriate orders.

Disposing of the appeal,

Held :

The power of superintendence over all the subordinate courts and tribunals is given to the High Court under Article 227 of the Constitution. The said power is both of administrative and judicial nature and it could be exercised *suo motu also*. However, such power of superintendence does not imply that the High Courts can influence the subordinate judiciary to pass any order or judgment in a particular manner. While invoking the provisions of Article 227 the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. It cannot intervene in the judicial functions of the lower judiciary. The independence of the subordinate courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior courts in the discharge of their judicial functions is. It is the members of the subordinate judiciary who directly interact with the parties in the course of proceedings of the case and, therefore, it is no less important that their independence should be protected effectively to the satisfaction of the litigants. The independence of the judiciary has been considered as a part of the basic structure of the Constitution and such independence is postulated not only from the executive, but also from all other sources of pressure. (Paras 10 and 14)

In respect of Article 235 also, the powers of control to be exercised thereunder do not extend to interfering with the judicial functions of the subordinate courts. By virtue of the power under Article 235 the High Court cannot direct the presiding officer of the subordinate court to pass a judicial order in a particular manner as that would certainly amount to interfering with the independence of the subordinate judiciary. (Para 15)

In the course of inspection, the High Court Judge is required to examine whether the courts are functioning within the norms laid down by the High Court. Mostly the inspection is to be confined to the administrative functioning of the courts and its officers. If any member of the administrative staff is not doing the work assigned to him or is causing any delay in the process of administration of justice, the Inspecting Judge can give proper direction and see that the courts function smoothly. But under no circumstances, the Inspecting Judge, as part of his administrative duty enjoys the power to interfere with the judicial functions of the subordinate courts in individual cases. In the course of inspection, a High Court Judge cannot pass any order on interim applications, such as bail petitions or transfer applications or applications for interim injunction, howsoever justified they may be. Orders on bail applications are passed under the provisions of the Code of Criminal Procedure or under various other enactments, which provide for grant of bail and such orders are passed as part of the judicial work. The Inspecting Judge is not supposed to pass any judicial order in individual cases in the course of inspection. While on inspection, he is not supposed to perform any judicial work. Of course, he can give administrative directions to the presiding officer or to any of the subordinate staff, if such directions are pertinent in the context of administration of justice. Except giving general directions regarding any matter concerning administration of justice, any interference in the judicial functions of the presiding officer would amount to interference with the independence of the subordinate judiciary. (Paras 16 and 17)

Therefore, even if any application for bail is received by the Inspecting Judge, the proper course is to send the application to the court concerned to pass appropriate orders. When the Inspecting Judge visits the jail, it is quite likely that so many inmates of the jail may file petitions before the Judge concerned. It is the duty of the Judge to see whether there is any merit in any of these petitions. If any application for bail is received, he can very well send it to the court concerned without making any comments on the merits of the case. On the contrary, if the learned Inspecting Judge passes any order in such matter, he would only be usurping the powers of the courts authorised to pass such orders. (Para 19). *Jasbir Singh* v. *State of Punjab*, (2006) 8 SCC 294: (2006) 3 SCC (Cri) 470.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 11-10-2006]

Waryam Singh v. Amarnath, AIR 1954 SC 215; Trimbak Gangadhar Telang v. Ramchandra Ganesh Bhide, (1977) 2 SCC 437; Mohd. Yunus v. Mohd. Mustaqim, (1983) 4 SCC 566; State v. Navjot Sandhu, (2003) 6 SCC 641: 2003 SCC (Cri) 1545; S.P. Gupta v. Union of India, 1981 Supp SCC 87; Alok Kumar Roy v. Dr. S.N. Sarma, AIR 1968 SC 453, relied on

(2) Maintainability of application

[6692] — **S. 439 — 'Custody' — Meaning of** — *Held, includes physical surrender by the accused before the court and submission to its directions — CrPC, 1898, S. 498*

In the context of S. 439, 'custody' is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court. A person is in custody within the meaning of S. 439 when he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. In the present case the accused, did physically submit before the Sessions Judge and therefore, the jurisdiction to grant bail arose. *Niranjan Singh* v. *Prabhakar Rajaram Kharote*, (1980) 2 SCC 559: 1980 SCC (Cri) 508: AIR 1980 SC 785: 1980 Cri LJ 426: 1980 MLJ (Cri) 573.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *A.P. Sen*, JJ. [Date of decision: 10-3-1980]

Affirmed in State of Haryana v. Dinesh Kumar, (2008) 3 SCC 222

[6693] — **Ss. 439 and 438 — Application for bail under S. 439 — Maintainability — Condition precedent — Held, accused must be in custody in connection with non-bailable offence — "Custody" — Meaning of — Person, who had been granted anticipatory bail under S. 438 for a limited period, has to move the regular court for bail under S. 439 within that period** — *If bail is not granted within that period, he has to surrender as required in law so that his application under S. 439 can be taken up for disposal — High Court cannot, during pendency of application under S. 439, by a blanket order extend the ad interim anticipatory bail arrangement so as to enable the accused to obtain bail under S. 439 — Observation of Supreme Court in* K.L. Verma *v.* State, *(1998) 9 SCC 348 that even after expiry of the limited period of anticipatory bail, a few days can be granted to enable the accused to move the higher court, held, per incuriam being without reference to the requirements of S. 439 — On facts held, the protection given by the High Court to accused-respondent by allowing his "application of ad interim anticipatory bail" while his application under S. 439 was pending, unsustainable*

Allowing the appeal,

Held :

Unless a person is in custody, an application for bail under Section 439 would not be maintainable. There is no question of bail unless a person is arrested in connection with a non-bailable offence by the police. (Paras 15 and 9)

He who is under the control of the court or is in the physical hold of an officer with coercive power, is in custody for the purpose of Section 439. The word is of elastic semantics but its core meaning is that the law has taken control of the person. (Para 16)

Since the expression "custody", though used in various provisions of the Code, including Section 439, has not been defined in the Code, it has to be understood in the setting in which it is used and the provisions contained in Section 437 which relate to jurisdiction of the Magistrate to release an accused on bail under certain circumstances which can be characterised as "in custody" in a generic sense. The expression "custody" as used in Section 439, must be taken to be a compendious expression referring to the events on the happening of which the Magistrate can entertain a bail petition of an accused. Section 437 envisages, inter alia, that the Magistrate may release an accused on bail, if such accused appears before the Magistrate. Such appearance before the Magistrate must be physical appearance and the consequential surrender to the jurisdiction of the Court of the Magistrate. (Para 17)

As observed in *Salauddin case*, (1996) 1 SCC 667, the protection in terms of Section 438 is for a limited duration during which the regular court has to be moved for bail. Obviously, such bail is bail in

(2) Maintainability of application *(contd.)*

terms of Section 439, mandating the applicant to be in custody. Otherwise, the distinction between orders under Sections 438 and 439 shall be rendered meaningless and redundant. The distinction between the two orders is that the latter is passed after arrest whereas the former is passed in anticipation of arrest and becomes effective at the very moment of arrest. (Paras 22 and 9)

Where in a case the decision has been rendered without reference to statutory bars, the same cannot have any precedential value and shall have to be treated as having been rendered per incuriam. The present case stands on a par, if not, on a better footing. The provisions of Section 439 do not appear to have been taken note of. (Para 20)

The protection given to Respondent 2 by the High Court while the application under Section 439 of the Code is pending is clearly unsustainable. Respondent 2 should surrender to custody as required in law so that his application under Section 439 can be taken up for disposal. The High Court will take up the matter for disposal in accordance with law immediately after Respondent 2 is in custody as required under Section 439. (Para 24). *Nirmal Jeet Kaur* v. *State of M.P.*, (2004) 7 SCC 558: 2004 SCC (Cri) 1989: (2004) 3 KLT 391.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 1-9-2004]

Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559: 1980 SCC (Cri) 508, relied on

[6694] — S. 439 — Bail — Held, unless a person is in custody, an application for bail is not maintainable (Paras 8, 12, 13, 18, 20, 21 and 22). *Sunita Devi* v. *State of Bihar*, (2005) 1 SCC 608: 2005 SCC (Cri) 435: AIR 2005 SC 498: (2004) 115 DLT 517: (2005) 2 Guj LR 1096: (2005) 1 KLT 748: (2005) 2 Mah LJ 534.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 6-12-2004]

Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667: 1996 SCC (Cri) 198; Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559: 1980 SCC (Cri) 508; Nirmal Jeet Kaur v. State of M.P., (2004) 7 SCC 558: 2004 SCC (Cri) 1989, relied on

[6695] — S. 439 — Bail application — Interim bail in vogue — Effect — Rejection of, by High Court on ground that it was not maintainable as the petitioner was not in custody — Propriety of *— When bail application was filed petitioner was in custody as he was then on interim bail — His application could have been considered on merits — Therefore held, High Court's order not sustainable — Matter remitted to High Court for consideration afresh on merits* (Paras 4 and 5). *Kanaksinh Mohansinh Mangrola* v. *State of Gujarat*, (2006) 9 SCC 540: (2006) 3 SCC (Cri) 224.

Bench Strength **2**. Coram: *H.K. Sema* and *L.S. Panta*, JJ. [Date of decision: 7-4-2006]

[6696] — Ss. 439 and 46(1) & (2) — Arrest and custody — What are — Voluntary appearance of accused before Magistrate and obtaining bail, if amounts to — Precondition for applying for bail *— Penal Code, 1860, Ss. 323/324/34 and 148/149/307/325 — Constitution of India — Arts. 20 and 21*

D, the respondent in first of the present two appeals and *L* and *B*, the appellants in the other appeal applied for appointment as Constable-Drivers under Haryana Police. The application forms contained a query as to whether the applicant had ever been arrested. *D* answered the said question in the negative. On verification it was found that *D* had been arrested in connection with a case arising out of an FIR registered under Sections 323/324/34 IPC. In that case, he was ultimately acquitted by the Magistrate. Moreover, he had not surrendered to the police but had voluntarily appeared before the Magistrate and had prayed for bail and was released on bail. The Department took the view that in answering the said question in the application form in the negative *D* had concealed the said facts. Accordingly, *D* was denied appointment.

D then approached the High Court contending that since in the said case, he had been granted bail without having been actually arrested he could not be said to have suppressed any information by replying in the negative the said question. Upholding his contention, the High Court directed the Department to issue an appointment letter to *D*. The Department then filed one of the present appeals by special leave.

In the other appeal, *L* and *B* had been involved in a criminal case registered with the police under Sections 148/149/307/325/323 IPC but they had been subsequently acquitted of the said charges. In regard to another FIR under Sections 323/324/34, they appeared before the Magistrate and were released on their personal bonds without being placed under arrest or being taken into custody. They were also denied appointment. A coordinate Bench of the same High Court dismissed their writ petitions without examining the question as to whether they had actually been arrested or not. It held that *L* and *B* had withheld important information regarding their prosecution in a criminal case though ultimately they were acquitted. *L* and *B* then filed the second of the present two appeals by special leave.

The common question arising in both the appeals before the Supreme Court was whether the appearance of the applicants before the Magistrate in the said manner and their release without being taken into formal custody, could amount to "arrest".

The Department contended that when the persons concerned appeared before the Magistrates and prayed for bail, it must be understood that they had surrendered to the custody of the court, as otherwise, the provisions of Section 439 of the Code would not have had application. That it did not matter as to whether the accused persons had been arrested and detained in custody by the police or not.

On the other hand, *D* and *L* and *B* contended that although technically the appearance of the accused before the Magistrate might amount to surrender to judicial custody, it was on a layman's understanding of the principle of "arrest" and "custody" that prompted them to mention that they had never been arrested.

Upholding the contentions raised by the Department, but in the peculiar circumstances of the case, dismissing the Department's appeal and allowing the appeal of the applicants, the Supreme Court

Held :

The expression "arrest" has neither been defined in CrPC nor in IPC or any other enactment dealing with criminal offences. However, from Sections 46(1) & (2) CrPC this much is clear that in order to make an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be submission to the custody by word or action. Similarly, the expression "custody" has also not been defined in CrPC. (Paras 13 to 15)

The Department is right in its submission that unless a person accused of an offence is in custody, he cannot move the court for bail under Section 439 CrPC, which provides for release on bail of any person accused of an offence and *in custody.* The precondition, therefore, for applying the provisions of Section 439 CrPC is that a person who is an accused must be in custody and his movements must have been restricted before he can move for bail. (Para 25)

In the instant case the accused persons had appeared before the Magistrates concerned and on applying for bail were granted bail without being taken into formal custody, which appears to have swayed one of the Benches of the High Court to take a liberal view and to hold that no arrest had actually been effected. The said view is incorrect as it goes against the very grain of Sections 46 and 439 CrPC. (Para 26)

Sections 107 and 108 of the Customs Act do not contemplate immediate arrest of a person being summoned in connection with an enquiry, but only contemplate surrendering to the custody of the Customs Officer which could subsequently lead to arrest and detention. In such context the Full Bench of the Madras High Court returned a finding in *Roshan Beevi case*, 1984 Cri LJ 134, that "custody" and "arrest" are not synonymous terms and observed that it is true that in every arrest there is a custody but not vice versa. A custody may amount to "arrest" in certain cases, but not in all cases. The interpretation of "arrest" and "custody" rendered by the Full Bench in *Roshan Beevi case* may be relevant in the context of Sections 107 and 108 of the Customs Act where summons in respect of an enquiry may amount to "custody" but not to "arrest", but such custody could subsequently materialise into arrest. The position is different as far as proceedings in the court are concerned in relation to enquiry into offences under the Penal Code and other criminal enactments. In the latter set of cases, in order to obtain the benefit of bail an accused has to surrender to the custody of the court or the police authorities before he can be granted the benefit thereunder. (Paras 24, 20 and 27)

It is, therefore, held that the views expressed by the High Court in *D*'s writ petition regarding arrest were incorrect, while the views expressed in the writ petitions filed by *L* & *B* correctly interpreted the meaning of the expressions "arrest" and "custody". However, how far the same would apply in the ultimate analysis relating to their answer in their application forms is another matter altogether. (Para 30)

The reasoning given in *D*'s case in that context is a possible view and does not call for interference under Article 136 of the Constitution. Conversely, the decision rendered in the writ petitions filed by *L* and *B* has to be reversed to be in line with the decision in *D*'s case. When the question as to what constitutes "arrest" has for long engaged the attention of different High Courts as also the Supreme Court, it may not be altogether unreasonable to expect a layman to construe that he had never been arrested on his appearing before the court and being granted bail immediately. The position would have been different, had the person concerned not been released on bail. In the facts of the present cases, the benefit of a mistaken impression, rather than that of

(2) Maintainability of application *(contd.)*

deliberate and wilful misrepresentation and concealment of facts, has to be given to the appellants in the second of the two appeals as well. (Paras 31 and 32). *State of Haryana* v. *Dinesh Kumar*, (2008) 3 SCC 222: (2008) 1 SCC (Cri) 722: AIR 2008 SC 1083: (2008) 63 AIC 265 (SC): (2008) 2 SLR 331: (2008) 2 LLN 120.

Bench Strength **2**. Coram: *C.K. Thakker* and **Altamas Kabir**, JJ. [Date of decision: 8-1-2008]

Roshan Beevi v. Jt. Secy. to the Govt. of T.N., 1984 Cri LJ 134 (Mad), limited

Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559: 1980 SCC (Cri) 508, affirmed

State of U.P. v. Deoman Upadhyaya, AIR 1960 SC 1125, relied on

Halsbury's Laws of England (4th Edn.), Vol. 11, Para 99, referred to

[6697] — Ss. 439 and 46(1) & (2) — Examination or summoning of person under Ss. 107 and 108, Customs Act, 1962 by Customs office — If amounts to "arrest" or "custody" — Distinction between the two — *Observation by Full Bench of Madras High Court in* Roshan Beevi case, *1984 Cri LJ 134 that "custody" and "arrest" are not synonymous and that in every arrest there is custody but not vice versa — Applicability of — Held, it may be relevant in the context of Ss. 107 and 108 where summons in respect of an enquiry may amount to "custody" but not to "arrest" although such custody can subsequently materialise into arrest — However, the position is different in respect of proceedings in court in relation to enquiry into offences under the Penal Code and other criminal enactments as in such cases, in order to obtain the benefit of bail the accused has first to surrender to the custody of the court or police authorities — Customs Act, 1962, Ss. 107 and 108. State of Haryana* v. *Dinesh Kumar*, (2008) 3 SCC 222: (2008) 1 SCC (Cri) 722: AIR 2008 SC 1083: (2008) 63 AIC 265 (SC): (2008) 2 SLR 331: (2008) 2 LLN 120.

Bench Strength **2**. Coram: *C.K. Thakker* and **Altamas Kabir**, JJ. [Date of decision: 8-1-2008]

(3) Grounds for bail — Generally

See also Section 439, '(4) Grounds for bail in murder cases', and

'(5) Grounds for bail — Particular offences', below

[6698] — S. 439 — Bail — Grant of — Grounds and considerations, stated and considered — Delay in trial, held, is one of the important factors for consideration while granting bail — *Respondent, a dentist applied stitches to one of the accused but there being no prima facie proof of respondent being involved in crime committed by all the other accused — Respondent having spent 66 days in custody and trial having not yet commenced, bail granted by High Court, held, sustainable — S. 43-D(5) proviso, 1967 Act not attracted as respondent was merely a member of an alleged illegal/terrorist organisation which had neither been declared so nor found to be so — Prima facie only offence that could be levelled against respondent was that under S. 202 IPC which too has to be proved beyond reasonable doubt during trial — Even a dentist can apply stitches during emergency — Unlawful Activities (Prevention) Act, 1967, S. 43-D(5) proviso — Constitution of India, Arts. 21 and 136*

Dismissing the appeal against grant of bail by the High Court,

Held :

There is no reason why the respondent should be denied bail. There is no prima facie proof that the respondent was involved in the crime. Prima facie the only offence that can be levelled against the respondent is that under Section 202 IPC, that is, of omitting to give information of the crime to the police, and this offence has also to be proved beyond reasonable doubt. Section 202 is a bailable offence. (Paras 15, 8 and 9)

There is no evidence as yet to prove that PFI is a terrorist organisation, and hence the respondent cannot be penalised merely for belonging to PFI. Moreover, even assuming that PFI is an illegal organisation, it has yet to be considered whether all members of the organisation can be automatically held to be guilty. In a democratic country like ours there is a distinction between an active "knowing" membership and passive, merely nominal membership in a subversive organisation. (Paras 10, 11 and 14)

Section 43-D(5) proviso, Unlawful Activities (Prevention) Act, 1967 has not been violated. The case against the respondent is very different from that against the alleged assailants. There is no allegation that the respondent was one of the assailants. (Paras 8 and 3)

Delay in trial is one of the important factors for consideration while granting bail. The respondent has already spend 66 days in custody. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel *A Tale of Two Cities*, who forgot his profession and even his name in the Bastille. If the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the

Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? (Para 15)

Just as it is the duty of a lawyer to defend an accused, so also it is the duty of a doctor to heal. Even a dentist can apply stitches in an emergency. Allegedly, the respondent, a dentist stitched the back of an assailant, which is not the job of a dentist. (Paras 9 and 3). *State of Kerala* v. *Raneef*, (2011) 1 SCC 784.

Bench Strength **2**. Coram: **Markandey Katju** and *Gyan Sudha Misra*, JJ. [Date of decision: 3-1-2011]

Scales v. United States, 6 L Ed 2d 782: 367 US 203 (1960), relied on

Elfbrandt v. Russell, 16 L Ed 2d 321: 384 US 11 (1965); Joint Anti-Fascist Refugee Committee v. McGrath, 95 L Ed 817: 341 US 123 (1950), considered

Redaul Hussain Khan v. National Investigation Agency, (2010) 1 SCC 521: (2010) 1 SCC (Cri) 822; State of Maharashtra v. Dhanendra Shriram Bhurle, (2009) 11 SCC 541: (2009) 3 SCC (Cri) 1480, distinguished

Charles Dicken: A Tale of Two Cities, referred to

[6699] — S. 439 — Membership of alleged unlawful/terrorist organisation, neither declared to be so nor found to be so — Effect on question of bail. *State of Kerala* v. *Raneef*, (2011) 1 SCC 784.

Bench Strength **2**. Coram: **Markandey Katju** and *Gyan Sudha Misra*, JJ. [Date of decision: 3-1-2011]

Scales v. United States, 6 L Ed 2d 782: 367 US 203 (1960), relied on

Elfbrandt v. Russell, 16 L Ed 2d 321: 384 US 11 (1965); Joint Anti-Fascist Refugee Committee v. McGrath, 95 L Ed 817: 341 US 123 (1950), considered

Redaul Hussain Khan v. National Investigation Agency, (2010) 1 SCC 521: (2010) 1 SCC (Cri) 822; State of Maharashtra v. Dhanendra Shriram Bhurle, (2009) 11 SCC 541: (2009) 3 SCC (Cri) 1480, distinguished

Charles Dicken: A Tale of Two Cities, referred to

[6700] — S. 439 — Granting of bail — Satisfaction of court as to existence of grounds for believing that the accused is not guilty of committing the offence in question — *A prima facie view of the court in respect of, held, has to be formed which must be based on very cogent material — Recovery of firearm, ammunition etc. from accused — Grant of bail by High Court doubting the alleged recovery — Propriety of — Said decision based on grounds that (i) there were discrepancies at various places in describing the firearm, and (ii) a person who, prior to recovery had objected before the Magistrate against the police custody by stating that the police would plant some incriminating material on him and would force a confession out of him, was not likely to make a confession and lead the police party to the discovery, held on facts, not proper — High Court's order set aside — Constitution of India — Art. 136 — Prevention of Terrorism Act, 2002, Ss. 49(7) and 4*

At the stage of granting bail, the court does not decide the merits of the matter. Of course, a prima facie view has to be formed in the court in order to satisfy itself that there are grounds for believing that the accused is not guilty of committing the offence he is charged with. However, such a prima facie view must be based on very cogent material. (Para 12)

The High Court stated that in one place the words "unlicensed revolver with ammunition and pamphlet" are used, in another place the words "unlicensed country-made pistol with ammunition and pamphlet" are used and in a third place the words "a country-made gun with two live ammunition of 0.410 Musket and a booklet in support of TNLA" have been used. It wrongly concluded that because of these discrepancies the non-existence of recovery was so probable that one could act on the supposition that the recovery did not exist. One must keep in mind that the articles recovered have been sent to the court and are in custody of the court. The first of the documents relied upon by the High Court was in Tamil language. The other documents are in English. Some police officer has translated it from Tamil to English. If some police officer wrongly translates the type of weapon one cannot conclude with any reasonable certainty that there was no recovery. Under Section 4 of POTA mere possession not just of an arm but also of an ammunition, is sufficient. Ammunition has also been allegedly recovered. There is no discrepancy in the description of the ammunition. Thus, at this stage, it is difficult to sustain the above conclusion of the High Court. (Paras 11 and 12)

Further, the statements (relating to objection to police custody) relied upon by the High Court, are given after the accused had been arrested and recoveries were made from him. They are also after the charge under POTA had been added. It is not unknown that persons who are charged or arrested make self-serving statement before the Magistrate with the intention of using those in court proceedings at a later stage. Therefore, at this stage, it would not be possible to conclude that no discovery would have been made at the instance of the accused. (Para 13). *State of T.N.* v. *R.R. Gopal*, (2003) 12 SCC 237.

Bench Strength **2**. Coram: **S.N. Variava** and *H.K. Sema*, JJ. [Date of decision: 26-9-2003]

[6701] — Ss. 439 and 437(2) — Bail — Grant of — Proper considerations — Held, nature of the alleged act of offence has to be considered

(3) Grounds for bail — Generally *(contd.)*

The order of granting bail to the appellant was certainly vulnerable. The accused cannot take a plea while applying for bail that the person whom he killed was a hardened criminal. That certainly is not a factor which can be taken into account. The perversity as highlighted in *Puran case*, (2001) 6 SCC 338 can flow from the fact that irrelevant materials have been taken into consideration adding vulnerability to the order granting bail. The irrelevant materials should be of a substantial nature and not of a trivial nature. In the instant case, the trial court seems to have been swayed by the fact that *S* had shady reputation and criminal antecedents. That is not certainly a factor which is to be considered while granting bail. It is the nature of the acts of offence which ought to have been considered. (Paras 27 and 25). *Dinesh M.N. (S.P.)* v. *State of Gujarat*, (2008) 5 SCC 66: (2008) 2 SCC (Cri) 508: AIR 2008 SC 2318: 2008 Cri LJ 3008: (2008) 3 Guj LR 2310.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 28-4-2008]

Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124, relied on

[6702] — S. 439 — Grant of bail — Parameters to be kept in view while dealing with application for bail — Reasoned order — Necessity of — *Reiterated, court considering bail application has to consider among other circumstances the following: (i) nature of accusation and severity of punishment in case of conviction and nature of supporting evidence, (ii) reasonable apprehension of tampering with witness or apprehension of threat to complainant, and (iii) prima facie satisfaction of court in support of charge — Herein, High Court granting bail to Respondent 2 without indicating any reasons — Unsustainability — Held, order of High Court set aside and matter remitted to it for consideration afresh for disposal by a reasoned order* (Paras 4 to 6). *Dhuk Singh* v. *State of Rajasthan*, (2009) 11 SCC 369: (2009) 3 SCC (Cri) 1382: (2009) 76 AIC 208 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 9-2-2009]

Chaman Lal v. State of U.P., (2004) 7 SCC 525: 2004 SCC (Cri) 1974, followed

Anwari Begum v. Sher Mohammad, (2005) 7 SCC 326: 2005 SCC (Cri) 1669; Anil Kumar Tulsiyani v. State of U.P., (2006) 9 SCC 425: (2006) 2 SCC (Cri) 565; State v. Eslian, (2006) 9 SCC 785: (2006) 3 SCC (Cri) 399, relied on

[6703] — Ss. 439, 437 and 389 — Bail in cases where a foreigner is involved, or where the offence is committed in a State adjoining the national frontiers — Duty of court — *Held, in an offence of this nature, after grant of bail it becomes difficult to trace out the accused — Hence, courts should be circumspect in granting bail in cases of this nature — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 37* (Para 4). *Union of India* v. *Abdul Momin*, (2005) 13 SCC 144: (2006) 2 SCC (Cri) 130.

Bench Strength **2**. Coram: *B.P. Singh* and *S.H. Kapadia*, JJ. [Date of decision: 7-10-2005]

[6704] — S. 439 — Bail — Entitlement to — Case mainly depending on confessions of appellant accused — *Appellants in custody for more than 2 years — Allegation that appellants' firm receiving huge amounts from Dubai through hawala transactions and with full knowledge of the fact that the money received by them and handed over to the recipients was being used for terrorist activities — Case mainly depending upon confessions of appellants — Considering the confessions, the reports of the Review Committees and the provisions of S. 49, POTA and the clarification provided in* PUCL *v.* Union of India, *(2004) 9 SCC 580, held, case made out for grant of bail to appellants — Prevention of Terrorism Act, 2002, Ss. 49(7) proviso, (6) & (9)* (Paras 9 to 12). *Kirtibhai Madhavlal Joshi* v. *State of Gujarat*, (2006) 4 SCC 680: (2006) 2 SCC (Cri) 399: (2006) 3 Guj LR 1850.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 4-4-2006]

People's Union for Civil Liberties v. Union of India, (2004) 9 SCC 580: 2005 SCC (Cri) 1905, relied on

[6705] — S. 439 — Bail — Grant of — Grounds and considerations — *Bail granted on ground that appeal is likely to be heard in six months, held, is not a good ground*

The impugned judgment of the High Court granting bail to the respondent-accused is set aside. He should be taken into custody forthwith. Bail was granted by the High Court for no good reason except by saying that the appeal is not likely to be heard in six months. If bail is granted on such a ground then bail will have to be granted in almost every case, even when the offence is heinous. Such a view cannot be approved. (Paras 9 and 8)

Despite the clear direction in *Rajesh Ranjan Yadav case*, (2007) 1 SCC 70 that no further bail application of the accused shall be entertained, the High Court granted bail to the respondent-accused. Said order of the High Court amounts to contempt of order of the Supreme Court. (Para 6). *Rabindra Nath Singh* v. *Rajesh Ranjan*, (2010) 6 SCC 417.

Bench Strength **2**. Coram : *Markandey Katju* and *A.K. Patnaik*, JJ. [Date of decision : 3-5-2010]

Rajesh Ranjan Yadav v. CBI, (2007) 1 SCC 70: (2007) 1 SCC (Cri) 254, relied on

[6706] — S. 439 — Bail — Considerations during grant of — Scope — *Admissibility or otherwise of confessional statement and the effect of evidence already adduced by prosecution and the merit of evidence that might be adduced later, held, were all matters to be considered at the stage of trial — Hence, argument that High Court was justified in granting bail as prosecution failed to establish even a prima facie case against the accused because most of the witnesses already turned hostile and the alleged confession of co-accused was inadmissible, held, not acceptable* (Para 19). *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2004) 7 SCC 528: 2004 SCC (Cri) 1977: AIR 2004 SC 1866: 2004 Cri LJ 1796.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 12-3-2004]

See also *Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005) 2 SCC 42*

[6707] — S. 439 — Bail — Grant of — Factors to be considered — Role of accused and period already undergone by him in jail — Consideration of — *Allegation made against appellant (who was Assistant Superintendent of Central Prison) that he received illegal gratification for permitting and facilitating accused T to use mobile phone for his unlawful activities, to run his fake stamp business from the jail and also to celebrate a party within the jail premises — Appellant in jail for more than three years and four months — Trial likely to take a long time for completion — Held, having regard to the nature of involvement alleged and the role attributed to the appellant, and the period already spent by the appellant in jail, it was a fit case for grant of bail to the appellant — Prevention of Corruption Act, 1988, Ss. 7, 12 and S. 13(1)(d) r/w S. 13(2) — Karnataka Control of Organised Crimes Act, 2000 (1 of 2002), Ss. 3, 4 and 25 — Constitution of India — Art. 136* (Para 8). *Nanjappa* v. *Union of India*, (2007) 4 SCC 350: (2007) 2 SCC (Cri) 300: (2007) 53 AIC 61 (SC).

Bench Strength **2**. Coram: *K.G. Balakrishnan, C.J.* and **R.V. Raveendran**, J. [Date of decision: 17-4-2007]

[6708] — S. 439 — Bail — Grant of — Bihar Fodder Scam — Long incarceration without trial a relevant consideration — *Undertrial incarcerated for a long period of about 1 year and 10 months and trial likely to consume some more time — In such circumstances, Supreme Court directing the undertrial to be released on bail subject to the condition that if the undertrial was a passport-holder he should surrender the passport to the trial court (Special Judge, Animal Husbandry in this case) — Constitution of India — Art. 21. Sunil K. Sinha* v. *State of Bihar*, (1998) 5 SCC 607: 1998 SCC (Cri) 1366: AIR 1999 SC 1533.

Bench Strength **3**. Coram: *M.M. Punchhi, C.J.* and *K. Venkataswami* and *B.N. Kirpal*, JJ. [Date of decision: 27-3-1998]

[6709] — S. 439 — Bail — Grant of — Grounds for — Long period of custody and early conclusion of trial not likely — *Grant of bail by High Court on grounds that accused had been in custody for a period of 3½ years and that there was no likelihood of the trial being concluded in the near future, held, not justified where gravity of the offence alleged was severe and serious allegations of tampering with the witnesses made against the accused*

A complaint involving charges of conspiracy and murder was filed against the accused. The accused made seven applications for grant of bail before the High Court. All the said applications were rejected, except the fifth one. Some of the said rejections were affirmed by the Supreme Court also. The order granting bail on the fifth application was set aside in appeal before the Supreme Court. By the instant appeal, the prosecution challenged the order of the High Court granting bail to the accused on his eighth bail application. The grounds on which the said bail was granted were that the accused had been in custody for more than 3½ years and there was no possibility of the trial concluding in the near future.

Allowing the appeal and setting aside the impugned order of the High Court,

Held :

The High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, the mere fact that the accused has undergone certain period of incarceration by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the accused on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail. (Paras 14 and 21). *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2004) 7 SCC 528: 2004 SCC (Cri) 1977: AIR 2004 SC 1866: 2004 Cri LJ 1796.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 12-3-2004]

Badri Prasad Puran Badhai v. Bala Prasad Mool Chand Sahu, 1985 MPLJ 258, impliedly distinguished

See also *Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005) 2 SCC 42*

(3) Grounds for bail — Generally *(contd.)*

[6710] — Ss. 439 and 228 — Delay in framing of charges — Bail — Entitlement to — *Accused in jail — Rejection of bail on several occasions — Case fixed for framing of charges on 20-12-2000 adjourned on various grounds from time to time — Charges ultimately framed on 12-7-2001 — Held, taking so much time in framing the charges is negation of principle of speedy trial — Grounds of adjournment showing that trial was being conducted poorly — Trial court cautioned and directed not to keep the cases for framing charges pending for long periods, while the accused languishes in custody — Accused-appellant directed to be released on bail — Constitution of India — Art. 21* (Para 5). *Bal Krishna Pandey* v. *State of U.P.*, (2003) 12 SCC 186.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and *R.C. Lahoti* and *P. Venkatarama Reddi*, JJ. [Date of decision: 20-8-2001]

[6711] — Ss. 439 and 437 — Bail — Grant of — Long incarceration and early conclusion of trial unlikely — *Where the accused-appellants were in jail for over 3 years and there was no possibility of early hearing of appeal pending before High Court, on facts, the accused persons directed to be released on bail — Penal Code, 1860, Ss. 302/149. Takht Singh* v. *State of M.P.*, (2001) 10 SCC 463.

Bench Strength 2. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 15-12-1999]

[6712] — Ss. 439 and 437 — Bail — Grant of — When improper — Direct evidence available against respondent-accused on record — *Held, High Court therefore erred in releasing said accused on bail. Jitendra Singh* v. *Mange Ram*, (2005) 13 SCC 392: (2006) 2 SCC (Cri) 335.

Bench Strength 2. Coram: *H.K. Sema* and *B.N. Srikrishna*, JJ. [Date of decision: 12-9-2005]

[6713] — S. 439 — Direction for release on bail — Issuance of, exclusively on the basis of plea of alibi — Legality — *Such a direction where the same was issued by High Court merely on accepting the accused's plea of alibi without examining the nature of offence or any other material, held, ex facie not sustainable — Absence of any allegation against the accused, of any further overt act or tampering with prosecution evidence since his release eight long months ago, though a vital consideration for continuing his release, Supreme Court directing that all relevant maters should be taken into consideration for taking a decision afresh in that regard — Till such decision the accused permitted to be continued on bail* (Para 2). *Naresh Pal Singh* v. *Raj Karan*, (1999) 9 SCC 104: 1999 SCC (Cri) 466.

Bench Strength 2. Coram: *G.B. Pattanaik* and *S.S.M. Quadri*, JJ. [Date of decision: 18-1-1999]

(4) Grounds for bail in murder cases

[6714] — Ss. 439 & 437 — Grant of bail — General principles/factors to be taken into account, reiterated — Grant of bail in a murder case — *Merely on the basis that: (i) accused was in jail for more than 2 years; (ii) he did not misuse his liberty while he was on temporary bail; and (iii) there was delay in initiation of trial — Unsustainability of — Held, the said reasons given for grant of bail were untenable — High Court completely ignored the general principles while granting bail in a heinous crime of murder — Respondent (who at the time of his grant of bail was a sitting MLA) was also involved in 10 other criminal cases, out of which 5 were under S. 307 IPC and one was under S. 302 IPC — He was acquitted in most of the cases for want of sufficient evidence — In one of the present two cases (in which bail granted on the basis of above reasons), 3 alleged eyewitnesses had unequivocally made statements under S. 161 CrPC that respondent was present at the time of occurrence and had fired from his gun — On these facts, held, prima facie a case for grant of bail not made out — Even in the other case also, having regard to the entire matter and in particular to the antecedents of the respondent, the alleged statements made to police by the witnesses present at the spot and the admitted enmity between the parties, it was not a fit case to grant bail — Hence, bail cancelled in both the murder cases — Penal Code, 1860, S. 302*

Allowing the appeals,

Held :

In *Amarmani Tripathi*, (2005) 8 SCC 21 it was held that while considering the application for bail, what is required to be looked is, (*i*) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (*ii*) nature and gravity of the charge; (*iii*) severity of the punishment in the event of conviction; (*iv*) danger of the accused absconding or fleeing if released on bail; (*v*) character, behaviour, means, position and standing of the accused; (*vi*) likelihood of the offence being repeated; (*vii*) reasonable apprehension of the witnesses being tampered with; and (*viii*) danger of justice being thwarted by grant of bail. (Para 24)

In the present case, the High Court has completely ignored the general principles, for grant of bail in a heinous crime of murder in which the sentence, if convicted, is death or life imprisonment. The High Court by the impugned order has granted bail to the respondent on three grounds — (*i*) that the respondent was in judicial custody since March 2004; (*ii*) that trial had yet not commenced and no prosecution witness had been examined; and (*iii*) that the Court had tested the respondent twice by granting temporary bail to him with stringent conditions for a duration of one month each and, on both the occasions, the respondent had surrendered within time, without breach of any of the conditions. (Paras 26 and 18)

The said reasons given in the impugned order for grant of bail are untenable. That the respondent did not misuse his liberty while on temporary bail twice by itself is no ground to grant bail in a murder case especially when he was allegedly involved in a subsequent case of murder. As regards the reason that the trial of the case has not progressed/begun, the complainant party was in no way responsible for any delay in trial. Further, the reason that the respondent had been in jail for the last more than 2 years, is equally untenable in view of the observations made in *Amarmani Tripathi*, (2005) 8 SCC 21. (Paras 19 to 22)

Apart from the present two cases of murder, the respondent has been named in 10 other criminal cases in the last 25 years or so, out of which 5 cases were under Section 307 IPC and another was under Section 302 IPC. The respondent has been acquitted in most of the cases for want of sufficient evidence. This speaks volumes. (Para 20)

In the first case (where the bail was granted on the basis of above reasons), three witnesses, who had allegedly seen the occurrence, have unequivocally in their statements under Section 161 CrPC stated that the respondent was present at the time of occurrence and he had fired from his gun. Prima facie a case for grant of bail was not made out. (Para 23)

As regards the second case, taking the overall view of the entire matter and in particular of the antecedents of the respondent, the alleged statements made by the witnesses, who were present at the spot, to the police and the admitted enmity between the parties (which is a double-edged weapon to commit the crime as well as to falsely implicate), it is opined that it was not a fit case to grant bail in this case as well. (Para 28). *Gobarbhai Naranbhai Singala* v. *State of Gujarat*, (2008) 3 SCC 775: (2008) 2 SCC (Cri) 743: AIR 2008 SC 1134: (2008) 3 Guj LR 2192: 2008 Cri LJ 1618.

Bench Strength 2. Coram: **Ashok Bhan** and *Altamas Kabir*, JJ. [Date of decision: 29-1-2008]

State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21: 2005 SCC (Cri) 1960 (2), followed

Panchanan Mishra v. Digambar Mishra, (2005) 3 SCC 143: 2005 SCC (Cri) 660, relied on

[6715] — S. 439 — Grant of bail — Murder case — Factors to be taken into account while dealing with application for bail — Merits of the case not required to be examined — *But reasons for prima facie conclusion to grant bail must be indicated — In absence of such reasons, order granting bail would be vitiated by non-application of mind*

A first information report was lodged by the deceased's brother about committing of murder of deceased by some unknown persons by gunshot firing. In the statement of the deceased's son recorded on 5-12-2006 and that of one *M* recorded on 9-12-2006 during the course of investigation it was disclosed that Respondent 2 and one *S* had entered into a criminal conspiracy to commit murder of the deceased by hiring two shooters. The police acted upon the information and found that a part of the amount fixed for the killing was paid to *S* through a demand draft under the camouflage of payment for purchase of construction material from *S* who was dealing with such materials. It was pointed out that the phone records clearly indicated a link between Respondent 2 and the killers. Respondent 2 moved an application for bail which was rejected by the trial court. But his bail application before the High Court was allowed. The High Court observed that FIR was lodged against unknown persons and expressed its surprise as to why the deceased's son and *M* "kept mum and at the very first opportunity did not disclose this fact to the investigating agency and only in their statements recorded under Section 161 CrPC which admittedly were recorded after about two-and-a-half months from the date of the incident, they disclosed the involvement of the applicant in the present crime". As such the Court opined "that at the most the applicant can be said to be an accused under Section 120-B IPC read with Section 302 IPC for which an accused can be sentenced to life imprisonment, but the prosecution story as revealed till now, the manner in which the involvement of the applicant in the commission of the crime has come to light and the evidence collected by the investigating officer puts a dent in the prosecution case. Besides it, involvement of the applicant in the commission of the crime has been disclosed at a very later stage of the investigation."

Allowing the appeal,

Held :

The High Court was not justified in granting bail to Respondent 2. The order granting bail is set aside. Respondent 2 who was released on bail shall surrender to custody forthwith. (Para 14)

(4) Grounds for bail in murder cases *(contd.)*

While dealing with an application for bail, there is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence. It is necessary for the courts dealing with an application for bail to consider among other circumstances, the following factors also before granting bail. They are:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

2. Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

3. Prima facie satisfaction of the court in support of the charge.

Any order dehors such reasons suffers from non-application of mind. (Para 11)

Though a conclusive finding in regard to the points urged by the parties is not expected of the court considering the bail application, yet giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. But that does not mean that while granting bail some reasons for prima facie concluding why bail was being granted is not required to be indicated. (Para 12). *Lokesh Singh* v. *State of U.P.*, (2008) 16 SCC 753: AIR 2009 SC 94: (2008) 6 All LJ 775: 2009 Cri LJ 369: (2008) 71 AIC 94 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 21-10-2008]

Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688; Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977; Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118: 1978 SCC (Cri) 41, relied on

[6716] — S. 439 — Bail — Murder charge — In murder case bail should not be granted merely on the ground of delay in recovery of the weapons used in the crime — *But where trial could not commence for long (in this case even during pendency of appeal before Supreme Court against High Court's order granting bail) for which accused-respondents were not responsible, held, on facts, it would be travesty of justice to keep the accused under further detention as undertrial prisoners — Hence no interference is called for with High Court's order releasing the accused on bail subject to the condition that before releasing them it should be ensured that they would not tamper with the evidence or intimidate or influence any of the witnesses for prosecution and that they would unfailingly attend the court on the posting dates* (Para 8). *State, CBI/SPE* v. *Pal Singh*, (2001) 1 SCC 247: 2001 SCC (Cri) 131: 2001 Cri LJ 744.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 28-11-2000]

[6717] — S. 439 — Bail in double murder case — Grant of, by High Court without considering material facts on record and without assigning any reasons, held, not justified — *There were eyewitnesses to the occurrence — Sufficient material on record available against accused — No mitigating circumstances — Hence, High Court's order liable to be set aside — Constitution of India — Art. 136* (Para 4). *State* v. *Eslian*, (2006) 9 SCC 785: (2006) 3 SCC (Cri) 399.

Bench Strength **2**. Coram: *H.K. Sema* and *R.V. Raveendran*, JJ. [Date of decision: 28-4-2006]

[6718] — S. 439 — Grant of bail in a murder case without indicating any "reason" — Unsustainability — *Held, such order passed by High Court was indefensible — Hence, set aside — Matter remitted to High Court for consideration afresh — Penal Code, 1860 — S. 302* (Para 10). *Deepak Singchi* v. *State of Rajasthan*, (2007) 14 SCC 583: AIR 2007 SC 3064: (2007) 57 AIC 23 (SC): 2007 Cri LJ 4338.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 3-8-2007]

Omar Usman Chamadia v. Abdul, (2004) 13 SCC 234: 2005 SCC (Cri) 157; V.D. Chaudhary v. State of U.P., (2005) 12 SCC 304: (2006) 1 SCC (Cri) 560; Chaman Lal v. State of U.P., (2004) 7 SCC 525: 2004 SCC (Cri) 1974; Kamaljit Singh v. State of Punjab, (2005) 7 SCC 226: 2005 SCC (Cri) 1668; Gajanand Agarwal v. State of Orissa, (2007) 14 SCC 537, followed

[6719] — Ss. 439 and 437 — Bail — Entitlement to — Case of daylight murder wherein two persons died — *Held, the said fact itself was not adequate to hold that accused **R** was not entitled to bail — Two co-accused had already been granted bail by High Court — **R** was a student, who was in jail for more than one year — His father was seriously ill due to heart ailment — In these circumstances, held order of Sessions Judge granting bail to **R** was not unjustified*

The fact that it was a case of daylight murder wherein two persons died, is not adequate to hold that the accused were not entitled to bail at all. (Para 18)

Passing order on a bail application is a matter of discretion which is exercised by a judicial officer with utmost responsibility. When a co-accused had been granted bail by the High Court, the appellant judicial officer cannot be said to have passed an unjustified order granting bail, that too, to an accused who was a student and had been in jail for more than one year. *R* had alleged that he had suffered a loss of one year's study. He also alleged that his father was seriously ill due to a heart ailment and he produced a medical certificate from one of the professors working in the local medical college. If *R* were to be denied bail in the circumstances of the case, it would have been a travesty of justice especially when all factors relevant to be gone into for considering the bail application were heavily loaded in favour of grant of bail to *R*. (Para 18). *Ramesh Chander Singh* v. *High Court of Allahabad*, (2007) 4 SCC 247: (2007) 2 SCC (Cri) 266: (2007) 3 All LJ 502: (2007) 53 AIC 66 (SC): (2007) 113 FLR 841: (2007) 2 SLR 880.

Bench Strength 3. Coram: **K.G. Balakrishnan, C.J.** and *L.S. Panta* and *D.K. Jain*, JJ. [Date of decision: 26-2-2007]

[6720] — Ss. 439 and 437 — Bail — Grant of — Factors to be considered — Murder case — *Fact that Magistrate who recorded dying declaration had been a tenant in house of complainant — Consideration of, while granting bail — Evidence Act, 1872, S. 32(1)*

In the bail order, the appellant judicial officer stated that there was an allegation that the Magistrate who recorded the dying declaration was once upon a time a tenant in one of the houses owned by the complainant. Taking of cognizance of this fact by the appellant in the order could not be said to be a totally unwarranted and a superfluous reasoning. (Para 9). *Ramesh Chander Singh* v. *High Court of Allahabad*, (2007) 4 SCC 247: (2007) 2 SCC (Cri) 266: (2007) 3 All LJ 502: (2007) 53 AIC 66 (SC): (2007) 113 FLR 841: (2007) 2 SLR 880.

Bench Strength 3. Coram: **K.G. Balakrishnan, C.J.** and *L.S. Panta* and *D.K. Jain*, JJ. [Date of decision: 26-2-2007]

[6721] — Ss. 439 and 437 — Bail — Grant of — Propriety — Offence under S. 302 r/w S. 201 IPC — *Accused, an advocate — Reasonable apprehension of the witnesses being tampered with or won over, coerced, threatened or intimidated by accused using his influence and position could not be ruled out — No mitigating circumstances to grant bail in the said non-bailable grave offence — Hence, High Court's order granting bail quashed — Penal Code, 1860 — S. 302 r/w S. 201 — Constitution of India — Art. 136* (Paras 12 to 14). *Anil Kumar Tulsiyani* v. *State of U.P.*, (2006) 9 SCC 425: (2006) 2 SCC (Cri) 565: (2006) 2 KLT 806.

Bench Strength 2. Coram: **H.K. Sema** and *R.V. Raveendran*, JJ. [Date of decision: 5-5-2006]

[6722] — Ss. 439 and 437 — Bail in non-bailable offences (offence under S. 302 r/w S. 201 IPC in this case) — Grant of — Relevant considerations — *Referring to various circumstances to be considered in an application for bail, held, gravity and nature of offence is one of the considerations in granting bail in such offences — High Court not at all addressed to this issue while granting bail to the respondent — On facts, held, High Court's order granting bail not sustainable* (Paras 10, 11 and 14). *Anil Kumar Tulsiyani* v. *State of U.P.*, (2006) 9 SCC 425: (2006) 2 SCC (Cri) 565: (2006) 2 KLT 806.

Bench Strength 2. Coram: **H.K. Sema** and *R.V. Raveendran*, JJ. [Date of decision: 5-5-2006]

State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21: 2005 SCC (Cri) 1960 (2), relied on

[6723] — Ss. 439 and 437 — Grant of bail by High Court — Inadequate grounds — *CB/CID investigating the case — Considering the fact that CB/CID normally takes a year or so in concluding the investigation and that the allegations of ailment of the applicant were not specifically denied, the High Court granting bail to applicant — Held, the said grounds were insufficient for granting bail to applicant, the main accused, in a case of such a serious nature (murder) — Further, in view of the fact that the ailment of applicant was not of such a nature requiring him to be released on bail and where the eyewitnesses directly connected him and assigned specific role to him in the murder, held, the High Court's order granting bail to the applicant was liable to be set aside. Pawan* v. *Ram Prakash Pandey*, (2002) 9 SCC 166: AIR 2002 SC 2224: 2002 Cri LJ 2940.

Bench Strength 2. Coram: *S.S.M. Quadri* and **S.N. Variava**, JJ. [Date of decision: 10-5-2002]

[6724] — Ss. 439 and 437(1)(i) — Case under Ss. 302, 120-B & 34 IPC and Arms Act — Bail — Grant of, by High Court — *Restriction contained in S. 437(1)(i) for granting bail — High Court did not apply its mind to the condition under, which is sine qua non for granting bail — Hence, High Court's order granting bail set aside*

The High Court considered only two grounds for granting bail — one is that the respondent was in custody for more than one year and the other is that the High Court made some observation in the previous order. The previous order referred to by the High Court only made a mention that the respondent could renew the application after framing of the charge against him. That observation is not a ground envisaged under Section 437(1)(*i*) of the Code for granting bail. Thus, there was no application of mind of the High Court from the angle provided in the aforesaid clause, which is sine qua non for granting bail, in the light of the specific prohibition contained in the sub-clause that such persons shall not be so released if there appears a reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life. (Paras 7 and 8). *Union of India* v. *Rajesh Ranjan*, (2004) 7 SCC 539: 2004 SCC (Cri) 1987.

Bench Strength **2**. Coram: *K.T. Thomas* and *S.N. Variava*, JJ. [Date of decision: 25-7-2001]

(5) Grounds for bail — Particular offences

[6725] — Ss. 439 and 437 — Bail — Entitlement to — Large economic scam in bank — *Huge amounts advanced to persons of dubious antecedents without taking steps to verify their creditworthiness in violation of applicable banking procedures and regulations — Accused-petitioner, a higher authority in that bank — Considering the facts and circumstances of the case, held, petitioner not entitled to be released on bail — Penal Code, 1860, Ss. 405, 406, 408, 409, 420, 467, 468, 471 and 120-B — Banking Regulation Act, 1949, Ss. 18, 24 and 35-A — Constitution of India — Art. 136* (Para 16). *Rameshchandra Nandlal Parikh* v. *State of Gujarat*, (2006) 1 SCC 732: (2006) 1 SCC (Cri) 481: AIR 2006 SC 915: (2006) 194 ELT 140: (2006) 2 Guj LR 1365: 2006 Cri LJ 964.

Bench Strength **2**. Coram: *Y.K. Sabharwal, C.J.* and **B.N. Srikrishna**, J. [Date of decision: 13-1-2006]

[6726] — Ss. 439 and 437 — Offence of cheating — Bail — Grant of — *Accused cheating a Japanese national of a big sum of about Rs 65 lakhs — Prima facie circumstances of the case not in favour of bail — In view of the fact that the accused was in custody for about 5 months, Supreme Court permitting the accused, by imposing certain conditions, to continue on bail as per its interim order passed earlier on 10-12-1999 — Respondents permitted to move for cancellation of the bail if accused misuses the bail or delays the trial — Case against the appellant may be splitted up so as to dispose of it expeditiously — Penal Code, 1860, Ss. 120-B, 420, 468, 471 and 506. Ashok Dhingra* v. *NCT of Delhi*, (2000) 9 SCC 533: 2001 SCC (Cri) 641: AIR 2000 SC 3537 (1).

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 3-3-2000]

[6727] — S. 439 — Export of drugs without export authorisation — Non-compliance with specific requirements of NDPS Act and Rules framed thereunder — Appellant and co-accused indulging in illegal internet pharmacy business — *Drugs mentioned in Schedule to NDPS Act procured from local pharmacy and dispatched to customers abroad — Appellant-accused contending that drugs in question being Schs. G and H drugs under Drugs and Cosmetics Rules, 1945, export thereof would not attract provisions of R. 58, NDPS Rules, 1985 and that use of drugs for medicinal purposes is acknowledged in terms of proviso to S. 8(c) — Tenability — Held, appellant and his co-accused were said to have got licences under Drugs and Cosmetics Act, 1940 — But under S. 80, NDPS Act, provisions of NDPS Act or Rules are in addition to, and not in derogation of Drugs and Cosmetics Act, 1940 or Rules made thereunder — Drugs and Cosmetics Act does not deal with exports — Provisions of Customs Act, 1962, do — Licensees, therefore, were thus required to comply with specific requirements of NDPS Act and Rules — Undisputedly, appellant neither applied for nor was granted any authority to export by Narcotic Commissioner or any other officer who was authorised in this behalf — Hence, no merit in the instant appeal — Narcotic Drugs and Psychotropic Substances Rules, 1985, Rr. 53, 53-A, 58, 59 and 63 — Drugs and Cosmetics Act, 1940, Ss. 33(2)(e), 33-N and 12 — Drugs and Cosmetics Rules, 1945 — Schs. G and H — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 8(c), 22, 23, 25, 27-A, 53, 53-A, 58, 9, 76, 80 & 37 and Schedule* (Paras 13 to 16). *D. Ramakrishnan* v. *Narcotic Control Bureau*, (2009) 14 SCC 603: AIR 2009 SC 2404: (2009) 240 ELT 321.

Bench Strength **2**. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 27-7-2009]

State of Uttaranchal v. Rajesh Kumar Gupta, (2007) 1 SCC 355: (2007) 1 SCC (Cri) 356, distinguished

[6728] — Ss. 439 and 438 — Bail application — Matter/Claim which cannot be adjudicated therein — Cheating and conspiracy — *Allegation that accused obtained money from complainants for sending them abroad — N (one of the accused) depositing in court the amount claimed in complaint to show his bona fides for the purpose of obtaining bail — Amount deposited was to be paid to complainants only on settlement between the parties — No settlement arrived at — Nature of claim, a civil dispute — Held, the High Court erred in allowing complainants' application filed in bail petition of the appellants (accused other than N) whereby they sought disbursement of the said amount to them — In a bail application, it could not have adjudicated upon the rights between the parties in regard to the amount in deposit — Impugned directions might also prejudice the defence of the* *accused — Amount in question directed to be kept in interest-bearing account till appropriate orders were passed by the competent court in this regard — Penal Code, 1860, Ss. 420 and 120-B*

While accepting the deposit, the Magistrate had made it clear that the amount in question would be paid to the complainants only if a settlement is arrived at. He had also directed that in the event of no settlement being arrived at within the time stipulated in his order the amount in question should be kept in interest-bearing deposit. The fact that there was no settlement between the parties is not in dispute. Even an attempt to settle the dispute through the Lok Adalat has failed. Therefore, the claim of the complainants for the amount in deposit being in the nature of a civil dispute, the High Court ought not to have directed the payment. The High Court in a bail application could not have adjudicated upon the rights between the parties in regard to the amount in deposit and the impugned directions might also prejudice the defence of the accused. Hence, the impugned orders are set aside. The amount in question be kept in interest-bearing deposit in a nationalised bank till such time as appropriate orders are passed by the competent court in this regard. (Paras 12, 13 and 15) . *Jagtar Singh* v. *State of Punjab*, (2004) 13 SCC 289: 2005 SCC (Cri) 208.

Bench Strength 2. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 17-9-2004]

[6729] — S. 439 — When bail should be granted — Case registered against appellant under Ss. 420, 467, 468 and 471 IPC for allegedly driving a car by using a forged registration certificate as genuine — *Car owned by appellant's uncle who had handed it over to appellant for getting registration certificate from RTO — Forged documents prepared by the co-accused, an agent of RTO — While the co-accused had been granted bail by High Court in October 2007, appellant still in jail since June 2007 — Counsel for the State failed to state about the progress and stage of trial of the case registered against appellant and the co-accused — Custody of appellant not required by IO for further interrogation — Bail application filed by appellant before High Court rejected — In the facts and circumstances of the case, held, it is a fit case where appellant deserves to be released on bail — Penal Code, 1860, Ss. 420, 467, 468 and 471* . *Anwar Ali* v. *State of Chhattisgarh*, (2008) 16 SCC 501: (2009) 1 ECrN 360 (SC): 2008 Cri LJ 4572.

Bench Strength 2. Coram: *R.V. Raveendran* and *L.S. Panta*, JJ. [Date of decision: 10-9-2008]

[6730] — S. 439 — Bail — Relevant facts to be considered — False encounter — *Plea that S who was encountered had a shady reputation and criminal antecedents — Unacceptability — Held, the accused police officer causing encounter cannot take a plea in bail application that the person whom he killed was a hardened criminal*

The appellant-accused (a senior police officer) and co-accused *N* and other police officers were arrested for entering into criminal conspiracy and causing fake encounter of a hardened criminal *S* and destroying evidence relating to the death of *K* (wife of *S*). The FIR was registered for the offences punishable under Sections 302, 364, 365, 368, 193, 197, 201, 120-B, 420 and 342 IPC read with Section 34 IPC and under Sections 25(1-B)(*a*) and 27 of the Arms Act, 1959. Allegedly, an FIR against *S* to cover up the fake encounter was lodged by co-accused *AR*, a subordinate officer of the appellant-accused. In the FIR it was stated that *S* was acting at the behest of ISI to spread terror and to disturb the unity and integrity of the country and was conspiring by possessing arms and ammunition so as to kill one of the big leaders of the State of Gujarat and when asked to surrender by the police party, fired from his revolver and attempted to kill them. The High Court by the impugned order in terms of Section 439(2) CrPC cancelled the bail application granted to the appellant-accused by the Sessions Court.

Dismissing the appeal,

Held :

The order of granting bail to the appellant was certainly vulnerable. The accused cannot take a plea while applying for bail that the person whom he killed was a hardened criminal. That certainly is not a factor which can be taken into account. The perversity as highlighted in *Puran case*, (2001) 6 SCC 338 can flow from the fact that irrelevant materials have been taken into consideration adding vulnerability to the order granting bail. The irrelevant materials should be of a substantial nature and not of a trivial nature. In the instant case, the trial court seems to have been swayed by the fact that *S* had shady reputation and criminal antecedents. That is not certainly a factor which is to be considered while granting bail. It is the nature of the acts of offence which ought to have been considered. (Paras 27 and 25)

Once it is concluded that bail was granted on untenable grounds, the plea of absence of supervening circumstances has no leg to stand. Irrelevant materials have been taken into account and relevant materials have been kept out of consideration. An

FIR was allegedly lodged to divert attention from the fake encounter. The same was not lodged by the Gujarat Police. The accused was the leader of the Rajasthan team and *AR*, one of the arrested officers had lodged the FIR. The relevance of these factors were kept out of consideration while granting bail. (Paras 26 and 27)

Even though reappreciation of the evidence as done by the court granting bail is to be avoided, the court dealing with an application for cancellation of bail under Section 439(2) CrPC can consider whether irrelevant materials were taken into consideration. That is so because it is not known as to what extent the irrelevant materials weighed with the court for accepting the prayer for bail. (Para 23). *Dinesh M.N. (S.P.)* v. *State of Gujarat*, (2008) 5 SCC 66: (2008) 2 SCC (Cri) 508: AIR 2008 SC 2318: 2008 Cri LJ 3008: (2008) 3 Guj LR 2310.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 28-4-2008]

Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977, relied on

(6) Proper exercise of discretionary jurisdiction/disposal of bail application

See also under Section 437

[6731] — Ss. 439 and 437 — Bail — Application for grant of, in "non-bailable" offence — Relevant factors to be considered — Power of court to scrutinise evidence — *Held, while making order in such a case, the nature and the gravity of the offence is the primary consideration — At the stage of bail, court can only go into the case as prima facie case established — It cannot go into question of credibility and reliability of witnesses put up by prosecution — Said question can only be tested during trial — In the present case, while granting bail the High Court did not consider the nature and the gravity of the offence and its impact on the society — It recorded findings on credibility and evidential value of witnesses at the stage of bail and virtually acquitted the accused even before trial — Such findings recorded at the stage of bail, held, not sustainable — Order granting bail was liable to be set aside — Penal Code, 1860 — Ss. 302/120-B*

In granting or non-granting of bail in non-bailable offence, the primary consideration is the nature and gravity of the offence. At the stage of granting of bail the court can only go into the question of the prima facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial. (Paras 12 and 5)

In the present case of murder, the order of the High Court granting bail shows that the nature and the gravity of the offence and its impact on the democratic fabric of the society was not at all considered. On the contrary, while considering the bail application, the High Court appears to have decided the case pending trial on merit after scrutinising the evidence. This is against all canons of law and judicial propriety. (Paras 12 and 6)

The High Court recorded findings on the credibility and the evidential value of the witnesses at the stage of granting bail. By making such observations and findings, it virtually acquitted the accused of all the criminal charges levelled against him even before the trial. Where the trial is in progress, if such findings are allowed to stand it would seriously prejudice the prosecution case. The findings recorded by the High Court virtually amount to the regular trial pointing out the deficiency and reliability/credibility of the prosecution evidence. Such findings recorded at the stage of consideration of bail cannot be allowed to sustain. (Paras 12 and 13)

Hence, in view of the above, the order granting bail is not sustainable in law. It is, accordingly, set aside. (Para 14). *Satish Jaggi* v. *State of Chhattisgarh*, (2007) 11 SCC 195: (2007) 56 AIC 202 (SC): 2007 Cri LJ 2766.

Bench Strength 2. Coram: *H.K. Sema* and *L.S. Panta*, JJ. [Date of decision: 30-4-2007]

Amit Jogi v. State of Chhattisgarh, 2006 Cri LJ 3349 (Chatt), reversed

[6732] — Ss. 439 & 437 — Grant of bail — Factors to be taken into account, restated — Reasoned order — Cardinal necessity of — *Though a detailed examination of the evidence and elaborate documentation of merits of the case is not required, it is necessary to give reasons for prima facie concluding why bail was being granted, particularly where an accused was charged of having committed a serious offence (murder in this case) — On facts, the cryptic non-reasoned order of the High Court granting bail, held, not sustainable — Hence, set aside — Penal Code, 1860 — Ss. 302/504/ 149/148/147*

There is a need to indicate in the order reasons for prima facie concluding why bail was being granted, particularly where an accused was charged of having committed a serious offence. Any order dehors of such reasons suffers from non-application of mind. Though a detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications, yet a court dealing with the bail application should be satisfied as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course. The factors which the court must consider among other circumstances before granting bail are (*i*) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (*ii*) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (*iii*) prima facie satisfaction of the court in support of the charge. (Paras 8 and 7)

In the present case, the grant of bail to the respondent by a non-speaking and non-reasoned order was not proper. Hence, the said order is set aside. (Paras 10 and 11). *Anwari Begum* v. *Sher Mohd.*, (2005) 7 SCC 326: 2005 SCC (Cri) 1669: AIR 2005 SC 3530: 2005 Cri LJ 4132.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Arun Kumar*, JJ. [Date of decision: 19-9-2005]

Omar Usman Chamadia v. Abdul, 2005 SCC (Cri) 157; V.D. Chaudhary v. State of U.P., (2005) 12 SCC 304; Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688; Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977; Chaman Lal v. State of U.P., (2004) 7 SCC 525: 2004 SCC (Cri) 1974, relied on

[6733] — S. 439 — Bail — Grant of — Reasoned order — Necessity of — Unnatural death of the deceased within seven years of the marriage — *High Court granted bail by a practically non-reasoned order — Held, it is not understood as to how the High Court observed that the provisions of S. 113-B, Evidence Act, 1872 were not applicable and this was not a case punishable under S. 304-B IPC — High Court's order is a bundle of confusion — Said order set aside and the matter remitted back to High Court for fresh consideration and disposal by a reasoned order — Evidence Act, 1872, S. 113-B — Penal Code, 1860, S. 304-B* (Para 6). *Subhash Chandra Singh* v. *Dheemant Singh*, (2009) 11 SCC 169: (2009) 3 SCC (Cri) 1284: (2009) 77 AIC 1 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 20-4-2009]

Chaman Lal v. State of U.P., (2004) 7 SCC 525: 2004 SCC (Cri) 1974; Anwari Begum v. Sher Mohammad, (2005) 7 SCC 326: 2005 SCC (Cri) 1669, followed

[6734] — S. 439 — Grant of bail — Recording of reasons — Necessity of — *Held, court granting bail has to exercise its discretion in a judicious manner with care and caution and not as a matter of course — Though at the stage of granting bail, elaborate examination of evidence and detailed reasons touching merit of case, which may prejudice accused, should be avoided, but there is a need to indicate in such order, reasons for prima facie concluding why bail was being granted, particularly where accused is charged of having committed a serious offence — Mere recording of submissions of counsel for both parties not enough — Order must show consideration of factors like nature of offence, evidence collected by prosecution and forming part of charge-sheet and circumstances under which offences were committed — Giving reasons is different from discussing merits or demerits* (Paras 13 and 19). *Masroor* v. *State of U.P.*, (2009) 14 SCC 286: (2009) 3 CTC 90 (SC).

Bench Strength **2**. Coram: **D.K. Jain** and *R.M. Lodha*, JJ. [Date of decision: 27-4-2009]

Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124; Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977, relied on

[6735] — S. 439 — Grant of bail to second respondent, without recording reasons therefor — Impermissibility of — Failure to consider relevant factors for granting bail — Impropriety of — *Charge-sheet for serious offences filed against 22 persons, including second respondent, for committing murder of two persons and causing multiple injuries to eight persons — Bail application filed by second respondent rejected by trial court — High Court, however, granting him bail, but without recording any reasons therefor — Sustaina bility — Failure on part of High Court in not indicating any reason for grant of bail, particularly when charges against second respondent were serious, makes the order indefensible — High Court completely ignored basic principles which are to be kept in view while dealing with an application under S. 439 for grant of bail, thus, committing a manifest error in matter of grant of bail to the second respondent, warranting interference — Penal Code, 1860, Ss. 302, 307, 148 and 149* (Paras 17, 18 and 12). *Masroor* v. *State of U.P.*, (2009) 14 SCC 286: (2009) 3 CTC 90 (SC).

Bench Strength **2**. Coram: **D.K. Jain** and *R.M. Lodha*, JJ. [Date of decision: 27-4-2009]

[6736] — S. 439 — Bail — Role of, in protection of right to personal liberty — Essence of function involved in grant of bail, and measures to ensure proper performance thereof — *Held, exercise of said jurisdiction requires maintaining of perfect balance between two conflicting interests viz. sanctity of individual liberty and interest of society — Hence, it should be entrusted to judicial*

(6) Proper exercise of discretionary jurisdiction/disposal of bail application *(contd.)*

officers with some experience and good track record — High Courts advised to periodically organise (through their Judicial Academies) workshops, symposiums, seminars and lectures for orientation of judicial officers and police officers in respect of importance of, and method of balancing of, said conflicting interests — Direction given for periodical evaluation of performance of judicial officers concerned on the basis of cases decided by them — Constitution of India, Arts. 21 and 22. Siddharam Satlingappa Mhetre v. *State of Maharashtra*, (2011) 1 SCC 694.

Bench Strength 2. Coram: **Dr. Dalveer Bhandari** and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 2-12-2010]

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465, relied on

[6737] — Ss. 439 and 437 — Bail — Grant of — Need for reasons — Extent of determination of contentions raised — *Held, reasons therefor must be recorded, particularly where an accused is charged with a serious offence, without discussing the merits of evidence — Further held, conclusive finding as regards the points urged by the parties not expected of the court considering the bail application*

Though a conclusive finding in regard to the points urged by the parties is not expected of the court considering the bail application, yet giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. But there is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence. (Paras 8 and 6). *State of Maharashtra* v. *Sitaram Popat Vetal*, (2004) 7 SCC 521: 2004 SCC (Cri) 1971: AIR 2004 SC 4258.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 23-8-2004]

[6738] — Ss. 439 and 437 — Bail — Grant of — Held, reasons must be recorded, but without discussion of merits and demerits of evidence — *Clarified that discussing evidence is totally different from giving reasons for a decision*

Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. What the Additional Sessions Judge had done in the order dated 11-9-2000 was to discuss the merits and demerits of the evidence. That was what was deprecated. That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated. (Para 8)

The High Court has correctly not gone into merits or demerits of the matter. The High Court has noted that the evidence prima facie indicated demand of dowry. The High Court has briefly indicated the evidence on record and what was found at the scene of the offence. The High Court has indicated that the evidence prima facie indicated that a demand for Rs 1 lakh was made just a month prior to the incident in question. The High Court has stated that the material on record suggested that the offences under Sections 498-A and 304-B were prima facie disclosed. The High Court has concluded that the material on record, the nature of injuries, demand for Rs 1 lakh and the other circumstances were such that this was not a fit case for granting bail. Thus the High Court has given very cogent reasons why bail should not have been granted and why this unjustified erroneous order granting bail should be cancelled. (Para 9). *Puran* v. *Rambilas*, (2001) 6 SCC 338: 2001 SCC (Cri) 1124: AIR 2001 SC 2023: 2001 Cri LJ 2566.

Bench Strength 2. Coram: *M.B. Shah* and **S.N. Variava**, JJ. [Date of decision: 3-5-2001]

Dolat Ram v. State of Haryana, (1995) 1 SCC 349: 1995 SCC (Cri) 237, relied on

[6739] — S. 439 — Bail — Factors to be considered before grant of, restated — Reasoned order — Necessity of — *Though a detailed examination of evidence and elaborate documentation of merits of the case is not required, it is necessary to give reasons for prima facie concluding why bail is being granted, particularly where an accused is charged of having committed a serious offence (murder in this case) — Giving reasons distinguished from discussing merits or demerits — On facts, the cryptic non-reasoned order of the High Court, held, not sustainable — Hence, set aside — Penal Code, 1860, Ss. 302/120-B*

Respondent 2 was charged for commission of offence punishable under Sections 302/120-B IPC. The Sessions Court rejected his bail application. The High Court observed that the accused was not named in FIR and his name had been disclosed in the statement under Section 161 CrPC after three days of the incident. Thus, the High Court granted bail to Respondent 2. Hence the present appeal.

Allowing the appeal and setting aside the impugned order of the High Court,

Held :

At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case is not to be undertaken, but there is a need to indicate in the order reasons for prima facie concluding why bail was being granted, particularly where an accused was charged of having committed a serious offence. Though a conclusive finding in regard to the points urged by the parties is not expected of the court considering the bail application, yet giving reasons is different from discussing merits or demerits. Any order dehors of such reasons suffers from non-application of mind. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course. The factors which the court must consider among other circumstances before granting bail are (*i*) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, (*ii*) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and (*iii*) prima facie satisfaction of the court in support of the charge. (Paras 11, 9, 10 and 8)

Above being the position, the cryptic non-reasoned order of the High Court is clearly indefensible. (Para 12). *Chaman Lal* v. *State of U.P.*, (2004) 7 SCC 525: 2004 SCC (Cri) 1974: AIR 2004 SC 4267: 2004 All LJ 3242.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 16-8-2004]

Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688; Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528, relied on

***Followed in** Deepak Singchi v. State of Rajasthan, (2007) 14 SCC 583*

[6740] — Ss. 439 and 437(1)(i) & (ii) — Bail — Grant of — Power of High Court — Relevant factors required to be considered by a court while taking a decision in the matter of enlargement on bail, restated — *Order of High Court should make it appear that the High Court, while forming opinion on prayer for bail, was conscious of the reasons for rejection of prayer for bail as assigned by the Sessions Court — Instant case involving circumstances in which special reasons required for granting bail — Considering the facts of the case and the previous history and antecedents of the accused, Sessions Court refusing bail — High Court erred in granting bail without stating anything as to why it did so in spite of availability of grounds to the contrary set out in the order of Sessions Court*

Previous conviction of an accused for a heinous offence punishable with imprisonment for life, his involvement in other crimes and the quantum of punishment for the offences in which the applicant is seeking bail are all relevant factors to which the court should consciously advert to while taking a decision in the matter of enlargement on bail. A prayer for bail having been rejected by the Sessions Court although the High Court while exercising its jurisdiction under Section 439 CrPC is not acting as a court of appeal or a court of revision over the order of the Sessions Court, nevertheless, the High Court should keep in mind, while hearing the application for bail, the factum of the prayer having been rejected by the Sessions Court and the reasons therefor expressly set out in the order of the Sessions Court. The order of the High Court, howsoever brief it may be, should make it appear that the High Court while forming opinion on prayer for bail was conscious of the reasons for rejection of prayer for bail as assigned by the Sessions Court. (Para 7)

Independently of the order of rejection passed by the Sessions Court, the High Court may grant bail to an accused person, yet it would be sound exercise of discretionary jurisdiction of the High Court if the order of the High Court reflects that the High Court had in mind the reasons assigned by the Sessions Court for refusing bail. The impugned order of the High Court suffers from this infirmity. (Para 8). *Ram Pratap Yadav* v. *Mitra Sen Yadav*, (2003) 1 SCC 15: 2003 SCC (Cri) 1.

Bench Strength **2**. Coram: **R.C. Lahoti** and *Brijesh Kumar*, JJ. [Date of decision: 20-11-2002]

[6741] — S. 439 — Grant of bail — Court should be satisfied only about a prima facie case and need not go into its merits — *Where the accused are policemen, court should keep in mind the possibility of intimidation of witnesses and tampering with the documents by such accused to prove themselves innocent — CrPC, 1898, S. 498*

Grant of bail is within the jurisdiction of the Sessions Judge but the Court must not, in grave cases, gullibly dismiss the possibility of police accused intimidating the witness. No party should have the impression that his case has been prejudiced. To be satisfied about a prima facie case is needed but it is not the same as an exhaustive exploration of the merits in the order itself. *Niranjan Singh* v. *Prabhakar Rajaram Kharote*, (1980) 2 SCC 559: 1980 SCC (Cri) 508: AIR 1980 SC 785: 1980 Cri LJ 426: 1980 MLJ (Cri) 573.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *A.P. Sen*, JJ. [Date of decision: 10-3-1980]

(6) Proper exercise of discretionary jurisdiction/disposal of bail application *(contd.)*

[6742] — Ss. 439 and 161 — Bail — Grant of bail — Duty of High Court at the stage of — *Held, it must consider all the statements recorded under S. 161 CrPC, examine the gravity of the offence and also examine the question of possibility of the accused tampering with the evidence and possibility of getting the attendance of the accused during trial and only then it can grant bail — Where four persons had died and charge-sheet had already been filed and the material collected by examining persons under S. 161 CrPC implicated S as one of the assailants, then grant of bail to S by High Court merely because in the statement of one of the injured persons, S was not indicated as an assailant, held, erroneous* (Para 1). *Salim Khan* v. *Sanjai Singh*, (2002) 9 SCC 670.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 15-12-1999]

[6743] — S. 439 — Grant of bail on examination of merits of case — Sustainability — *High Court should not go into merits of the case and decide, without affording an opportunity to prosecution, about non-complicity of the accused in the crime and on that basis grant bail to accused — On facts held, High Court was not justified in granting bail by going into merits of the case — No exceptional ground made out for departing from the usual procedure of trial once charge-sheet had been filed in trial court*

According to the prosecution, the respondent had a love affair with the deceased. The deceased was insisting for marriage to which the respondent and his mother were not agreeable as the deceased belonged to a Scheduled Caste and the respondent belonged to Teli community which is considered as a higher caste. The respondent is alleged to have hatched a conspiracy to get rid of the deceased by eliminating her. In furtherance of the conspiracy and to create evidence in his favour, the respondent went to another place viz. Baramati. From that place he used to have telephonic talks with the accused persons who managed to take the deceased out of the house and got her killed. The respondent was arrested for the offences punishable under Sections 302, 109, 120-B, 364, 397, 201 read with Section 34 of the Indian Penal Code and under Section 3(1)(*xi*) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The respondent filed an application for bail in the trial court which was dismissed on finding that his complicity in the criminal conspiracy was established. He then filed a revision petition under Section 439 CrPC in the High Court which was allowed granting bail pending trial on the ground that there was no material on record to establish the involvement of the respondent in the commission of the crime and that the accused was not aware of the criminal conspiracy, in execution of which, the deceased was killed.

Allowing the appeal and setting aside the order of the High Court,

Held :

For releasing the respondent on bail, the High Court has ventured to refer to the merits of the case and prematurely held that there was no material on record to show that the respondent was guilty of conspiracy, in execution of which, the deceased was murdered. Despite observing that the case was based on circumstantial evidence, the High Court did not afford the prosecution an opportunity to lead evidence for establishing the existence of conspiracy and wrongly held that it was difficult to infer the existence of a conspiracy, particularly when the respondent had gone to Baramati. The factum of the respondent going to Baramati was relied upon by the prosecution as one of the circumstances connecting the accused with the commission of the crime particularly when it was alleged that while at Baramati he used to have telephonic talks with the other accused persons about the alleged conspiracy. In the absence of "exact talks", the High Court found that the allegation of conspiracy was not established. (Para 5)

Once the final charge-sheet has been filed in the trial court, the High Court, under the normal circumstances, should have permitted the respondent to get a verdict of his innocence or involvement from that court under Chapter XVIII of the Code of Criminal Procedure. No exceptional ground has been made out, in the instant case, to depart from such usual established procedure. The order impugned being contrary to law is liable to be set aside. (Para 6). *State of Maharashtra* v. *Ritesh*, (2001) 4 SCC 224: 2001 SCC (Cri) 671: AIR 2001 SC 1310: 2001 Cri LJ 1695.

Bench Strength **2**. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 15-3-2001]

[6744] — Ss. 439 & 437 — Bail application — Mode of disposal — Power to appreciate evidence — *Noticing the extent of examination of evidence while considering the question of bail as stated in* Amarmani Tripathi, *(2005) 8 SCC 21, held, grant of bail in present case by touching upon the merits of the case and in a manner as if an order of acquittal was being passed, was not proper*

In *Amarmani Tripathi*, (2005) 8 SCC 21 it has been held that a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice is caused. Only a brief examination is to be done to satisfy about the facts and circumstances or otherwise of a prima facie case. In the present case, the findings recorded in the order granting bail touch upon the merits of the case. The Judge concerned has proceeded as if an order of acquittal is being passed. (Para 27). *Gobarbhai Naranbhai Singala* v. *State of Gujarat*, (2008) 3 SCC 775: (2008) 2 SCC (Cri) 743: AIR 2008 SC 1134: (2008) 3 Guj LR 2192: 2008 Cri LJ 1618.

Bench Strength 2. Coram: **Asho k Bhan** and *Altamas Kabir*, JJ. [Date of decision: 29-1-2008]

State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21: 2005 SCC (Cri) 1960 (2), followed

[6745] — Ss. 439 & 437 — Bail application — Power of Court to appreciate evidence/materials while dealing with — *Held, though the Court can make some reference to materials, but it cannot make a detailed and in-depth analysis of the materials and record findings on their acceptability or otherwise, which is essentially a matter for trial — In this view, the course adopted by High Court while dealing with bail application in present case, not proper — Hence, matter remitted to it for consideration afresh* (Para 3). *Nira Radia* v. *Dheeraj Singh*, (2006) 9 SCC 760: (2006) 3 SCC (Cri) 397.

Bench Strength 2. Coram: *Arijit Pasayat* and *S.H. Kapadia*, JJ. [Date of decision: 10-5-2006]

[6746] — S. 439 — Grant or refusal of bail need not be by a speaking order — *SLP permitted to be withdrawn. Jivaji Jedeja* v. *State of Maharashtra*, 1986 Supp SCC 556: 1987 SCC (Cri) 171: AIR 1987 SC 1491.

Bench Strength 2. Coram: *P.N. Bhagwati, C.J.* and *G.L. Oza*, J. [Date of decision: 22-10-1986]

[6747] — S. 439 — Bail — Grant of — Reasons/Findings — Recording of — Necessity — *Giving prima facie reasons for granting bail particularly where the accused is charged of having committed a serious offence, held, necessary — Order devoid of such reasons would suffer from non-application of mind — The court granting bail must indicate a prima facie finding on all points urged before it — On facts, non-consideration of vital facts as to allegations of threat or inducement made to witnesses by the accused, held, vitiated the conclusions arrived at by the High Court while granting bail*

While granting bail, the High Court did not advert to the complaint of the investigating agency as to the threat administered by the accused to the witnesses as also to the fact of a number of witnesses having turned hostile after the accused was enlarged on bail. Before the Supreme Court, the accused contended that though the High Court did not give a finding in regard to this aspect, it did bear in mind these factors and rejected these contentions since these allegations were frivolous. It was also submitted that the High Court was justified in not giving any conclusive finding in regard to some of the arguments because any such finding given by the High Court might have prejudiced the pending trial.

Held :

The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. Such expression of prima facie reasons for granting bail is a requirement of law in cases where such orders on bail application are appealable, more so because of the fact that the appellate court has every right to know the basis for granting the bail. Therefore, there can be no agreement with the argument that the High Court was not expected even to indicate a prima facie finding on all points urged before it while granting bail, more so in the background of the facts of this case where on facts it is established that a large number of witnesses who were examined after the accused was enlarged on bail had turned hostile and there are complaints made to the court as to the threats administered by the accused or his supporters to witnesses in the case. In such circumstances, the Court was duty-bound to apply its mind to the allegations put forth by the investigating agency and ought to have given at least a prima facie finding in regard to these allegations because they go to the very root of the right of the accused to seek bail. The non-consideration of these vital facts as to the allegations of threat or inducement made to the witnesses by the accused has vitiated the conclusions arrived at by the High Court while granting bail to the accused. (Paras 11 and 18). *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2004) 7 SCC 528: 2004 SCC (Cri) 1977: AIR 2004 SC 1866: 2004 Cri LJ 1796.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 12-3-2004]

Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124, followed

(6) Proper exercise of discretionary jurisdiction/disposal of bail application *(contd.)*

[6748] — S. 439 — A reasoned order is a requirement of law to be complied with in all appealable orders — *Grant of bail by High Court by reversing order of Sessions Court without assigning reasons as counsel for the parties did not press for a "reasoned order" — Held, not proper — Deprecating such practice, need for passing a reasoned order particularly where the appellate court is reversing the order of the lower court, emphasised — Bail — Grant of, by reversing the order of lower court without assigning reasons — Propriety of* (Para 10). *Omar Usman Chamadia* v. *Abdul*, (2004) 13 SCC 234: 2005 SCC (Cri) 157: AIR 2004 SC 1508: 2004 Cri LJ 1364.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 4-2-2004]

State of Punjab v. Jagdev Singh Talwandi, (1984) 1 SCC 596: 1984 SCC (Cri) 135, relied on

[6749] — S. 439 — Scope of exercise of power by High Court/Supreme Court — Appreciation of evidence — *High Court not granting bail — Prima facie findings by High Court or Supreme Court for grant of bail before completion of Sessions trial, held, would be improper as any expression would undoubtedly affect the trial — Penal Code, 1860 — S. 302 — Arms Act, 1959, Ss. 25 and 27*

It is for the trial court to consider and appreciate the evidence which comes before it in support of the plea of conspiracy and to arrive at the correct finding. It was an admitted position that the sessions trial had almost come to an end, and there were only few more witnesses to be examined. It would not have been proper for the Supreme Court/High Court hearing bail applications under Section 439 CrPC at that juncture to discuss about prima facie finding. It would not have been proper to discuss the evidence threadbare as any expression would undoubtedly have affected the trial. (Paras 12, 9 and 10). *Narayan Ghosh* v. *State of Orissa*, (2008) 3 SCC 693: (2008) 2 SCC (Cri) 723: AIR 2008 SC 1159: 2008 Cri LJ 1625.

Bench Strength **2**. Coram: *S.B. Sinha* and **V.S. Sirpurkar**, JJ. [Date of decision: 4-2-2008]

Jayendra Saraswathi Swamigal v. State of T.N., (2005) 2 SCC 13: 2005 SCC (Cri) 481, distinguished

[6750] — Ss. 439 and 437 — Bail — Grant of, by a cryptic order without taking into consideration the relevant circumstances, held, not proper — *Hence, order of High Court granting bail set aside — Matter remitted to High Court for consideration afresh — Penal Code, 1860, S. 302*

The impugned order is wholly cryptic and has not taken into consideration the relevant circumstances. (Para 7)

The impugned order only states that the contention of the accused is that their names and that of the deceased are not mentioned in the information given in the control room; the deceased was not taken to the hospital by his brother and about the nature of injuries. Attention has been drawn to the order of the Sessions Judge rejecting the bail applications, inter alia, noting therein that the accused are named in the first information report; the FIR was promptly lodged; and that the post-mortem report corroborates the prosecution story. It also notices that there are two eyewitnesses, who are named in the FIR, and the pendency of as many as ten cases against the accused. The Supreme Court would refrain from commenting on what is stated in the said order and hope that all relevant aspects would be considered by the High Court on re-examination of the bail applications. (Paras 6 and 8). *Ajay Kumar Sharma* v. *State of U.P.*, (2005) 7 SCC 507: 2005 SCC (Cri) 1702.

Bench Strength **3**. Coram: *Y.K. Sabharwal*, *B.N. Srikrishna* and *C.K. Thakker*, JJ. [Date of decision: 29-8-2005]

[6751] — S. 439 — Contempt of Supreme Court by High Court — Without good ground, High Court in breach of Supreme Court directions granting bail under S. 439 CrPC, held, would amount to contempt of Supreme Court — *Contempt of Courts Act, 1971, S. 2(b) — Constitution of India*, Arts. 129 and 144

The impugned judgment of the High Court granting bail to the respondent-accused is set aside. He should be taken into custody forthwith. Bail was granted by the High Court for no good reason except by saying that the appeal is not likely to be heard in six months. If bail is granted on such a ground then bail will have to be granted in almost every case, even when the offence is heinous. Such a view cannot be approved. (Paras 9 and 8)

Despite the clear direction in *Rajesh Ranjan Yadav case*, (2007) 1 SCC 70 that no further bail application of the accused shall be entertained, the High Court granted bail to the respondent-accused. Said order of the High Court amounts to contempt of order of the Supreme Court. (Para 6). *Rabindra Nath Singh* v. *Rajesh Ranjan*, (2010) 6 SCC 417.

Bench Strength **2**. Coram: *Markandey Katju* and *A.K. Patnaik*, JJ. [Date of decision: 3-5-2010]

Rajesh Ranjan Yadav v. CBI, (2007) 1 SCC 70: (2007) 1 SCC (Cri) 254, relied on

[6752] — S. 439 — Bail — Grant of — After denial by trial court, High Court granting bail must record reasons — *Held, where the trial court found material to establish a prima facie case against the respondent-accused and denied bail, High Court ought to at least briefly indicate reasons for reversing the trial court's findings and granting bail — Order of grant of bail by High Court set aside*

Since the trial court has assigned reasons for refusing bail which includes availability of material to establish prima facie case against the respondent-accused, and looking to the gravity of the offence as also the apprehension of the complainant as to the possibility of interference by the accused with the investigation and threat to the prosecution witnesses in the event of they being enlarged on bail, it would have been more appropriate if the High Court could have at least briefly indicated the reasons which it thought entitled the respondent-accused to bail. It may be that any strong expression of opinion in the nature of a finding in a bail application by the High Court though not binding on the trial court, could influence the mind of the trial court since such observation comes from the High Court, yet it is appropriate that some indication of the grounds on which the High Court rejected the findings recorded by the trial court, should have been reflected in the order by which the High Court reversed such findings. (Para 5). *Ghanchi Rubina Salimbhai* v. *Metubha Diwansingh Solanki*, (2003) 7 SCC 183: 2003 SCC (Cri) 1600: 2003 Cri LJ 3759.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *B.P. Singh*, JJ. [Date of decision: 24-7-2003]

(7) Temporary/Interim bail

See also under Section 437
See also Section 438

[6753] — S. 439 — In view of medical report and circumstances of case order of High Court granting interim bail to respondent quashed by Supreme Court — *High Court directed to dispose of bail application at a very early date and enable the respondent, if so required, to be available for operation — Constitution of India — Art. 136. S.K. Wadhera* v. *Rajinder Gautam*, 1990 Supp SCC 149: 1990 SCC (Cri) 635.

Bench Strength **3**. Coram: *R.S. Pathak, C.J.* and *S. Natarajan* and *M.N. Venkatachaliah*, JJ. [Date of decision: 7-4-1988]

[6754] — S. 439 — Grant of interim bail till final disposal of bail application — Power of Sessions Court in respect of, indicated by a seven-Judge Full Bench judgment in *Amarawati case*, 2005 Cri LJ 755 (All) — Ignorance of, by Sessions Courts of the State concerned (i.e. U.P.) — *Sessions Courts of the said State ignoring the said judgment and not granting interim bail pending disposal of the final bail application even in appropriate cases — Held [per Markandey Katju, J.], this was wholly improper — Hence, direction issued that* Amarawati case ***must be implemented in letter and spirit*** *by the Sessions Courts in the State concerned*

The decision of the seven-Judge Full Bench of the Allahabad High Court in *Amarawati case*, 2005 Cri LJ 755 (All) mentioned that the Sessions Judge while considering a bail application under Section 439 CrPC can grant interim bail till the final disposal of the bail application subsequently. This will enable innocent persons to avoid going to jail pending consideration of their bail application. However, despite the said judgment, the Sessions Courts in U.P. are ignoring that judgment and are not granting interim bail pending disposal of the final bail application even in appropriate cases. This is wholly improper. Decisions of the Supreme Court and the High Court must be respected and carried out by the subordinate courts punctually and faithfully. It is, therefore, directed that *Amarawati case* must be implemented in *letter and spirit* by the Sessions Courts in U.P. and in this connection the Registrar General of the Allahabad High Court will circulate letters to all the District Judges in U.P. along with a copy of this judgment to ensure faithful compliance with the said decision. (Paras 58 and 59). *Som Mittal* v. *Govt. of Karnataka*, (2008) 3 SCC 753: (2008) 1 SCC (L&S) 895: (2008) 2 SCC (Cri) 73: AIR 2008 SC 1126: (2008) 2 LLN 690: (2008) 65 AIC 187 (SC): 2008 Cri LJ 1610.

Bench Strength **2**. Coram: **H.K. Sema**[1] and **Markandey Katju**[2], JJ. [Date of decision: 29-1-2008]

Amarawati v. State of U.P., 2005 Cri LJ 755 (All), approved

[6755] — Ss. 439 and 438 — Interim bail — No allegation of non-cooperation on appellant's part and FIR lodged as far back as in January 2008 — *If investigations are still incomplete, the appellant held, would be entitled to interim bail till consideration of regular bail — If charge-sheet is filed, the appellant would surrender and his bail application would be considered in accordance with law — Constitution of India, Art. 136*

(7) Temporary/Interim bail *(contd.)*

Disposing of the appeal,

Held :

Having regard to the facts and circumstances of the case and bearing in mind the fact that FIR was lodged as far back as in January 2008 and so far no action has been taken against the appellant despite rejection of his prayer for anticipatory bail in July 2008, and further there is no allegation against him regarding non-cooperation in the investigation, the appeal is disposed of with the direction that in the event of filing of charge-sheet against the appellant and on being informed by the Public Prosecutor about the filing of charge-sheet, he shall surrender before the trial court and apply for regular bail. (Para 4)

The application of the appellant for grant of regular bail shall be considered in its correct perspective in accordance with law. However, if the investigations are still incomplete, in the event of his arrest he shall be admitted to bail on his furnishing a personal bond in the sum of Rs 20,000 with one surety in the like amount to the satisfaction of the investigating officer, which will continue to be in force till appropriate orders are passed on the appellant's application for regular bail. (Para 5). *Dalip Babulal Tapadia* v. *State of Maharashtra*, (2009) 16 SCC 714.

Bench Strength **2**. Coram: *D.K. Jain* and *R.M. Lodha*, JJ. [Date of decision: 9-4-2009]

[6756] — Ss. 439 and 437 — Interim bail — Grant of — Propriety — *Accused conspired in the siphoning off of the funds of a cooperative bank — He undertaking to deposit Rs 15 lakhs immediately and Rs 35 lakhs within six or eight months — He had been in jail for about 22 months — In these circumstances, held, accused to be released on interim bail for a period of six months — High Court to consider continuance of said bail, subject to further developments in the matter — Penal Code, 1860, Ss. 406, 420, 467 & 120-B — Constitution of India — Art. 136* (Para 3). *Babubhai Ratilal Patel* v. *State of Gujarat*, (2005) 12 SCC 536.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *B.N. Srikrishna*, JJ. [Date of decision: 5-8-2005]

[6757] — Ss. 439 and 437 — Short-term bail — Grant of — Impermissibility — *High Court granting accused bail for a period of 4 months on medical grounds and restricting it with a view to keep a watch over his future conduct and activities during the period — Held, if a case for release of the applicant on bail is not otherwise made out, he cannot be released on bail for a limited period only for keeping a watch over his future conduct and activities during the period — However on facts, Supreme Court declining to interfere with the order of High Court as bail was granted on medical grounds, the accused requiring frequent medical attention and freedom granted to him not misused during that period. State of U.P.* v. *Atique Ahmad*, (2002) 9 SCC 401: AIR 2002 SC 2435: 2002 Cri LJ 3238.

Bench Strength **2**. Coram: *D.P. Mohapatra* and *Shivaraj V. Patil*, JJ. [Date of decision: 11-10-2001]

(8) Successive/repeated bail applications

See also under Section 437

See also Section 439, '(15) Fresh consideration of application on remand', below

[6758] — S. 439 — Successive bail applications — Judgments of superior court rendered in a lis between same parties — Binding nature of — Supreme Court affirming order refusing bail on four occasions — *Further, by a reasoned order it cancelling the bail granted by High Court subsequently — High Court's approach in passing further order granting bail without taking note of the grounds on which the Supreme Court cancelled the bail earlier, held, was violative of the principle of binding nature of judgments of superior court rendered in a lis between the same parties — Constitution of India — Art. 141* (Para 20). *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2004) 7 SCC 528: 2004 SCC (Cri) 1977: AIR 2004 SC 1866: 2004 Cri LJ 1796.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 12-3-2004]

[6759] — S. 439 — Bail — Grant of — After denial by trial court, High Court granting bail must record reasons — *Held, where the trial court found material to establish a prima facie case against the respondent-accused and denied bail, High Court ought to at least briefly indicate reasons for reversing the trial court's findings and granting bail — Order of grant of bail by High Court set aside*

Since the trial court has assigned reasons for refusing bail which includes availability of material to establish prima facie case against the respondent-accused, and looking to the gravity of the offence as also the apprehension of the complainant as to the possibility of interference by the accused with the investigation and threat to the prosecution witnesses in the event of they being enlarged on bail, it would have been more appropriate if the High Court could have at least briefly indicated the reasons which it thought entitled the respondent-accused to bail. It may be that any strong expression of opinion in the nature of a finding in a bail application by the High Court though not binding on the trial court, could influence the mind of the trial court since such observation comes from the High Court, yet it is appropriate that some indication of the grounds on which the High Court rejected the findings recorded by the trial court, should have been reflected in the order by which the High Court reversed such findings. (Para 5). *Ghanchi Rubina Salimbhai* v. *Metubha Diwansingh Solanki*, (2003) 7 SCC 183: 2003 SCC (Cri) 1600: 2003 Cri LJ 3759.

Bench Strength 2. Coram: *N. Santosh Hegde* and *B.P. Singh*, JJ. [Date of decision: 24-7-2003]

[6760] — S. 439 — Bail — Interference by a Bench of High Court with an order of grant or rejection of bail passed by a coordinate Bench of same court — Propriety — *Long-standing convention and requirements of judicial discipline in such matters restated — Where, on facts, bail was granted to appellant by a Single Judge of High Court, cancellation of it by the other Single Judge on subsequent application of the State, held, was not appropriate — Proper remedy for the party aggrieved by the decision of a High Court Bench is either to approach the appropriate higher forum or to place the matter before the same Judge who made the said decision — Constitution of India — Art. 226*

Accused-appellant was released on bail by a Single Judge of the High Court. On a subsequent application moved by the State, bail of the appellant was cancelled by the other Single Judge of the same High Court. The appellant herein challenged the said interference with the decision of a coordinate Bench by the other Judge of the High Court.

Allowing the appeal,

Held :

It was not open to the other Judge of the High Court to sit in appeal against the order passed by another coordinate Bench of the same Court. If the accused had obtained the bail order by misrepresentation or by suppression of facts, it was open for the State Government either to approach the appropriate higher forum or to place the matter before the same Judge. (Para 8)

The long-standing convention and judicial discipline require that subsequent application for grant or rejection of bail should be placed before the same Judge who had passed earlier orders. Placing of such matter before the same Judge has its roots in principle as it prevents abuse of process of court inasmuch as an impression is not created that a litigant is shunning or selecting a court depending on whether the court is to his liking or not. Said practice also prevents the filing of subsequent applications without any new factor having been cropped up. Disposal of successive bail applications on the same subject by different Judges, if permitted, would lead to conflicting orders. (Para 9). *Harjeet Singh* v. *State of Punjab*, (2002) 1 SCC 649: 2002 SCC (Cri) 225: AIR 2002 SC 281: 2002 Cri LJ 571: (2002) 1 CHN (Supp) 127.

Bench Strength 2. Coram: **M.B. Shah** and *B.N. Agrawal*, JJ. [Date of decision: 6-12-2001]

Shahzad Hasan Khan v. Ishtiaq Hasan Khan, (1987) 2 SCC 684: 1987 SCC (Cri) 415, followed

Vikramjit Singh v. State of M.P., 1992 Supp (3) SCC 62: 1992 SCC (Cri) 964, relied on

[6761] — Ss. 439 & 437 — Successive bail applications — Maintainability — Existence of changed circumstances — *No change in circumstances under which initial bail application rejected, except the fact that accused had undergone a further period in custody — Hence, appeal filed against order of High Court rejecting the prayer for bail, held, could not be entertained* (Para 71). *Jamiruddin Ansari* v. *CBI*, (2009) 6 SCC 316.

Bench Strength 2. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 6-5-2009]

[6762] — S. 439 — Bail — Rejection — Fresh bail application — Maintainability — *Earlier rejections, held, would not render fresh bail application legally not maintainable — Court can always consider fresh circumstances and subsequent events* (Para 2). *Parvinder Singh* v. *State of Punjab*, (2003) 12 SCC 615.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *B.N. Agrawal*, JJ. [Date of decision: 24-11-2003]

[6763] — S. 439 — Bail — Rejection — Fresh bail application — Maintainability — *Fact that SLP filed before Supreme Court against an earlier order of the High Court rejecting bail was dismissed as withdrawn, held, would not make the fresh bail application legally not maintainable — High Court can always consider fresh circumstances and subsequent events* (Para 2). *Parvinder Singh* v. *State of Punjab*, (2003) 12 SCC 615.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *B.N. Agrawal*, JJ. [Date of decision: 24-12-2003]

[6764] — S. 439 — Bail — Rejection of earlier bail applications — Subsequent applications for grant of bail — *Duty of court while dealing with, held, is to consider the reasons and grounds on which the earlier bail applications were rejected and record the fresh grounds which persuade it to*

(8) Successive/repeated bail applications *(contd.)*

take a view different from the one taken in the earlier applications — On facts, no such fresh ground recorded by the High Court while granting bail on subsequent application — High Court's order set aside — Constitution of India — Art. 136. Kalyan Chandra Sarkar v. *Rajesh Ranjan*, (2004) 7 SCC 528: 2004 SCC (Cri) 1977: AIR 2004 SC 1866: 2004 Cri LJ 1796.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 12-3-2004]

Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688, relied on

[6765] — Ss. 439 and 446-A — Cancellation of bail by High Court — Coordinate Benches deciding differently in case of co-accused — *While one bench of the High Court directing the appellant to be released on bail, another bench while considering bail application of another accused observing that the accused persons did not deserve to be enlarged on bail and that these were fit cases where State should apply for cancellation of bail — Accordingly State filing application for cancellation of bail of the accused persons including the appellant for cancellation of their bail quoting the observations of the bench without stating any additional facts or allegations relevant for such cancellation — Application listed before the same bench which had made the observations and the bench by its impugned order cancelling the bail — Held, the bench had no authority to disturb the earlier order of co-ordinate bench of the High Court*

The latter bench had no authority to upset the earlier order of the High Court. The judgment of the earlier bench had became final so far the High Court was concerned. If the appellant had misused the bail or new materials came to light, it would have been open to the prosecution to move for cancellation, but that is not the position in the present case. On the basis of the same materials and in the same circumstances in which the order was earlier passed in favour of the appellant by the High Court, the application for cancellation was made entirely as a sequel of the observations made by the latter bench while dealing with the application of another accused.

No bench can comment on the functioning of a co-ordinate bench of the same court, much less sit in judgment as an appellate court over its decision. That which could not be done directly could also not be done indirectly. Otherwise, a party aggrieved by an order passed by one bench of the High Court would be tempted to attempt to get the matter reopened before another bench, and there would not be any end to such attempts. Besides, it was not consistent with the judicial discipline which must be maintained by courts both in the interest of administration of justice by assuring the binding nature of an order which becomes final, and the faith of the people in the judiciary. *Vikramjit Singh* v. *State of M.P.*, 1992 Supp (3) SCC 62: 1992 SCC (Cri) 964: AIR 1992 SC 474: 1992 Cri LJ 516.

Bench Strength 2. Coram: *L.M. Sharma* and *J.S. Verma*, JJ. [Date of decision: 10-9-1991]

[6766] — S. 439 — Bail refused by a Judge of High Court — Subsequently accused moving another application for bail on ground of serious illness of his wife disclosing therein refusal of his previous application — *Another Judge of the High Court granting provisional bail on that application — Judge who had earlier refused bail, suo motu causing the matter to be placed before him and cancelling the provisional bail order without any application being moved in that behalf by Public Prosecutor or Government counsel, without granting short adjournment prayed for by accused's counsel for obtaining accused's instructions and without issuing any show-cause notice to the Public Prosecutor or to the Government — Held, action bad and inconsistent with the high office of High Court Judge. Dara Gaddi* v. *State of Bihar*, (1986) 4 SCC 564: 1986 SCC (Cri) 543.

Bench Strength 2. Coram: *P.N. Bhagwati*, *C.J.* and *Ranganath Misra*, J. [Date of decision: 3-9-1986]

(9) Conditions for bail

[6767] — S. 439 — Condition for granting bail should not be so excessively onerous as to amount to denial of bail itself — *In such case Supreme Court can modify the conditions under Art. 136 — Constitution of India — Art. 136. Keshab Narayan Banerjee* v. *State of Bihar*, AIR 1985 SC 1666.

Bench Strength 1. Coram: *E.S. Venkataramiah*, J. [Date of decision: 11-7-1984]

[6768] — S. 439 — Conditional release on bail — *Offence under Ss. 463, 467, 461, 419 r/w S. 120-B IPC — Accused in custody for about 1 year — Charge-sheet filed — Having regard to the fact that the trial may take long time, Supreme Court releasing accused on bail imposing certain conditions on him due to the alleged links he had with international terrorists — Penal Code, 1860, Ss. 463, 467, 461, 419 r/w S. 120-B. Mehmood Mohd. Sayeed* v. *State of Maharashtra*, (2002) 10 SCC 677: 2004 SCC (Cri) 1144: AIR 2002 SC 482.

Bench Strength 2. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 16-2-2001]

[6769] — Ss. 439 and 437 — Imposition of conditions while granting bail — Condition to pay Rs 5 lakhs to complainant — Propriety of — *Forbidding the High Court from imposing such a condition, High Court directed to consider the matter of grant of bail afresh — Constitution of India — Art. 136* (Para 6). *Geetha* v. *State of T.N.*, (2005) 12 SCC 203.

Bench Strength 2. Coram: *B.P. Singh* and *Arun Kumar*, JJ. [Date of decision: 11-4-2005]

(10) Matters at large/Orders/Directions that may be passed

[6770] — S. 439 — Bail — Right of appellant to pray for, as and when he intends to — High Court cannot debar him from exercising his right for any period (one year in this case) — *High Court may or may not entertain the bail petition but it cannot prevent an accused from seeking him release on bail. Manjoor Khan* v. *State of Bihar*, (1998) 8 SCC 368: 1998 SCC (Cri) 1541.

Bench Strength 2. Coram: *M.K. Mukherjee* and *K.T. Thomas*, JJ. [Date of decision: 19-8-1997]

[6771] — S. 439 — Direction by the High Court to the Sessions Judge not to entertain any bail application of appellant — Propriety of — *High Court, while disposing of the matter in habeas corpus petition, ordering that no application for bail was to be entertained by the Sessions Judge or any other court except the High Court or the Apex Court — The jurisdiction of a Sessions Judge under CrPC to entertain a bail application and dispose of it in accordance with law, held, cannot be taken away by the High Court — Irrespective of the facts, the right of an accused to move an application for bail cannot be curtailed in the manner as done in this case. Shankar Lal* v. *State of Rajasthan*, (2002) 7 SCC 735: 2002 SCC (Cri) 1859.

Bench Strength 2. Coram: *G.B. Pattanaik* and *K.G. Balakrishnan*, JJ. [Date of decision: 16-8-2002]

[6772] — S. 439 — Once bail is refused, Magistrate, held, not entitled to stay issuance of non-bailable warrant to enable the accused to move to higher court — *CrPC, 1898, S. 498. Niranjan Singh* v. *Prabhakar Rajaram Kharote*, (1980) 2 SCC 559: 1980 SCC (Cri) 508: AIR 1980 SC 785: 1980 Cri LJ 426: 1980 MLJ (Cri) 573.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *A.P. Sen*, JJ. [Date of decision: 10-3-1980]

[6773] — Ss. 439 and 437 — Bail — Improper observations made by High Court in order rejecting bail regarding the nature of offence — Expunction of — *Police filing final report under S. 174 CrPC alleging that offences under Ss. 304-A and 498-A IPC were made out — High Court vide impugned order making observations that material on record indicated that torture was being committed and it was not a case under S. 304-A but a case under S. 302 IPC and, therefore, it declining to grant bail — Held, High Court should not have made such passing observation — Matter should have been left to the appropriate court to take any decision on the materials produced before it — If the superior courts make any such observation the subordinate courts would be unduly swayed by it and may implicitly take certain decision without there being any proper application of mind — Hence, the aforesaid observations deleted — As regards bail, appellant directed to approach the High Court by way of a fresh application* (Paras 4 to 6). *Hitesh Verma* v. *State of Jharkhand*, (2005) 13 SCC 174: (2006) 2 SCC (Cri) 133.

Bench Strength 2. Coram: *K.G. Balakrishnan* and *P.P. Naolekar*, JJ. [Date of decision: 30-9-2005]

[6774] — Ss. 439 and 438 — Bail application — Matter/Claim which cannot be adjudicated therein — Cheating and conspiracy — *Allegation that accused obtained money from complainants for sending them abroad — N (one of the accused) depositing in court the amount claimed in complaint to show his bona fides for the purpose of obtaining bail — Amount deposited was to be paid to complainants only on settlement between the parties — No settlement arrived at — Nature of claim, a civil dispute — Held, the High Court erred in allowing complainants' application filed in bail petition of the appellants (accused other than N) whereby they sought disbursement of the said amount to them — In a bail application, it could not have adjudicated upon the rights between the parties in regard to the amount in deposit — Impugned directions might also prejudice the defence of the accused — Amount in question directed to be kept in interest-bearing account till appropriate orders were passed by the competent court in this regard — Penal Code, 1860, Ss. 420 and 120-*B

While accepting the deposit, the Magistrate had made it clear that the amount in question would be paid to the complainants only if a settlement is arrived at. He had also directed that in the event of no settlement being arrived at within the time stipulated in his order the amount in question should be kept in interest-bearing deposit. The fact that there was no settlement between the parties is not in dispute. Even an attempt to settle the dispute through the Lok Adalat has failed. Therefore, the claim of the complainants for the amount in deposit being in the nature of a civil dispute, the High Court ought not to have directed the payment. The High Court in a bail application could not have adjudicated upon the rights between the parties in regard to the amount in deposit and the impugned directions might also prejudice the defence of the accused. Hence, the impugned orders are set aside. The amount in question be kept in interest-bearing deposit in a nationalised bank till such time as appropriate orders are passed by the competent court in this regard. (Paras 12, 13 and 15) . *Jagtar Singh* v. *State of Punjab*, (2004) 13 SCC 289: 2005 SCC (Cri) 208.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 17-9-2004]

(11) Cancellation of bail

See also under Section 437

[6775] — Ss. 439 and 437 — Grant/cancellation of bail — Consideration — If different — *Held, different considerations have to be weighed while dealing with applications for cancellation of bail and for grant of bail respectively* (Para 4). *Ramcharan* v. *State of M.P.*, (2004) 13 SCC 617.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *H.K. Sema*, JJ. [Date of decision: 3-3-2003]

[6776] — Ss. 439 and 389 — Bail — Cancellation of — Considerations involved — Appeal filed against acquittal — Cancellation of bail pending the appeal — Impropriety — *On appeal being filed by State against acquittal of the accused conditional bail granted to accused — Cancellation of bail, arrest of accused and confinement in custody ordered by High Court on violation of condition imposed for grant of bail — Application for condonation of said violation and grant of bail also rejected by impugned order — Propriety — Held, effect of impugned order is that despite acquittal, respondent remained in jail for six months — This itself shows that said order cannot be sustained by any reasoning* (Para 2). *Sitaram* v. *State of Chhattisgarh*, (2004) 13 SCC 672.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 9-8-2004]

[6777] — S. 439 — Bail — Cancellation of — Parameters regarding grant/cancellation of bail, restated — *Only because co-accused did not actually oppose prayer for cancellation of bail, held, could not be a ground to cancel bail — Penal Code, 1860, Ss. 307/34* (Paras 5 and 6). *Ram Babu Tiwari* v. *State of M.P.*, (2009) 12 SCC 471.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 24-4-2009]

Dinesh M.N. (S.P.) v. State of Gujarat, (2008) 5 SCC 66: (2008) 2 SCC (Cri) 508, relied on

[6778] — S. 439 — Bail — Cancellation of — Nature and exercise of judicial discretion in matters of — Principles to be considered — *Respondent released on bail on furnishing of surety — Bail of respondent cancelled by High Court for non-appearance at time of hearing of bail application and for threatening appellant and violation of conditions of bail — Whether on facts warranted — Held, cancellation of bail should not be done in a routine manner — Where it appears to the superior court inter alia that the court granting bail acted on irrelevant materials or there was non-application of mind or where court does not take note of any statutory bar to grant of bail, order for cancellation of bail can be made — These circumstances are illustrative and not exhaustive — Court considering the application for cancellation of bail has to take note of all relevant aspects — Single Judge did not give any reasons for the cancellation and seems to have taken exception for non-appearance of the appellant at the time of hearing of the application for cancellation of bail — The reason for non-appearance has been explained by the respondent — It is also true that in the order granting bail there was no specific stipulation of any condition — Hence question of its violation did not arise — Furthermore, considering the nature of injuries allegedly caused by the respondent — Matter therefore remanded to High Court for fresh consideration* (Paras 4 and 7). *Rizwan Akbar Hussain Syyed* v. *Mehmood Hussain*, (2007) 10 SCC 368: (2007) 3 SCC (Cri) 598: (2007) 56 AIC 248 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 18-5-2007]

[6779] — S. 439 — Cancellation of bail — Grounds for — High Court cancelling bail granted by Sessions Court on the ground that the accused had simultaneously made application for bail to the High Court and this was not disclosed to the Sessions Court — *Bail restored as there was no allegation of interference with the course of justice. Mohan Singh* v. *UT, Chandigarh*, (1978) 2 SCC 366: 1978 SCC (Cri) 190: AIR 1978 SC 1095: 1978 Cri LJ 844.

Bench Strength **3**. Coram: *V.R. Krishna Iyer, Jaswant Singh* and *R.S. Pathak*, JJ. [Date of decision: 20-2-1978]

[6780] — S. 439 — Irrelevant materials considered — Cancellation of bail on ground of — *Held, though reappreciation of the evidence as done by the court granting bail is to be avoided, the court dealing with an application for cancellation of bail under S. 439(2) can consider whether irrelevant materials were taken into consideration* *because it is not known as to what extent the irrelevant materials weighed with the court for accepting the prayer for bail — However, the irrelevant material so considered which adds to the vulnerability of the bail order should be of a substantial nature and not a trivial nature* (Paras 10 to 12). *Manjit Prakash* v. *Shobha Devi*, (2009) 13 SCC 785: AIR 2008 SC 3032: (2008) 68 AIC 107 (SC): 2008 Cri LJ 3908.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *H.S. Bedi*, JJ. [Date of decision: 18-7-2008]

Mehboob Dawood Shaikh v. State of Maharashtra, (2004) 2 SCC 362: 2004 SCC (Cri) 551; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977; Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124, relied on

[6781] — S. 439 — Cancellation of bail — When warranted — Murder case — Husband, wife and others involved — *Bail of husband cancelled on ground of interfering with the investigation and threatening witnesses — Wife's bail also cancelled since she would then do the same*

In this case the High Court has failed to deal with the vast material placed by CBI which clearly indicated that the accused has, at all material times, tried to interfere with the course of investigation, tamper with witnesses, fabricate evidence, intimidate or create obstacles in the path of investigation officers and derail the case. The High Court granted bail being of the opinion that the extra-judicial confession given by *R* may not stand the test of scrutiny by a judicial mind but that by itself was not sufficient to grant the bail. There is voluminous evidence collected by CBI to show the involvement of *AT* in crime, and his effort to interfere with the investigation of the case before the grant of bail and also after the grant of bail. He tried to change the course of investigation by creating false evidence of the marriage of *M* with one *AM*. *AT* after his release on bail tried to threaten as well as win over sister of the deceased and her mother by offering bribe. The police officers who refused to toe the line of *AT* were transferred at his instance. It is also not in dispute that *AT* was on bail in a kidnapping case, when he indulged in the activities in question. Therefore, the High Court gravely erred in granting bail to *AT* in such circumstances. (Paras 26, 31 and 24)

The position of *MT* is somewhat different from the case of her husband *AT*. While *AT* is a politician and ex-Minister, *MT* is no doubt a housewife. In comparison to *AT*, there is no record of criminal cases against *MT* and there is nothing to show that she made any attempt to tamper with the evidence. But there is material to show that she had absconded for several months and surrendered only when bail was refused to her husband on the ground that she was absconding. Further, when the matter is considered in its entirety, with reference to the murder of *M* and the propensity of *AT* and *MT* to pressurise and persuade others to act according to their wishes, there is reasonable ground for apprehension that if *AT* alone is taken into custody; leaving *MT* to remain outside, *MT* may take over the task of tampering with the evidence and manipulating/threatening witnesses. Therefore, interference is called for even in regard to the bail granted to *MT*. (Para 32)

Hence, the High Court's order is set aside. The bail bonds of the respondents *AT* and *MT* are cancelled. (Para 33). *State of U.P.* v. *Amarmani Tripathi*, (2005) 8 SCC 21: 2005 SCC (Cri) 1960 (2): AIR 2005 SC 3490: (2005) 123 DLT 362: 2005 Cri LJ 4149.

Bench Strength 2. Coram: **Ashok Bhan** and *R.V. Raveendran*, JJ. [Date of decision: 26-9-2005]

Dolat Ram v. State of Haryana, (1995) 1 SCC 349: 1995 SCC (Cri) 237; Samarendra Nath Bhattacharjee v. State of W.B., (2004) 11 SCC 165: 2004 SCC (Cri) Supp 7, explained and distinguished

[6782] — Ss. 439, 437 and 389 — Cancellation of bail — Grounds — Held, bail can be cancelled on existence of cogent and overwhelming circumstances but not on reappreciation of the facts of the case — *Hence, in the absence of any supervening circumstances which might warrant recalling of the order which granted bail, suo motu cancellation of bail by the High Court merely on the ground that the bail order was passed on some misapprehension of factual position, held, not sustainable* (Paras 4 and 5). *Ramcharan* v. *State of M.P.*, (2004) 13 SCC 617.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *H.K. Sema*, JJ. [Date of decision: 3-3-2003]

Dolat Ram v. State of Haryana, (1995) 1 SCC 349: 1995 SCC (Cri) 237, relied on

[6783] — Ss. 439 & 437 — Cancellation of bail, by Supreme Court — When justified — *Where basic requirements necessary for grant of bail are completely ignored by High Court, held, Supreme Court would be justified in cancelling the bail — Constitution of India — Art. 136* (Para 24). *Gobarbhai Naranbhai Singala* v. *State of Gujarat*, (2008) 3 SCC 775: (2008) 2 SCC (Cri) 743: AIR 2008 SC 1134: (2008) 3 Guj LR 2192: 2008 Cri LJ 1618.

Bench Strength 2. Coram: **Ashok Bhan** and *Altamas Kabir*, JJ. [Date of decision: 29-1-2008]

[6784] — Ss. 439 & 437 — Cancellation of bail by Supreme Court — Bail — Scope of interference — General rule and exceptions — *Held, the general rule that the Supreme Court will not ordinarily interfere in matters relating to bail, is subject to*

(11) Cancellation of bail *(contd.)*

*exceptions where there are special circumstances and when the basic requirements for grant of bail are completely ignored by the High Court — **AT**, a politician and ex-Minister, and his wife **MT** along with others hatching conspiracy to commit murder in question — Grant of bail by High Court to **AT** and **MT** merely on ground that extra-judicial confession made by co-accused implicating them in crime was inadmissible in evidence, held, not proper — Material on record disclosing prima facie existence of the aforesaid conspiracy — **AT** from the day of murder trying to interfere, detract and mislead the investigation and to threaten and coerce witnesses — Reasonable ground for apprehension that the wife **MT**, if not taken in custody, might take over the task of tampering with the evidence and manipulating/threatening witnesses — Therefore held, it was necessary to interfere with High Court's order — Evidence Act, 1872, S. 24 — Constitution of India — Art. 136*

One *M* was shot dead in her house by two persons. Investigation in the case revealed that *M* was killed pursuant to a conspiracy involving *AT* (a politician and ex-Minister) and his wife *MT*.

The prosecution alleged that *AT* was having an affair with *M*. This led to *M*'s pregnancy thrice. On the first two occasions, the pregnancy was aborted at the instance of *AT*. On the third occasion, in spite of pressure and persuasion by *AT*, *M* refused to abort the pregnancy. The post-mortem revealed a six-month-old foetus in her womb. The DNA test of the foetus established the paternity of *AT*.

MT was upset when she learnt about the illicit intimacy between *AT* and *M*. She made several calls to the deceased and her family members to threaten and abuse them. Later, she informed *R* (cousin of *AT*) that she was troubled by her husband's relationship with *M* and requested him to help her to teach a "lesson" to *M*. *R* contacted one *S* and hired him for committing the murder of *M*. *MT* asked *S* to finish *M* at any cost. *AT* told *R* that *M* must be eliminated in such a manner that his name must not be linked to that incident. On 9-5-2003, *S* along with one *P* went to the house of *M* and shot her with a country-made pistol (*katta*) from close range, resulting in her death.

The facts disclosed that *AT* was interfering with the investigation, by trying to sidetrack it and mislead the police into a false trail, planting false stories in the media, creating false evidence and threatening witnesses either directly or by using the police. He even managed to get the police officers (including an officer of the rank of SSP) who were not toeing his line, transferred. *MT* surrendered before the court when the bail application of her husband was rejected on the ground that she was absconding.

Despite the said facts and circumstances, the High Court granted bail to *AT* and *MT*. Hence the present appeals by the State.

Held :

The general rule that the Supreme Court will not ordinarily interfere in matters relating to bail, is subject to exceptions where there are special circumstances and when the basic requirements for grant of bail are completely ignored by the High Court. (Para 21)

The matters to be considered in an application for bail are (*i*) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (*ii*) nature and gravity of the charge; (*iii*) severity of the punishment in the event of conviction; (*iv*) danger of the accused absconding or fleeing, if released on bail; (*v*) character, behaviour, means, position and standing of the accused; (*vi*) likelihood of the offence being repeated; (*vii*) reasonable apprehension of the witnesses being tampered with; and (*viii*) danger, of course, of justice being thwarted by grant of bail. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. (Para 18)

In this case the High Court has failed to deal with the vast material placed by CBI which clearly indicated that the accused has, at all material times, tried to interfere with the course of investigation, tamper with witnesses, fabricate evidence, intimidate or create obstacles in the path of investigation officers and derail the case. The High Court granted bail being of the opinion that the extra-judicial confession given by *R* may not stand the test of scrutiny by a judicial mind but that by itself was not sufficient to grant the bail. There is voluminous evidence collected by CBI to show the involvement of *AT* in crime, and his effort to interfere with the investigation of the case before the grant of bail and also after the grant of bail. He tried to change the course of investigation by creating false evidence of the marriage of *M* with one *AM*. *AT* after his release on bail tried to threaten as well as win over sister of the deceased and her mother by offering bribe. The police officers who refused to toe the line of *AT* were transferred at his instance. It is also not in dispute that *AT* was on bail in a kidnapping case, when he indulged in the activities in question. Therefore, the High Court gravely erred in granting bail to *AT* in such circumstances. (Paras 26, 31 and 24). *State of U.P.* v. *Amarmani Tripathi*, (2005) 8 SCC 21: 2005 SCC (Cri) 1960 (2): AIR 2005 SC 3490: (2005) 123 DLT 362: 2005 Cri LJ 4149.

Bench Strength **2**. Coram: **Ashok Bhan** and *R.V. Raveendran*, JJ. [Date of decision: 26-9-2005]

Pawan v. Ram Prakash Pandey, (2002) 9 SCC 166: 2003 SCC (Cri) 1110; Ram Pratap Yadav v. Mitra Sen Yadav, (2003) 1 SCC 15: 2003 SCC (Cri) 1; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977; Prahlad Singh Bhati v. NCT, Delhi, (2001) 4 SCC 280: 2001 SCC (Cri) 674; Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118: 1978 SCC (Cri) 41; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977, relied on

[6785] — Ss. 439 and 446-A — Cancellation of bail by High Court — Coordinate Benches deciding differently in case of co-accused — *While one bench of the High Court directing the appellant to be released on bail, another bench while considering bail application of another accused observing that the accused persons did not deserve to be enlarged on bail and that these were fit cases where State should apply for cancellation of bail — Accordingly State filing application for cancellation of bail of the accused persons including the appellant for cancellation of their bail quoting the observations of the bench without stating any additional facts or allegations relevant for such cancellation — Application listed before the same bench which had made the observations and the bench by its impugned order cancelling the bail — Held, the bench had no authority to disturb the earlier order of co-ordinate bench of the High Court*

The latter bench had no authority to upset the earlier order of the High Court. The judgment of the earlier bench had became final so far the High Court was concerned. If the appellant had misused the bail or new materials came to light, it would have been open to the prosecution to move for cancellation, but that is not the position in the present case. On the basis of the same materials and in the same circumstances in which the order was earlier passed in favour of the appellant by the High Court, the application for cancellation was made entirely as a sequel of the observations made by the latter bench while dealing with the application of another accused.

No bench can comment on the functioning of a co-ordinate bench of the same court, much less sit in judgment as an appellate court over its decision. That which could not be done directly could also not be done indirectly. Otherwise, a party aggrieved by an order passed by one bench of the High Court would be tempted to attempt to get the matter reopened before another bench, and there would not be any end to such attempts. Besides, it was not consistent with the judicial discipline which must be maintained by courts both in the interest of administration of justice by assuring the binding nature of an order which becomes final, and the faith of the people in the judiciary. *Vikramjit Singh* v. *State of M.P.*, 1992 Supp (3) SCC 62: 1992 SCC (Cri) 964: AIR 1992 SC 474: 1992 Cri LJ 516.

Bench Strength **2**. Coram: *L.M. Sharma* and *J.S. Verma*, JJ. [Date of decision: 10-9-1991]

[6786] — S. 439 — Bail — Grant of, by High Court — Cancellation by Supreme Court — *Several cases involving serious offences already pending against accused — Some of them committed while on bail in other cases — Offences in question also committed while on bail — Bail granted in one of the earlier cases cancelled by Sessions Court on the ground of violation of conditions of bail — Considering the above facts and the nature of allegation and weapon used in the crime in question, held, it was a fit case to cancel the bail* (Para 9). *Omar Usman Chamadia* v. *Abdul*, (2004) 13 SCC 234: 2005 SCC (Cri) 157: AIR 2004 SC 1508: 2004 Cri LJ 1364.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 4-2-2004]

***Followed** in Deepak Singchi v. State of Rajasthan, (2007) 14 SCC 583*

[6787] — Ss. 439(2) and 437 — Bail — Cancellation of — Ingredients to be considered by superior court while exercising discretion in matters of — *Held, if a superior court finds that court granting bail had acted on irrelevant material, or if there was non-application of mind or failure to take note of any statutory bar to grant bail, or if there was manifest impropriety e.g. failure to hear Public Prosecutor/complainant where required, order for cancellation of bail can be made* (Para 16). *Subodh Kumar Yadav* v. *State of Bihar*, (2009) 14 SCC 638: (2009) 80 AIC 74 (SC).

Bench Strength **2**. Coram: *R.V. Raveendran* and **J.M. Panchal**, JJ. [Date of decision: 15-7-2009]

Gajanand Agarwal v. State of Orissa, (2006) 12 SCC 131: (2007) 1 SCC (Cri) 568; Rizwan Akbar Hussain Syyed v. Mehmood Hussain, (2007) 10 SCC 368: (2007) 3 SCC (Cri) 598, relied on

[6788] — S. 439(2) — Applicability — Held, application for cancellation of bail must be premised on the factors envisaged under S. 439(2) — *On facts, held, High Court committed a manifest illegality in directing cancellation of bail of appellants — Metropolitan Magistrate in passing the*

(11) Cancellation of bail *(contd.)*

order while granting bail had taken into consideration all the relevant factors — He imposed a fine on appellants — Even the passports were surrendered — Application for cancellation of bail was filed by S, wife, on a misstatement that the passports had not been surrendered — Various contentions, in regard to purported suffering of the wife was taken into consideration which were wholly irrelevant (Paras 37 and 38). *Vimlaben Ajitbhai Patel* v. *Vatslaben Ashokbhai Patel*, (2008) 4 SCC 649: AIR 2008 SC 2675: (2008) 65 AIC 38 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 14-3-2008]

Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118: 1978 SCC (Cri) 41; Bhagirathsinh v. State of Gujarat, (1984) 1 SCC 284: 1984 SCC (Cri) 63; Jayendra Saraswathi Swamigal v. State of T.N., (2005) 2 SCC 13: 2005 SCC (Cri) 481; Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259, relied on

[6789] — S. 439(2) — Bail — Cancellation — Right of third parties to invoke suo motu power of High Court for — High Court has power to direct arrest of a person who had earlier been released on bail by the same High Court on judicial consideration and to commit him to custody — Held, power can also be exercised by High Court suo motu — *Hence any member of the public can maintain a petition before the High Court reminding it of the need to exercise its suo motu power in a particular case — Where on Single Judge of High Court having granted bail to certain persons, a group of practising advocates presented petitions before Chief Justice of the High Court seeking initiation of suo motu proceedings for cancellation of bail by posting the petitions before a Division Bench of the High Court and accordingly the matter was placed before a Division Bench, held, the Division Bench erred in refusing to exercise its suo motu power on the ground that the petition submitted by the advocates was not maintainable*

The frame of sub-section (2) of Section 439 indicates that it is a power conferred on the said courts. Exercise of that power is not banned on the premise that bail was earlier granted by the High Court on judicial consideration. In fact the power can be exercised only in respect of a person who was released on bail by an order already passed. There is nothing to indicate that the said power can be exercised only if the State or investigating agency or even a Public Prosecutor moves for it by a petition. The power so vested in the High Court can be invoked either by the State or by any aggrieved party. The said power can also be exercised suo motu by the High Court. If so, any member of the public, whether he belongs to any particular profession or otherwise, who has a concern in the matter can move the High Court to remind it of the need to invoke the said power suo motu. There is no barrier either in Section 439 of the Code or in any other law which inhibits a person from moving the High Court to have such powers exercised suo motu. If the High Court considers that there is no need to cancel the bail for the reasons stated in such petition, after making such considerations it is open to the High Court to dismiss the petition. If that is the position, it is also open to the High Court to cancel the bail if the High Court feels that the reasons stated in the petition are sufficient enough for doing so. It is, therefore, improper to refuse to look into the matter on the premise that such a petition is not maintainable in law. (Para 8)

Every matter to be decided by a High Court is normally decided by a two-Judge Bench of the High Court. For achieving expediency in disposal of cases, statutes have provided that certain categories of cases can be heard and disposed of by Single Judges of the High Court. But it must be pointed out that all matters which can be heard and decided by a Single Judge, can as well be heard and decided by a Division Bench but not vice versa, subject to statutory restrictions passed by the legislature. It is the prerogative of the Chief Justice of a High Court to allot cases to different Judges of the High Court for disposal, subject to such statutory provisions. (Para 9)

Though the aforesaid position has not been deviated from by the Division Bench of the Madras High Court it is necessary to remind all concerned of the legal principles involving the prerogative of a Chief Justice. The Division Bench has gone wrong in holding that the petition submitted by the advocates concerned was not maintainable at all. Refusing to exercise the suo motu powers contemplated in Section 439(2) cannot be on such a fallacious premise. The Division Bench ought to have considered the petitions on merits. (Para 11). *R. Rathinam* v. *State*, (2000) 2 SCC 391: 2000 SCC (Cri) 958: AIR 2000 SC 1851.

Bench Strength **2**. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 8-2-2000]

State of Rajasthan v. Prakash Chand, (1998) 1 SCC 1, relied on

[6790] — S. 439(2) — Bail — Cancellation of — *Cancellation of bail by Sessions Judge after taking into consideration all the relevant facts and coming to the conclusion that cancellation of bail was necessary in order to maintain terror-free atmosphere during the proceedings — High Court not justified in interfering with order of the Sessions Judge. Sant Ram* v. *State of Haryana*, 1994 Supp (2) SCC 205: 1994 SCC (Cri) 1217.

Bench Strength **2**. Coram: *P.B. Sawant* and *Yogeshwar Dayal*, JJ. [Date of decision: 30-11-1993]

[6791] — S. 439(2) — Bail — Cancellation of — Held, not to be lightly resorted to — Conditions in which bail can be cancelled, restated — *On facts, accused-appellant threatening the witnesses in court premises with dire consequences — Case registered in respect thereof under S. 188 IPC — Affidavit filed by Police Inspector concerned stating the said facts — Nothing urged by way of reply to the affidavit or the truth or otherwise to the contents thereof before the High Court — Cancellation of bail by High Court, held on facts, proper*

Rejection of bail stands on one footing, but cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to. (Para 8)

When a person to whom bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled. (Para 8)

In the affidavit of the Police Inspector attached to Control Room, Solapur, it has been clearly mentioned that a case (CR No. 3097 of 2003) was registered under Section 188 IPC in relation to the threat. Further, it is fairly accepted by learned counsel for the appellant that nothing seemed to have been urged by way of reply to the affidavit or the truth or otherwise to the contents thereof before the High Court. That being so, the appellant cannot make a grievance that no enquiry was made to find out the truth or otherwise of the statement made in the affidavit. As there were allegations prima facie showing that the witnesses have been threatened, a ground for cancellation of bail did exist. (Paras 9 and 10). *Mehboob Dawood Shaikh* v. *State of Maharashtra*, (2004) 2 SCC 362: 2004 SCC (Cri) 551: (2004) 2 KLT 812: 2004 Cri LJ 1359.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-1-2004]

Aslam Babalal Desai v. State of Maharashtra, (1992) 4 SCC 272: 1992 SCC (Cri) 870, followed

[6792] — S. 439(2) — Bail — Cancellation of — Relevant considerations for, restated — *Consideration of merits of order granting bail — Permissibility of — Appeal under a special enactment (POTA in this case), against an order granting bail — Relevancy of said considerations — Prevention of Terrorism Act, 2002, S. 34*

While hearing an application for cancellation of bail under Section 439(2) CrPC, the courts generally do not examine the merits of the order granting bail. What is normally relevant to be examined in such a proceeding is whether the accused is trying to tamper with the evidence subsequent to his release on bail or has threatened the witnesses or has committed any other offence while on bail or is trying to adopt dilatory tactics resulting in delay of trial or has absconded or that the offence committed by him has created serious law and order problem. The court has to see as to whether the accused has misused the privilege of bail granted to him. Only in exceptional cases where the order granting bail is vitiated by any serious infirmity and in the interest of justice it becomes necessary to interfere with the discretion exercised in granting bail that the order would be interfered with on merits. (Para 9)

In view of the express language used in sub-section (1) of Section 34 of POTA, the appeal against the order granting bail in offences under POTA would lie before the High Court both on facts and law. In such case, even an order granting bail can be examined on merits by the High Court without any kind of fetters on its powers and it can come to an independent conclusion whether the accused deserves to be released on bail on the merits of the case. The considerations which are generally relevant in the matter of cancellation of bail under Section 439(2) CrPC, will not come in the way of the High Court in setting aside an order of the Special Court granting bail. (Para 11). *State of Gujarat* v. *Salimbhai Abdulgaffar Shaikh*, (2003) 8 SCC 50: AIR 2003 SC 3224.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 8-9-2003]

[6793] — S. 439(2) — Bail — Practice of High Court to grant bail with effect from a future date ranging between six months to one year deprecated — *Matter remitted back to the High Court for individual consideration on merits of each case. Dasharath Pandey* v. *State of Bihar*, 1995 Supp (3) SCC 551: 1995 SCC (Cri) 991.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 20-1-1995]

[6794] — S. 439(2) — Cancellation of bail — *Murder of District Magistrate by members of an unlawful assembly — Allegation against the respondent, an MLA (Anand Mohan), that he exhorted the co-accused to kill him who fired shots from his pistol resulting in death of the District Magistrate — Held, in the circumstances of the case, High Court not justified in granting bail to the respondent — Bail cancelled but respondent given liberty to move the trial court for grant of bail at a stage when recording of evidence of eyewitnesses is completed. State of Bihar* v. *Akhlakh Ahmed*, (1998) 8 SCC 743.

Bench Strength **2**. Coram: *Kuldip Singh* and *S. Saghir Ahmad*, JJ. [Date of decision: 15-1-1996]

(11) Cancellation of bail *(contd.)*

[6795] — S. 439(2) — Cancellation of bail — Dowry death/Bride burning — *Where appellant was charged under Ss. 498-A and 304-B IPC, held on facts, High Court had given adequate reasons for cancellation of bail where, after giving a brief outline of evidence and indicating what had been found at the scene of the offence, as well as the nature of the injuries (electric burns), it had noted that on the face of it evidence indicated that dowry (of Rs 1 lakh) had been demanded (one month prior to death of wife of appellant) and had concluded that appellant's case was not a fit one for grant of bail*

The appellant, *P*, was charged with offences under Sections 498-A and 304-B of the Penal Code arising out of the death of his wife on 2-9-2000, within one year of their marriage. Three female relatives were also charged. These three women were granted bail on 11-9-2000 and a petition against that order was dismissed. *P* was granted bail on 13-11-2000 by the Sessions Court. However, by order dated 24-1-2001 the High Court allowed the petition of the father of the deceased for cancellation of *P*'s bail.

On the face of it the evidence indicated inter alia that a dowry of Rs 5 lakh had been demanded at the time of the marriage; that the bride's father had spent Rs 7 lakhs on the marriage; that only a month before the death of *P*'s wife Rs 1 lakh had been demanded; at the time of her death she was eight months' pregnant; she was not wearing any jewellery at all. There were extensive electric burn injuries on her left hand and over the right supramammary region.

Before the Supreme Court it was contended on behalf of the appellant that the observation of the High Court that the Sessions Judge had not given any reasons and had not referred to any material circumstances on record when allowing bail was not justified. The same Sessions Judge while granting bail to the three female accused in the case had given detailed reasons, had examined the evidence closely and had even discussed its merits and demerits. In its order rejecting the challenge to the bail granted to the three women, the High Court had reminded the lower court that a detailed examination of the evidence and discussion of merits ought not to be carried out in the course of passing orders in bail applications. On this basis, it was submitted on behalf of the appellant that the Sessions Judge could not and did not give reasons for granting bail; it was also contended that a third party could not move for cancellation of bail where the prosecution had not so moved. It was also contended that the High Court could not order cancellation of bail in exercise of powers under Section 482 CrPC as an order granting bail was an interlocutory order and that the High Court could not sit in appeal or revision over a Sessions Court's order under Section 439(2) as for the purposes of that section the High Court and Court of Session were coordinate courts.

Dismissing the appeal,

Held :

Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. What the Additional Sessions Judge had done in the order dated 11-9-2000 was to discuss the merits and demerits of the evidence. That was what was deprecated. That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated. (Para 8)

The High Court has correctly not gone into merits or demerits of the matter. The High Court has noted that the evidence prima facie indicated demand of dowry. The High Court has briefly indicated the evidence on record and what was found at the scene of the offence. The High Court has indicated that the evidence prima facie indicated that a demand for Rs 1 lakh was made just a month prior to the incident in question. The High Court has stated that the material on record suggested that the offences under Sections 498-A and 304-B were prima facie disclosed. The High Court has concluded that the material on record, the nature of injuries, demand for Rs 1 lakh and the other circumstances were such that this was not a fit case for granting bail. Thus the High Court has given very cogent reasons why bail should not have been granted and why this unjustified erroneous order granting bail should be cancelled. (Para 9)

In this case the High Court has cancelled bail for very valid and cogent reasons. *Puran* v. *Rambilas*, (2001) 6 SCC 338: 2001 SCC (Cri) 1124: AIR 2001 SC 2023: 2001 Cri LJ 2566.

Bench Strength **2**. Coram: *M.B. Shah* and **S.N. Variava**, JJ. [Date of decision: 3-5-2001]

Dolat Ram v. State of Haryana, (1995) 1 SCC 349: 1995 SCC (Cri) 237, relied on

[6796] — S. 439(2) — Cancellation of bail — Grounds for — *Held, an order granting bail passed by ignoring material and evidence on record and without giving reasons, would be perverse and contrary to principles of law — Such an order would itself provide a ground for moving an* *application for cancellation of bail — Such ground for cancellation is different from the ground that the accused misconducted himself or some new facts call for cancellation*

Generally speaking, the grounds for cancellation of bail are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. However, these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected. (Para 10)

Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. (Para 11). *Puran* v. *Rambilas*, (2001) 6 SCC 338: 2001 SCC (Cri) 1124: AIR 2001 SC 2023: 2001 Cri LJ 2566.

Bench Strength **2**. Coram: *M.B. Shah* and **S.N. Variava**, JJ. [Date of decision: 3-5-2001]

Dolat Ram v. State of Haryana, (1995) 1 SCC 349: 1995 SCC (Cri) 237; Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118: 1978 SCC (Cri) 41: AIR 1978 SC 179, relied on

Subhendu Mishra v. Subrat Kumar Mishra, 2000 SCC (Cri) 1508: 1999 Cri LJ 4063; State (Delhi Admn.) v. Sanjay Gandhi, (1978) 2 SCC 411: 1978 SCC (Cri) 223; Bhagirathsinh v. State of Gujarat, (1984) 1 SCC 284: 1984 SCC (Cri) 63, distinguished

[6797] — S. 439(2) — Cancellation of bail — Irrelevant material — Degree of irrelevancy — *Held, bail can be cancelled if material(s) on which bail is granted are/is substantially irrelevant*

Dismissing the appeal,

Held :

The order of granting bail to the appellant was certainly vulnerable. The accused cannot take a plea while applying for bail that the person whom he killed was a hardened criminal. That certainly is not a factor which can be taken into account. The perversity as highlighted in *Puran case*, (2001) 6 SCC 338 can flow from the fact that irrelevant materials have been taken into consideration adding vulnerability to the order granting bail. The irrelevant materials should be of a substantial nature and not of a trivial nature. In the instant case, the trial court seems to have been swayed by the fact that *S* had shady reputation and criminal antecedents. That is not certainly a factor which is to be considered while granting bail. It is the nature of the acts of offence which ought to have been considered. (Paras 27 and 25)

Once it is concluded that bail was granted on untenable grounds, the plea of absence of supervening circumstances has no leg to stand. Irrelevant materials have been taken into account and relevant materials have been kept out of consideration. An FIR was allegedly lodged to divert attention from the fake encounter. The same was not lodged by the Gujarat Police. The accused was the leader of the Rajasthan team and *AR*, one of the arrested officers had lodged the FIR. The relevance of these factors were kept out of consideration while granting bail. (Paras 26 and 27)

Even though reappreciation of the evidence as done by the court granting bail is to be avoided, the court dealing with an application for cancellation of bail under Section 439(2) CrPC can consider whether irrelevant materials were taken into consideration. That is so because it is not known as to what extent the irrelevant materials weighed with the court for accepting the prayer for bail. (Para 23). *Dinesh M.N. (S.P.)* v. *State of Gujarat*, (2008) 5 SCC 66: (2008) 2 SCC (Cri) 508: AIR 2008 SC 2318: 2008 Cri LJ 3008: (2008) 3 Guj LR 2310.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 28-4-2008]

Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977, relied on

[6798] — S. 439(2) — Cancellation of bail — Parameters for grant of and cancellation of bail are different — *Court dealing with cancellation application required to find whether irrelevant material of substantial nature was taken into account or relevant material omitted from consideration, while granting bail — If so, order granting bail would be perverse, justifying cancellation — However, court should avoid reappreciation of evidence — Accused, a senior IPS officer was charged in a fake encounter case — While granting bail shady reputation and criminal antecedents of the deceased considered — On facts held, irrelevant materials had been taken into consideration and/or relevant materials omitted from consideration while granting bail to appellant — Hence High Court was justified in cancelling the bail granted to appellant — That there was no supervening circumstance has no relevance in such a case*

(11) Cancellation of bail *(contd.)*

In connection with death of one *S* and his wife *K*, investigation commenced pursuant to which it was found that the deaths were result of fake encounters carried out by the then officers of Anti-Terrorist Squad (ATS), State of Gujarat. The appellant, a senior IPS officer, along with other officers was found to be involved in the encounters. According to the prosecution, in response to summons issued under Section 160 CrPC, the appellant appeared before the investigating officer but he did not cooperate and instead influenced the witnesses. On the date of recording his first statement he was not available either at his residence or at his place of posting. The appellant was arrested, remanded to police custody and charge-sheet was filed. The appellant moved a bail application which was accepted by the trial Judge. According to the trial court the accused had served the department with sincerity and dedication to curb the anti-social and anti-national elements. Persons like him should not be subjected to unnecessary harassment and humiliation when there was possibility of securing the persons by imposing appropriate conditions.

The State of Gujarat filed an application under Section 439(2) CrPC for cancellation of the bail. The stand of the State before the High Court was that the appellant was charged with offences punishable under Sections 302, 193, 201, 120-B read with Section 34 IPC and his role was narrated in the charge-sheet. Reference was made to the fact that even though he was in no way connected with ATS of Gujarat Police, he was present at the scene of offence where body of *K* was burnt. Mobile tracking also indicated presence of the appellant at the farm where the victims were illegally confined. It was pointed out that weekly diary showed his presence in the court during the period, but he was not actually in the court and some places were kept vacant in weekly diary and surprisingly during the entire operation mobile phone of the accused was switched off. The presence of the appellant when the corpse of *K* was cremated has been established by the statement of the witnesses. It was pointed out that the trial Judge concluded that the nature and gravity of the offence alleged was serious but there was no cogent, sufficient and reliable evidence to support the prosecution case. In other words, he had written indirectly an order of acquittal even before the trial was concluded. The High Court noticed that the appellant, a high ranking official, was charged with serious and heinous offences and while enlarging him on bail, the trial court ought to have kept in view the seriousness of the offences, punishment prescribed for such offences and involvement of the accused. It was pointed out that there was no question for referring to the antecedents of *S* and his characteristics as that was of no relevance. The bail, therefore, was cancelled.

Dismissing the appeal,

Held :

The parameters for grant of bail and cancellation of bail are different. Even though the reappreciation of the evidence as done by the court granting bail is to be avoided the court dealing with an application for cancellation of bail under Section 439(2) can consider whether irrelevant materials were taken into consideration. That is so because it is not known as to what extent the irrelevant materials weighed with the court for accepting the prayer for bail. Perversity can flow from the fact that irrelevant materials have been taken into consideration adding vulnerability to the order granting bail. But, the irrelevant materials should be of a substantial nature and not of a trivial nature. (Paras 18, 23 and 25)

Though it was urged that the aspects to be dealt with while considering the application for cancellation of bail on appeal against the grant of bail, it was fairly accepted that there is no scope for filing an appeal against the order of grant of bail. Under the scheme of the Code the application for cancellation of bail can be filed before the Court granting the bail if it is a Court of Session or the High Court. (Paras 18 and 20)

In the instant case, the trial court seems to have been swayed by the fact that *S*, husband of *K* had shady reputation and criminal antecedents. That was certainly not a factor which was to be considered while granting bail. It was the nature of the acts which ought to have been considered. By way of illustration, it can be said that the accused cannot take a plea while applying for bail that the person whom he killed was a hardened criminal. That certainly is not a factor which can be taken into account. Another significant factor which was highlighted by the State before the High Court was that an FIR allegedly was filed to divert attention from the fake encounter. The same was not lodged by Gujarat Police. Once it is found that bail was granted on untenable grounds, same can be cancelled. The stand that there was no supervening circumstance has no relevance in such a case. (Paras 25 and 26)

The above aspects have been highlighted to show that in this case irrelevant materials have been taken into account and/or relevant materials have been kept out of consideration. That being so, the order of granting bail to the appellant was certainly vulnerable. The order of the High Court does not suffer from any infirmity to warrant interference. (Para 27). *Narendra K. Amin (Dr.)* v. *State of Gujarat*, (2008) 13 SCC 584.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 28-4-2008]

Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977; Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124, relied on

[6799] — S. 439(2) — Cancellation of bail — When not justified — *Cancellation of bail by the High Court on ground that the accused was guilty of suppression of the material fact that his co-accused's bail application was rejected twice — Knowledge of the rejection of co-accused's bail application imputed to the accused without valid basis — High Court knowing that the co-accused was not granted bail — Omission on the part of the prosecution/complainant to bring to the court's notice that two bail applications of the co-accused were rejected — Held, in the circumstances of the case, the accused was not guilty of suppression of material fact — Hence cancellation of bail on that ground is improper. Kashmira Singh* v. *Duman Singh*, (1996) 4 SCC 693: 1996 SCC (Cri) 844: AIR 1996 SC 2176.

Bench Strength 2. Coram: **A.M. Ahmadi, C.J.** and *S.C. Sen*, J. [Date of decision: 9-7-1996]

[6800] — S. 439(2) — Cancellation of bail — When not justified — *Fight between two groups resulting in casualty on both sides — Possibility of the complainant's side being aggressor, or there being a free fight cannot be ruled out — Fact that there were injuries on both sides was known to the High Court when it granted bail — In the circumstances of the case, the High Court was not justified in cancelling the bail on ground that there was only one case and not a cross-case against the complainant's party as assumed while granting bail. Kashmira Singh* v. *Duman Singh*, (1996) 4 SCC 693: 1996 SCC (Cri) 844: AIR 1996 SC 2176.

Bench Strength 2. Coram: **A.M. Ahmadi, C.J.** and *S.C. Sen*, J. [Date of decision: 9-7-1996]

[6801] — S. 439(2) — Cancellation of bail by High Court — Non-consideration of the plea of absence of supervening circumstances by High Court — Sessions Court considering irrelevant materials and ignoring relevant materials — Effect — *Sessions Court considering the victim's past criminal record/conduct in a case of fake encounter — Sessions Court not considering that a co-accused* ***AR*** *lodged the FIR against S (the victim of encounter), allegedly to cover up the fake encounter — On facts, held, the plea of absence of supervening circumstance has no leg to stand — Penal Code, 1860 — Ss. 302, 364, 365, 368, 193, 197, 201, 120-B, 420 and 342 — Arms Act, 1959, Ss. 25(1-B)(a) and 27. Dinesh M.N. (S.P.)* v. *State of Gujarat*, (2008) 5 SCC 66: (2008) 2 SCC (Cri) 508: AIR 2008 SC 2318: 2008 Cri LJ 3008: (2008) 3 Guj LR 2310.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 28-4-2008]

Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977, relied on

[6802] — S. 439(2) — Cancellation of bail in a non-bailable case — Proper mode of — Principles laid down in *Dolat Ram case* reported in (1995) 1 SCC 349: 1995 SCC (Cri) 237, held, ought not to have been ignored by High Court — *Hence, High Court's order cancelling the bail in a rather mechanical manner, held, unsustainable* (Paras 4 and 5). *Subhendu Mishra* v. *Subrat Kumar Mishra*, 2000 SCC (Cri) 1508: AIR 1999 SC 3026: 1999 Cri LJ 4063.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and *M. Srinivasan* and *N. Santosh Hegde*, JJ. [Date of decision: 22-2-1999]

Dolat Ram v. State of Haryana, (1995) 1 SCC 349: 1995 SCC (Cri) 237, followed

[6803] — S. 439(2) — Considerations for cancellation of bail — *Cancellation should not be by way of punishment even if prima facie case against the accused is established — Held, High Court erred in interfering with Sessions Court's bail order on irrelevant considerations such as nature and gravity of circumstances in which offence committed — Penal Code, 1860, S. 307*

The appellant was arrested while inflicting several knife blows on a social and political worker who had come to visit a patient in a hospital. An offence under S. 307, IPC and S. 135 of the Bombay Police Act, was registered against him and he was remanded to judicial custody. His application for releasing him on bail was granted by the Sessions Court by a well-reasoned order made after hearing both the sides. The State moved an application to the High Court for cancellation of the order granting bail. The High Court allowed the application and cancelled the bail order holding that once a prima facie case was established, the Sessions Court ought to have taken into consideration the nature and gravity of the circumstances in which the offence was committed.

Held :

Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. Even where a prima facie case is established, the

(11) Cancellation of bail *(contd.)*

approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence.

In the present case the High Court completely overlooked the fact that it was not for it to decide whether the bail should be granted but the application was for cancellation of the bail. It was misdirected while examining the question of directing cancellation of bail by interfering with discretionary order of the Sessions Court. The circumstance found by it that the victim attacked was a social and political worker cannot be considered to be so overriding as to permit such interference. The High Court was impressed by some of the most irrelevant considerations, overlooking the considerations relevant for deciding the question. The High Court's approach thus being erroneous must be set aside. *Bhagirathsinh* v. *State of Gujarat*, (1984) 1 SCC 284: 1984 SCC (Cri) 63: AIR 1984 SC 372: 1984 Cri LJ 160: (1984) 1 GLR 332.

Bench Strength **2**. Coram: *D.A. Desai* and *R.B. Misra*, JJ. [Date of decision: 21-11-1983]

[6804] — S. 439(2) — In appeal to Supreme Court against refusal of High Court to cancel bail, the prosecution cannot rely on any new material — *If it wants to rely on such new material it must apply to the High Court again*

The Supreme Court will not allow the State to rely on any new material which was not available to the High Court. True, that the additional data came into existence after the High Court gave its judgment but it would be unfair to the respondent to make use of that material without giving him an adequate opportunity to meet it. That will entail a fairly long adjournment which may frustrate the very object of the proceeding initiated by the State.

Besides, though in appropriate cases the Supreme Court has the power to take additional evidence, that power has to be exercised sparingly, particularly in appeals brought under Art. 136 of the Constitution.

The new developments could, if the prosecution is so advised, be brought to the High Court's attention for obtaining suitable relief. The Supreme Court would not go into the new material for the first time. *State (Delhi Admn.)* v. *Sanjay Gandhi*, (1978) 2 SCC 411: 1978 SCC (Cri) 223: AIR 1978 SC 961: 1978 Cri LJ 952: 1978 MLJ (Cri) 500.

Bench Strength **3**. Coram: **Y.V. Chandrachud, C.J.** and *S. Murtaza Fazal Ali* and *P.N. Shinghal*, JJ. [Date of decision: 5-5-1978]

[6805] — S. 439(2) — Invocation of — By whom permissible — Power of court to cancel bail order, held, may be invoked either by State or any aggrieved party (in this case father of deceased)

The framework of Section 439(2) CrPC indicates that it is a power conferred on the courts mentioned therein. There is nothing to indicate that the said power can be exercised only if the State or investigating agency or a Public Prosecutor moves a petition. The power so vested in the High Court can be invoked either by the State or by any aggrieved party. The said power could also be exercised suo motu by the High Court. Therefore, any member of the public, whether he belongs to any particular profession or otherwise can move the High Court to remind it of the need to exercise its power suo motu. There is no barrier either in Section 439 of the Criminal Procedure Code or in any other law which inhibits a person from moving the High Court to have such powers exercised suo motu. If the High Court considers that there is no need to cancel the bail then it can dismiss the petition. It is always open to the High Court to cancel the bail if it feels that there are sufficient reasons for doing so. (Para 14). *Puran* v. *Rambilas*, (2001) 6 SCC 338: 2001 SCC (Cri) 1124: AIR 2001 SC 2023: 2001 Cri LJ 2566.

Bench Strength **2**. Coram: *M.B. Shah* and **S.N. Variava**, JJ. [Date of decision: 3-5-2001]

R. Rathinam v. State by DSP, (2000) 2 SCC 391: 2000 SCC (Cri) 958, relied on

Simranjit Singh Mann v. Union of India, (1992) 4 SCC 653: 1993 SCC (Cri) 22: AIR 1993 SC 280; Janata Dal v. H.S. Chowdhary, (1991) 3 SCC 356: 1991 SCC (Cri) 933, distinguished

[6806] — S. 439(2) — Petition for cancellation of bail — What amounts to — *Accused enlarged on bail by the High Court — Thereafter the complainant making a representation to the Chief Minister stating that the accused had issued threats to him, a copy of which was sent to the Chief Justice of the High Court — High Court not justified in treating the same as a petition for cancellation of bail. Kashmira Singh* v. *Duman Singh*, (1996) 4 SCC 693: 1996 SCC (Cri) 844: AIR 1996 SC 2176.

Bench Strength **2**. Coram: **A.M. Ahmadi, C.J.** and *S.C. Sen*, J. [Date of decision: 9-7-1996]

[6807] — S. 439(2) — Power of High Court to cancel bail — Orders in respect of which it may be exercised — Bail orders passed by Court of Session — *As High Court is a superior court in hierarchy of courts, its power under S. 439(2) can also be exercised in relation to bail orders passed by Court of Session, not just those passed by any*

Magistrate — Contention rejected that High Court and Court of Session were coordinate courts for purposes of S. 439(2) and therefore High Court could not sit in appeal or revision over an order of Court of Session

In the hierarchy of courts, the High Court is the superior court. A restrictive interpretation which would have the effect of nullifying Section 439(2) cannot be given. When Section 439(2) grants to the High Court the power to cancel bail, it necessarily follows that such powers can be exercised also in respect of orders passed by the Court of Session. (Para 16). *Puran* v. *Rambilas*, (2001) 6 SCC 338: 2001 SCC (Cri) 1124: AIR 2001 SC 2023: 2001 Cri LJ 2566.

Bench Strength 2. Coram: *M.B. Shah* and **S.N. Variava**, JJ. [Date of decision: 3-5-2001]

[6808] — S. 439(2) — Scope — Considerations before the court in cancelling bail — *Mere turning of witnesses hostile not enough — Involvement of the accused in bringing about such result must be shown — But the burden on the prosecution is not of proof beyond reasonable doubt — On facts, cancellation of bail justified*

Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only, if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial.

The fact that prosecution witnesses have turned hostile cannot by itself justify the inference that the accused has won them over.

It is therefore necessary for the prosecution to show some act or conduct on the part of the respondent from which a reasonable inference may arise that the witnesses have gone back on their statements as a result of an intervention by or on behalf of the respondent.

The issue of cancellation of bail can only arise in criminal cases, but that does not mean that every incidental matter in a criminal case must be proved beyond a reasonable doubt like the guilt of the accused. The same standard of proof as in a civil case applies to proof of incidental issues involved in a criminal trial like the cancellation of bail of an accused. *State (Delhi Admn.)* v. *Sanjay Gandhi*, (1978) 2 SCC 411: 1978 SCC (Cri) 223: AIR 1978 SC 961: 1978 Cri LJ 952: 1978 MLJ (Cri) 500.

Bench Strength 3. Coram: **Y.V. Chandrachud, C.J.** and *S. Murtaza Fazal Ali* and *P.N. Shinghal*, JJ. [Date of decision: 5-5-1978]

[6809] — Ss. 439(2) and 437(5) — Bail — Cancellation of — Grounds — Held, court cannot cancel the bail on a ground alien to the grounds mentioned in S. 437 — *Hence, cancellation of bail by High Court on the ground that accused husband failed to keep his wife (complainant) with him and thus violated the terms of compromise which formed the basis for grant of bail, held, not justified — Grant of bail on the basis of an assurance of a compromise, or its cancellation for violation of the terms of such compromise, held, not permissible — Further, material on record indicated that no such compromise was arrived at between the parties — Hence, question of fulfilling the terms thereof did not arise at all — Penal Code, 1860 — S. 498-A* (Para 7). *Biman Chatterjee* v. *Sanchita Chatterjee*, (2004) 3 SCC 388: 2004 SCC (Cri) 814: AIR 2004 SC 1699: 2004 Cri LJ 1451.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 10-2-2004]

[6810] — Ss. 439(2) and 437(5) — Bail — Cancellation of — Grounds — Alleged threat to witnesses — *Mere assertion of, held, should not be utilised as a ground for cancellation of bail, routinely — Court to carefully weigh the acceptability of the allegations and pass orders as circumstances warrant in law — Further emphasised that such matters should be dealt with expeditiously*

Mere assertion of an alleged threat to witnesses should not be utilized as a ground for cancellation of bail, routinely. Otherwise, there is ample scope for making such allegation to nullify the bail granted. The Court before which such allegations are made should in each case carefully weigh the acceptability of the allegations and pass orders as circumstances warrant in law. Such matters should be dealt with expeditiously so that actual interference with the ordinary and normal course of justice is nipped in the bud and an irretrievable stage is not reached. (Para 11). *Mehboob Dawood Shaikh* v. *State of Maharashtra*, (2004) 2 SCC 362: 2004 SCC (Cri) 551: (2004) 2 KLT 812: 2004 Cri LJ 1359.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-1-2004]

[6811] — Ss. 439(2) and 437(5) — Bail — Cancellation of, without notice — Propriety — *Impugned order set aside and High Court directed to reconsider the matter and hear the accused before passing appropriate orders* (Paras 1 and 3). *Gurdev Singh* v. *State of Bihar*, (2005) 13 SCC 286: (2006) 2 SCC (Cri) 177: 2000 Cri LJ 4686.

Bench Strength 2. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 13-3-2000]

(11) Cancellation of bail *(contd.)*

[6812] — Ss. 439(2) and 437(5) — Cancellation of bail — Conventional practice of placing the matter before the same Judge who granted the bail — *Held, need not be followed as a statutory requirement where the cancellation is sought for on grounds different from those which existed at the time of granting bail*

In the instant case, it was contended by the accused-appellant that the order of the High Court cancelling his bail could not be maintained as the said order was not passed by the learned Judge who had earlier granted the bail.

Rejecting the said contention and dismissing the appeal,

Held :

There is a long-standing convention and requirement of judicial discipline which has held the field for a long period that subsequent application for grant or cancellation of bail application should be placed before the same learned Judge who had passed the earlier order. This certainly is a desirable course. But at the same time the party who makes a grievance that the course has not been followed has to indicate as to in what manner he was in prejudice by the deviation. The question of prejudice arises only when on the same set of facts, a different order is passed by another learned Judge cancelling the bail or granting the bail as the case may be. But where the cancellation is sought for on grounds different from those which existed at the time of granting bail, the conventional practice of placing the matter before the same learned Judge need not be followed as if it is a statutory requirement. (Para 12)

In the case at hand, the cancellation has been done on a ground other than those which weighed with learned Single Judge for grant of bail. Though initially the application for cancellation of bail was founded on the alleged misrepresentation or suppression of facts, but what weighed with the learned Single Judge who dealt with the application for cancellation of bail was the conduct of the accused in threatening the witnesses. (Para 12). *Mehboob Dawood Shaikh* v. *State of Maharashtra*, (2004) 2 SCC 362: 2004 SCC (Cri) 551: (2004) 2 KLT 812: 2004 Cri LJ 1359.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 16-1-2004]

Harjeet Singh v. State of Punjab, (2002) 1 SCC 649: 2002 SCC (Cri) 225, distinguished on facts

[6813] — Ss. 439(2), 438 and 437(5) — Cancellation of bail — Factors to be taken into consideration — Rejection of bail in non-bailable offence and cancellation of bail already granted must be considered and dealt with on different bases and not mechanically — *Cancellation of anticipatory bail in dowry death case*

Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. (Para 4) . *Dolat Ram* v. *State of Haryana*, (1995) 1 SCC 349: 1995 SCC (Cri) 237: (1994) 3 Crimes 1013: (1995) 32 ACC 149: (1995) 1 Andh LT (Cri) 37.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *M.K. Mukherjee*, JJ. [Date of decision: 24-11-1994]

[6814] — Ss. 439(2) and 437(5) — Cancellation of bail — Grounds for, held, should be those which arose after the grant of bail and should be referable to the conduct of the accused while on bail — Order of High Court cancelling bail of appellant *N* — Propriety of — *Order based on grounds that (i) there was threat to PWs by N and his musclemen, (ii) N had suppressed the fact that in the connected trial the co-accused had already been convicted and sentenced to life imprisonment, and (iii) the High Court had failed to consider the fact that in the connected matter the trial court found material as to the participation of N in the offence — Held, complaints filed in relation to threats given to PWs could not be accepted ex facie as on the dates mentioned in those complaints N was still in jail and was not released on bail — Further, N had specifically mentioned about conviction of co-accused — That apart, the third ground, as stated above, also could not be a basis to cancel the bail — Allegation as to abscondence of N in the past or the likelihood of the same in future, not sustainable — Thus, no case made out for cancellation of* *bail — Order of High Court set aside — However, considering apprehension of complainant that N being an MLA might interfere with the trial or try to influence the witnesses, N directed not to enter the territorial jurisdiction of the place concerned with the trial, except for attending trial — In case it was imperative to visit the said place, N could do so after informing the investigating agency* (Paras 8 to 10). *Nityanand Rai* v. *State of Bihar*, (2005) 4 SCC 178: 2005 SCC (Cri) 1159: AIR 2005 SC 2239: 2005 Cri LJ 2187.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *S.B. Sinha*, JJ. [Date of decision: 11-4-2005]

[6815] — Ss. 439(2) and 438 — Anticipatory bail — Cancellation of, by the High Court — Propriety — Non-application of mind — *Complaint filed by wife's father (respondent) against his son-in-law (appellant) alleging offences under S. 498-A IPC and S. 4 of Dowry Prohibition Act — Anticipatory bail granted to appellant by High Court on the condition that he should stay at Chennai and report to the police everyday for a week while his father (second appellant) should report to the police as and when required — Accordingly appellant complying with the directions — Application for cancellation of bail filed, alleging that the appellant had gone to the house of one H and abused and threatened him not to give evidence in the case in which he happened to be a witness — But instead of lodging a complaint on the same day or on next day of the alleged threat, complaint lodged two days thereafter — Held, this delay in lodging the complaint itself creates a doubt as to authenticity of the complaint — Even the affidavit filed by the Inspector of Police complaining of violation of the conditions imposed cannot be relied upon since the complaint was made for the first time, eight months after the alleged threat — High Court erred in cancelling the bail by merely accepting the allegation made in the application for cancellation — Hence the order cancelling the anticipatory bail cannot be sustained* (Para 10). *Raj Kumar Jain* v. *Kundan Jain*, (2004) 10 SCC 612: 2004 SCC (Cri) 2034: AIR 2004 SC 3794: 2004 Cri LJ 3342.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 29-4-2004]

[6816] — Ss. 439(2) and 482 — Cancellation of bail — Approach to be followed — High Court not to decide as if in appeal

The High Court has approached the case as if it is an appeal against the conviction by giving findings on factual issues which are yet to be decided, which is too premature and is likely to prejudice the trial. That apart, since the only ground on which the cancellation of bail could have been ordered being the ground of intimidation which is not satisfactorily proved, the High Court erred in cancelling the bail granted to the appellant. (Paras 12 and 13). *Samarendra Nath Bhattacharjee* v. *State of W.B.*, (2004) 11 SCC 165: AIR 2004 SC 4207: 2004 Cri LJ 4215.

Bench Strength **3**. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *G.P. Mathur*, JJ. [Date of decision: 25-8-2004]

[6817] — S. 439(2) and S. 437(5) — Bail — Cancellation of — Propriety of — *Bail granted by Sessions Court cancelled by the Magistrate — Propriety — Bail granted by Sessions Court subject to certain directions and empowering the Magistrate to consider question of violation of any of the conditions stipulated therein and to pass appropriate orders thereon — Plea by appellant that (i) when the Sessions Court had granted bail, it or any superior court was alone empowered to cancel it; and (ii) it could not have vested such power in the Magistrate — Held, as a general proposition, the first plea raised by the appellant is correct but since there was a specific direction to pass appropriate orders as if the conditions for granting bail had been imposed by the Magistrate himself, the impugned order is legal and valid — Superior court can always give directions of this nature and authorise the subordinate courts to pass appropriate orders* (Paras 6, 7 and 8). *P.K. Shaji* v. *State of Kerala*, (2005) 13 SCC 283: (2006) 2 SCC (Cri) 174: AIR 2006 SC 100: (2005) 4 KLT 856: 2005 Cri LJ 5063.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 27-10-2005]

Gurdev Singh v. State of Bihar, (2005) 13 SCC 286, followed

[6818] — S. 439(2) and S. 437(5) — Cancellation of bail — Hearing before, to accused — *Held, accused must be heard before his bail is cancelled* (Para 6). *P.K. Shaji* v. *State of Kerala*, (2005) 13 SCC 283: (2006) 2 SCC (Cri) 174: AIR 2006 SC 100: (2005) 4 KLT 856: 2005 Cri LJ 5063.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *B.N. Srikrishna*, JJ. [Date of decision: 27-10-2005]

Gurdev Singh v. State of Bihar, (2005) 13 SCC 286, followed

[6819] — S. 439(2) r/w S. 482 and S. 438 — Anticipatory bail — Grant of, by Sessions Court — Cancellation by High Court — When not permissible — *Appellants apprehending implication for murder and conspiracy — Held, normally, very cogent and overwhelming grounds or circumstances are required to cancel the bail already granted — Sessions Court initially granting the* *anticipatory bail to appellants for six weeks and subsequently confirming the said order — Relevant facts and circumstances taken into account and reasons given in support while granting the bail — Held, High Court erred in cancelling the bail in a mechanical manner by simply stating and not showing how the judicial discretion exercised by the Sessions Court was erroneous — Further held that High Court failed to consider the distinction between rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted*

The learned Additional Sessions Judge, Rewari, after hearing both sides, initially granted anticipatory bail to the appellants on 9-4-2001 for six weeks, which was confirmed and bail was continued by the order dated 5-6-2001. Unfortunately, the High Court in the impugned order dated 21-12-2001, while cancelling the anticipatory bail granted to the appellants and in the subsequent order dated 22-2-2002 did not consider the contentions raised on behalf of the parties objectively and in proper perspective and did not deal with the reasons recorded and consideration made by the learned Additional Sessions Judges in the orders dated 9-4-2001 and 5-6-2001 granting anticipatory bail. The High Court simply observed in the order dated 21-12-2001 that the learned Additional Sessions Judge, Rewari, had not taken all the facts into account and that he granted anticipatory bail to the appellants on 9-4-2001 when the case was at the initial stage. The High Court has simply stated that the order of the learned Sessions Judge is based on exercise of judicial discretion in an erroneous manner without considering the material on the file. It is strange that the High Court has made such an observation without showing how the judicial discretion exercised by the learned Additional Sessions Judge was erroneous. A considered order of the learned Additional Sessions Judge supported by reasons in exercise of judicial discretion does not become erroneous by merely dubbing or calling it as such. Both the orders of the learned Additional Sessions Judges dated 9-4-2001 and 5-6-2001 after due consideration of the facts and circumstances of the case to the extent required for exercise of judicial discretion in the matter of granting bail are sustainable. The judicial discretion exercised in granting anticipatory bail, is neither perverse nor erroneous. On the other hand, they are based on relevant considerations supported by reasons. When the learned Additional Sessions Judges have passed the orders granting anticipatory bail exercising judicial discretion, there is no warrant to say that such an order of bail is obtained by dubious means. The High Court, except referring to two decisions as to the position of law, failed to notice the facts and relevant aspects of the case on hand to apply them. (Paras 9 and 16)

Further, there is a distinction between rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted. Normally, very cogent and overwhelming grounds or circumstances are required to cancel the bail already granted. In the present case, the High Court, it appears, did not bear this distinction in mind and cancelled the bail in a mechanical manner. (Para 17). *Mahant Chand Nath Yogi* v. *State of Haryana*, (2003) 1 SCC 326: 2003 SCC (Cri) 312: AIR 2003 SC 18: 2003 Cri LJ 76.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Shivaraj V. Patil**, JJ. [Date of decision: 24-10-2002]

Subhendu Mishra v. Subrat Kumar Mishra, 2000 SCC (Cri) 1508, followed

(12) Cancellation of bail after charge-sheet filed: Ss. 439(2), 437(5) and S. 167(2)

See also Section 439, '(11) Cancellation of bail', above

See also under Section 437

[6820] — Ss. 439 and 167(2) — Recall of order granting bail — Giving an opportunity of hearing to accused in case of — Necessity of — *Accused claiming that he was entitled to bail under S. 167(2) as no charge-sheet had been submitted by police within the statutory period — Sessions Judge, in the absence of the Public Prosecutor and in the light of the said averments, releasing accused on bail — But, on the same day at a later stage, Public Prosecutor appearing before the Sessions Judge and drawing his attention to the fact that the charge-sheet had already been submitted — In the circumstances of the case, Sessions Judge recalling his earlier order in the absence of accused — Held, High Court was right in setting aside the recall order and in directing the Sessions Judge to pass a fresh order in accordance with law after giving an opportunity of hearing to accused* (Para 6). *Samya Sett* v. *Shambhu Sarkar*, (2005) 6 SCC 767: 2005 SCC (Cri) 1483: AIR 2005 SC 3309: 2005 Cri LJ 3739.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and **C.K. Thakker** and *P.K. Balasubramanyan*, JJ. [Date of decision: 12-8-2005]

[6821] — Ss. 439(2) and 167(2) — Special powers of High Court or Sessions Court regarding bail — *Magistrate releasing the accused under S. 167(2) on ground that the charge-sheet was not submitted within 90 days — Sessions Judge setting aside said order on ground that the accused was released on the 89th day i.e. before expiry of 90 days — High Court setting aside Sessions Judge's order holding that order passed by the Magistrate being an interlocutory order was not revisable under the revisional jurisdiction — Held, if a person is illegally or erroneously released on bail under S. 167(2), his bail can be cancelled by passing appropriate order under S. 439(2) — High Court erred in not referring to provisions of S. 439(2) which specifically empowers the High Court or the Sessions Court to cancel bail in such circumstances* (Paras 7 to 10). *Pandit Dnyanu Khot* v. *State of Maharashtra*, (2008) 17 SCC 745.

Bench Strength 3. Coram: *M.B. Shah*, *B.P. Singh* and *H.K. Sema*, JJ. [Date of decision: 2-5-2002]

Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124, considered

[6822] — Ss. 439(2) and 167(2) — Cancellation of bail — Justifiability of grounds for — *High Court cancelling bail for sole purpose of police remand to recover marriage articles in a case of cruelty by in-laws under Ss. 498-A, 406, 506, 323 r/w S. 34 IPC — There being no allegation of misuse of bail granted by Magistrate, said ground for cancellation of bail, held, not sufficient — Therefore, bail granted by Magistrate restored* (Paras 14 and 17). *Devender Kumar* v. *State of Haryana*, (2010) 6 SCC 753.

Bench Strength 2. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 5-5-2010]

CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141: 1992 SCC (Cri) 554, followed

(13) Appeal/Remedy

See also under Section 437

[6823] — S. 439 — Bail — Grant of — Remedy against — No appeal lies against order granting bail — Application for cancellation of bail has to be filed before the Court which passed the order granting bail

Though it was urged that the aspects to be dealt with while considering the application for cancellation of bail on appeal against the grant of bail, it was fairly accepted that there is no scope for filing an appeal against the order of grant of bail. Under the scheme of CrPC the application for cancellation of bail can be filed before the Court granting the bail if it is a Court of Session or the High Court. (Paras 18 and 20). *Narendra K. Amin (Dr.)* v. *State of Gujarat*, (2008) 13 SCC 584.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 28-4-2008]

[6824] — S. 439 — Challenge to order of Single Judge of High Court granting bail — Proper forum and locus standi — *Held, neither any practising advocate who had nothing to do with the particular case nor any other person can challenge the order of the Single Judge by moving the same High Court subsequently — Only remedy available is to move the Supreme Court seeking special leave under Art. 136* (Para 5). *R. Rathinam* v. *State*, (2000) 2 SCC 391: 2000 SCC (Cri) 958: AIR 2000 SC 1851.

Bench Strength 2. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 8-2-2000]

(14) Interference by Supreme Court

See also under Section 439, '(11) Cancellation of bail', above

[6825] — S. 439 — Judicial Discipline — Observation made by High Court as to how an appeal against its order granting bail should be decided by Supreme Court, held, subversive of judicial discipline

What in effect the Single Judge of the High Court had said in its impugned order was that when an appeal is filed against an order of the High Court granting bail to an accused, it should be decided by the Supreme Court in accordance with the observations made in the case of *Bihar Legal Support Society*, (1986) 4 SCC 767 meaning thereby that the Supreme Court should not have interfered with his earlier order dated 30-5-2003 granting bail to Respondent 1.

Held :

In the hierarchical judicial system, it is not for any court to tell a superior court as to how a matter should be decided when an appeal is taken against its decision to that superior court. Such a course would be subversive of judicial discipline on the bedrock of which the judicial system is founded and finality is attached and orders are obeyed. The Supreme Court does not consider it proper to say anything further and would like the matter to rest there. (Para 13). *Sompal Singh* v. *Sunil Rathi*, (2005) 1 SCC 1: AIR 2005 SC 1483: (2004) 3 KLT 992.

Bench Strength 2. Coram: *R.C. Lahoti*, *C.J.* and **G.P. Mathur**, J. [Date of decision: 3-11-2004]

Tirupati Balaji Developers (P) Ltd. v. State of Bihar, (2004) 5 SCC 1, relied on

(14) Interference by Supreme Court *(contd.)*

[6826] — S. 439 — Bail — Grant of — Non-interference therewith by Supreme Court though approach of High Court not proper to certain extent — *Investigation by CBI disclosing that respondent aided the main accused in commission of organised crime relating to fake stamps — He did not arrest the persons involved in the crime — For said work, he received illegal gratification from accused — High Court discarding evidence of witnesses on ground of delay and granting bail to respondent — Considering the fact that present case was entrusted to CBI for thorough investigation on directions of Supreme Court issued 3½ years back, held, the approach of High Court to the extent that there was delay in recording statement of witnesses was incorrect — However, Supreme Court in present appeal could not go into various aspects urged before it as the same were to be decided at trial — Hence, those matters left to trial court for decision after taking proper evidence — Thus, despite the fact that Supreme Court not fully approving the views expressed by High Court, it declining to interfere with order granting bail — Maharashtra Control of Organised Crime Act, 1999 (30 of 1999), Ss. 21(4), 3, 4 & 24*

Challenge in the present appeal was to the judgment of the High Court granting bail to the respondent Inspector of Police who was arrested in "stamp scam" case.

The appellant State submitted that the investigation conducted by CBI clearly indicated the involvement of the respondent in lending help to the main accused in commission of an organised crime. It was pointed out that the respondent had failed to arrest the main accused when he appeared in the office of the Crime Branch. Similarly, the respondent had set free the various persons taken into custody when huge quantity of fake stamps were recovered in a raid and this was done by the respondent in the light of the illegal gratification received by him from Accused 8. Accused 8 had made a confessional statement in this regard. That apart, nine of the witnesses had spoken of the involvement of the respondent. The State argued that the High Court made an erroneous approach to the materials gathered by CBI and erred in discarding them on the basis that there was some delay in recording the statements of the witnesses. It was contended that the High Court did not keep in mind the nature of the offence, its impact on society, the position held by the respondent, his duty as a protector of the law and the rights of the citizens and the nature of his conduct. It was a clear case where the offences under Sections 3, 4 and 24 of the Maharashtra Control of Organised Crime Act, 1999 (for short "MCOCA") had been made out. The High Court ought not to have interfered with the order refusing to grant bail.

Dismissing the appeal,

Held :

There is some merit in the contention of the appellants that the High Court was not correct in thinking that all the evidence gathered by CBI must be treated as evidence gathered belatedly. The High Court obviously forgot that CBI was directed to take up the investigation by the Supreme Court only in March 2004 and what the Supreme Court was intending, was a thorough investigation by CBI, especially in the nature of unsatisfactory performance of the State police and the number of police personnel and higher-ups allegedly involved in the organised crime. To that extent the approach or attitude of the High Court in dealing with the appeal against the refusal to grant bail to the respondent, cannot be approved. Same would be the position regarding the confessional statement of Accused 8. The High Court was not correct in trying to discard it on the basis that it was belated. (Para 7)

Any studied inaction or aid extended to the members of an organised crime, the members of an organised gang involved in such crime might also amount to an offence under MCOCA and this fact cannot be forgotten when dealing with the case of a police officer allegedly involved in the crime. But then that is a matter to be decided at trial. It is not proper in this appeal to go into the various aspects urged at great length. The matters must be left to the trial court for decision after taking proper evidence and it would be premature to pronounce on the various aspects urged herein. Thus, though it is neither possible to fully endorse or to fully approve the views expressed by the High Court in the order under challenge, it is not considered necessary, at this stage, to interfere with that order and set aside the bail granted to the respondent. (Paras 8 and 9). *State of Maharashtra* v. *Vashishtha Rambhau Andhale*, (2007) 7 SCC 341: (2007) 3 SCC (Cri) 359: (2007) 57 AIC 97 (SC).

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **P.K. Balasubramanyan**, JJ. [Date of decision: 17-8-2007]

[6827] — Ss. 439 and 386 — Grant of bail by High Court — *Supreme Court ordinarily does not interfere with — But it can interfere to prevent miscarriage of justice if it considers it fit to do so having regard to nature and gravity of offence and the materials collected during investigation — Constitution of India — Art. 136*

Normally, the Supreme Court does not interfere with orders granting bail but considering the nature and gravity of the offence alleged against the respondent and the materials collected against him during investigation, this is a fit case where the order of the High Court has got to be set aside to prevent miscarriage of justice. *State of Maharashtra* v. *Ramesh Taurani*, (1998) 1 SCC 41: 1998 SCC (Cri) 257: AIR 1998 SC 586: 1998 Cri LJ 855.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *K.T. Thomas*, JJ. [Date of decision: 26-11-1997]

[6828] — Ss. 439 and 437 — Bail — Improper grant of, by High Court — Stage of proceedings at trial — Consideration of, by Supreme Court — Relief — *Instead of cancelling bail, High Court's order maintained imposing certain conditions — Charge-sheet filed under S. 304 IPC — Initially investigation proceeded on the line as if the offence under S. 304-A IPC had been committed — High Court holding that the case was surreptitiously converted into S. 304 IPC — It considering that accused was already on bail for offences under Ss. 304-A and 338 IPC — Hence, it directing to accept fresh bail for added offence under S. 304 — No reasons indicated for grant of bail — Thus, though this was a fit case for cancellation of bail, considering that prosecution evidence was practically closed, held, trial to be completed within four months and accused to continue on bail subject to conditions that he would not take advantage of the bail granted and would not delay the case and/or tamper with the evidence — Constitution of India — Art. 136* (Paras 7 and 9). *V.D. Chaudhary* v. *State of U.P.*, (2005) 12 SCC 304: 2005 Cri LJ 3753: AIR 2005 SC 3270.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Arun Kumar*, JJ. [Date of decision: 1-9-2005]

Followed in *Deepak Singchi v. State of Rajasthan, (2007) 14 SCC 583*

[6829] — S. 439 — On facts, Supreme Court directing grant of bail. *Ranjit Singh* v. *Popat Rambhaji Sonavane*, (1983) 1 SCC 298: 1983 SCC (Cri) 196: AIR 1983 SC 292: 1983 Cri LJ 437.

Bench Strength **2**. Coram: *D.A. Desai* and *R.B. Misra*, JJ. [Date of decision: 4-1-1983]

[6830] — S. 439 — Sessions Court and High Court granting bail under — *Supreme Court declining to interfere under Art. 136 though it considered the grant of bail to be improper — Constitution of India — Art. 136*. *Niranjan Singh* v. *Prabhakar Rajaram Kharote*, (1980) 2 SCC 559: 1980 SCC (Cri) 508: AIR 1980 SC 785: 1980 Cri LJ 426: 1980 MLJ (Cri) 573.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *A.P. Sen*, JJ. [Date of decision: 10-3-1980]

[6831] — S. 439 — Application for bail — Rejection of, by trial court and High Court — Appeal before Supreme Court — When no interference called for — *Applicant appellant facing trial for alleged offences under various sections of IPC, POTA and Arms Act — According to appellant, he was kept in illegal custody by Crime Branch before his arrest, question of making alleged confession under S. 32 POTA did not arise as he did not know the regional language of the State (Gujarati) and did not even sign before Deputy Commissioner and though he was produced before Magistrate for confirmation of his confessional statement under S. 32(5) POTA, he was remanded to judicial custody and the so-called confessional statement was retracted by him — Trial court found existence of prima facie material showing appellant's involvement in the crime and his link with the absconding main accused as also his criminal antecedents as reflected in his so-called confessional statement, refused to grant him bail — Further, when appellant was produced for confirmation of so-called confessional statement, there was no allegation that the same was obtained under pressure and if there was no confession as claimed by appellant, question of any retraction would not arise — Held, no interference with High Court's order dismissing the appeal called for — Prevention of Terrorism Act, 2002, Ss. 49 and 32. Gulam Mohammed* v. *State of Gujarat*, (2008) 15 SCC 402: AIR 2009 SC 509.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 11-11-2008]

State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600: 2005 SCC (Cri) 1715, relied on

[6832] — S. 439 — Grant of bail by Supreme Court — High Court refused to grant bail — *Having regard to relevant material appearing in the case diary and other material on record and circumstances of the case, held, appellant deserves to be released on bail — Conditions laid down to be imposed by trial court while releasing appellant on bail — Constitution of India — Art. 136. Padma Charan Patra* v. *State of Orissa*, (2007) 15 SCC 657.

Bench Strength **2**. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 12-5-2006]

[6833] — S. 439 — Bail — Grant of, by Supreme Court — Delay in release of accused — *Bail granted on 25-4-2003 — Order received in jail on 1-5-2003 — Accused immediately informed to furnish the required bond with surety — On his furnishing the same, trial court releasing him on 7-5-2003 — Held, though there had been noticeable delay in release of accused, the same was due to the procedure involved in giving effect to the*

(14) Interference by Supreme Court *(contd.)*

Supreme Court's order and not due to any individual's laxity — Constitution of India — Art. 136 (Paras 4 and 5). *Pusai* v. *State (NCT of Delhi)*, (2004) 9 SCC 81: 2004 SCC (Cri) 1416: AIR 2004 SC 1184: 2004 Cri LJ 923.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 11-12-2003]

[6834] — S. 439 — Review of cancellation of bail — Serious note taken that in spite of cancellation of bail, accused neither surrendering nor taken to custody — *CBI thus directed to enforce earlier order — Review petition dismissed on merits — Constitution of India, Arts. 137 and 136* (Paras 1 to 4). *Rajesh Ranjan* v. *State of Bihar*, (2010) 13 SCC 57.

Bench Strength 2. Coram: *Markandey Katju* and *A.K. Patnaik*, JJ. [Date of decision: 5-8-2010]

Rabindra Nath Singh v. *Rajesh Ranjan, (2010) 6 SCC 417: (2010) 3 SCC (Cri) 165, referred to*

(15) Fresh consideration of application on remand

See also Section 439, '(8) Successive/repeated bail applications', above

[6835] — S. 439 — Bail application — Fresh consideration of, by the High Court in view of the direction made by the Supreme Court while setting aside its earlier order — *Hearing by same Judge who decided the earlier bail application, held, not a necessity since it is not a second bail application — It could be heard by any Judge of High Court*

After the earlier order granting bail had been set aside by the Supreme Court, a fresh bail application was filed in the High Court on 27-2-2004, which came up for hearing on 1-3-2004 before another learned Judge who had been assigned the jurisdiction. For reasons which are not clear from record, an order was passed by him to list the bail application before the same learned Judge who had granted bail on the earlier occasion. This order may have been proper had it been a second bail application in view of Chapter V Rule 13 of the Allahabad High Court Rules. But this being not a second bail application, the jurisdiction to hear the bail application lay with the learned Judge assigned with the jurisdiction by the Chief Justice and he could not have passed an order directing the matter to be listed before a particular Judge. (Para 6). *Sompal Singh* v. *Sunil Rathi*, (2005) 1 SCC 1: AIR 2005 SC 1483: (2004) 3 KLT 992.

Bench Strength 2. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur**, J. [Date of decision: 3-11-2004]

[6836] — S. 439 — Remand by Supreme Court for reconsideration of bail application afresh to High Court — Proper mode of disposal — *Grant of bail by High Court without considering the relevant factors despite the same having been pointed out by the Supreme Court while setting aside its earlier order granting bail and directing it to decide the matter afresh — Held, impugned order granting bail was liable to be set aside as (i) instead of considering the matter de novo in the light of the observations made by the Supreme Court, the High Court only gave justification for its earlier order, (ii) emphasis was given to minor discrepancies, and (iii) conclusion as to absence of the informants at the time of occurrence was not proper*

The instant appeal was preferred by the complainant *S* against the judgment and order dated 27-5-2004 of the Allahabad High Court by which Respondent 1 was granted bail in a case under Sections 147/148/149/302/307/ 404/504 and 506 IPC.

Respondent 1 had been initially granted bail by the High Court on 30-5-2003. This order was challenged by *S* before the Supreme Court. The Supreme Court observed that the High Court while granting the bail had not considered the facts (*i*) that the accused was named in FIR, (*ii*) that the accused had several other accusations to his credit, and (*iii*) that the co-accused was denied bail. Thus, the order dated 30-5-2003 was accordingly set aside and the bail application filed by Respondent 1 was directed to be considered afresh by the High Court. Thereafter, the bail application was again heard by the same Judge and the accused was granted bail by the order dated 27-5-2004 which was the subject-matter of challenge in the present appeal.

Allowing the appeal and setting aside the order of the High Court,

Held :

The High Court did not decide the bail application on considerations which are relevant. A reading of the impugned order shows that instead of considering the matter de novo in the light of the observations made by the Supreme Court the whole effort of the learned Judge has been to give justification for the order earlier passed by him on 30-5-2003 by which bail was granted to the accused. (Paras 7 and 7.1)

While granting bail, the High Court has given great emphasis to some minor discrepancies alleged to have occurred during the course of investigation of the case. It is well settled that every infirmity in investigation does not lead to an inference that the case of the prosecution is false or the accused is entitled to acquittal. Though the High Court was hearing a bail application it has gone to the extent of recording a finding that the informant *S* and *K* were not present at the time of the occurrence, only on the ground that they had not received injuries in the incident and the two injured witnesses, namely, *V* and *P* had not specifically mentioned the presence of the informants in their statement under Section 161 CrPC. Instead of deciding the bail application on the basis of the evidence which was then available on record, the High Court chose to rely upon the statements of *V* and *P* made under Section 161 CrPC. The prosecution did not examine *V* and *P* as witnesses in the trial, and, therefore, their statements under Section 161 CrPC could not be used at all at that stage. (Para 9). *Sompal Singh* v. *Sunil Rathi*, (2005) 1 SCC 1: AIR 2005 SC 1483: (2004) 3 KLT 992.

Bench Strength **2**. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur**, J. [Date of decision: 3-11-2004]

Ambika Prasad v. State (Delhi Admn.), (2000) 2 SCC 646: 2000 SCC (Cri) 522; Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517: 1998 SCC (Cri) 1085, relied on

(16) CrPC provisions for bail and Special Statutes

See also under Section 437

[6837] — S. 439 — High Court has no jurisdiction to entertain application for bail in respect of TADA offences under S. 439, CrPC — *TADA, 1987, S. 19(1). State of Punjab* v. *Kewal Singh*, 1990 Supp SCC 147: 1990 SCC (Cri) 640.

Bench Strength **2**. Coram: *A.P. Sen* and *B.C. Ray*, JJ. [Date of decision: 18-7-1988]

Usmanbhai Dawoodbhai Memon v. State of Gujarat, (1988) 2 SCC 271: 1988 SCC (Cri) 318, followed

[6838] — S. 439 — Granting of bail — Satisfaction of court as to existence of grounds for believing that the accused is not guilty of committing the offence in question — *A prima facie view of the court in respect of, held, has to be formed which must be based on very cogent material — Recovery of firearm, ammunition etc. from accused — Grant of bail by High Court doubting the alleged recovery — Propriety of — Said decision based on grounds that (i) there were discrepancies at various places in describing the firearm, and (ii) a person who, prior to recovery had objected before the Magistrate against the police custody by stating that the police would plant some incriminating material on him and would force a confession out of him, was not likely to make a confession and lead the police party to the discovery, held on facts, not proper — High Court's order set aside — Constitution of India — Art. 136 — Prevention of Terrorism Act, 2002, Ss. 49(7) and 4*

At the stage of granting bail, the court does not decide the merits of the matter. Of course, a prima facie view has to be formed in the court in order to satisfy itself that there are grounds for believing that the accused is not guilty of committing the offence he is charged with. However, such a prima facie view must be based on very cogent material. (Para 12)

The High Court stated that in one place the words "unlicensed revolver with ammunition and pamphlet" are used, in another place the words "unlicensed country-made pistol with ammunition and pamphlet" are used and in a third place the words "a country-made gun with two live ammunition of 0.410 Musket and a booklet in support of TNLA" have been used. It wrongly concluded that because of these discrepancies the non-existence of recovery was so probable that one could act on the supposition that the recovery did not exist. One must keep in mind that the articles recovered have been sent to the court and are in custody of the court. The first of the documents relied upon by the High Court was in Tamil language. The other documents are in English. Some police officer has translated it from Tamil to English. If some police officer wrongly translates the type of weapon one cannot conclude with any reasonable certainty that there was no recovery. Under Section 4 of POTA mere possession not just of an arm but also of an ammunition, is sufficient. Ammunition has also been allegedly recovered. There is no discrepancy in the description of the ammunition. Thus, at this stage, it is difficult to sustain the above conclusion of the High Court. (Paras 11 and 12)

Further, the statements (relating to objection to police custody) relied upon by the High Court, are given after the accused had been arrested and recoveries were made from him. They are also after the charge under POTA had been added. It is not unknown that persons who are charged or arrested make self-serving statement before the Magistrate with the intention of using those in court proceedings at a later stage. Therefore, at this stage, it would not be possible to conclude that no discovery would have been made at the instance of the accused. (Para 13). *State of T.N.* v. *R.R. Gopal*, (2003) 12 SCC 237.

Bench Strength **2**. Coram: **S.N. Variava** and *H.K. Sema*, JJ. [Date of decision: 26-9-2003]

[6839] — S. 439 — Grant of bail in TADA case by Designated Court despite misutilisation of bail granted earlier — Propriety of — *Accused, who was released on bail earlier, jumped bail, but ultimately taken into custody by investigating agency — Under such circumstances, held, the Designated Court erroneously granted the bail — Accused-respondent directed to be taken into custody. State of Maharashtra* v. *Mohd. Shahid N. Qureshi*, (2001) 10 SCC 462.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 16-12-1999]

(16) CrPC provisions for bail and Special Statutes *(contd.)*

[6840] — S. 439 — Jurisdiction of High Court under, to entertain bail application — POTA case — Specific provision in the statute [S. 34(4) POTA in this case] for appeal before High Court against an order granting or refusing bail — Effect of — *Held, powers under S. 439 cannot be exercised in such case — Hence, in view of the specific provision under POTA, held, High Court erred in granting bail to accused-respondents exercising powers under S. 439 — Prevention of Terrorism Act, 2002, S. 34(4)*

Section 34(4) of POTA provides for an appeal to the High Court against an order of the Special Court granting or refusing bail. The accused-respondents submitted that the power of the High Court to grant bail under Section 439 CrPC has not been taken away by POTA and consequently, the learned Single Judge of the High Court had the jurisdiction to grant bail to the respondents in exercise of the power under Section 439 CrPC. It was urged that if the intention of the legislature was to make the provisions of Section 439 CrPC inapplicable in relation to offences under POTA, it would have made a provision similar to Section 49(5) of POTA which expressly excludes the applicability of Section 438 CrPC.

Rejecting the said contention,

Held:

Section 49 of POTA cannot be read in isolation, but must be read keeping in mind the scope of Section 34 of the said Act whereunder an accused can obtain bail from the High Court by preferring an appeal against the order of the Special Court refusing bail. In view of this specific provision, it will not be proper to interpret Section 49 in the manner suggested by the respondents. (Para 12)

That apart, if the argument of the respondents is accepted, it would mean that a person whose bail under POTA has been rejected by the Special Court will have two remedies and he can avail any one of them at his sweet will. He may move a bail application before the High Court under Section 439 CrPC in the original or concurrent jurisdiction or may prefer an appeal under sub-section (4) of Section 34 of POTA. To interpret a statutory provision in such a manner that a court can exercise both appellate and original jurisdiction in respect of the same matter will lead to an incongruous situation. (Para 14). *State of Gujarat* v. *Salimbhai Abdulgaffar Shaikh*, (2003) 8 SCC 50: AIR 2003 SC 3224.

Bench Strength 2. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 8-9-2003]

A.R. Antulay v. Ramdas Sriniwas Nayak, (1984) 2 SCC 500: 1984 SCC (Cri) 277; Usmanbhai Dawoodbhai Menon v. State of Gujarat, (1988) 2 SCC 271: 1988 SCC (Cri) 318; State of Punjab v. Kewal Singh, 1990 Supp SCC 147: 1990 SCC (Cri) 640, relied on

[6841] — Ss. 439 & 438 — Anticipatory bail — FERA violations alleged involving large amount — Held, on facts, was not a case fit for anticipatory bail. *Directorate of Enforcement* v. *Ashok Kumar Jain*, (1998) 2 SCC 105: 1998 SCC (Cri) 510: AIR 1998 SC 631.

Bench Strength 3. Coram: *M.K. Mukherjee*, *S.P. Kurdukar* and **K.T. Thomas**, JJ. [Date of decision: 8-1-1998]

[6842] — S. 439 — Bail — Grant of, by Supreme Court in "stamp scam" case — Relevant considerations — Likelihood of delay in completion of trial — Ground of parity — Consideration of period already passed in jail — *Charges levelled against appellant Senior Superintendent of Central Prison that he conspired with the main accused involved in the stamp scam and violated the prison rules and regulations by permitting and facilitating the said accused to use mobile phone for his unlawful activities, to run his fake stamp business from the jail and also to celebrate a party within the jail premises, all for illegal gratification — Appellant had already been in jail for about three years and nine months — Trial was likely to take a long time for completion — Co-accused against whom similar accusations were made, already released on bail — Held, having regard to the nature of involvement alleged and the role attributed to the appellant, and the period already spent by him in jail, it was a fit case for grant of bail — Hence, directions made accordingly — Karnataka Control of Organised Crimes Act, 2000 (1 of 2002), Ss. 3, 4 & 25 — Prevention of Corruption Act, 1988, Ss. 7, 12 and S. 13(1)(d) r/w S. 13(2) — Constitution of India — Art. 136* (Paras 8 and 9). *Jaya Simha* v. *State of Karnataka*, (2007) 8 SCC 145: (2007) 3 SCC (Cri) 518: (2007) 59 AIC 224 (SC).

Bench Strength 3. Coram: *K.G. Balakrishnan*, *C.J.* and *Tarun Chatterjee* and **R.V. Raveendran**, JJ. [Date of decision: 21-9-2007]

[6843] — S. 439 — Regular bail — Application made for, after lapse of period of interim bail — Rejection of — Propriety — *Offences of cheating, forgery, etc. — Appellants who had floated various companies and were Directors of a Company committing said offences causing huge loss to those who had deposited amounts in City Cooperative Bank Ltd. and the said Company — Appellants granted interim bail on certain conditions including that they would make payments to the investors — Steps* *already taken to pay to the depositors their dues — Petition for winding up of the said Company pending before Company Judge — Appellants not objecting to making payment to depositors from their assets — Held, no fruitful purpose would be served by keeping the appellants in continued detention — Bail granted imposing certain conditions — Various directions including placement of personal and other assets of the appellants at the disposal of the Company Judge for disbursement of claims of depositors by the said Judge, issued — Clarified that such directions could not have ordinarily been issued by the Supreme Court while disposing of a bail application but considering the present facts, issued under Art. 142 to do complete justice to all parties — Parties given liberty to approach the Supreme Court for any clarification/direction, if any occasion arises therefor — Constitution of India, Arts. 136 and 142* (Paras 24 to 30). *Arvind Mohan Johri* v. *State of U.P.*, (2005) 4 SCC 640: 2005 SCC (Cri) 1175.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *S.B. Sinha*, JJ. [Date of decision: 3-11-2004]

[6844] — S. 439 — Bail — Entitlement to — Factors to be considered — *SLPs filed against order of High Court holding that provisions of the 1999 Act were misapplied to the facts of the case — Dismissal of — Accused in custody for about 1 year and 7½ months — His medical condition not proper — In these circumstances, held, accused was entitled to be released on bail — Maharashtra Control of Organised Crime Act, 1999 (30 of 1999), S. 21(4)*

Having regard to the fact that the Supreme Court is dismissing the special leave petitions filed by the State of Maharashtra against the order of the Bombay High Court holding that the provisions of the Maharashtra Control of Organised Crimes Act, 1999 had been misapplied to the facts of the case, the stringent provisions regarding bail under the said Act will no longer be attracted in this case. Since the petitioner has been under arrest since the date of his surrender on 1-7-2005, and having further regard to his medical condition, it is directed that the petitioner *L* be released on bail to the satisfaction of the Chief Judicial Magistrate concerned. (Para 74). *State of Maharashtra* v. *Lalit Somdatta Nagpal*, (2007) 4 SCC 171: (2007) 2 SCC (Cri) 241: 2007 Cri LJ 1678.

Bench Strength **2**. Coram: *Dr. Ar. Lakshmanan* and **Altamas Kabir**, JJ. [Date of decision: 13-2-2007]

[6845] — S. 439 — Bail in "stamp scam" case — Grant of, to respondent police officer — Challenge to — Tenability — *Commission of organised crime, namely, the printing and sale of fake stamp papers — Respondent not taking necessary action against the prime accused T — He facilitating the continuing of illegal activity by T including disposal of ill-gotten properties of T even while T was in police custody — Respondent giving special treatment to T — Contention that High Court granted bail on erroneous approach that connivance or deliberate inaction on the part of a police officer which facilitated the organised crime to flourish would not amount to an offence under S. 3 of the Maharashtra Control of Organised Crime Act — Held, said question need not be gone into in detail in instant proceedings — It would be inappropriate to go into an analysis of the facts and circumstances of the case — It was for the trial court to take a final view on all questions after the evidence was let in — Thus, order granting bail not interfered with — Maharashtra Control of Organised Crime Act, 1999 (30 of 1999), Ss. 21(4) & 3*

The present appeal was preferred against the order of the High Court granting bail to the respondent police officer. The respondent was arrested in connection with stamp scam case in respect of various offences under the Penal Code as well as under the Maharashtra Control of Organised Crime Act, 1999 (MCOCA) and the Prevention of Corruption Act, 1988.

According to the appellant i.e. CBI, the respondent rendered help and support on his own in the commission of an organised crime. He had directed his subordinates that *T*, the prime accused in the stamp scam case should not be kept in any lock-up. This had facilitated the continuing of illegal activity by *T* including the disposal of his ill-gotten properties even while he was in police custody. *T* was also accorded special treatment by the respondent. The appellant contended that the High Court was clearly in error in granting bail to the respondent on its misconception of the scope of the relevant provisions of MCOCA and on its erroneous approach that connivance or deliberate inaction on the part of a police officer which facilitated the organised crime to flourish would not amount to an offence under Section 3 of MCOCA.

On the other hand, the respondent submitted that the alleged acts of commission and omission of the respondent did not attract Section 3 of MCOCA. Even if the case was brought under Section 24 of MCOCA, the punishment could extend only to three years. Hence, the High Court was justified in granting bail to the respondent.

(16) CrPC provisions for bail and Special Statutes *(contd.)*

Dismissing the appeal,

Held :

There is some merit in submission of the appellant that the approach of the High Court leaves a lot to be desired. There may be some substance in the argument that the High Court has not properly understood the content of Sections 3(2) and 3(3) of MCOCA and it was in error in thinking that deliberate inaction or studied negligence on the part of a responsible police officer could not amount to abetting or knowingly facilitating the commission of an organised crime. But, it is not proper for the Supreme Court to go into that question in detail in this proceeding, which is only an appeal against the grant of bail. It would be inappropriate to go into an analysis of the facts and circumstances of the case. After all, whatever may be said in this order will not even control the decision to be taken after the conclusion of the trial and it would be appropriate to leave it to the court trying the case to take a final view on all the questions after the evidence has been let in. (Paras 5 and 6). *CBI* v. *Pradeep Bhalchandra Sawant*, (2007) 7 SCC 344: (2007) 3 SCC (Cri) 362: (2007) 57 AIC 8 (SC).

Bench Strength **2**. Coram: *K.G. Balakrishnan, C.J.* and **P.K. Balasubramanyan**, J. [Date of decision: 17-8-2007]

[6846] — S. 439 — Bail — Grant of — Considerations — *Appellant associated with "Telgi" scam (printing and distributing counterfeit stamps/stamp papers on a very large scale) from registration of FIR (7-6-2002) till the first charge-sheet filed (3-9-2002) — He retired on 31-8-2003 — He was arrested on 4-12-2003 for his alleged involvement in subverting the investigation by helping the perpetrators of organised crime and receiving illegal gratification therefor — Appellant in jail for 2 years and 9 months — Trial likely to take several years as more than 800 witnesses to be examined — Without considering the relative scope of Ss. 3(2) and 34 of MCOC Act, 1999, bail granted having regard to the nature of involvement alleged and the role attributed to him, subject to stipulated conditions* (Paras 12 to 15). *Mohd. Chand Mulani* v. *Union of India*, (2006) 13 SCC 143: (2007) 2 SCC (Cri) 658: AIR 2006 SC 3403: (2006) 46 AIC 108 (SC).

Bench Strength **3**. Coram: *K.G. Balakrishnan, G.P. Mathur* and **R.V. Raveendran**, JJ. [Date of decision: 18-9-2006]

[6847] — S. 439 — Bail — Relevant considerations for grant of — *Telgi stamp scam case — Appellant, Dy. Supdt. of Stamps, arrested during course of investigation about 1½ years after registration of case against several persons under relevant provisions of Penal Code and Ss. 3(2), 3(5) and 24 of Maharashtra Control of Organised Crime Act, 1999 — Charges could not be framed by the time hearing of the present appeal was concluded — Appellant already in custody for more than 2 years and 3 months — Held, only consideration for Court is whether appellant made out a case for bail — Detailed discussion on scope of the said Act or materials against appellant and arguments for and against him on merits not called for at this stage — Court can neither be carried away by the catchy submission that "bail and not jail" is the rule, nor can it ignore the principle reflected by that catchphrase — On consideration of relevant circumstances and taking note of the period during which appellant had been in custody, held, it is a fit case for grant of bail to the appellant — Appellant be enlarged on bail on his furnishing security to the satisfaction of the Special Court in a sum of Rs 1 lakh with two solvent sureties for the like amount and on his fulfilling other conditions of S. 438(2) — Further, appellant should report before IO between 10.00 a.m. and 12.00 noon every third Saturday of the month and surrender his passport (or file affidavit, if he has none) before Special Court. Babanrao Tukaram Ranjane* v. *State of Maharashtra*, (2006) 9 SCC 422: (2006) 2 SCC (Cri) 562.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **P.K. Balasubramanyan**, JJ. [Date of decision: 12-5-2006]

[6848] — Ss. 439 and 46(1) & (2) — Examination or summoning of person under Ss. 107 and 108, Customs Act, 1962 by Customs office — If amounts to "arrest" or "custody" — Distinction between the two — *Observation by Full Bench of Madras High Court in* Roshan Beevi case, *1984 Cri LJ 134 that "custody" and "arrest" are not synonymous and that in every arrest there is custody but not vice versa — Applicability of — Held, it may be relevant in the context of Ss. 107 and 108 where summons in respect of an enquiry may amount to "custody" but not to "arrest" although such custody can subsequently materialise into arrest — However, the position is different in respect of proceedings in court in relation to enquiry into offences under the Penal Code and other criminal enactments as in such cases, in order to obtain the benefit of bail the accused has first to surrender to the custody of the court or police authorities — Customs Act, 1962, Ss. 107 and 108*

The expression "arrest" has neither been defined in CrPC nor in IPC or any other enactment dealing with criminal offences. However, from Sections 46(1) & (2) CrPC this much is clear that in order to make an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be submission to the custody by word or action. Similarly, the expression "custody" has also not been defined in CrPC. (Paras 13 to 15)

The Department is right in its submission that unless a person accused of an offence is in custody, he cannot move the court for bail under Section 439 CrPC, which provides for release on bail of any person accused of an offence and *in custody*. The precondition, therefore, for applying the provisions of Section 439 CrPC is that a person who is an accused must be in custody and his movements must have been restricted before he can move for bail. (Para 25)

In the instant case the accused persons had appeared before the Magistrates concerned and on applying for bail were granted bail without being taken into formal custody, which appears to have swayed one of the Benches of the High Court to take a liberal view and to hold that no arrest had actually been effected. The said view is incorrect as it goes against the very grain of Sections 46 and 439 CrPC. (Para 26)

Sections 107 and 108 of the Customs Act do not contemplate immediate arrest of a person being summoned in connection with an enquiry, but only contemplate surrendering to the custody of the Customs Officer which could subsequently lead to arrest and detention. In such context the Full Bench of the Madras High Court returned a finding in *Roshan Beevi case*, 1984 Cri LJ 134, that "custody" and "arrest" are not synonymous terms and observed that it is true that in every arrest there is a custody but not vice versa. A custody may amount to "arrest" in certain cases, but not in all cases. The interpretation of "arrest" and "custody" rendered by the Full Bench in *Roshan Beevi case* may be relevant in the context of Sections 107 and 108 of the Customs Act where summons in respect of an enquiry may amount to "custody" but not to "arrest", but such custody could subsequently materialise into arrest. The position is different as far as proceedings in the court are concerned in relation to enquiry into offences under the Penal Code and other criminal enactments. In the latter set of cases, in order to obtain the benefit of bail an accused has to surrender to the custody of the court or the police authorities before he can be granted the benefit thereunder. (Paras 24, 20 and 27)

It is, therefore, held that the views expressed by the High Court in *D*'s writ petition regarding arrest were incorrect, while the views expressed in the writ petitions filed by *L* & *B* correctly interpreted the meaning of the expressions "arrest" and "custody". However, how far the same would apply in the ultimate analysis relating to their answer in their application forms is another matter altogether. (Para 30)

The reasoning given in *D*'s case in that context is a possible view and does not call for interference under Article 136 of the Constitution. Conversely, the decision rendered in the writ petitions filed by *L* and *B* has to be reversed to be in line with the decision in *D*'s case. When the question as to what constitutes "arrest" has for long engaged the attention of different High Courts as also the Supreme Court, it may not be altogether unreasonable to expect a layman to construe that he had never been arrested on his appearing before the court and being granted bail immediately. The position would have been different, had the person concerned not been released on bail. In the facts of the present cases, the benefit of a mistaken impression, rather than that of deliberate and wilful misrepresentation and concealment of facts, has to be given to the appellants in the second of the two appeals as well. (Paras 31 and 32). *State of Haryana* v. *Dinesh Kumar*, (2008) 3 SCC 222: (2008) 1 SCC (Cri) 722: AIR 2008 SC 1083: (2008) 63 AIC 265 (SC): (2008) 2 SLR 331: (2008) 2 LLN 120.

Bench Strength **2**. Coram: *C.K. Thakker* and **Altamas Kabir**, JJ. [Date of decision: 8-1-2008]

Roshan Beevi v. Jt. Secy. to the Govt. of T.N., 1984 Cri LJ 134 (Mad), limited

Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559: 1980 SCC (Cri) 508, affirmed

State of U.P. v. Deoman Upadhyaya, AIR 1960 SC 1125, relied on

Halsbury's Laws of England (4th Edn.), Vol. 11, Para 99, referred to

[6849] — Ss. 439 and 437 — Bail granted ignoring provisions of S. 37 NDPS Act — Cancellation of — Non-consideration of the provisions contained in, while granting bail — *Order releasing the accused on bail set aside — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 37. T. Bijando Singh* v. *Mohd. Ibocha*, (2004) 10 SCC 151.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *R.P. Sethi*, JJ. [Date of decision: 5-11-2001]

[6850] — S. 439 — Bail — Grant of — Alleged use of medicines containing psychotropic substances — Advertisements allegedly issued by the respondent in newspapers claiming that medicines used by him were prepared from herbal plants and by application thereof patients suffering from epilepsy can be cured — *Respondent arrested on allegation of using medicines containing psychotropic substances — High*

(16) CrPC provisions for bail and Special Statutes *(contd.)*

Court allowing the bail application on the ground that ordinarily applications for bail are required to be considered having regard to S. 37 of the 1985 Act, however, as drugs in question not being listed in Sch. I appended to the 1985 Rules, respondent cannot be said to have committed any offence under S. 8 r/w S. 22 of the 1985 Act — Propriety — Held, general prohibitions contained in Rr. 53 and 64 of the 1985 Rules refer only to the drugs and psychotropic substances specified in Sch. I appended to the 1985 Rules — R. 67-A of the 1985 Rules provides for special provisions for medical and scientific purposes — S. 8 of the 1985 Act contains an exception regarding use of the psychotropic substances for medicinal or scientific use — The medicines seized come within the purview of Schs. G and H of the Drugs and Cosmetics Rules and none of them finds place in Sch. I appended to the 1985 Rules — Hence, held, if the drugs do not find place in Sch. I appended to the 1985 Rules, the provisions of S. 8 of the 1985 Act would have no application — S. 37 of the 1985 Act must be construed in a pragmatic manner — It cannot be construed in such a way so as to negate the right of party to obtain bail which is a valuable right — Therefore, held, S. 37 of the 1985 Act would prima facie have no application in view of the exception contained in S. 8 thereof r/w the Rules — Hence, held, a person cannot be denied the right of being released on bail unless a clear case of application of the 1985 Act is made out — He may ultimately be found guilty even for commission of an offence under the 1985 Act but when prima facie the provisions of the said Act are not found applicable, particularly when, on facts, he has been in custody for more than two years, it is not a fit case for exercise of discretionary jurisdiction under Art. 136 of the Constitution — Narcotic Drugs and Psychotropic Substances Rules, 1985, Rr. 53, 64, 65, 66, 67, 67-A and Sch. — Drugs and Cosmetics Rules, 1945 — Schs. G and H — Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, Ss. 3 and 4 — Constitution of India — Art. 136 — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 8, 22, 37, 2(vii-a), 2(xxiii-a), 9, 10, 76 and Sch.

Respondent herein is an Ayurvedacharya operating from two clinics. Advertisements were, allegedly, being issued by him in various newspapers claiming that medicines used by him were prepared from herbal plants collected from the banks of Ganges and by application thereof patients suffering from epilepsy can be cured. However, on the allegation that in his medicine he had been using unlabelled tablets containing psychotropic substances making the unsuspecting patients addicted to the drugs, the State raided the premises of the said clinics and recovered the drugs. The drugs allegedly used to be dispatched by post also. The respondent was arrested on 13-8-2004 and since then he was in jail custody. Charges were framed against him under Section 8 read with Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. An application for bail moved by him before the Special Judge was dismissed. He filed an application for bail before the High Court which was granted. A special leave petition was filed thereagainst and by an order the bail application was revived. The High Court was requested to dispose of the same expeditiously. The High Court by reason of the impugned order allowed the said bail application. In its order the High Court noticed that ordinarily applications for bail are required to be considered having regard to Section 37 of the 1985 Act. It, however, opined that the drugs in question not being listed in Schedule I appended to the Narcotic Drugs and Psychotropic Substances Rules, 1985, the respondent cannot be said to have committed any offence under Section 8 read with Section 22 of the 1985 Act. The State thus filed the present appeal.

Dismissing the appeal,

Held :

It is not in dispute that the medicines seized from the said clinic come within the purview of Schedules G and H of the Drugs and Cosmetics Rules. None of them finds place in Schedule I appended to the 1985 Rules. Hence, the provisions of Section 8 of the 1985 Act would have no application whatsoever. In view of the fact that all the drugs being allopathic drugs mentioned in Schedules G and H of the Drugs and Cosmetics Rules indisputably are used for medicinal purposes. Once the drugs are said to be used for medicinal purposes, it cannot be denied that they are acknowledged to be the drugs which would come within the purview of description of the expression "medicinal purposes". (Paras 22 and 23)

The exceptions contained in Section 8 of the 1985 Act must be judged on the touchstone of:

(*i*) whether drugs are used for medicinal purposes;

(*ii*) whether they come within the purview of the regulatory provisions contained in Chapters VI and VII of the 1985 Rules. (Para 24)

Chapter VII-A of the 1985 Rules which was introduced by a notification dated 25-6-1997 with effect from 27-6-1997 provides for special provisions regarding manufacture, possession, transport, import-export, purchase and consumption of narcotic drugs and psychotropic substances for medical and scientific purposes. (Para 25)

Section 37 of the 1985 Act must be construed in a pragmatic manner. It cannot be construed in such a way so as to negate the right of party to obtain bail which is otherwise a valuable right for all practical purposes. (Para 28)

Section 37 of the 1985 Act would *prima facie* have no application in view of the exception contained in Section 8 thereof read with the Rules. (Para 36)

The respondent is charged with a grave offence. It was, therefore, all the more necessary to apply the principles of law strictly. A person cannot be denied the right of being released on bail unless a clear case of application of the 1985 Act is made out. He may ultimately be found guilty even for commission of an offence under the 1985 Act, but in a case of this nature when prima facie the provisions of the said Act are not found applicable particularly, in view of the fact that he has been in custody for a period of more than two years now, it is not a fit case for exercising discretionary jurisdiction under Article 136 of the Constitution of India. (Para 38). *State of Uttaranchal* v. *Rajesh Kumar Gupta*, (2007) 1 SCC 355: (2007) 1 SCC (Cri) 356: (2007) 1 All LJ 254: (2007) 50 AIC 394 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 10-11-2006]

Dadu v. State of Maharashtra, (2000) 8 SCC 437: 2000 SCC (Cri) 1528; Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294: 2005 SCC (Cri) 1057; Babanrao Tukaram Ranjane v. State of Maharashtra, (2006) 9 SCC 422: (2006) 2 SCC (Cri) 562; Sajan Abraham v. State of Kerala, (2004) 4 SCC 441: 2004 SCC (Cri) 1299; Hussain v. State of Kerala, (2000) 8 SCC 139: 2000 SCC (Cri) 1468, relied on

Rajinder Gupta v. State, (2005) 123 DLT 55; Pradeep Dhond v. Intelligence Officer, Narcotic & Control Bureau, Cri A No. 6787 of 2005, disposed of on 7-2-2006 (Bom), approved

[6851] — S. 439 — Bail — Grant of, by High Court without indicating any reason as to why it was of the view that the contraband articles under the NDPS Act were not seized from the exclusive possession of the accused — Sustainability — *Held, was not sustainable — Hence, said order set aside — Bail application directed to be considered afresh by the High Court keeping in view the parameters of S. 37, NDPS Act — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 37* (Paras 13 and 14). *Union of India* v. *Shiv Shanker Kesari*, (2007) 7 SCC 798: (2007) 3 SCC (Cri) 505: (2007) 6 All LJ 355.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 14-9-2007]

[6852] — S. 439 — Offences under NDPS Act — Rejection of bail — Non-consideration of relevant factors — *Allegation against appellants regarding recovery of* **ganja** *— On the day of arrest of one of the appellants, a telegram sent by one* **K** *to various government and police authorities stating that there was danger to the lives of the appellants as a police party forcibly entered and arrested the appellants from their house and that their whereabouts were not known, ignored by the said authorities — Was a relevant consideration — Hence, bail granted to appellants by imposing certain conditions — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 37, 42, 20(b)(ii)(C) and 25* (Paras 6 to 8). *Sarija Banu* v. *State*, (2004) 12 SCC 266.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *B.N. Srikrishna*, JJ. [Date of decision: 26-2-2004]

[6853] — S. 439 — Bail — Grant of — Twin conditions prescribed under S. 37(1)(b)(ii) NDPS Act for — Fulfilment of — Mode of — Necessary considerations and findings required on the part of court — Expression "reasonable grounds" occurring in S. 37(1)(b)(ii) — Meaning of — *Held, for granting bail, both the conditions prescribed under S. 37(1)(b)(ii) i.e. satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty and that he is not likely to commit any offence while on bail, must be satisfied — If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail — Explaining the meaning of expression "reasonable grounds", further held, there must be existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged — However, the court is not required to record a finding of "not guilty" as it does while pronouncing a judgment of acquittal — Existence of some material is also necessary for coming to conclusion as to second condition that the accused is not likely to commit any offence while on bail — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 37(1)(b)(ii)*

As Section 37(1)(*b*)(*ii*) of the NDPS Act, 1985 itself provides that no person shall be granted bail unless the two conditions are satisfied. They are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty and that he is not likely to commit any offence while on bail. Both the conditions have to be satisfied. If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail. (Para 6)

(16) CrPC provisions for bail and Special Statutes *(contd.)*

The expression used in Section 37(1)(*b*)(*ii*) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable cause for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged. (Para 7)

The court while considering the application for bail with reference to Section 37 of the NDPS Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty. (Para 11)

Additionally, the court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion. (Para 12). *Union of India* v. *Shiv Shanker Kesari*, (2007) 7 SCC 798: (2007) 3 SCC (Cri) 505: (2007) 6 All LJ 355.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 14-9-2007]

[6854] — S. 439 — Bail — Grant of — Powers of High Court in NDPS matter — Prosecution under Ss. 8/18, NDPS Act — *Setting aside the impugned order, held, High Court erred in failing to consider the mandatory provisions of S. 37 of the NDPS Act while granting bail to accused — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 37 — Consideration of, held, mandatory for granting bail under the Act. Union of India* v. *Aharwa Deen*, (2000) 9 SCC 382: 2001 SCC (Cri) 399: AIR 2000 SC 3512 (2): 2000 Cri LJ 3526: (2000) 120 ELT 595.

Bench Strength 2. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 31-1-2000]

[6855] — Ss. 439 and 437 — Grant of bail in NDPS case without bearing in mind the provisions under S. 37 of the NDPS Act, held, not proper — Provisions of, not borne in mind by the High Court before granting the bail to accused respondent — *Act of High Court, held, was improper — Order passed by the High Court set aside — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 37* (Para 5). *Union of India* v. *Gurcharan Singh*, (2003) 11 SCC 764.

Bench Strength 2. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 8-5-2000]

[6856] — Ss. 439 and 167 proviso (a) — Power of High Court under S. 37, NDPS Act — *Delay in trial of accused prosecuted under the Narcotic Drugs and Psychotropic Substances Act — High Court refusing to cancel the bail — Quashing the order of High Court, held, provisions of S. 37 of the Act are mandatory and Court must bear that in mind while deciding the bail application under the Act — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 37 — Held is mandatory. Union of India* v. *Ikram Khan*, (2000) 9 SCC 221: 2000 SCC (Cri) 1493: AIR 2000 SC 3397.

Bench Strength 2. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 13-1-2000]

[6857] — S. 439 — Bail — Offence under NDPS Act — Relevant factors — *Held, compliance with S. 42, NDPS Act is mandatory and is a relevant fact to be taken into account while considering the bail application — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 37 and 42* (Para 7). *Sarija Banu* v. *State*, (2004) 12 SCC 266.

Bench Strength 2. Coram: *K.G. Balakrishnan* and *B.N. Srikrishna*, JJ. [Date of decision: 26-2-2004]

[6858] — S. 439 — Powers of High Court under are subject to the limitations contained in S. 37 of the NDPS Act — Offences committed under the Act — Non-compliance with certain provisions of the Act — Bail application — Factors to be borne in mind — *Respondent and his wife prosecuted under Ss. 8-C, 21, 27-A, 28 and 29 of the NDPS Act and Ss. 193 and 120-B of the Penal Code, 1860 — High Court granting bail on the ground of non-compliance with Ss. 52 and 57 of the Act — Having regard to the provisions of S. 37 of the Act, held, it would be too early to take into account and judge the matter regarding non-compliance with the formalities during the bail stage — Since recording of findings under S. 37 of the Act was a sine qua non for granting bail under the Act, impugned order of High Court set aside — No consequential directions made as respondent already put back in jail — This order would not come in way of right of respondent's wife to seek her release by any remedy available under the law — Penal Code, 1860, Ss. 193 and 120-B — Evidence Act, 1872, S. 114 Ill. (e) — Official acts — Factual presumption by courts regarding the due performance of — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 37, 52 and 57*

In the light of Section 37 of the Act no accused can be released on bail when the application is opposed by the Public Prosecutor unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offences and that he is not likely to commit any offence while on bail. It is unfortunate that matters which could be established only in offence regarding compliance with Sections 52 and 57 have been pre-judged by the learned Single Judge at the stage of consideration for bail. The minimum which the learned Single Judge should have taken into account was the factual presumption in law position that official acts have been regularly performed. Such presumption can be rebutted only during evidence and not merely saying that no document has been produced before the learned Single Judge during bail stage regarding the compliance with the formalities mentioned in Sections 52 and 57. (Para 6). *Supdt., Narcotics Control Bureau, Chennai* v. *R. Paulsamy*, (2000) 9 SCC 549: 2001 SCC (Cri) 648: AIR 2000 SC 3661.

Bench Strength **2**. Coram: *K.T. Thomas* and *D.P. Mohapatra*, JJ. [Date of decision: 30-3-2000]

Union of India v. Ram Samujh, (1999) 9 SCC 429: 1999 SCC (Cri) 1522, followed

[6859] — S. 439 — Scope of High Court's power to grant bail under — Held, limited to the extent provided under S. 37 of NDPS Act — *Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 37 and 36-A(3)*

The powers of the High Court to grant bail under S. 439 are subject to the limitations contained in the amended S. 37 of the NDPS Act and the restrictions placed on the powers of the court under the said section are applicable to the High Court also in the matter of granting bail. (Para 7). *Narcotics Control Bureau* v. *Kishan Lal*, (1991) 1 SCC 705: 1991 SCC (Cri) 265: AIR 1991 SC 558: (1991) 1 KLT 547: (1991) 52 ELT 328: 1991 Cri LJ 654.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **K. Jayachandra Reddy**, JJ. [Date of decision: 29-1-1991]

[6860] — S. 439 r/w S. 482 — Bail — Grant of, by the High Court on the ground that there was no material to show that the articles seized could be treated as "psychotropic substance" — *Propriety — Accused found carrying large quantity of "Diazepam" 5 mg tablets — Recovery of tablets admitted by accused in confessional statement under S. 67, NDPS Act — Description of drug at Sl. No. 43 of the Schedule to the Act not kept in view by High Court — Further, report of Central Revenue Control Laboratory lightly brushed aside without any justifiable reason — Object of S. 37, held, completely overlooked by High Court — Present one not a case where it could be reasonably believed that the accused was not guilty of the alleged offence — Bail cancelled — Constitution of India — Art. 136 — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 8 r/w Item 43 of the Schedule and S. 37* (Paras 7 and 8). *Collector of Customs* v. *Ahmadalieva Nodira*, (2004) 3 SCC 549: 2004 SCC (Cri) 834: (2004) 110 DLT 300: 2004 Cri LJ 1810: (2004) 166 ELT 302.

Bench Strength **3**. Coram: *S. Rajendra Babu*, **Arijit Pasayat** and *G.P. Mathur*, JJ. [Date of decision: 11-3-2004]

Ahmadalieva Nadira v. Customs, (2002) 147 ELT 44 (Del), reversed

[6861] — S. 439 — Grant of bail for offences under NDPS Act, 1985 — Matters to be considered — Nature and scope — Scope of High Court's power to grant bail under — Non obstante clause — Effect — Conditions and limitations for grant of bail under — "Reasonable grounds" — Meaning — *Held, apart from giving an opportunity to the Public Prosecutor to oppose bail application as provided under S. 37(1)(b)(i), the other twin conditions set out in S. 37(1)(b)(ii) have to be satisfied — The said conditions are cumulative and not alternative — Criminal Trial — Bail — Grant of, in respect of offences under special statute — Considerations involved — Words and Phrases — "Reasonable grounds" — Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 37*

It is plain from a bare reading of the non obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, but also subject to the restrictions placed by clause (*b*) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz. (*i*) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (*ii*) that he is not likely to commit any offence while on bail, have to be satisfied. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds". The expression "reasonable grounds" in Section 37(1)(*b*)(*ii*) has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act. (Paras 12 and 13)

While considering an application for bail under Section 37 of the NDPS Act, the court is not called upon to record a finding of "not guilty". At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail. (Para 14). *Union of India* v. *Rattan Mallik*, (2009) 2 SCC 624.

Bench Strength 2. Coram: **D.K. Jain** and *R.M. Lodha*, JJ. [Date of decision: 23-1-2009]

Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798: (2007) 3 SCC (Cri) 505, relied on

(17) Other issues

[6862] — S. 439(1)(a) — Bail — Appeal against grant of bail — Duty of the State in an appeal against grant of bail — *In case of erroneous grant of bail by High Court, held, it was the State which ought to have assailed the order granting bail — In the instant case, the appeal was filed by the informant while the State had remained totally silent and its officers failed to instruct its counsel in the said matter — Such attitude of State and its officers deprecated by Supreme Court — Constitution of India — Art. 136* (Para 1). *Salim Khan* v. *Sanjai Singh*, (2002) 9 SCC 670.

Bench Strength 2. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 15-12-1999]

— S. 440 *See also* S. 498, Criminal Procedure Code, 1898, pp.1274 et seq. in Vol. 2

— S. 440 *See* Ss. 436, 437, 440 & 441
See also Ss. 436 to 450
See also Ss. 436, 437, 440, 441 and 442

[6863] — Ss. 440 and 441 — Bail — Amount of bond and sureties — Onerous conditions for grant of bail at FIR stage — Justifiability — Appellant arrested pursuant to FIR lodged by respondent alleging offences under Ss. 420 and 406 IPC — *Bail granted on condition of payment of Rs 2 lakhs — As part of compliance with the conditions, appellant executing a bond in a sum of Rs 50,000 with two solvent sureties and one of the sureties issuing cheques for Rs 2 lakhs to the complainant — Cheques having been dishonoured, bail cancelled — Consequently appellant languishing in jail for more than 10 months — Held, keeping the appellant in prison endlessly for default of the surety in case where bail would normally be granted was improper*

It is not possible to appreciate even the first order passed by the Metropolitan Magistrate imposing the onerous condition that an accused at the FIR stage should pay a huge sum of Rs 2 lakhs to be set at liberty. On default in payment of that amount the appellant is to languish in jail for more than 10 months now, is sufficient indication that he was unable to make up the amount. If the cheques issued by his surety were dishonoured, the Court could perhaps have taken it as a ground to suggest to the payee of the cheques to resort to the legal remedies provided by law. Similarly if the Court was dissatisfied with the conduct of the surety as for his failure to raise funds for honouring the cheques issued by him, the Court could have directed the appellant to substitute him with another surety. But to keep him in prison for such a long period, that too in a case where bail would normally be granted for the offences alleged, is not only hard but improper. The Court has not even come to the conclusion that the allegations made in the FIR are true. That can be decided only when the trial concludes, if the case is charge-sheeted by the police. No doubt if the appellant was not in a position to abide by the conditions imposed for granting bail he should have raised his objection at that time or should have challenged the order soon after his release on bail. But his failure to do so then cannot now be used as a bar for preventing him from approaching the Court with a prayer to release him from jail. He cannot be detained in custody for long without conviction in a case of this nature. Therefore, the appellant must be released on bail on his executing a bond in a sum of Rs 25,000, with two solvent sureties, to the satisfaction of the Metropolitan Magistrate. (Paras 4 to 6). *Sandeep Jain* v. *NCT of Delhi*, (2000) 2 SCC 66: 2000 SCC (Cri) 316: AIR 2000 SC 714: 2000 Cri LJ 807.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 18-1-2000]

— **S. 441** *See also* S. 499, Criminal Procedure Code, 1898, pp. 1275 et seq. in Vol. 2

— **S. 441** *See* Ss. 167(2), proviso (a), 309(2), 437(5), 439(2), 441, 442(1) and 444

See also Ss. 436, 389, 437, 441 and 445

See also Ss. 436 to 450

See also Ss. 436, 437, 440 & 441

See also Ss. 436, 437, 440, 441 and 442

See also Ss. 440 and 441

[6864] — Ss. 441 and 442 — Supreme Court's interference with failure to execute order granting bail when not called for — *Constitution of India, Art. 136. Raghubir Singh* v. *State of Bihar*, (1986) 4 SCC 481: 1986 SCC (Cri) 511: AIR 1987 SC 149.

Bench Strength 2. Coram: **O. Chinnappa Reddy** and *M.M. Dutt*, JJ. [Date of decision: 19-9-1986]

[6865] — Ss. 441, 446 and 444(1) — Modification of conditions of bail — Effect, if any, on the liability of the surety — *Alteration of conditions other than that of ensuring the attendance of the accused in the court whenever required, held, does not absolve the surety from his liability in terms of the bond — If the surety is not agreeable to the modified conditions, he must apply to the court under S. 444(1) to discharge him — Hence, in case of forfeiture of the bond due to default of the accused in appearing before the court, the surety, unless already discharged by the court, held, can be proceeded against by the court under S. 446 — Penal Code, 1860, Ss. 466 and 471 — Registration of Foreigners Act, 1939 — Passport Act, 1967*

The appellants stood sureties for bailing out a foreign national who was under indictment for the offences mentioned in Sections 466 and 471 of the IPC besides a few other offences under the Registration of Foreigners Act, 1939 and the Passport Act, 1967. The conditions of bail were, inter alia, as follows:

"(*i*) The accused should furnish a personal bond of Rs 25,000 and to furnish two local sureties for the same amount.

(*iv*) The accused should not leave Bangalore city without the prior permission from the Bangalore City Police Commissioner, till the trial is completed."

After the release, at the instance of the accused, the Magistrate relaxed condition (*iv*) of the bond and permitted the accused to reside in Mysore. Thereafter, the accused slipped out of India. Consequently, the Magistrate forfeited the bail bonds and required the sureties to pay the amount of bail bonds. The sureties' appeal was dismissed by the Sessions Court and their second appeal was dismissed on merits by the High Court. The Supreme Court found the second appeal to be not maintainable but since the High Court had dismissed the same on merits, the Supreme Court treated the High Court's order as a revisional one and proceeded to hear the appeal on merits. The appellant sureties contended that with the relaxation of condition (*iv*) of the bond without notice to them, they stood absolved of their liability under the bond. Rejecting this contention,

Held :

The contention of the appellants is not sustainable. The most essential element of the bail order is for ensuring the attendance of the accused in the court whenever required. In fact, that is the hub of the order and the other conditions are only subsidiary thereto. So long as that core postulate remains unchanged a surety cannot take advantage of any subsequent modification effected in respect of any other conditions. If a surety is not agreeable to abide by the modified conditions he must apply to the court under Section 444(1) CrPC to discharge him. Until the surety is discharged he is bound by the bond and any modification or even deletion of a condition of the order cannot absolve him from his liability in respect of the unaltered conditions. If there is forfeiture of the bond executed by the surety due to the default of the accused in making appearance before the court it is open to the court concerned to resort to the steps contemplated in Section 446 CrPC as against the sureties, besides the accused himself. (Para 12). *Mohd. Kunju* v. *State of Karnataka*, (1999) 8 SCC 660: AIR 2000 SC 6.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 29-10-1999]

State of Bihar v. M. Homi, AIR 1955 SC 478: (1955) 2 SCR 78, distinguished

[6866] — S. 441 and Sch. II Form 45 — Extent of liability of surety on forfeiture of the bond — Held, each surety would be liable for the amount undertaken by him — *On facts, the accused had furnished a personal bond for Rs 25,000 and two sureties for the same amount — Hence, on forfeiture of such bond, each of the surety, held, was liable to pay Rs 25,000 individually and could not share the amount by half and half* (Paras 14 and 5). *Mohd. Kunju* v. *State of Karnataka*, (1999) 8 SCC 660: AIR 2000 SC 6.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 29-10-1999]

Ram Lal v. State of U.P., (1979) 2 SCC 192: 1979 SCC (Cri) 418: AIR 1979 SC 1498, followed

— **S. 441(3)** *See* Ss. 437, 441(3) and 209(b)

— **S. 442** *See* Ss. 436 to 450

See also Ss. 436, 437, 440, 441 and 442

See also Ss. 441 and 442

— **S. 442(1)** *See* Ss. 167(2), proviso (a), 309(2), 437(5), 439(2), 441, 442(1) and 444

— **S. 443** *See* Ss. 436 to 450

— **S. 444** *See* Ss. 167(2), proviso (a), 309(2), 437(5), 439(2), 441, 442(1) and 444

See also Ss. 436 to 450

— **S. 444(1)** *See* Ss. 441, 446 and 444(1)

— **S. 445** *See* Ss. 436, 389, 437, 441 and 445

See also Ss. 436 to 450

— **S. 446** *See also* S. 514, Criminal Procedure Code, 1898, pp. 1279 et seq. in Vol. 2

— **S. 446** *See* Ss. 436 to 450

See also Ss. 441, 446 and 444(1)

See also Ss. 449(ii) & (i) and 446

[6867] — S. 446 — Bond given to a police officer — If can be enforced and security forfeited — *S. 523 and U.P. Police Regulations, Regulation 165 — Effect of — CrPC, 1898, Ss. 514 and 523*

Though S. 523, CrPC, read with Regulation 165 of U.P. Police Regulations authorises the police to seize the property and to make a summary order of the custody of the property, but neither S. 523 nor R. 165(*ii*) authorizes the police officer to take a bond from the person to whom the property is entrusted. The policy of the law appears to be that the execution of the bond involves a civil liability and, therefore, it is in the fitness of things that it should be executed before a court.

Section 514 clearly shows that a bond for the production of the property seized by the police must be executed before the Court, although a bond for the appearance of any person before the Court can be taken by the police under S. 170(2) of the Code of Criminal Procedure. This section also clearly enjoins that a bond can be forfeited only if it is executed before a court or before a Presidency Magistrate or a Magistrate of the first class.

Since in the present case the bond was not one as contemplated by S. 514, it could not be forfeited.

Even under the new Criminal Procedure Code, 1973 there is no express provision which empowers the police to get a bond from the person to whom the property seized is entrusted.

No observation is being made regarding any other liability of the appellant under the law. *Anwar Ahmad* v. *State of U.P.*, (1976) 1 SCC 154: 1975 SCC (Cri) 785: AIR 1976 SC 680: (1976) 1 SCR 779: 1976 Cri LJ 620.

Bench Strength **2**. Coram: *V.R. Krishna Iyer* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 12-9-1975]

[6868] — S. 446 — Charges against foreigners who have already left India directed to be dropped — *Charges being of trivial nature only a token penalty of Rs. 100 imposed upon surety. Madhu Limaye* v. *Metropolitan Magistrate*, 1984 Supp SCC 699: 1985 SCC (Cri) 148.

Bench Strength **3**. Coram: *Y.V. Chandrachud, C.J.* and *R.S. Pathak* and *V. Khalid*, JJ. [Date of decision: 20-7-1984]

[6869] — S. 446(3) — Remission in penalty — In the peculiar circumstances of the case, granted — *Foreign national under indictment under Ss. 466 and 471 IPC and a few other offences under Registration of Foreigners Act and Passport Act released on bail and thereafter absconding abroad secretly — Sureties in terms of the bond were liable to pay Rs 25,000 each — In such circumstances, since the offences, though not trivial, were not very serious either, the court had not required the accused to surrender his passport and there was no connivance on the part of the sureties, Supreme Court granting remission to them and directing each surety to pay instead Rs 5000 as penalty — Penal Code, 1860, Ss. 466 and 471 — Registration of Foreigners Act, 1939 — Passport Act, 1967* (Paras 15 and 16). *Mohd. Kunju* v. *State of Karnataka*, (1999) 8 SCC 660: AIR 2000 SC 6.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 29-10-1999]

Madhu Limaye v. Metropolitan Magistrate, 1984 Supp SCC 699: 1985 SCC (Cri) 148, followed

— **S. 446-A** *See* Ss. 436 to 439 and 446-A

See also Ss. 439 and 446-A

— **S. 447** *See* Ss. 436 to 450

— **S. 448** *See* Ss. 436 to 450

— **S. 449** *See* Ss. 436 to 450

— **S. 449(i)** *See also* Ss. 449(ii) & (i) and 446

[6870] — Ss. 449(ii) & (i) and 446 — Applicability of S. 449(ii) — Held, not applicable in cases where appeal lies to Sessions Court — *Hence, appeal from appellate order of Sessions Court, held, not maintainable*

The order in the instant case was passed by the Chief Metropolitan Magistrate and hence the appeals preferred by the appellants before the Sessions Court were according to law. Section 449(*ii*) will not apply in any case where the appeal lies to the Sessions Court as the said provision deals with a different situation when the original order has been passed by the Sessions Court in which case the appeal normally lies to the High Court. In the present case only one appeal can be preferred and that was actually filed and was disposed of by the Sessions Court by a judgment. It is not an order falling within the ambit of clause (*ii*). Hence no further appeal could have been maintained. (Para 7). *Mohd. Kunju* v. *State of Karnataka*, (1999) 8 SCC 660: AIR 2000 SC 6.

Bench Strength 2. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 29-10-1999]

— S. 450 *See* Ss. 436 to 450

— Ch. XXXIV *See* S. 4 and Chs. VII, XIII & XXXIV

— S. 451 *See also* S. 516-A, Criminal Procedure Code, 1898, p. 1280 in Vol. 2

— S. 451 *See* Ss. 102 and 451

See also Ss. 164, 451, 452 and 457

See also Ss. 457 and 451

See also Ss. 482 & 451

[6871] — **S. 451 — Custody of the animal during pendency of prosecution — Owner's right to** — *Unless deprived of the custody consequent to conviction under the Act for the second time, the owner of the animal, held, not barred from claiming interim custody thereof — S. 35(2), Prevention of Cruelty to Animals Act, 1960 gives discretion to, but does not bind, the Magistrate to give interim custody of the animal to a pinjrapole in the event of not sending it to an infirmary — Bombay Police Act, 1951 (22 of 1951) — Gujarat Diseases of Animals Control Rules, 1963, Rr. 65 to 75 — Prevention of Cruelty to Animals Act, 1960, Ss. 35 and 29(3) & (4)*

In view of the provisions of Section 35 of the Prevention of Cruelty to Animals Act, 1960 and Section 451 of CrPC, it has to be held that unless the owner of the animal in respect of which he is facing prosecution, is deprived of the custody (which can be done only on his conviction under the Act for the second time), no bar can be inferred against him to claim interim custody of the animal.

Section 35(2) vests in the Magistrate the discretion to give interim custody of the animal to a pinjrapole. It does not say that the Magistrate shall send the animals to a pinjrapole. The expression "shall be sent" occurring in Section 35(2) is a part of the direction to be given by the Magistrate if in his discretion he decides to give interim custody to a pinjrapole. It follows that under Section 35(2), the Magistrate has discretion to hand over interim custody of the animal to a pinjrapole but he is not bound to hand over custody of the animal to a pinjrapole in the event of not sending it to an infirmary. In a case where the owner is claiming the custody of the animal, the pinjrapole has no preferential right. *Pinjrapole Deudar* v. *Chakram Moraji Nat*, (1998) 6 SCC 520: AIR 1998 SC 2769.

Bench Strength 2. Coram: *M.K. Mukherjee* and **S.S.M. Quadri**, JJ. [Date of decision: 31-8-1998]

[6872] — Ss. 451 and 457 — Applicability — Relief — *In the present case, pursuant to FIR against drivers and cleaners for cruelty against animals filled in trucks, police seizing the animals and placing them in pinjrapole — Animal owners' application under Ss. 451 and 457 CrPC for release of animals rejected by trial court — Animal owners filing writ petition thereagainst but not claiming therein award of any compensation or costs against the First Informant — In such circumstances, High Court's direction to First Informant to pay compensation and cost to writ petitioners, held, improper* (Paras 29, 30, 33, 34, 36, 37 and 42). *Bharat Amratlal Kothari* v. *Dosukhan Samadkhan Sindhi*, (2010) 1 SCC 234.

Bench Strength 2. Coram: *H.S. Bedi* and **J.M. Panchal**, JJ. [Date of decision: 4-11-2009]

Krishna Priya Ganguly v. University of Lucknow, (1984) 1 SCC 307; Om Prakash v. Ram Kumar, (1991) 1 SCC 441, followed

Dosukhan Samdakhan Sindhi v. State of Gujarat, 2009 Cri LR 101 (Mah & Guj), reversed

[6873] — **S. 451 — Writ petition filed by respondent challenging seizure of sandalwood by appellant** — *Criminal cases relating to seizure of the lorry and sandalwood pending against respondent — High Court taking the view that the sandalwood seized did not form part of the subject-matter of the criminal cases and that simply because there was no official seal mark on the sandalwood seized, it could not be said that the sandalwood was illicitly purchased or smuggled and accordingly it directing the appellant to return the sandalwood to respondent — Held, in absence of any evidence on record High Court erred in recording such findings on disputed questions of fact — Criminal court under S. 451 CrPC was the proper forum for adjudicating such dispute — Constitution of India — Art. 226 — Decision on question of fact, Art. 226*

The High Court committed error in adjudicating the question whether the sandalwood was legally or illegally seized or was it or was it not in wrongful possession or whether the seized sandalwood is or is not the subject-matter of criminal cases. There did not exist any evidence on record to decide or conclude any such above findings. Therefore, the High Court committed error in going into the questions and recording findings which it should not have done in exercise of its power under Article 226 of the Constitution of India. Not only High Court has decided disputed questions of fact but through its order has taken the property outside the reach of the criminal court. Accordingly, the said impugned orders are unsustainable in law. In fact the proper course open to the respondent was to move the criminal court under Section 451 of the Criminal Procedure Code in respect of the custody of the seized sandalwood. The High Court has committed error in issuing the writ and granting relief to the respondent. (Para 4). *S.P., Forest Cell* v. *Kannans Co.*, (2001) 9 SCC 209.

Bench Strength **2**. Coram: *A.P. Misra* and *N. Santosh Hegde*, JJ. [Date of decision: 11-8-2000]

[6874] — S. 451 — Conditional release of vehicle during trial — *Not advisable to keep the vehicle in court compound indefinitely — More advisable to release it to the owner by imposing certain conditions during the pendency of the trial. Ashok Kumar* v. *State of Bihar*, (2001) 9 SCC 718.

Bench Strength **2**. Coram: *K.T. Thomas* and *R. P. Sethi*, JJ. [Date of decision: 7-4-2000]

[6875] — S. 451 — Conditional release of vehicle during trial — *Subject to certain conditions, custody of vehicle could be entrusted temporarily to its registered owner during the pendency of the trial. Rajendra Prasad* v. *State of Bihar*, (2001) 10 SCC 88.

Bench Strength **2**. Coram: *K.T. Thomas* and *D.P. Mohapatra*, JJ. [Date of decision: 10-2-2000]

[6876] — S. 451 — Seizure of truck for alleged non-production of papers — Conditional order for release of said truck which was purchased on loan — Propriety of — *High Court confirming the order of Sessions Court which directed the release of truck to the appellant, the registered owner of the truck, subject to the condition that the appellant would first get the guarantors exonerated from the guarantee furnished by them in respect of the loan taken by the appellant for the purchase of the truck, and that he would also furnish a security of Rs 4 lakhs — Held, the inter se civil liabilities of the appellant, the financier and the guarantors were not the subject-matter relevant for granting interim custody of the seized vehicle — Hence, condition imposed to get the guarantors exonerated towards the loan, set aside — Direction made for release of truck to the appellant on his furnishing security in the sum of Rs 4 lakhs to the satisfaction of the trial Magistrate* (Paras 5, 6 and 7). *Ramesh Chand Jain* v. *State of Haryana*, (2007) 15 SCC 126.

Bench Strength **2**. Coram: *M.B. Shah* and *D.M. Dharmadhikari*, JJ. [Date of decision: 16-8-2002]

[6877] — S. 451 — Disposal of seized property viz. semi-processed film and negatives — Property must be one regarding which offence is committed in order to attract S. 451 — *Offence alleged against accused film producer of inducing investors to deposit large amounts of money in finance company run by him on temptation of high rate of interest and committing fraud and breach of trust by utilising the deposit for production of film — Film remaining unfinished on closure of the finance company and semi-processed films and negatives seized by police during investigation in criminal case against him — In insolvency proceedings pending against the accused the unfinished film and negatives shown as assets of the accused to be secured by Insolvency Court — Held, the semi-processed film and negatives not properties over which an order of disposal could be made under S. 451. Sajan K. Varghese* v. *State of Kerala*, (1989) 2 SCC 208: 1989 SCC (Cri) 339: AIR 1989 SC 1058: (1989) 2 KLT 243.

Bench Strength **2**. Coram: *R.S. Pathak, C.J.* and **S. Natarajan**, J. [Date of decision: 15-2-1989]

[6878] — S. 451 — Disposal of perishable seized item by auction — Upheld — Auction-sale of paddy/rice (perishable item), pending determination of the rights of the parties in suit — Upheld — *CPC, 1908, S. 75(f)* (Paras 4 and 2). *Satnam Agro Industries* v. *State of Punjab*, (2008) 15 SCC 784: (2009) 3 SCC (Cri) 1213: AIR 2009 SC 249: 2009 Cri LJ 387.

Bench Strength **2**. Coram: *L.S. Panta* and *V.S. Sirpurkar*, JJ. [Date of decision: 14-10-2008]

[6879] — S. 451 — Whether vehicle or vessel, etc. seized under S. 50(1)(c) Wild Life Act can be released by Magistrate during pendency of trial in exercise of power under S. 451 CrPC — *Held, provisions of S. 50 and amendments made thereunder do not in any way affect Magistrate's power to order interim release under S. 451 CrPC — Further held, to contend that the use of a vehicle in the commission of an offence under the Act, without anything else would bar its interim release appears to be quite unreasonable — There may be a case where a vehicle was undeniably used for commission of an offence under the Act but the vehicle's owner is in a position to show that it was used for committing the offence only after it was stolen from his possession — In such situation there is no rea-*

son as to why the vehicle should not be released in the owner's favour during the pendency of the trial — Wild Life (Protection) Act, 1972 — S. 50 (as amended by Amendment Act 44 of 1991) (Paras 1, 16 and 20 to 23). *State of M.P.* v. *Madhukar Rao*, (2008) 14 SCC 624.

Bench Strength 2. Coram: *H.K. Sema* and **Aftab Alam**, JJ. [Date of decision: 9-1-2008]

Moti Lal v. CBI, (2002) 4 SCC 713: 2002 SCC (Cri) 889, relied on

State of Karnataka v. K.A. Kunchindammed, (2002) 9 SCC 90: 2003 SCC (Cri) 1085, distinguished

[6880] — S. 451 — Relative scope and applicability of Ss. 39(1)(d) and 50(1)(c), Wild Life Act — S. 39(1)(d) of the Act if made the articles seized under S. 50(1)(c) of the Act government property and, therefore, there was no question of their release — *Held, S. 39(1)(d) would come into play only after a court of competent jurisdiction found the accusation and the allegations made against the accused as true and recorded the finding that the seized article was, as a matter of fact, used in the commission of offence — Any attempt to operationalise S. 39(1)(d) of the Act merely on the basis of seizure and accusations/allegations levelled by the departmental authorities would bring it into conflict with the constitutional provisions and would render it unconstitutional and invalid — On facts held, provisions of S. 39(1)(d) cannot be used against exercise of the magisterial power under S. 451 CrPC to release the vehicle during pendency of the trial — Wild Life (Protection) Act, 1972 — Ss. 39(1)(d) and 50(1)(c)* (Para 23). *State of M.P.* v. *Madhukar Rao*, (2008) 14 SCC 624.

Bench Strength 2. Coram: *H.K. Sema* and **Aftab Alam**, JJ. [Date of decision: 9-1-2008]

[6881] — S. 451 — Interim release — Power of — Forest produce — Includes sandalwood oil — *Wherever word "sandalwood" used in the Act, it has to be understood as including "sandalwood oil" in view of definition under S. 2(18), Karnataka Forest Act — Therefore, where vehicle carrying sandalwood oil seized by forest officer on allegation of illegal transportation of forest produce, report about the seizure required to be submitted to the Authorized Officer under S. 62(3)(a), Karnataka Forest Act and the sandalwood oil together with the vehicle would be liable to be confiscated by the Authorized Officer under S. 71-A, who alone and not the Magistrate shall have jurisdiction under S. 71-G to make orders with regard to interim custody/release of the vehicle seized — Karnataka Forest Act, 1963 (5 of 1964), Ss. 2(7), (18), 62(3)(a), 65, 71, 71-A, 71-C, 71-D and 71-G*

A lorry carrying 5 barrels of sandalwood oil was seized by the officials of the Forest Mobile Squad on the allegation of illegal transportation of forest produce. Thereupon, FIR was registered and a report about the seizure was submitted to the Authorized Officer and Deputy Conservator of Forests under Section 71-A of the Act. By an order of the Authorized Officer, custody of the seized material and the vehicle was entrusted to the Forest Range Officer as whereabouts of the driver and owner of the vehicle were not known to the Authorized Officer. After publication of a notice in the newspaper for information of all concerned, particularly the persons interested in the goods seized, when nobody came forward to claim the seized property, the Authorized Officer ordered confiscation of the seized vehicle and the sandalwood oil. The order was published in the Official Gazette as well as in the newspaper and the same, having not been challenged in appeal under Section 71-D or in any other proceeding, stood confirmed under Section 71-F of the Act and was published in the Official Gazette. The owner of the vehicle, the respondent, filed an application before the Judicial Magistrate for interim custody of the vehicle. But the Magistrate dismissed the application holding that in the circumstances of the case the power to grant interim release/custody of the vehicle was vested in the Authorized Officer. The said order was challenged by the respondent in revision before the Sessions Judge who upheld the order passed by the Magistrate. The respondent then challenged the order of the Sessions Judge by filing a petition under Section 482 CrPC. The High Court took the view that the power to order for interim custody of a vehicle seized, which was found illegally transporting sandalwood oil, is not vested in the Authorized Officer but in the Magistrate exercising jurisdiction in the area for the reason that while the expression sandalwood is included in the provisions vested in the exclusive jurisdiction of the Authorized Officer, "sandalwood oil" is not mentioned therein. Since the two terms have been separately mentioned in the inclusive definition of the term "forest produce" the High Court drew the inference that the power for interim custody of the vehicle is to be exercised only by the jurisdictional Magistrate and not by the Authorized Officer. Accordingly the High Court allowed the petition and issued a direction to the Magistrate to consider the request of the petitioner for interim custody of the vehicle on merits and further directed disposal of the matter within two weeks.

Allowing the appeal,

Held :

The High Court failed to take note of the definition of the expression "sandalwood" in Section 2(18) of the Act in which "sandalwood oil" has been included within the term "sandalwood". It follows that wherever the term "sandalwood" is used under the Act, it has to be understood in terms of the definition in Section 2(18). If the provisions relating to power of confiscation in Sections 71-A, 71-C, 71-D and bar of jurisdiction in Section 71-G are so read, it is clear that "sandalwood oil" is also included within the purview of the said sections and the distinction between the two terms and their specific inclusion or exclusion in the statutory provision does not exist. Perhaps the attention of the High Court was not drawn to the amended provisions of the Act. Therefore, the Magistrate and the Sessions Judge were right in holding that on facts and in the circumstances of the case, it is the Authorized Officer who is vested with the power to pass order of interim custody of the vehicle and not the Magistrate. The High Court was in error in taking a view to the contrary and in setting aside the orders passed by the Magistrate and the Sessions Judge on that basis. (Paras 22 and 24)

The Karnataka Forest Act is a special statute enacted for the purpose of preserving the forests and the forest produce in the State. The scheme of the Act, as expressed in the sections, is to vest power in the Authorized Officers of the Forest Department for proper implementation/enforcement of the statutory provisions and for enabling them to take effective steps for preserving the forests and forest produce. For this purpose, certain powers including the power of seizure, confiscation and forfeiture of the forest produce illegally removed from the forests have been vested exclusively in them. The position is made clear by the non obstante clause in the relevant provisions giving overriding effect to the provisions in the Act over other statutes and laws. The necessary corollary of such provisions is that in a case where the Authorized Officer is empowered to confiscate the seized forest produce on being satisfied that an offence under the Act has been committed thereof the general power vested in the Magistrate for dealing with interim custody/release of the seized materials under CrPC has to give way. The Magistrate while dealing with a case of any seizure of forest produce under the Act should examine whether the power to confiscate the seized forest produce is vested in the Authorized Officer under the Act and if he finds that such power is vested in the Authorized Officer then he has no power to pass an order dealing with interim custody/release of the seized material. This will help in proper implementation of provisions of the special Act and will help in advancing the purpose and object of the statute. If in such cases power to grant interim custody/release of the seized forest produce is vested in the Magistrate then it will be defeating the very scheme of the Act. Such a consequence is to be avoided. (Para 23). *State of Karnataka* v. *K.A. Kunchindammed*, (2002) 9 SCC 90: AIR 2002 SC 1875: 2002 Cri LJ 2565.

Bench Strength 2. Coram: **D.P. Mohapatra** and *Shivaraj V. Patil*, JJ. [Date of decision: 16-4-2002]

[6882] — Ss. 451 and 457 — Consideration of application under — Directions that can be issued at stage of — *Application for interim custody of animals filed during pendency of applicant's complaint under various provisions of IPC, accusing certain persons, of illegally and with help of police, taking over possession of applicants' animals during transportation thereof in trucks — Trial court not having named any police officer as errant — Direction issued to State Government at this stage before final disposal of complaint, to take departmental action for illegal or unauthorised actions, if any, on the part of any police officer, held, harsh as well as uncalled for — Hence, set aside — Penal Code, 1860, Ss. 395, 427, 506 Pt. II and S. 34*

In the order passed by the Additional CJM no officer has been named at all. Whether search and seizure of the goats and sheep was illegal or not can be effectively gone into only at the stage of final disposal of the trial and not at interim stage when the court hears an application under Section 451 read with Section 457 CrPC for interim custody of the muddammal. Direction to the State Government to initiate appropriate departmental action against erring police officer for illegal or unauthorised actions at the interim stage is harsh as well as not called for on the facts of the case. Therefore, the said direction also deserves to be set aside. (Para 44). *Bharat Amratlal Kothari* v. *Dosukhan Samadkhan Sindhi*, (2010) 1 SCC 234.

Bench Strength 2. Coram: *H.S. Bedi* and **J.M. Panchal**, JJ. [Date of decision: 4-11-2009]

[6883] — Ss. 451 and 457 — Interim custody of animals seized by police — Factors relevant to decide entitlement to — *Goats and sheep allegedly filled in trucks in cruel manner while in transit seized by police and kept in pinjrapole — Owners of said animals challenging the legality of seizure and seeking interim custody of animals — Taking into consideration that: (i) a long period of one-and-a-half year having elapsed, no marks of cruelty were likely to be found on the animals at the* *time of production before court to prove cruelty, and (ii) trade in goats and sheep, in which the applicants were engaged, was not prohibited by any law, the applicants, held, entitled to interim custody of the said animals subject to certain conditions as specified — Prevention of Cruelty to Animals Act, 1960, S. 11(1)(d) — Animals seized under — Entitlement to interim custody of, under Ss. 451 and 457 for interim custody of*

The fact that Respondents 1 to 6 were owners of the goats and sheep seized is not disputed. Respondents 1 to 6 by vocation trade in goats and sheep. About one-and-half year has elapsed by this time and by production of goats and sheep seized before the court, the prosecution cannot prove that they were subjected to cruelty by the accused because no marks of cruelty would be found by this time. The trade in which Respondents 1 to 6 are engaged, is not prohibited by any law. Therefore, Respondents 1 to 6 would be entitled to interim custody of goats and sheep. Therefore, Respondent 8 (the panjarapole) is directed to hand over custody of goats and sheep seized in the instant case to Respondents 1 to 6 in such proportion as the original number of seized animals bears to the number of surviving animals, on each of them depositing a sum of rupees fifty thousand with the trial court and each furnishing two sureties of Rs 50,000 to the satisfaction of the trial court. Respondents 1 to 6 are directed to see that no cruelty is meted out to the surviving animals and submit an undertaking to that effect to the trial court within two weeks. (Paras 47 to 49). *Bharat Amratlal Kothari* v. *Dosukhan Samadkhan Sindhi*, (2010) 1 SCC 234.

Bench Strength **2**. Coram: *H.S. Bedi* and **J.M. Panchal**, JJ. [Date of decision: 4-11-2009]

[6884] — S. 451 — Release of vehicle — Trial under NDPS Act, 1985 — *In the facts and circumstances of the case, held, High Court's order releasing vehicle during trial not sustainable — Accused directed to surrender the vehicle within one month — Narcotic Drugs and Psychotropic Substances Act, 1985* (Paras 3 and 4). *Union of India* v. *Dinesh Kumar Verma*, (2005) 9 SCC 330.

Bench Strength **2**. Coram: *B.N. Agrawal* and *P.K. Balasubramanyan*, JJ. [Date of decision: 15-4-2005]

[6885] — S. 451 — Security for release of property to be produced at the time of trial — *Order of High Court modified in the interests of justice — CrPC, 1898, S. 516-A. Vijay Bahadur Singh* v. *State of U.P.*, (1975) 4 SCC 113: 1975 SCC (Cri) 367: AIR 1975 SC 1512: 1975 Cri LJ 1326.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *R.S. Sarkaria*, JJ. [Date of decision: 21-1-1975]

[6886] — S. 451 — Confiscation of vehicle — Burden of proof to establish no offence committed — Option to pay fine, in lieu of confiscation — Duty of court — Illegal transportation of liquor — *A, driver of appellant found transporting foreign liquor — Trial court convicted and sentenced* **A** *under S. 34, M.P. Excise Act and also issued show-cause notice to appellant against confiscation of truck under S. 46, M.P. Excise Act — Stand of appellant that he was only the owner of truck and was not present in it at the time of seizure and that driver* **A** *without his consent and permission took the truck — Trial court ordered for confiscation of truck which was confirmed by the appellate court as well as High Court — Before Supreme Court it was alternatively submitted that S. 47, M.P. Excise Act as it stood before amendment, was applicable to the facts of the case and in lieu of confiscation fine can be imposed — Held, appellant could not establish his defence available under proviso to S. 46 — Despite that under S. 47 the Magistrate ought to have given appellant the option of payment of fine in lieu of confiscation of vehicle — M.P. Excise Act, 1915 (2 of 1915), Ss. 46 and 47*

Partly allowing the appeal,

Held :

According to the proviso to Section 46, the burden is on the owner of the property to establish that he had no reason to believe that such offence was being committed or was likely to be committed. It provides that no animals, carts, vessels, rafts and other conveyance shall be liable to confiscation, if it is proved that they are not the property of the offender and if the owner establishes that he has no reason to believe that such offence was being or was likely to be committed. As noted above, the owner has to establish the aforesaid facts. The trial court, first appellate court and the High Court have concluded that the appellant has not established his lack of knowledge. (Paras 11 and 12)

Coming to the alternative submission relating to payment of fine in lieu of confiscation the Supreme Court found that the Magistrate had not indicated the alternative to the appellant. (Para 13). *Kailashchandra* v. *State of M.P.*, (2007) 14 SCC 595: 2008 Cri LJ 1035.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *Tarun Chatterjee* and *L.S. Panta*, JJ. [Date of decision: 30-11-2007]

[6887] — Ss. 451, 452 and 457 — Disposal of car seized by the police — Held, a car once seized can be returned only pursuant to the order of a competent court only. *George* v. *State of Kerala*, (1998) 4 SCC 605: AIR 1998 SC 1376: 1998 Cri LJ 2034.

Bench Strength **2**. Coram: **M.K. Mukherjee** and *S.S.M. Quadri*, JJ. [Date of decision: 18-3-1998]

[6888] — Ss. 451 and 452 — Property custodia legis — *Owner entitled to its delivery, and if property lost and not traceable while in court's custody, entitled to its value. Inter Continental Agencies (P) Ltd.* v. *Amin Chand Khanna*, (1980) 3 SCC 103: 1980 SCC (Cri) 544: AIR 1980 SC 951: 1980 Cri LJ 689: 1980 MLJ (Cri) 583.

Bench Strength 2. Coram: *R.S. Sarkaria* and **O. Chinnappa Reddy**, JJ. [Date of decision: 14-2-1980]

[6889] — Ss. 451 and 452 — Prosecution under S. 411 IPC for recovery of some items of the property from the houses of the accused persons — Conviction by trial court on the basis of identification of two items — *Conviction set aside by the High Court — CJM directed to make enquiry and pass appropriate orders in respect of those two items along with other articles. Sulekh Chand* v. *Suresh Chand*, AIR 1991 SC 380: 1991 Cri LJ 469: 1990 All LJ 916.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and *K. Jayachandra Reddy*, JJ. [Date of decision: 6-11-1990]

[6890] — Ss. 451 and 457 — Ss. 6-A, 7, Essential Commodities Act, 1955 do not exclude criminal court's jurisdiction under Ss. 523 and 516-A, CrPC, 1898 — *CrPC, 1898, Ss. 523 and 516-A — Essential Commodities Act, 1955, Ss. 6-A and 7*

Having regard to the language used in Ss. 6-A and 7 of the Essential Commodities Act it must be held that the criminal court's jurisdiction to entertain an application under S. 523 read with S. 516-A CrPC, 1898 is not completely ousted. *State of M.P.* v. *Rameshwar Rathod*, (1990) 4 SCC 21: 1990 SCC (Cri) 522: AIR 1990 SC 1849: 1990 Cri LJ 1756.

Bench Strength 2. Coram: **Sabyasachi Mukharji, C.J.** and *K.N. Saikia*, J. [Date of decision: 10-7-1990]

[6891] — Ss. 451 and 457 — Disposal of mudammal articles, kept in police custody, pending trial — *Expeditious and judicious exercise of power under S. 451 needed — Purpose of such exercise of power stated — Procedure for custody and disposal of valuable articles and currency notes, vehicles, seized liquor and narcotic drugs laid down*

The powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. court or the police would not be required to keep the article in safe custody;

3. if the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles. (Para 7)

Valuable articles and currency notes

Valuable articles such as golden or silver ornaments or articles studded with precious stones, need not be kept in police custody for years till trial is over. The Magistrate should pass appropriate orders as contemplated under Section 451 CrPC at the earliest. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:

(*1*) preparing detailed proper panchnama of such articles;

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

(*3*) after taking proper security.

For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the court under Section 451 CrPC to impose any other appropriate condition. (Para 13)

In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the court may direct that such articles be kept in bank lockers. Similarly, if articles are required to be kept in police custody, it would be open to the SHO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the court may direct that such articles be handed back to the investigating officer for further investigation and identification. However, in no set of circumstances the investigating officer should keep such articles in custody for a longer period for the purposes of investigation and identification. For currency notes, similar procedure can be followed. (Para 14)

Vehicles

It is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles. (Para 17)

In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared. (Para 18)

Liquor/Narcotic drugs

For articles such as seized liquor also, prompt action should be taken in disposing of them after preparing necessary panchnama. If sample is required to be taken, the sample may be kept properly after sending it to the Chemical Analyser, if required. But in no case, a large quantity of liquor should be stored at the police station. No purpose is served by such storing. (Para 19)

Similarly for the narcotic drugs also, for its identification, procedure under Section 451 CrPC should be followed of recording evidence and disposal. Its identity could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the Chemical Analyser so that subsequently, a contention may not be raised that the article which was seized was not the same. (Para 20)

However these powers are to be exercised by the Magistrate concerned. The Magistrate concerned would take immediate action for seeing that powers under Section 451 CrPC are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly. (Para 21). *Sunderbhai Ambalal Desai* v. *State of Gujarat*, (2002) 10 SCC 283: 2003 SCC (Cri) 1943: AIR 2003 SC 638.

Bench Strength **2**. Coram: *M.B. Shah* and *D.M. Dharmadhikari*, JJ. [Date of decision: 1-10-2002]

Basavva Kom Dyamangouda Patil v. State of Mysore, (1977) 4 SCC 358: 1977 SCC (Cri) 598, relied on

[6892] — Ss. 451 and 457 — Disposal of mudammal property, kept in police custody pending trial — Procedure for custody and disposal of valuable articles, vehicles etc. — *In furtherance of directions dated 1-10-2002 published at (2002) 10 SCC 283, where accused disputes that he is not involved in the alleged incident and no article was found on him, Supreme Court clarifying and passing directions — Court further clarifying that there may not be any necessity of producing the vehicle before the court and seizure report may be sufficient. Sunderbhai Ambalal Desai* v. *State of Gujarat*, (2002) 10 SCC 290: 2003 SCC (Cri) J 440.

Bench Strength **2**. Coram: *M.B. Shah* and *D.M. Dharmadhikari*, JJ. [Date of decision: 18-11-2002]

Sunderbhai Ambalal Desai v. State of Gujarat, (2002) 10 SCC 283, clarified

[6893] — Ss. 451 and 457 — Custody and disposal of vehicles seized in accidents — *Strict compliance with orders issued in* Sunderbhai, *(2002) 10 SCC 283 and* General Insurance Council, *(2007) 12 SCC 354 mandated — Further directions issued to ensure implementation of statutory provisions, and senior police officials directed to be in charge of disposal of seized vehicles so that national waste caused by their neglect in police station be reduced/eliminated — Constitution of India — Arts. 32 and 141 — Central Motor Vehicles Rules, 1989, R. 159 — Motor Vehicles Act, 1988, Ss. 147, 149, 166 and 158(6)*

Directed :

The insurer may move a separate application for release of recovered vehicle as soon as it was informed of such recovery before the jurisdictional court. Release to be made within 30 days of application and necessary photographs duly authenticated and certified may be taken and detailed panchnama prepared before release. Insurer to submit an undertaking/guarantee to remit proceeds from sale/auction of vehicle conducted by the Insurance Company in the event the Magistrate finally adjudicates that rightful ownership of vehicle does not vest with the insurer. *General Insurance Council* v. *State of A.P.*, (2010) 6 SCC 768.

Bench Strength **2**. Coram: *P. Sathasivam* and **Deepak Verma**, JJ. [Date of decision: 19-4-2010]

Sunderbhai Ambalal Desai v. State of Gujarat, (2002) 10 SCC 283: 2003 SCC (Cri) 1943; General Insurance Council v. State of A.P., (2007) 12 SCC 354: (2008) 1 SCC (Cri) 384, followed

[6894] — Ss. 451 and 457 — Release of vehicle — Vehicle purchased under an hire-purchase agreement — Right of financier vis-à-vis hirer — *Registration certificate of vehicle indicating name of financier and the factum that the vehicle was subject to hire-purchase agreement — In hire-purchase agreement, appellant financier was described as owner and Respondent 2 as hirer — Respondent 2 applying for release of vehicle — Vehicle released in his favour on certain conditions — But Respondent 2 not fulfilling those conditions — Vehicle, therefore, lying with seizing authorities for nearly 8 years — On these facts, held, vehicle could be released in favour of appellant financier subject to fulfilment of the conditions which were stipulated for Respondent 2 — T.N. Prohibition Act, 1937 (10 of 1937), Ss. 4(1)(a) & (aaa)* (Para 10). *Bharath Metha* v. *State*, (2008) 5 SCC 752: (2008) 3 SCC (Cri) 72: AIR 2008 SC 1970: 2008 Cri LJ 2245.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 25-3-2008]

Charanjit Singh Chadha v. Sudhir Mehra, (2001) 7 SCC 417: 2001 SCC (Cri) 1557; Sunderbhai Ambalal Desai v. State of Gujarat, (2002) 10 SCC 283: 2003 SCC (Cri) 1943, relied on

[6895] — Ss. 451 and 457 — Release of property — *Property seized in connection with a case against appellants' father — Application filed by appellants before Magistrate for release of the property dismissed on ground that accused father of appellants was absconding — Writ petition filed against Magistrate's order, dismissed by High Court — But from appellant's submission as also from several proceedings pending before Supreme Court, it appearing that appellant's father was not absconding but had been admitted in AIIMS, New Delhi — Held, Magistrate was not justified in rejecting the application for release of the property on the sole ground that appellant's father was absconding — High Court also failed to correct the error in exercise of its jurisdiction under Art. 226 — Magistrate directed to consider the application for release of the property on merits. Dhananjay Kumar Pandey* v. *State of Bihar*, (2000) 9 SCC 209: 2000 SCC (Cri) 1207.

Bench Strength 2. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 11-2-2000]

[6896] — Ss. 451 to 457 — Provisions in Rajasthan Excise Act barring jurisdiction of courts — Constitutionality — Provisions in State Excise Act relating to seizure, etc. of vehicles, etc. for transporting exigible articles barring jurisdiction of courts under CrPC — Nature and constitutionality of — *Provisions in State Act concerned (Rajasthan Excise Act, 1950 in this case), conferring jurisdiction on Excise Authorities to make order with regard to possession, delivery, disposal or release of the means of conveyance seized and barring the jurisdiction and powers of courts under CrPC in that regard — Nature and constitutionality of, and analogous provisions — Held, they are regulatory in nature and constitutional — Analogous provisions of other State Acts cited — Nature and constitutionality of — Constitution of India, Arts. 254, 14, 19, 20, 21, 301, 246(3) and Sch. VII List II Entries 8, 64 & 65 — T.N. Excise Act, 1971 (34 of 1971), Ss. 4 and 14-A — Karnataka Excise Act, 1965 (21 of 1966), Ss. 43-A and 43-B — U.P. Excise Act, 1910 (4 of 1910), S. 72 — Andhra Pradesh Excise Act, 1968 (17 of 1968), Ss. 46 and 46-A — Rajasthan Excise Act, 1950 (2 of 1950), Ss. 54-A, 69(6) to (9)* (ins. *in 2000) and S. 9-B* (ins. *in 1998) and Statement of Objects and Reasons of the Amending Act of 2000* (Paras 15, 20, 21, 23, 1, 2, 6 and 3). *Oma Ram* v. *State of Rajasthan*, (2008) 5 SCC 502.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 21-4-2008]

P.N. Krishna Lal v. Govt. of Kerala, 1995 Supp (2) SCC 187: 1995 SCC (Cri) 466; State of Karnataka v. K. Krishnan, (2000) 7 SCC 80: 2000 SCC (Cri) 1289; Shambhu Dayal Agarwala v. State of W.B., (1990) 3 SCC 549: 1990 SCC (Cri) 489; Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp (1) SCC 596, followed

— S. 452 *See also* S. 517, Criminal Procedure Code, 1898, pp. 1280 et seq. in Vol. 2

— S. 452 *See* Ss. 164, 451, 452 and 457

See also Ss. 451 & 452

See also Ss. 451 to 457

See also Ss. 451, 452 and 457

See also Ss. 482 and 452

[6897] — S. 452 — Disposal of property — Property subject-matter of theft case lost while in custody of police — Liability of State to pay compensation to owner — *CrPC, 1898, S. 517*

In the instant case, it is not the case of the State that the property was lost in spite of due care and caution having been taken by it or due to circumstances beyond its control. The articles were alleged to have been kept in the guardroom of the police station and except the formality of a report that they were lost having been lodged no other action was taken by the State against the concerned police officers who were responsible for the custody. Therefore the State cannot successfully resist the application filed by the appellant and the value of the property must be paid to the appellant by the State.

Only the value of the articles recovered and seized by the police is due. Therefore Court must look for material showing value of the articles seized.

In the present case the appellant is entitled not only to the value of the goods but also the costs throughout. *Basavva Kom Dyamangouda Patil* v. *State of Mysore*, (1977) 4 SCC 358: 1977 SCC (Cri) 598: AIR 1977 SC 1749: 1977 Cri LJ 1141: 1977 MLJ (Cri) 486.

Bench Strength **3**. Coram: *P.N. Bhagwati, R.S. Sarkaria* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 19-4-1977]

[6898] — S. 452 — Auction of a truck seized in connection with a theft — *Thereafter criminal proceedings ending in favour of the accused from whom the truck was seized and the truck directed to be returned to the accused — Held, auction-purchaser has no right to claim the truck. Naiz Ahmed* v. *State of U.P.*, 1994 Supp (3) SCC 356: 1994 SCC (Cri) 1730.

Bench Strength **3**. Coram: *K. Jayachandra Reddy, S. Mohan* and *G.N. Ray*, JJ. [Date of decision: 17-11-1993]

[6899] — S. 452 — Disposal of property by Magistrate — *Appellant-company giving financial facility on hire-purchase basis to respondent for purchase of motor vehicle — On respondent committing default in the payment of purchase price, appellant taking possession of the vehicle as per terms of the agreement — Thereupon respondent filing complaint of theft against appellant — Trial Magistrate dropping the complaint but directing custody of the vehicle be returned the respondent on his executing an indemnity bond with surety — Appellant directed to have the question of title to vehicle determined by civil court — Order affirmed by Sessions Court and High Court — In appeal to Supreme Court held, the learned Magistrate was not right in passing the impugned order and thereby giving relief to a party which had invoked jurisdiction on false accusations — It was surprising that without making good the charge of theft the hirer, by using the State instrumentality, obtained possession of the vehicle — The approach of the courts below was totally unsustainable — Impugned order set aside and the vehicle directed to be restored to the possession of the appellant — Penal Code, 1860, S. 379 — Abuse of judicial process — False complaint. Manipal Finance Corpn. Ltd.* v. *T. Bangarappa*, 1994 Supp (1) SCC 507: 1994 SCC (Cri) 588.

Bench Strength **2**. Coram: *A.M. Ahmadi* and *Yogeshwar Dayal*, JJ. [Date of decision: 30-4-1993]

[6900] — Ss. 452, 457 and 321 — Articles seized by police during investigation — Disposal of, where prosecution is withdrawn — *Held, in such a case, ordinarily the articles have to be returned to the person from whom they were recovered — But, the court can consider various other aspects and can pass appropriate order for disposal of the matter — Articles alleged to have been stolen from Scindia Museum — Recovery of, from Rani Mahal occupied by appellants — Withdrawal of prosecution — Direction by courts below for handing over the recovered articles to Scindia Museum — Challenge to, by appellants — Articles in question were valuable items and some of them were antiques — Further, civil litigations pending between the parties in respect of the ownership of these properties — Held, no reason to interfere with the impugned order* (Paras 3 and 4). *Rajmata Vijaya Raje Scindia* v. *State of M.P.*, (2003) 12 SCC 429.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 28-10-2003]

Manipal Finance Corpn. Ltd. v. T. Bangarappa, 1994 Supp (1) SCC 507: 1994 SCC (Cri) 588; Brijendra Singh v. Brij Kumar Gupta, 1976 Cri LJ 467: 1975 ACC 270 (2) (All), distinguished on facts

[6901] — Ss. 452 and 162 — Confessional part of statement of accused leading to discovery can be made use of for the purpose of disposal of property — *Where the stolen property recovered at the instance of accused is disclaimed by him and he is given benefit of doubt property should be returned to owner — Forfeiture of property to State wholly unwarranted — Evidence Act, 1872, S. 27. Mahesh Kumar* v. *State of Rajasthan*, 1990 Supp SCC 541(2): 1991 SCC (Cri) 219.

Bench Strength **2**. Coram: *A.P. Sen* and *L.M. Sharma*, JJ. [Date of decision: 11-3-1988]

Queen Empress v. Tribhovan Manekchand, ILR 9 Bom 131; Pohlu v. Emperor, AIR 1943 Lah 312: 45 PLR 391: 209 IC 546; Dhanraj Baldeokishan v. State, AIR 1965 Raj 238: (1965) 2 Cri LJ 805: 1965 Raj LW 289; Veerabhadrappa v. Govinda, ILR (1973) 23 Mys 64, approved

[6902] — Ss. 452 and 362 — Disposal of property at conclusion of trial — Theft case ending in acquittal — *High Court in revision ordering money recovered from underneath a heap of straw in the outer verandah of accused's house to be returned to the accused — Later same judge reviewing his order holding that if the money belonged to the accused he would not have kept it in the outer verandah underneath a heap of straw and ordering it to be returned to the complainant — Held, though it was true that a criminal order is not reviewed, the impugned order showed that there was a doubt and the disposal of the property was not made lightly —*

Hence, in the facts and circumstances of the case no interference with the impugned order was called for. Kineshwar Singh v. *Hori Lal*, 1995 SCC (Cri) 706.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 3-11-1993]

[6903] — Ss. 452 and 454 — SLP — Interference with findings of HC — Practice — *Accused in dacoity case acquitted by HC under S. 395 IPC — Complainant (appellant in the present case) applying to HC for return of property, which was the subject matter of the dacoity, as belonging to him — HC declining the request on the ground that ownership was not established — In appeal to SC, held the court was not inclined to interfere with the finding of HC — However, in case the appellant chose to claim the property by way of a regular suit, the findings of HC would not come in his way in establishing his ownership — Penal Code, 1860, S. 395 — Constitution of India — Art. 136. Devi Lal* v. *Chandan Singh*, 1994 SCC (Cri) 157.

Bench Strength 2. Coram: *Kuldip Singh* and *P.B. Sawant*, JJ. [Date of decision: 20-11-1992]

— S. 452(1) *See also* Ss. 4(2) and 452(1)

[6904] — S. 452(1) — Whether special provisions of Customs Act regarding confiscation of goods seized under that Act make the general law as to disposal of property contained in S. 452(1) inapplicable in respect of such goods — *Question not considered — Foreign Exchange Regulation Act, 1973, Ss. 13(1) and 67 — Customs Act, 1962, Ss. 135, 111 and 11. Remo Paul Altoe* v. *Union of India*, (1977) 4 SCC 437: 1977 SCC (Cri) 629: AIR 1977 SC 2255: 1977 Cri LJ 1933: (1978) 48 Comp Cas 522.

Bench Strength 2. Coram: **A.C. Gupta** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 13-10-1977]

[6905] — S. 452(1) — Held, Court's discretion to "make such order as it thinks fit" regarding disposal of the property is judicial and therefore the order must be based on reason and justice — *Appellant acquitted of charge under S. 302, Indian Penal Code having caused death by licensed gun in self-defence — He never used or attempted to use the gun for commission of any offence in the past — In absence of any special circumstances, the trial Court, held, not justified in arbitrarily ordering for confiscation of the gun without giving any reason and opportunity of hearing to the appellant — CrPC, 1898, S. 517*

The words "may make such order as fit" in S. 517, Criminal Procedure Code, 1898, [S. 452(1), Criminal Procedure Code, 1973] vest the court with a discretion to dispose of the property in any of the three modes, viz. (*i*) destruction, (*ii*) confiscation, or (*iii*) delivery to any person entitled to the possession thereof. But the exercise of such discretion is inherently a judicial function. The choice of the mode or manner of disposal is not to be made arbitrarily, but judicially in accordance with sound principles founded on reason and justice, keeping in view the class and nature of the property and the material before it. One of such well-recognised principles is that when after an inquiry or trial the accused is discharged or acquitted, the court should normally restore the property which is "produced before" the court or is "in custody to the person from whose custody it was taken". Departure from this salutary rule of practice is not to be lightly made, when there is no dispute or doubt — as in the instant case — that the property in question was seized from the custody of such accused and belonged to him.

In the present case, the acquittal of the accused-appellant on the ground that the gun was used in causing the fatal injury to the deceased, only in self-defence, necessarily involved a finding that the gun was not used in the commission of any offence for which the accused was tried. The gun thus falls in the class of the property which was in the custody of the court. The trial Court neither gave any reason for its order of confiscation, nor was there any material before it warranting a departure from the general rule, nor is there anything in the record to show that it had before passing the order of confiscation, given an opportunity of being heard to the accused, specifically with regard to this matter. The order of confiscation of the gun was thus manifestly arbitrary.

The High Court also erred in justifying the confiscation order when there was nothing to show that in the past twenty years during which the appellant had been in lawful possession of this gun under a licence, he had ever used or attempted to use this gun for commission of any offence, from which, in the event of the gun being restored to him, a likelihood of his misusing the gun "again" could be reasonably predicated, or even suspected. *N. Madhavan* v. *State of Kerala*, (1979) 4 SCC 1: 1979 SCC (Cri) 883: AIR 1979 SC 1829: 1979 Cri LJ 1197.

Bench Strength 3. Coram: **R.S. Sarkaria**, *P.N. Shinghal* and *O. Chinnappa Reddy*, JJ. [Date of decision: 7-8-1979]

[6906] — S. 452(1) — Magistrate convicting appellant for offence under S. 135 Customs Act, 1962 for violation of S. 13(1) of the Foreign Exchange Regulation Act, 1973 for illegal

importation of foreign currency into India — *Currency seized by the customs authorities, however, neither produced before the Magistrate nor put in the custody or control of the Court — Held, in such circumstances, no order or direction by the Magistrate under S. 452(1), Criminal Procedure Code, was called for and hence direction for confiscation set aside — Matter left to customs authorities to proceed according to law — Plea for restoration of seized currency to the appellant not acceded to. Remo Paul Altoe* v. *Union of India*, (1977) 4 SCC 437: 1977 SCC (Cri) 629: AIR 1977 SC 2255: 1977 Cri LJ 1933: (1978) 48 Comp Cas 522.

Bench Strength **2**. Coram: **A.C. Gupta** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 13-10-1977]

— **S. 453** *See* Ss. 451 to 457

— **S. 454** *See* Ss. 451 to 457

See also Ss. 452 and 454

— **S. 455** *See* Ss. 451 to 457

— **S. 456** *See also* S. 522, Criminal Procedure Code, 1898, p. 1282 in Vol. 2

— **S. 456** *See* Ss. 372 and 456

See also Ss. 451 to 457

[6907] — S. 456(2) — Appellate Court has power to make order for restoration of possession of immovable property even after disposing of the appeal — *Where no time-limit prescribed order must be made within a reasonable time — "While disposing of the appeal, reference or revision" — Meaning of — CrPC, 1898, S. 522*

The appellate or revisional court acting under S. 456(2) will have jurisdiction or power to pass the order for restoration of possession at any time. There is no limitation on the power to the effect that such order must be incorporated in the body of the judgment disposing of the appeal, reference or revision; but it has to be exercised with discretion within reasonable time of the disposal of the appeal, reference or revision. *H.P. Gupta* v. *Manohar Lal*, (1979) 2 SCC 486: 1979 SCC (Cri) 530: AIR 1979 SC 443: 1979 Cri LJ 199: 1979 MLJ (Cri) 322: (1978) 15 ACC 427.

Bench Strength **2**. Coram: **V.D. Tulzapurkar** and *R.S. Pathak*, JJ. [Date of decision: 3-11-1978]

— **S. 457** *See also* S. 523, Criminal Procedure Code, 1898, pp. 1282 et seq. in Vol. 2

— **S. 457** *See* Ss. 164, 451, 452 and 457

See also Ss. 451 to 457

See also Ss. 451, 452 and 457

See also Ss. 451 & 457

See also Ss. 452, 457 and 321

[6908] — S. 457 — Court has power to order release of property seized from any person in connection with an offence even though the property was not produced before Court and trial has not commenced — *Court however has to decide on release only after considering whether property will be required to be produced at the trial or not*

The Special Judge has power to release the seized property but that would not mean that whenever the claimants ask for its return he should give it back.

But the question of releasing the property to the claimant has to be decided by the Court on the merits in each case and this discretion of the Court has to be exercised after due consideration of the interests of justice including the prospective necessity of the production of the seized property at the time of the trial. If the release of the property will, in any manner, affect or prejudice the course of justice at the time of trial, it will be a wise exercise of discretion to reject the claim for return. *Ram Parkash Sharma* v. *State of Haryana*, (1978) 2 SCC 491: 1978 SCC (Cri) 309: AIR 1978 SC 1282: (1978) Cri LJ 1120.

Bench Strength **2**. Coram: *V.R. Krishna Iyer* and *V.D. Tulzapurkar*, JJ. [Date of decision: 18-4-1978]

[6909] — S. 457 — Order of High Court for return of sums of monies and documents becoming final — *In the absence of a criminal case or a valid order of assessment by the Income Tax authorities, such property could not be retained and must be returned — There must be an authority of law under which money can be kept — Revenue cannot keep the money on the plea that there will be a demand — CrPC, 1898, S. 523. J.R. Malhotra* v. *Addl. Sessions Judge*, (1976) 1 SCC 430: 1976 SCC (Cri) 48: AIR 1976 SC 219: (1976) 2 SCR 993: 1976 Tax LR 130.

Bench Strength **4**. Coram: **A.N. Ray, C.J.** and *M.H. Beg*, *R.S. Sarkaria* and *P.N. Shinghal*, JJ. [Date of decision: 11-12-1975]

[6910] — S. 457 — Interference by High Court if justified — *Excise Commissioner directing release of seized vehicle on furnishing of bank guarantee equal to value of vehicle — Respondent instead of availing remedy of statutory appeal preferred application to High Court — High Court without assigning any reason directing release of the vehicle on executing a bond — Held, High Court ought not to have interfered in a matter where statutory remedies are provided — Though vehicle released pursuant to order of High Court, respondent directed to furnish bank guarantee of Rs 25,000 in* *addition to personal bond executed for release of the vehicle — Kerala Abkari Act, 1077 (1 of 1077), Ss. 55(a), 67-B, 67-E & 67-F* (Paras 6 to 8). *State of Kerala* v. *C.A. Jabbar*, (2009) 15 SCC 92: (2009) 2 KLT 709.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 1-5-2009]

[6911] — Ss. 457 and 102 — Illegal search and seizure — Liability to pay compensation/costs — In case of illegal seizure of jewellery and ornaments, the Department, held, liable to compensate the owner at least by way of costs — *In the present case High Court directing payment of interest @ 8% p.a. on the value of the illegally seized articles which High Court had quantified at Rs 84.68 lakhs — Department not complying therewith until about one long year later when the said articles were returned — Such omission on the part of the Department, held, further aggravated the loss suffered by the owner — Hence, without examining the question of payability of interest, Department directed to pay within four weeks Rs 75,000 on account of costs in full settlement of the claim towards the quantum of interest under High Court's order — Further directed, omission to comply with the order herein would culminate in automatic dismissal of the present appeal with costs — Income Tax Act, 1961, S. 132*

Certain items of jewellery and ornaments belonging to the respondents were seized by the departmental authorities on 12-1-2001. In a writ petition filed by the respondents, the High Court found the search and seizure to be illegal. Therefore, it directed the seized articles to be returned to the respondents with interest @ 8% p.a. on the value of the jewellery and ornaments which the High Court quantified at Rs 84.68 lakhs from the date of seizure till payment. The Revenue then filed the present appeal by special leave.

Before the Supreme Court, the appellant Revenue contended that the writ petitioners had not sought in the writ petition, the relief of payment of interest.

On the other hand, the respondent contended that the High Court was competent to award penal interest by way of compensation. They further pointed out that the Department had not complied with the High Court's order until almost one year later when the gold, diamond, jewellery and other ornaments were returned.

In such circumstances,

Held :

Without going into the question as to the payability of interest on the value of goods found by the court to have been illegally seized, it is held that the appellants are liable to compensate the respondents at least by way of costs. The loss obviously suffered by the respondents during the pendency of the proceedings before the High Court was further aggravated by the delay in complying with the High Court's decision. In the circumstances, the appellants are directed to pay a sum of Rs 75,000 to the respondents on account of costs which the respondents will accept in full and final settlement of the claim towards the quantum of interest under the impugned order. Such payment is to be made within a period of four weeks. In the event such payment is not made, this appeal will stand dismissed with costs. (Para 5). *Director General of Income Tax* v. *Diamondstar Exports Ltd.*, (2006) 5 SCC 564.

Bench Strength 2. Coram: *Ruma Pal* and *Dalveer Bhandari*, JJ. [Date of decision: 20-3-2006]

[6912] — Ss. 457 and 451 — Seizure of vehicle used in offence under Wild Life Act — Applicable provision of CrPC — *S. 457 CrPC not applicable — But S. 451 CrPC applicable in certain cases — Wild Life (Protection) Act, 1972, S. 50(1) (as amended by Act 44 of 1991)*

In view of the clear language of sub-section (1) of Section 50, Section 457 of the Code has no application. But there is another provision which also is relevant i.e. Section 451 of the Code that relates to the order for custody and disposal of the property pending trial in certain cases. (Para 10). *State of U.P.* v. *Lalloo Singh*, (2007) 7 SCC 334: (2007) 3 SCC (Cri) 353.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 20-7-2007]

— S. 460 *See also* S. 529, Criminal Procedure Code, 1898, pp. 1288 et seq. in Vol. 2

— S. 460 *See also* Ss. 202(2) proviso, 200, 203, 204, 208, 209, 313, 208, 226 to 228, 460, 461 and 465

[6913] — Ss. 460(g), 306 and 307 — Irregularities which do not vitiate proceedings — Grant of pardon to approver by Chief Judicial Magistrate after committal of proceedings to the Court of Session is without jurisdiction — *Such irregularity not a curable irregularity within S. 460(g) — Position under corresponding provision of old Code indicated — CrPC, 1898, Ss. 529(g), 337 and 338*

Section 460 can have no reference to an act of a Magistrate who is empowered under Section 306 but does not possess the jurisdiction after an order of commitment is passed. The Chief Judicial Magistrate no doubt was authorised under Section 306 of the Code to tender pardon in course of an investigation, inquiry or trial before the committal of the proceedings to the Court of Session. But after commitment of the proceedings he does not have jurisdiction to grant pardon and in such a case if the said Chief Judicial Magistrate tenders pardon then that would not be a curable irregularity within the ambit of clause (*g*) of Section 460 of the Code.

Under Section 529(*g*) of the 1898 Code it was specifically stated that if any Magistrate not empowered by law to tender pardon under Section 337 or 338 did so the same would not vitiate the proceedings. But under Section 460(*g*) of the new Code the legislature has omitted Section 307 which is corresponding to Section 338, and therefore, such irregularity committed by the Magistrate cannot be said to be a curable irregularity under clause (*g*) of Section 460. *A. Devendran* v. *State of T.N.*, (1997) 11 SCC 720: AIR 1998 SC 2821.

Bench Strength 2. Coram: *G.N. Ray* and **G.B. Pattanaik**, JJ. [Date of decision: 21-10-1997]

— **S. 461** *See* Ss. 202(2) proviso, 200, 203, 204, 208, 209, 313, 208, 226 to 228, 460, 461 and 465

— **S. 462** *See* Ss. 221, 222 and 462

See also Ss. 409(2) & 194, 407 and 462 & 465

— **S. 463** *See also* S. 533, Criminal Procedure Code, 1898, p. 1290 in Vol. 2

— **S. 463** *See* Ss. 164, 281 and 463

See also Ss. 164 and 463

See also Ss. 164(2) and 463

[6914] — **S. 463 — Object of** — *Held, is to enable the court to take evidence in regard to any non-compliance and to act on such evidence if the court is satisfied that such non-compliance has not injured the accused in his defence on the merits — However, since caution to the confessor, before recording his confession, that he was not bound to make such a confession had been administered by the police officer concerned, resort to said section not felt necessary in the instant case. Nazir Ahmad Bhatt* v. *State of Delhi*, (2002) 1 SCC 674: 2002 SCC (Cri) 234: AIR 2002 SC 30: 2002 Cri LJ 213.

Bench Strength 2. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 2-11-2001]

[6915] — **Ss. 463 and 164 — Recording of confession of accused — Procedure to be followed — Requirements of obtaining signature of accused, appending certificate and making memorandum at the end of confession, as required under R. 15(3), TADA Rules — Omission as to — Effect — Curability of the said defect** — *Reiterated, said omission in obtaining signature of accused or appending certificate at the end of confession is curable in view of provision contained in S. 463 CrPC — In present case, certain confessional statements recorded without appending certificate or making memorandum in terms of R. 15(3)(b) — Confessional statements containing opening words similar to subject-matter of memorandum to be made under R. 15(3)(b) — Further, said confessional statements mainly corroborating the confession made strictly in compliance with all necessary provisions of TADA Act and Rules — Considering the facts, held, the defect, if any, present in the confessional statements got cured through reliable and trustworthy depositions made by the respective recording officers before the trial court — Terrorist and Disruptive Activities (Prevention) Rules, 1987, R. 15(3). Ahmed Hussein Vali Mohammed Saiyed* v. *State of Gujarat*, (2009) 7 SCC 254: (2009) 3 SCC (Cri) 368: (2009) 79 AIC 229 (SC).

Bench Strength 3. Coram: *K.G. Balakrishnan, C.J.* and **P. Sathasivam** and *J.M. Panchal*, JJ. [Date of decision: 12-5-2009]

[6916] — **Ss. 463 and 164 — Scope of S. 463 — Judicial confession when not admissible** — *Held, S. 463 makes it clear that (for non-admissibility of judicial confession) it has to be established that because of non-compliance (with provisions of S. 164), an injury was occasioned to the accused in his defence on merits — On facts, that was not so* (Para 18). *State of Punjab* v. *Harjagdev Singh*, (2009) 16 SCC 91.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 22-4-2009]

— **S. 464** *See also* Ss. 535 and 232, Criminal Procedure Code, 1898, pp. 1290 et seq. and p. 1102, respectively in Vol. 2

— **S. 464** *See* Ss. 211 & 215 and 464 & 465

See also Ss. 215, 211, 465 and 464

See also Ss. 215, 221 and 464

See also Ss. 218, 464 and 465

See also Ss. 221 & 218 and 215 & 464

See also Ss. 221, 222 and 464

See also Ss. 222(2) & 464 and 313

[6917] — **S. 464 — Defective charge — Effect on trial** — *Though in a given case it does not vitiate trial, but in the instant case where (i) the omission was vital, (ii) the substance of accusations was totally different from what was sought to be established by the prosecution, and (iii) there was no evidence to establish essential ingredients of relevant section, held on facts, it was an additional factor for acquitting the* *accused — Penal Code, 1860, S. 201 — Defective charge under — Held on facts, was an additional factor for acquittal* (Para 10). *Sou. Vijaya* v. *State of Maharashtra*, (2003) 8 SCC 296: 2003 SCC (Cri) 1998: AIR 2003 SC 3787.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 3-9-2003]

[6918] — S. 464 — Effect of omission to frame, or absence of, or error in charge — Prejudice — *Respondent-accused charged under S. 148 and S. 302 IPC and convicted by trial court — High Court in appeal while finding respondents responsible for the death of the deceased holding that in the absence of charge under S. 302 read with S. 149 IPC, they could not have been convicted under S. 302 IPC, and hence convicting them under S. 326 IPC — Held, if the view of High Court is accepted, then in absence of charge under S. 149 IPC, conviction in terms of S. 326 also could not have been done — Combined reading of Charge 1 and Charge 3 makes it clear that the court specified that the accused persons were members of unlawful assembly and in prosecution of the common object of such assembly i.e. in order to commit murder of the deceased, committed the offence and at that time they were armed with daggers, etc. to bring in the application of S. 148 IPC — In Charge 3, there is a specific reference to the transactions, as mentioned in the first charge, and the object to commit murder by hacking the body of the deceased with daggers and causing his intentional death and thereby committing offence punishable under S. 302 IPC — Hence, charge in relation to the offence punishable under S. 149 IPC is not only implicit but also patent in the charges — Apart from the question of prejudice, this aspect has also been lost sight of by the High Court — Judgment of High Court set aside and that of trial court restored — Penal Code, 1860 — Ss. 302, 148, 149 & 326 — Framing of charges* (Paras 2, 15 and 18). *Dumpala Chandra Reddy* v. *Nimakayala Balireddy*, (2008) 8 SCC 339: (2008) 3 SCC (Cri) 493: AIR 2008 SC 3069: 2008 Cri LJ 3936.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *P. Sathasivam* and *Dr. M.K. Sharma*, JJ. [Date of decision: 14-7-2008]

Willie (William) Slaney v. State of M.P., AIR 1956 SC 116: (1955) 2 SCR 1140; Ramkishan v. State of Rajasthan, (1997) 7 SCC 518: 1997 SCC (Cri) 1106; B.N. Srikantiah v. State of Mysore, AIR 1958 SC 672: 1959 SCR 496; Dalbir Singh v. State of U.P., (2004) 5 SCC 334: 2004 SCC (Cri) 1592, relied on

Rewa Ram v. Teja, (2008) 8 SCC 346: 1998 SCC (Cri) 1350, considered

[6919] — S. 464 — Effect of omission to frame, or absence of, or error in, charge — *Held, mere defect in language, or in narration, or in form of charge would not render conviction unsustainable, provided accused is not prejudiced thereby — If ingredients of the section are obvious or implicit, conviction in regard thereto can be sustained irrespective of fact that said section has not been mentioned*

Section 149 IPC creates constructive liability i.e. a person who is a member of an unlawful assembly is made guilty of the offence committed by another member of the same assembly in the circumstances mentioned in the section, although he may have had no intention to commit that offence and had done no overt act except his presence in the assembly and sharing the common object of that assembly. (Para 47)

Some divergence between the two decisions of the Supreme Court in *Nanak Chand case*, AIR 1955 SC 274 and *Suraj Pal case*, AIR 1955 SC 419 seems to have been noticed and the matter was referred to the Constitution Bench in *Willie (William) Slaney case*, AIR 1956 SC 116. Although *Willie (William) Slaney case* was not a case under Section 149 of the Penal Code, 1860 and the charge against the accused therein was under Section 302 read with Section 34 IPC but the Constitution Bench considered the question whether the omission to frame an alternative charge under Section 302 IPC is an illegality that cuts at the root of conviction. *Willie (William) Slaney case* held that where the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable, in such a situation, the absence of a charge under one or the other of the various heads of criminal liability for the offence cannot be said to be fatal by itself, and before a conviction for the substantive offence, without a charge can be set aside, prejudice will have to be made out. (Paras 48 to 53)

Section 464 specifies that a finding or sentence of a court shall not be set aside merely on the ground that a charge was not framed or that charge was defective unless it has occasioned in prejudice. Because of a mere defect in language or in the narration or in form of the charge, the conviction would not be rendered bad if the accused has not been adversely affected thereby. If the ingredients of the section are obvious or implicit, conviction in regard thereto can be sustained irrespective of the fact that the said section has not been mentioned. (Paras 54 and 55)

A fair trial to the accused is a sine qua non in our criminal justice system but at the same time procedural law contained in the Code of Criminal Procedure is designed to further the ends of justice and not to frustrate them by introduction of hypertechnicalities. Every case must depend on its own merits and no straitjacket formula can be applied; the essential and important aspect to be kept in mind is: has omission to frame a specific charge resulted in prejudice to the accused. (Para 56)

In the instant case all the accused were put to notice under Charge 1 that on 16-5-1996 in the morning near Gollalaguduru Harijanawada, they were members of an unlawful assembly armed with deadly weapons and in prosecution of common object of such assembly, namely, in murdering Deceased 1 and 2, they committed the offence of rioting, punishable under Section 148 IPC. A-1 to A-5 and A-6 to A-9 were noticed of the particulars under Charge 4 that during the course of same transaction as mentioned in Charge 1, they committed murder by intentionally causing death of D-1 and thereby committed an offence punishable under Section 302 IPC. A-3, A-6 to A-8, A-10 to A-13 were put to notice under Charge 5 that during the course of the same transaction as mentioned in Charge 1 they committed murder by intentionally causing death of D-2 and thereby committed an offence punishable under Section 302 IPC. (Paras 57 to 59)

A careful reading of Charge 4 and Charge 5 leaves no manner of doubt, since the transaction mentioned in Charge 1 has been made an integral part thereof, that all the necessary ingredients of Section 149 IPC are implicit therein except mentioning of Section 149 IPC specifically. The particulars stated in Charges 4 and 5 are reasonably sufficient to give the appellants adequate notice of Section 149 IPC although not specifically mentioned. Hence, their conviction does not stand vitiated; more so when the accused have failed to show any prejudice in this regard. At the highest it may be considered an irregularity, whereby their conviction and sentence is not at all affected. (Paras 60 and 61)

The offence, in the established facts and circumstances of the case, under Section 302 read with Section 149 IPC is implicit and applying the dictum laid down by the Constitution Bench of the Supreme Court in *Willie (William) Slaney case*, the omission to mention Section 149 IPC specifically in Charges 4 and 5 cannot affect their conviction. In no way their conviction is rendered bad as the appellants had assembled together armed with axes and *eathapululu* (sickle) and were parties to the assault on D-1 and D-2 and others. In a situation such as this it was not obligatory upon the prosecution to prove which specific overt act was done by which of the accused. (Para 62)

Hence, impugned judgment convicting appellants calls for no interference. *Annareddy Sambasiva Reddy* v. *State of A.P.*, (2009) 12 SCC 546: AIR 2009 SC 2661: (2009) 78 AIC 222 (SC). Bench Strength **2**. Coram: *D.K. Jain* and **R.M. Lodha**, JJ. [Date of decision: 21-4-2009]

Willie (William) Slaney v. State of M.P., AIR 1956 SC 116: (1955) 2 SCR 1140, considered and followed

Pandurang v. State of Hyderabad, AIR 1955 SC 216: (1955) 1 SCR 1083; ; Suraj Pal v. State of U.P., AIR 1955 SC 419: (1955) 1 SCR 1332; Nanak Chand v. State of Punjab, AIR 1955 SC 274: (1955) 1 SCR 1201; Umesh Singh v. State of Bihar, (2000) 6 SCC 89: 2000 SCC (Cri) 1026, considered

[6920] — Ss. 464, 211 and 215 — Framing of charge — Omission/error in framing of charge — Effect — Need to establish prejudice — *Held, unless the convict is able to establish real prejudice to him and that he was not informed as to what was the real case against him and that he could not defend himself properly, no interference is required on mere technicalities — Conviction needs to be tested on touchstone of prejudice theory — In the instant case appellant alone was charged only under S. 120-B and convicted thereunder — No grievance was raised thereagainst while framing the charge, nor during the course of trial, and nor by filing any petition for quashing the charge — No prejudice caused to appellant could also be established — Further held, though at most charge could have been said to be incorrectly framed, but appellant was given full opportunity to defend himself against that only charge of conspiracy as there were no other allegations against him — He was specifically asked questions relating to conspiracy while examining him under S. 313 CrPC — Hence, by no stretch of imagination can it be said that accused was in any way prejudiced* (Paras 21 to 29). *Sanichar Sahni* v. *State of Bihar*, (2009) 7 SCC 198: (2009) 3 SCC (Cri) 347: (2009) 80 AIC 136 (SC). Bench Strength **2**. Coram: *Dr. M.K. Sharma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 26-5-2009]

State of A.P. v. Thakkidiram Reddy, (1998) 6 SCC 554: 1998 SCC (Cri) 1488; Willie (William) Slaney v. State of M.P., AIR 1956 SC 116; Gurpreet Singh v. State of Punjab, (2005) 12 SCC 615: (2006) 1 SCC (Cri) 191, considered and followed

Ramji Singh v. State of Bihar, (2001) 9 SCC 528: 2002 SCC (Cri) 760, relied on

[6921] — Ss. 464, 211 and 215 — Framing of charge — Omission/Error in — Effect — Need to establish prejudice — *Whether conviction under any other provision, for which charge has not been framed, sustainable in law — Held, accused must be aware as to what is the case against him and what defence he could lead — Unless accused satisfies court that there has been a failure of justice from non-framing of charge under a particular penal provision, and some prejudice has been* *caused to him, conviction under such provision of law is sustainable — Hence, though charges framed only under Ss. 302/120-B IPC, conviction altered to one under Ss. 304 Pt. II/34 — Penal Code, 1860, Ss. 302/120-B or Ss. 304 Pt. II/34* (Paras 19 and 20). *S. Ganesan* v. *Rama Raghuraman*, (2011) 2 SCC 83.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 3-1-2011]

Amar Singh v. State of Haryana, (1974) 3 SCC 81: 1973 SCC (Cri) 789; Sanichar Sahni v. State of Bihar, (2009) 7 SCC 198: (2009) 3 SCC (Cri) 347; Topandas v. State of Bombay, AIR 1956 SC 33: 1956 Cri LJ 138; Willie (William) Slaney v. State of M.P., AIR 1956 SC 116: 1956 Cri LJ 291; Fakhruddin v. State of M.P., AIR 1967 SC 1326: 1967 Cri LJ 1197; State of A.P. v. Thakkidiram Reddy, (1998) 6 SCC 554: 1998 SCC (Cri) 1488; Ramji Singh v. State of Bihar, (2001) 9 SCC 528: 2002 SCC (Cri) 760; Gurpreet Singh v. State of Punjab, (2005) 12 SCC 615: (2006) 1 SCC (Cri) 191, relied on

[6922] — Ss. 464 and 218 — Error or irregularity in charge — Effect on validity of finding by court, if any — *Held, no finding by court of competent jurisdiction shall be deemed to be invalid merely on ground that no charge was framed or on ground of any error in relation to charge, including any misjoinder of charge, unless in the opinion of court of appeal, confirmation or revision, a failure of justice was occasioned thereby — Hence, High Court was not justified to say that charge was defective* (Paras 18 and 19). *State of Punjab* v. *Harjagdev Singh*, (2009) 16 SCC 91.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 22-4-2009]

[6923] — S. 464 — Effect of omission to frame, or absence of, or error in charge — Charges framed against four accused including appellant for offences punishable under Ss. 147, 148, 324, 302 r/w S. 149 IPC, while appellant alone convicted under S. 302 simpliciter — *Held, accused can be convicted for an offence for which no charge was framed, unless it had occasioned failure of justice — In instant case, role of appellant in assaulting deceased with knife was clearly proved by PWs — In his examination under S. 313 CrPC a specific question was put to appellant and he was made aware of basic ingredients of the offence and main facts sought to be established against him were explained to him — Thus, he can be convicted under S. 302 IPC simpliciter for having committed the murder — S. 313* (Paras 11, 27 and 28). *Balraje* v. *State of Maharashtra*, (2010) 6 SCC 673.

Bench Strength **2**. Coram: **P. Sathasivam** and *H.L. Dattu*, JJ. [Date of decision: 10-5-2010]

Radha Mohan Singh v. State of U.P., (2006) 2 SCC 450: (2006) 1 SCC (Cri) 661, relied on

[6924] — Ss. 464, 215 and 223 — Conspiracy — Charge under — Only against single person — Conviction — Sustainability — *Appellant alone charged only under S. 120-B but for no other offence, while co-accused charged under different provisions but not S. 120-B — Relying on* Topandas case, *AIR 1956 SC 33 and* Fakhruddin case, *AIR 1967 SC 1326 submission that one person alone could not be guilty of conspiracy because one cannot conspire with himself — Held, in the above cases, co-accused had been acquitted of charges of conspiracy, and hence, they were of no assistance to appellant since facts in instant case were quite distinct — In the instant case only one person was charged for conspiracy — At the most it could be said that charges has not been properly framed — Penal Code, 1860, S. 120-B* (Paras 18 to 20). *Sanichar Sahni* v. *State of Bihar*, (2009) 7 SCC 198: (2009) 3 SCC (Cri) 347: (2009) 80 AIC 136 (SC).

Bench Strength **2**. Coram: *Dr. M.K. Sharma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 26-5-2009]

Topandas v. State of Bombay, AIR 1956 SC 33; Fakhruddin v. State of M.P., AIR 1967 SC 1326, distinguished on facts

[6925] — S. 464 — Wrong section mentioned in the charge — Effect — Conviction under S. 22, NDPS Act though appropriate section applicable in the instant case was S. 21, NDPS Act — Legality — *Held, appellants not handicapped from meeting the case against them or otherwise suffered any prejudice due to citation of wrong section in charge — Trial and conviction could not be set aside on that score — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 22 and 21*

On receiving a telephonic message from the Commandant, BSF that a special *nakabandi* (patrolling) was required to be organised, PW 1 (Police Inspector), along with other police personnel, reached the BSF Headquarters. The Commandant deputed two Inspectors including PW 2 and three more BSF personnel to accompany PW 1 for the patrolling. The Commandant instructed them to hold the *naka* at the canal bridge in the vicinity of village *M* as he had some information about smuggling. The patrolling party noticed two persons coming from the direction of village *T*. The said persons fired at the patrolling party. In self-defence, the Inspectors also fired. Ultimately, those persons were arrested and recovery of arms, cartridges and contraband articles was made from them. The trial court convicted the appellants under Section 22, Narcotic Drugs and Psychotropic Substances Act, 1985. Appellant *P* was also convicted under Section 307 IPC. The High Court affirmed the conviction and sentence. Hence the present appeals. The accused challenged the conviction mainly on the ground of violation of Sections 42 and 50 of the NDPS Act.

Setting aside the conviction of Appellant *P* under Section 307 IPC and altering the conviction under Section 22 of the NDPS Act to Section 21 of that Act,

Held:

The accused contended that the conviction under Section 22 of the NDPS Act, 1985 is illegal inasmuch as the article in question is not a psychotropic substance. It is not denied that the seized substance answers the definition of "manufactured drug" being an opium derivative containing "diacetyl morphine" and, therefore, the appropriate section providing for punishment is Section 21. The punishments prescribed under Sections 21 and 22 are the same. By reason of citation of wrong section in the charge, it cannot be said that the appellants were handicapped from meeting the case against them or otherwise suffered any prejudice. The trial and conviction cannot therefore be set aside on this score. (Para 13). *Durgo Bai* v. *State of Punjab*, (2004) 7 SCC 144: 2004 SCC (Cri) 1865: AIR 2004 SC 4170.

Bench Strength 2. Coram: **P. Venkatarama Reddi** and *B.P. Singh*, JJ. [Date of decision: 10-8-2004]

[6926] — Ss. 464, 211, 216 and 228 — Conviction of an offence not included in the charge — *Case not covered by Ss. 236 and 237 — Trial is illegal and the defect is not curable — CrPC, 1898, Ss. 236 and 237*

Where the conviction is for a totally different offence from the one charged and not covered by Ss. 236 and 237 of the Code. On a charge for a minor offence, there can be no conviction for a major offence e.g., grievous hurt or rioting and murder. The omission to frame a separate and specific charge in such cases will be an incurable irregularity amounting to an illegality. *Willie (William) Slaney* v. *State of M.P.*, AIR 1956 SC 116: (1955) 2 SCR 1140: 1956 Cri LJ 291.

Bench Strength 5. Coram: *S.R. Das*[1], **Vivian Bose**[1], *B. Jagannadhadas*[2], **Syed Jafer Imam**[3] and **N. Chandrasekhara Aiyar**[2], JJ. [Date of decision: 31-10-1955]

[6927] — S. 464 — Charge not properly framed — Finding/Sentence/Order of the court to become invalid only if improper framing of charge has resulted in failure of justice — *Burden to prove failure of justice, held, is on the accused* (Para 8). *State of U.P.* v. *Paras Nath Singh*, (2009) 6 SCC 372.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *D.K. Jain* and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

[6928] — Ss. 464, 222, 215 and 216 — Charge under S. 302 r/w S. 34 IPC, but conviction under Ss. 306 and 498-A IPC — Sustainability — *Victim dying of burn injuries — At the stage of framing charge, trial court noting that several statements were given by deceased giving different versions, and as such it was required to be appreciated whether it was a case of murder or abetment of suicide — Trial court accordingly framing charge under S. 302 r/w S. 34, but convicting the appellant under S. 306 and S. 498-A — High Court by impugned judgment upholding the same — Following* Shamnsaheb M. Multtani, *(2001) 2 SCC 577, held, normally in such circumstances the matter would be remanded back so that accused could put forth his defence regarding the offence for which he was convicted — However, in the instant case no useful purpose would be served by remanding the matter since it was 20 years old and appellant had served part of the custodial sentence — Besides, no question was put to him in his examination under S. 313 CrPC relating to dowry demand or abetment of suicide — Hence, impugned judgment unsustainable — Ranbir Penal Code, 1989 Smvt., Ss. 306 & 498-A or S. 302 r/w S. 34* (Paras 6 to 8 and 10 to 16). *Bimla Devi* v. *State of J&K*, (2009) 6 SCC 629.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

Sangaraboina Sreenu v. State of A.P., (1997) 5 SCC 348: 1997 SCC (Cri) 690; Lokendra Singh v. State of M.P., 1999 SCC (Cri) 371; Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577: 2001 SCC (Cri) 358, considered and followed

[6929] — Ss. 464, 211, 216 and 228 — Omission to frame charge — Effect — *All of the accused charged for offence under S. 302 IPC — Conviction of some of them under S. 325 read with S. 149 — No prejudice caused to the accused — Held, in the circumstances of the case, conviction not illegal — Penal Code, 1860, Ss. 149/302 and 149/325 — Applicability of S. 149 when charge not framed under*

Section 464 is in mandatory terms and specifically provides what is to be done in cases where a charge is not framed or there is an error, omission or irregularity in framing of the charge. From the unequivocal terms of the section, it can be stated that a finding, sentence or order could be set aside only in those cases where the facts are such that no valid charge could be preferred against the accused in respect of the facts proved. Secondly, if the facts are such that a charge could be framed and yet it is not framed but no failure of justice has in fact been occasioned thereby, the finding, sentence or order of the court of competent jurisdiction is not to be set aside on that ground. Thirdly, if there is failure of justice occasioned by not framing of the charge or in case of an error, omission or irregularity in the charge, retrial of the case is to be directed under sub-section (2).

Non-framing of a charge would not vitiate the conviction if no prejudice is caused thereby to the accused. The trial should be fair to the accused, fair to the State and fair to the vast mass of the people for whose protection penal laws are made and administered. The Code of Criminal Procedure is a procedural law and is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. In the present case, the accused were tried on the prosecution version that all of them went at 3.30 p.m. to the field of the deceased; they picked up a quarrel with him, inflicted injuries on the deceased as narrated by the prosecution witnesses, Accused 3 to 6 participated; the statements were recorded under Section 313 of the CPC and the questions were asked to the effect that they jointly came at 3.30 p.m. and caused injuries to the deceased as stated by the prosecution witnesses and the role assigned to Accused 3 to 6 was also specifically mentioned. Hence, it is apparent that no prejudice has been caused to the accused who were charged for the offence under Section 302, by not framing the charge for the offence punishable under Section 302 read with Section 149. In this view of the matter, the conviction of Accused 3 to 6 for the offence punishable under Section 325 read with Section 149 cannot be said to be in any way illegal which requires to be set aside. *Kammari Brahmaiah* v. *Public Prosecutor, High Court of A.P.*, (1999) 2 SCC 522: 1999 SCC (Cri) 281: AIR 1999 SC 775: 1999 Cri LJ 1134.

Bench Strength **2**. Coram: *G.B. Pattanaik* and **M.B. Shah**, JJ. [Date of decision: 3-2-1999]

Ramkishan v. State of Rajasthan, (1997) 7 SCC 518: 1997 SCC (Cri) 1106; Willie (William) Slaney v. State of M.P., AIR 1956 SC 116: 1956 Cri LJ 291, followed

Panduram v. State of Hyderabad, AIR 1955 SC 216: 1955 Cri LJ 572, explained

***Distinguished on facts in** Anil v. Admn. of Daman & Diu, Daman, (2006) 13 SCC 36: (2008) 1 SCC (Cri) 72*

[6930] — Ss. 464 and 211 — Omission to frame charge — If shown to have caused prejudice to accused, trial and conviction would be vitiated — *Charge framed by trial court under Ss. 302/149, 307/149, 147, 148 and 307 IPC against accused persons — Accused raised plea of right of private defence and produced evidence in support — But trial court convicted accused under S. 302 r/w S. 109 IPC — Held, non-framing of charge under S. 109 IPC caused prejudice to accused, hence accused rightly acquitted by High Court — But it would not be in the interest of justice to remand the case to trial court for fresh trial from the point of framing charge in view of long lapse of time (incident occurred in 1997, trial court rendered judgment in 2000 and High Court two years thereafter). Chandrawati* v. *Ramji Tiwari*, (2010) 13 SCC 281.

Bench Strength **2**. Coram: *H.S. Bedi* and *J.M. Panchal*, JJ. [Date of decision: 14-1-2010]

Wakil Yadav v. State of Bihar, (2000) 10 SCC 500: 2001 SCC (Cri) 1499; Dalbir Singh v. State of U.P., (2004) 5 SCC 334: 2004 SCC (Cri) 1592; Radha Mohan Singh v. State of U.P., (2006) 2 SCC 450: (2006) 1 SCC (Cri) 661; Sohan Lal v. State of Punjab, (2003) 11 SCC 534: 2004 SCC (Cri) 226; Joseph Kurian v. State of Kerala, (1994) 6 SCC 535: 1995 SCC (Cri) 20, relied on

Willie (William) Slaney v. State of M.P., AIR 1956 SC 116: 1956 Cri LJ 291, distinguished

[6931] — Ss. 464, 211 and 216 — Applicability — When applicable despite non-mention thereof in the charges — *Penal Code, 1860, S. 149*

Where though no specific charge indicating the applicability of Section 149 IPC was framed, but all the ingredients of Section 149 IPC were clearly indicated in the charge framed against the appellants, it must be held that the omission to mention Section 149 IPC specifically in the charge was only an irregularity and since no prejudice was shown to have been caused to the appellants by that omission it cannot affect their conviction. *Ramkishan* v. *State of Rajasthan*, (1997) 7 SCC 518: 1997 SCC (Cri) 1106: AIR 1997 SC 3997.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *K. Venkataswami*, JJ. [Date of decision: 2-9-1997]

Willie (William) Slaney v. State of M. P., AIR 1956 SC 116: (1955) 2 SCR 1140, followed

Followed in Kammari Brahmaiah v. Public Prosecutor, (1999) 2 SCC 522

[6932] — Ss. 464, 216, 221 and 215 — Conviction for offence in respect of which no charge is framed (though framed for similar but higher offence) — Sustainability of — *Reiterating the principles of law laid down by Supreme Court in such matter, held, where the offence (pertaining to S. 364-A IPC) in respect of which no charge was framed was a different as well as a higher offence than the one (pertaining to S. 364 IPC) in respect of which charge was framed, the conviction for offence in respect of which no charge was framed could not be sustained as it caused prejudice to the accused — Hence, conviction altered to S. 364 IPC in respect of which charge was framed — Appellant sentenced to rigorous imprisonment for life — Penal Code, 1860, Ss. 364-A and 364 — Conviction under S. 364-A IPC though charge framed only in respect of S. 364 IPC — Sustainability of such conviction*

As regards the cases where the accused is convicted for the offence in respect of which no charge is framed, the propositions of law which can be culled out from the judgments of the Supreme Court are:

(*i*) The accused should not suffer any prejudice by reason of misjoinder of charges.

(*ii*) A conviction for lesser offence is permissible.

(*iii*) It should not result in failure of justice.

(*iv*) If there is a substantial compliance, misjoinder of charges may not be fatal and such misjoinder must be arising out of mere misjoinder to frame charges. (Para 54)

The ingredients for commission of offence under Section 364 and 364-A IPC are different. Whereas the intention to kidnap a person in order that he may be murdered or may be so disposed of as to be put in danger of being murdered satisfies the requirements of Section 364 IPC, for obtaining a conviction for commission of an offence under Section 364-A thereof it is necessary to prove that not only such kidnapping or abetment has taken place but thereafter the accused threatened to cause death or hurt to such person or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or causes hurt or death to such person in order to compel the Government or any foreign State or international intergovernmental organisation or any other person to do or abstain from doing any act or to pay a ransom. (Para 55)

Thus, it was obligatory on the part of the trial court to frame a charge which would answer the description of the offence envisaged under Section 364-A IPC. It may be true that the kidnapping was done with a view to get ransom but the same should have been put to the appellant while framing a charge. The prejudice to the appellant is apparent as the ingredients of a higher offence had not been put to him while framing any charge. Hence, the appellant could not have been convicted under Section 364-A IPC. The appellant is held to be guilty of commission of an offence under Section 364 IPC. He deserves the highest punishment prescribed therein i.e. the rigorous imprisonment for life. (Paras 58, 55 and 56). *Anil* v. *Admn. of Daman & Diu, Daman*, (2006) 13 SCC 36: (2008) 1 SCC (Cri) 72: (2007) 49 AIC 65 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 24-11-2006]

K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217: 2003 SCC (Cri) 271; Kammari Brahmaiah v. Public Prosecutor, High Court of A.P., (1999) 2 SCC 522: 1999 SCC (Cri) 281; Dalbir Singh v. State of U.P., (2004) 5 SCC 334: 2004 SCC (Cri) 1592; Kamalanantha v. State of T.N., (2005) 5 SCC 194: 2005 SCC (Cri) 1121; Harjit Singh v. State of Punjab, (2006) 1 SCC 463: (2006) 1 SCC (Cri) 417, relied on

Kammari Brahmaiah v. Public Prosecutor, High Court of A.P., (1999) 2 SCC 522: 1999 SCC (Cri) 281, distinguished on facts

[6933] — Ss. 464, 218 and 211(4) — Failure to frame a charge under S. 302 or S. 109 IPC — *Conviction of accused-appellant under S. 302 r/w S. 109 IPC, held, illegal — Hence, liable to be set aside — Penal Code, 1860 — S. 302 r/w S. 109 — Conviction under, in absence of any charge being framed under S. 302 or S. 109*

Accused *SL* was called upon to face trial only for the charge under Section 304-B IPC. Neither a charge under Section 302 IPC nor under Section 109 IPC, was levelled against him in the charge-sheet. In the absence of a charge being framed against him under Section 302 or 109 IPC, it would certainly cause prejudice to him, if he is convicted under either of these offences at the end of the trial. Thus, it was not permissible for the trial court to convict *SL* for the offence under Section 302 read with Section 109 IPC. His conviction under Section 302 read with Section 109 IPC is, therefore, illegal and is liable to be set aside. (Para 7). *Sohan Lal* v. *State of Punjab*, (2003) 11 SCC 534: 2004 SCC (Cri) 226: AIR 2003 SC 4466.

Bench Strength 2. Coram: *K.G. Balakrishnan* and **B.N. Srikrishna**, JJ. [Date of decision: 14-10-2003]

[6934] — Ss. 464, 218 and 223 — Misjoinder of charges due to joint trial — No objection to the joint trial raised by concerned parties either at trial stage or at appellate stage or even before Supreme Court, nor any prejudice shown to have caused to them by such trial — *Held, in absence of proof that failure of justice had occasioned by the joint trial, finding and sentence recorded by the competent court valid. Prem Chand* v. *State of Haryana*, 1989 Supp (1) SCC 286: 1989 SCC (Cri) 418: AIR 1989 SC 937: 1989 Cri LJ 1246.

Bench Strength 2. Coram: *B.C. Ray* and **S. Ratnavel Pandian**, JJ. [Date of decision: 31-1-1989]

[6935] — Ss. 464, 218 and 228 — Omission to frame charge — Alteration of conviction from S. 302 IPC to S. 302 r/w S. 34 IPC where charge framed under S. 302 simpliciter but not under S. 302 r/w S. 34 — Charge framed under S. 302 simpliciter, but not under S. 302 r/w S. 34 — Conviction under S. 302 r/w S. 34 — Permissibility — *Accused not prejudiced in their defence merely because of non-framing of the said charge — Evidence that accused shared the common intention to cause death of the victim — Prosecution proved its case beyond reasonable doubt — In view of the above, held, conviction of appellants could be altered from S. 302 to S. 302 r/w S. 34 as fatal injury* *could not be attributed to them — Penal Code, 1860 — S. 302 and S. 302 r/w S. 34* (Paras 16 and 17). *Gurpreet Singh* v. *State of Punjab*, (2005) 12 SCC 615.

Bench Strength 2. Coram: **B.N. Agrawal** and *A.K. Mathur*, JJ. [Date of decision: 9-11-2005]

State of A.P. v. Thakkidiram Reddy, (1998) 6 SCC 554: 1998 SCC (Cri) 1488; Ramji Singh v. State of Bihar, (2001) 9 SCC 528: 2002 SCC (Cri) 760, relied on

Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577: 2001 SCC (Cri) 358; Atmaram Zingaraji v. State of Maharashtra, (1997) 7 SCC 41: 1997 SCC (Cri) 990; Roopa Ram v. State of Rajasthan, 1999 SCC (Cri) 1316, distinguished on facts

[6936] — Ss. 464, 386, 401 and 399 — Passing conviction for offence for which no charge framed — Power of appellate or revisional court *— Held, the said court can do so unless the court is of the opinion that failure of justice would in fact occasion — To judge whether failure of justice occasioned it would be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he was being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself — On facts, though charge framed under S. 302 r/w S. 149 IPC, A-1 convicted under S. 302 IPC — Passing conviction under, though charge framed under S. 302 r/w S. 149 IPC — Power of appellate or revisional court*

In view of Section 464 CrPC it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. In the present case, the witnesses examined on behalf of the prosecution, whose testimony has been relied upon, clearly deposed that A-1 was armed with a spear and he assaulted the deceased with the said weapon. In his examination under Section 313 CrPC a specific question in this regard was put to A-1. Therefore, A-1 was made aware of the basic ingredients of the offence and the main facts sought to be established against him were explained to him. Thus, he can be convicted under Section 302 IPC for having committed the murder in question, though the Sessions Judge had framed charge under Section 302 read with Section 149 IPC against all the accused including A-1. (Para 20). *Radha Mohan Singh* v. *State of U.P.*, (2006) 2 SCC 450: (2006) 1 SCC (Cri) 661: AIR 2006 SC 951: (2006) 1 KLJ 535: (2006) 2 All LJ 242: 2006 Cri LJ 1121.

Bench Strength 3. Coram: *K.G. Balakrishnan, Arun Kumar* and **G.P. Mathur**, JJ. [Date of decision: 20-1-2006]

Dalbir Singh v. State of U.P., (2004) 5 SCC 334: 2004 SCC (Cri) 1592, applied

[6937] — Ss. 464 & 215, 386, 399 and 401 — Non-framing of charge in respect of an offence *— Power of appellate or revisional court to convict the accused for the said offence — Having regard to S. 464 CrPC, held, conviction possible if (i) the accused was aware of the basic ingredients of that offence, (ii) the main facts sought to be established against him were explained to him clearly, and (iii) he got a fair chance to defend himself — Hence, where charges were framed under Ss. 302, 498-A and 304-B IPC but not under S. 306 IPC, held on facts, accused could be convicted under S. 306 — Penal Code, 1860, Ss. 306, 498-A, 302 and 304-B — Non-framing of charge under S. 306 — Conviction under that section in appeal — In view of S. 464 CrPC, held on facts, permissible*

The accused-appellant faced trial in respect of charges under Sections 302, 498-A and 304-B IPC. He was convicted by the trial court under Sections 302 and 498-A, but acquitted of the charge under 304-B. In appeal, the High Court held that the charge under Section 302 IPC was not established and accordingly, acquitted the accused in respect of the said offence. The High Court further held that the accused was guilty under Section 306 IPC for having abetted commission of suicide by his wife. But in view of the fact that no charge under Section 306 IPC was framed against him, the High Court, relying upon *Sangaraboina Sreenu* v. *State of A.P.*, (1997) 5 SCC 348, held that the accused could not be convicted for the said offence. The High Court noticed that a contrary view had been taken in an earlier decision in *Lakhjit Singh* v. *State of Punjab*, 1994 Supp (1) SCC 173, but chose to rely upon the later decision having regard to the settled view that if there is conflict of opinion in two decisions of the Supreme Court rendered by Benches of equal strength, it is the later decision which has to prevail. Hence, in view of the said conflict of opinion in two decisions, the instant appeals were placed for hearing before the present three-Judge Bench.

The main question for consideration by the Supreme Court was whether the accused could be convicted under Section 306 IPC if a charge for the said offence had not been framed against him.

Partly allowing the appeal filed by the State but dismissing the one filed by the accused,

Held :

In view of Section 464 CrPC, it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. (Para 17)

In the present case, the accused had started making a demand of dowry soon after marriage. Even after his father-in-law had given him a colour TV, a scooter and money for purchasing the flat, he did not feel satisfied and continued to harass his wife. He used to frequently taunt her that some of the items given by way of gift at the time of marriage were of poor quality and were not of his standard. He had also assaulted his wife and even his seven-year-old daughter on several occasions. It was in such circumstances that his wife took the extreme step of not only setting herself on fire, but also her two daughters, one of whom was only one-year old. The letter written by the wife just before taking such an extreme step speaks volumes about the treatment meted out to her by the accused. Therefore, the basic ingredients of the offence under Section 306 IPC have been established by the prosecution. The next question to be seen is whether the accused was confronted with the aforesaid features of the prosecution case in his statement under Section 313 CrPC. His statement runs into six pages where every aspect of the prosecution case referred to above was put to him. He also gave a long written statement in accordance with Section 233(2) CrPC wherein he admitted that the wife committed suicide. He also admitted that the scooter and colour TV were subsequently given to him by his in-laws but came out with a plea that he had paid money and purchased the same from his in-laws. There is no aspect of the prosecution which may not have been put to him. Therefore, in view of the material on record, the conviction under Section 306 IPC can safely be recorded and the same would not result in failure of justice in any manner. (Para 18). *Dalbir Singh* v. *State of U.P.*, (2004) 5 SCC 334: 2004 SCC (Cri) 1592: AIR 2004 SC 1990: 2004 All LJ 1448: 2004 Cri LJ 2025.

Bench Strength 3. Coram: *S. Rajendra Babu, Dr. Ar. Lakshmanan* and **G.P. Mathur**, JJ. [Date of decision: 8-4-2004]

Lakhjit Singh v. State of Punjab, 1994 Supp (1) SCC 173: 1994 SCC (Cri) 235, affirmed

Sangaraboina Sreenu v. State of A.P., (1997) 5 SCC 348: 1997 SCC (Cri) 690, overruled

Willie (William) Slaney v. State of M.P., AIR 1956 SC 116: 1956 Cri LJ 291; Gurbachan Singh v. State of Punjab, AIR 1957 SC 623: 1957 Cri LJ 1009, relied on

[6938] — Ss. 464 and 228 — Scope — Omission to frame a charge or error in the charge framed — Effect of — *Will depend on circumstances of different cases according to the applicability of the section — CrPC, 1898, Ss. 232, 233 to 250, 535 & 537*

Per Bose, J. and S. R. Das, acting C.J.

The cases contemplated by S. 237 are just as much a departure from S. 233 as are those envisaged in Ss. 225, 226, 227, 228, 535 and 537. Sections 236, 237 and 238 deal with joinder of charges and so does S. 233. The first condition is that there shall be a separate charge for each offence and the second is that each charge must be tried separately except in the cases mentioned in Ss. 234, 235 and 236.

So far as S. 233 is concerned, there can be no doubt that it requires a separate charge for each offence and does not envisage a situation in which there is either no charge at all or where, there being a charge for some other offence of which the accused is acquitted, he can be convicted instead of something else for which he was not charged. The Code has not regarded Ss. 237 and 238 as part of normal procedure.

Sections 225, 226, 227 and 228, 535 and 537 apply with equal force to 'every' kind of departure from that part of S. 233 that requires a separate charge for each offence. Section 237 is only a corollary to S. 236 and is there to emphasise that even when a number of charges could be joined together in the cases set out in S. 236 and one or more are not put in, even then, there can be convictions in respect of those offences despite the absence of a charge or charges.

All these sections are governed by the overriding rule about prejudice mentioned in one form or another in Ss. 225, 226, 227, 228 and 537. It would be monstrous to hold that a conviction cannot be set aside even when gross prejudice is proved in cases covered by S. 237 just because it does not speak of prejudice. Such cases can be envisaged where there would be grave prejudice under that section as clearly as we can see cases where there would be none under the others.

Sections 233 to 240 deal with joinder of charges and they must be read together and not in isolation. They all deal with the same subject-matter and set out different aspects of it. When they are read as a whole, it becomes clear that Ss. 237 and 238 cover every type of case in which a conviction can be sustained when there is no charge for that offence provided there is a charge to start with.

They do not deal with a case in which there is no charge at all, and anything travelling beyond that when there is a charge would be hit by Ss. 233, 234, 235 and 239 read as a whole.

The sections between them including Ss. 535 and 537 cover every possible case that relates to the charge and they place 'all' failures to observe the rules about the charge in the category of curable irregularities. Ch. XIX deals comprehensively with charges and Ss. 535 and 537 cover every case in which there is a departure from the rules set out in that chapter.

Such departures range from errors, omissions and irregularities in charges that are framed, down to charges that might have been framed and were not and include a total omission to frame a charge at all at any stage of the trial. In all these cases the only question is about prejudice.

Sections 225, 232, 535 and 537(*a*) between them, cover every conceivable type of error and irregularity referable to a charge that can possibly arise, ranging from cases in which there is a conviction with no charge at all from start to finish down to cases in which there is a charge but with errors, irregularities and omissions in it. The Code is emphatic that 'whatever' the irregularity it is not to be regarded as fatal unless there is prejudice.

Per Chandrasekhara Ayyar & Jagannadhadas, JJ.

A case of complete absence of a charge is covered by S. 535, whereas an error or omission in a charge is dealt with by S. 537. The consequences seem to be slightly different. Where there is no charge, it is for the Court to determine whether there is any failure of justice. But in the latter, where there is mere error or omission in the charge, the Court is also bound to have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

Section 535 and 537 indicate that in the generality of cases the omission to frame a charge is not 'per se' fatal. The contention that where there is no charge the conviction will be illegal, prejudice or no prejudice is not sound. The wording of S. 535 of the Code of Criminal Procedure is sufficiently wide to cover every case of no charge.

Sections 225, 226 and 232 and the powers exercisable thereunder, are with reference to a trial which has already commenced or taken place. There would, therefore, normally relate to errors or omissions which occur in a trial that has validly commenced.

There is no reason to think that S. 535 of the Code of Criminal Procedure is not also to be understood with reference to the same context. There may be cases where, a trial which proceeds without any kind of charge at the outset can be said to be a trial wholly contrary to what is prescribed by the Code. In such cases the trial would be illegal without the necessity of a positive finding of prejudice.

The omission to frame a charge is a grave defect and should be vigilantly guarded against. In some cases, it may be so serious that by itself it would vitiate a trial and render it illegal, prejudice to the accused being taken for granted.

In the main, the provision of S. 535 would apply to cases of inadvertence to frame a charge induced by the belief that the matter on record is sufficient to warrant the conviction for a particular offence without express specification, and where the facts proved by the prosecution constitute a separate and distinct offence but closely relevant to and springing out of the same set of facts connected with the one charged. *Willie (William) Slaney* v. *State of M.P.*, AIR 1956 SC 116: (1955) 2 SCR 1140: 1956 Cri LJ 291.

Bench Strength 5. Coram: *S.R. Das*[1], **Vivian Bose**[1], *B. Jagannadhadas*[2], **Syed Jafer Imam**[3] and **N. Chandrasekhara Aiyar**[2], JJ. [Date of decision: 31-10-1955]

Followed in Kammari Brahmaiah v. Public Prosecutor, (1999) 2 SCC 522

[6939] — Ss. 464(1) and 222, 221 — Non-framing of or omission to frame charge in respect of an offence — When can accused be convicted of that offence — Test — Whether failure of justice occasioned thereby — "Failure of justice" — Meaning — *Accused charged under S. 302 IPC but prosecution failed to prove that charge, instead ingredients of S. 304-B IPC found established though no charge had been framed thereunder — Held, conviction under S. 304-B IPC without affording opportunity to accused to enter on his defence and disprove the presumption raised thereunder read with S. 113-B, Evidence Act would result in failure of justice — Hence conviction under S. 304-B cannot be recorded in absence of charge thereunder — Accused to be put on notice and to be allowed to enter his defence against the charge under S. 304-B*

When a person is charged with an offence under Sections 302 and 498-A IPC on the allegation that he caused the death of a bride after subjecting her to harassment with a demand for dowry, within a period of 7 years of marriage, a situation may arise, as in this case, that the offence of murder is not established as against the accused. Nonetheless, all other ingredients necessary for the offence under Section 304-B IPC would stand established. Can the accused be convicted in such a case for the offence under Section 304-B IPC without the said offence forming part of the charge? In other words whether in a case where prosecution failed to prove the charge under Section 302 IPC, but on the facts the ingredients of Section 304-B have winched to the fore, can the court convict him of that offence in the absence of the said offence being included in the charge. That was the question raised before the Supreme Court, in this case.

Held :

Under Section 464(1) CrPC a conviction would be valid even if there is any omission or irregularity in the charge, provided it did not occasion a failure of justice. The crux of the matter is this: Would there be occasion for a failure of justice by adopting such a course as to convict an accused of the offence under Section 304-B IPC when all the ingredients necessary for the said offence have come out in evidence, although he was not charged with the said offence? (Para 21)

The expression "failure of justice" is perhaps too pliable or facile an expression which could be fitted in any situation of a case. The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage. (Para 23)

One of the cardinal principles of natural justice is that no man should be condemned without being heard, (*audi alteram partem*). But courts often hesitate to approve the contention that failure of justice had occasioned merely because a person was not heard on a particular aspect. However, if the aspect is of such a nature that non-explanation of it has contributed to penalising an individual, the court should say that since he was not given the opportunity to explain that aspect there was failure of justice on account of non-compliance with the principle of natural justice. (Para 24)

The postulates needed to establish the offence under Section 304-B(1) are: (*1*) death of a wife should have occurred otherwise than under normal circumstances within seven years of her marriage; (*2*) soon before her death she should have been subjected to cruelty or harassment by the accused in connection with any demand for dowry. Reading Section 113-B of the Evidence Act, as a part of the said offence, the position is: If the prosecution succeeds in showing that soon before her death she was subjected by the husband to cruelty or harassment for or in connection with any demand for dowry and that her death had occurred (within seven years of her marriage) otherwise than under normal circumstances "the court *shall presume* that such person had caused the dowry death". In view of Section 4 of the Evidence Act the court has no option but to presume that the accused had caused dowry death unless the accused disproves it. It is a statutory compulsion on the court. However it is open to the accused to adduce such evidence for disproving the said compulsory presumption, as the burden is unmistakably on him to do so. He can discharge such burden either by eliciting answers through cross-examination of the witnesses of the prosecution or by adducing evidence on the defence side or by both. (Paras 27 and 28)

But where the accused is called upon to defend only a charge under Section 302 IPC, the burden of proof never shifts onto him. It ever remains on the prosecution which has to prove the charge beyond all reasonable doubt. The said traditional legal concept remains unchanged even now. In such a case the accused can wait till the prosecution evidence is over and then to show that the prosecution has failed to make out the said offence against him. No compulsory presumption would go to the assistance of the prosecution in such a situation. If that be so, when an accused has no notice of the offence under Section 304-B IPC, as he was defending a charge under Section 302 IPC alone, it would lead to a grave miscarriage of justice when he is alternatively convicted under Section 304-B IPC and sentenced to the serious punishment prescribed thereunder, because he is deprived of the opportunity to disprove the burden cast on him by law. (Paras 31 to 33)

In such a situation, if the trial court finds that the prosecution has failed to make out the case under Section 302 IPC, but the offence under Section 304-B IPC has been made out, the court has to call upon the accused to enter on his defence in respect of the said offence. Even if no such count was included in the charge, when the court affords him an opportunity to discharge his burden by putting him to notice regarding the prima facie view of the court that he is liable to be convicted under Section 304-B IPC, it is possible for the court to enter upon a conviction of the said offence in the event of his failure to disprove the presumption. (Para 34)

As the appellant was convicted by the High Court under Section 304-B IPC, without such an opportunity being granted to him, it is necessary in the interest of justice to afford him that opportunity. The case in the trial court should proceed against the appellant (not against the other two accused whose acquittal remains unchallenged now) from the stage of defence evidence. He is put to notice that unless he disproves the presumption, he is liable to be convicted under Section 304-B IPC. (Para 35). *Shamnsaheb M. Multtani* v. *State of Karnataka*, (2001) 2 SCC 577: 2001 SCC (Cri) 358: AIR 2001 SC 921.

Bench Strength 3. Coram: **K.T. Thomas**, *R.P. Sethi* and *B.N. Agrawal*, JJ. [Date of decision: 24-1-2001]

Town Investments Ltd. v. Deptt. of the Environment, (1977) 1 All ER 813: 1978 AC 359: (1977) 2 WLR 450 (HL), relied on

[6940] — Ss. 464(2)(a) and 386 — Conviction under S. 302 IPC by appellate court, where accused was charged only under S. 201 IPC — Validity of — *Held, was not valid when tested on touchstone of provision contained in S. 464(2)(a) CrPC as appellate court (High Court) had failed to follow the procedure laid down in the said section — Even on the proven facts on record, no case for conviction under S. 302 IPC made out — Hence, said conviction was liable to be set aside — Penal Code, 1860 — S. 302 or S. 201, Ss. 302 or 201 r/w S. 34 — Conviction passed under S. 302 IPC by appellate court, where accused was charged only under S. 201 IPC*

The present appeals were filed against the judgment of the High Court which set aside the conviction of the appellants A-1 and A-2 (who were husband and father-in-law of the deceased respectively) in relation to offences under Sections 304-B and 498-A read with Section 34 IPC but found them guilty of the offences punishable under Sections 302 and 201 read with Section 34 IPC.

The case of the prosecution rested only on circumstantial evidence. The trial court observed that although PWs 11 and 12 (sister and mother of A-1 respectively) were present in their house where the offence was committed, but they had not uttered anything against A-1. On the contrary they had tried to implicate one *S* who had come to their house as a guest. They also denied having seen the appellants throttling the neck of the deceased and that the deceased was crying. Both the said witnesses were declared hostile. Nevertheless, the trial court observed that there were two circumstances against appellant A-1, namely, (*i*) motive, and (*ii*) last seen together.

Referring to the statement of PW 12 (mother of A-1), wherein she had said that A-1 and the deceased were sleeping in one room and she was sleeping in the other room, the trial court observed that the circumstances put forth by the prosecution may lead to inference that death of the deceased might have been caused by A-1 but that was not sufficient for convicting him for the offence of murder. However, relying on the evidence of the father, mother, sister and cousin of the deceased, the trial court came to the conclusion that the deceased was subjected to cruelty on account of demand for dowry, the motive for causing the death stood proved and that the circumstance of having been last seen together alone in the company of A-1 also stood proved. Thus, the trial court convicted the appellants under Sections 304-B and 498-A read with Section 34 IPC.

In appeal, the High Court found that there were material improvements in the evidence as regards demand of money and that A-2 had an evil eye on the deceased. The High Court observed that the prosecution failed to establish the charge against both the appellants in relation to commission of offences under Sections 498-A and 304-B IPC. Thus, it held that the trial court was not justified in convicting the appellants for the said two offences. However, the High Court noted that from the evidence of PW 12 (wife of A-2) it was borne out that on the fateful night both the accused, the deceased and PW 12 were present in the house. As per PW 8, who had performed the post-mortem, the injuries were ante-mortem and the deceased had died due to throttling and not for any other reason. Thus the High Court was of the view that the fact that the deceased was throttled to death and then thrown in a well, read with established circumstances that on the fateful night she was sleeping in the room along with her husband and even appellant A-2 was present in the house, to which there was no explanation given by both the appellants, the chain of circumstances stood completed. The High Court convicted the appellants under Sections 302 and 201 read with Section 34 IPC and sentenced them accordingly. Hence, the present appeals.

Since despite various opportunities A-1 failed to surrender, his appeal was dismissed. Therefore, the Supreme Court was only concerned with the case of A-2.

Allowing the appeal to the extent it pertained to A-2 and setting aside the conviction and sentence passed on him,

Held :

Though charge for offence punishable under Section 302 IPC had been framed against appellant A-1, no such charge was framed against appellant A-2, even with the aid of Section 34 IPC. The only charge framed against A-2 was for an offence punishable under Section 201 read with Section 34 IPC. (Para 14)

However, the High Court convicted A-2 for having committed a major offence punishable under Section 302 IPC. The said conviction cannot be held to be valid when tested on the touchstone of the provision contained in Section 464(2)(*a*) CrPC. If the High Court was convinced that a failure of justice had, in fact, been occasioned, the High Court was required to follow the procedure laid down in the section, which was not done. That apart, even on the proven facts on record, a case for conviction under Section 302 IPC was not made out against the said appellant. (Paras 15, 22 and 23). *Sukhram* v. *State of Maharashtra*, (2007) 7 SCC 502: (2007) 3 SCC (Cri) 426: AIR 2007 SC 3050: (2007) 57 AIC 90 (SC).

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 17-8-2007]

— **S. 465** *See also* S. 537, Criminal Procedure Code, 1898, pp. 1291 et seq. in Vol. 2

—**S. 465** *See* Ss. 156, 157, 465, 401 and 397
See also Ss. 197 and 465
See also Ss. 202(2) proviso, 200, 203, 204, 208, 209, 313, 208, 226 to 228, 460, 461 and 465
See also Ss. 202(2) proviso, 209 and 465
See also Ss. 211 & 215 and 464 & 465
See also Ss. 215, 211, 465 and 464
See also Ss. 215 and 465
See also Ss. 216, 217 and 465
See also Ss. 218, 464 and 465
See also Ss. Ch. XVIII (Ss. 225 to 237) and S. 465
See also Ss. 235(2) and 465
See also Ss. 300, 482, 465 and 227
See also Ss. 354 and 465
See also Ss. 386 and 465
See also Ss. 409(2) & 194, 407 and 462 & 465
See also Ss. 482 and 465

[6941] — S. 465 — Error or irregularity in a sanction for prosecution — *Held, prosecution not vitiated unless a failure of justice has been occasioned thereby — Merely because the defence raised this objection at the earliest opportunity not sufficient to vitiate the trial — Position under old Code compared — CrPC, 1898, S. 537*

In the corresponding provision under the old Code of 1898 the words "or any error or irregularity in any sanction for the prosecution" were absent. Legal position under the old Code, as settled by the decisions of various courts, was that any defect in sanction was not curable and hence the prosecution itself would have been void.

Parliament advisedly incorporated the words "any error or irregularity in any sanction for the prosecution" in Section 465 of the present Code as they wanted to prevent failure of prosecution on the mere ground of any error or irregularity in the sanction for prosecutions. An error or irregularity in a sanction may, nevertheless, vitiate the prosecution only if such error or irregularity has occasioned failure of justice.

Sub-section (2) of Section 465 of the Code is not a carte blanche for rendering all trials vitiated on the ground of the irregularity of sanction if objection thereto was raised at the first instance itself. The sub-section only says that "the court shall have regard to the fact" that objection has been raised at the earlier stage in the proceedings. It is only one of the considerations to be weighed but it does not mean that if objection was raised at the earlier stage, for that very reason the irregularity in the sanction would spoil the prosecution and transmute the proceedings into a void trial. *Kalpnath Rai* v. *State*, (1997) 8 SCC 732: AIR 1998 SC 201.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 6-11-1997]

[6942] — S. 465 — Finding or sentence when reversible by reason of error, omission or irregularity — "Failure of justice" — What amounts to (Paras 23 to 25). *Nishan Singh* v. *State of Punjab*, (2008) 17 SCC 505: AIR 2008 SC 1661: (2008) 65 AIC 172 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 7-3-2008]

State of M.P. v. Bhooraji, (2001) 7 SCC 679: 2001 SCC (Cri) 1373; M.C. Sulkunte (Dr.) v. State of Mysore, (1970) 3 SCC 513: 1971 SCC (Cri) 119; CBI v. V.K. Sehgal, (1999) 8 SCC 501: 1999 SCC (Cri) 1494; State of Haryana v. Ram Singh, (2002) 2 SCC 426: 2002 SCC (Cri) 350, relied on

[6943] — S. 465 — Irregular proceedings — *High Court's judgment, well reasoned — Even if there were irregularities in the procedure, held, the judgment not open to be set aside in absence of any showing of failure of justice. Hanumant Dass* v. *Vinay Kumar*, (1982) 2 SCC 177: 1982 SCC (Cri) 379(2): AIR 1982 SC 1052: 1982 Cri LJ 977.

Bench Strength **2**. Coram: *O. Chinnappa Reddy* and **R.B. Misra**, JJ. [Date of decision: 5-4-1982]

[6944] — S. 465 — Non-production of seized drugs (*charas* and *ganja*) before trial court — *Held, was not a mere procedural irregularity — It caused prejudice to the accused — Hence was fatal to the prosecution case* (Paras 5 and 6). *Jitendra* v. *State of M.P.*, (2004) 10 SCC 562: 2004 SCC (Cri) 2028: AIR 2003 SC 4236: 2003 Cri LJ 4985.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and **B.N. Srikrishna**, JJ. [Date of decision: 18-9-2003]

[6945] — S. 465 — Trial of a summons case as a warrant case is a mere irregularity and not illegality and does not vitiate the trial unless there is prejudice. *Supdt. and Remembrancer of Legal Affairs* v. *Anil Kumar Bhunja*, (1979) 4 SCC 274: 1979 SCC (Cri) 1038: AIR 1980 SC 52: 1979 Cri LJ 1390.

Bench Strength **3**. Coram: **R.S. Sarkaria**, *P.N. Shinghal* and *O. Chinnappa Reddy*, JJ. [Date of decision: 23-8-1979]

[6946] — Ss. 465, 306 and 307 — Scope and object of S. 465 — *Held, S. 465 cannot be applied to a patent defect of jurisdiction or an order passed in contravention of any mandatory provision of the Code — Tender of pardon by a Chief Judicial Magistrate who had no jurisdiction to do so is a total lack of jurisdiction which cannot be cured under S. 465*

Section 465 of the Code is the residuary section intended to cure any error, omission or irregularity committed by a court of competent jurisdiction in course of trial through accident or inadvertence, or even an illegality consisting in the infraction of any provisions of law. The sole object of the section is to secure justice by preventing the invalidation of a trial already held, on the ground of technical breaches of any provisions in the Code causing no prejudice to the accused. But by no stretch of imagination the aforesaid provisions can be attracted to a situation where a court having no jurisdiction under the Code does something or passes an order in contravention of the mandatory provisions of the Code. In view of the legal position that after a criminal proceeding is committed to a Court of Session it is only the Court of Session which has the jurisdiction to tender pardon to an accused and the Chief Judicial Magistrate does not possess any such jurisdiction, it would be impossible to hold that such tender of pardon by the Chief Judicial Magistrate can be accepted and the evidence of the approver thereafter can be considered by attracting the provisions of Section 465 of the Code. The aforesaid provision cannot be applied to a patent defect of jurisdiction. Then again it is not a case of reversing the sentence or order passed by a court of competent jurisdiction but is a case where only a particular item of evidence has been taken out of consideration as that evidence of the so-called approver has been held by us to be not a legal evidence since pardon had been tendered by a court of incompetent jurisdiction. To such a situation the provisions of Section 465 cannot be attracted at all. It is true that procedures are intended to subserve the ends of justice and undue emphasis on mere technicalities which are not vital or important may frustrate the ends of justice. The courts, therefore, are required to consider the gravity of irregularity and whether the same has caused a failure of justice. To tender pardon by a Chief Judicial Magistrate cannot be held to be a mere case of irregularity nor can it be said that there has been no failure of justice. It is a case of total lack of jurisdiction, and consequently the follow-up action on account of such an order of a Magistrate without jurisdiction cannot be taken into consideration at all. *A. Devendran* v. *State of T.N.*, (1997) 11 SCC 720: AIR 1998 SC 2821.

Bench Strength **2**. Coram: *G.N. Ray* and **G.B. Pattanaik**, JJ. [Date of decision: 21-10-1997]

[6947] — Ss. 465 and 197 — Want of valid sanction for prosecution — Scope of interference by appellate or revisional court with the conviction by the trial court — *Prosecution under S. 161 IPC and S. 5(2) of Prevention of Corruption Act ending in conviction — In such circumstances, reversal of conviction and sentence by appellate or revisional court merely on the ground of want of a valid sanction for prosecution, held, impermissible — More so when the plea of want of valid sanction was raised for the first time before the appellate court — Penal Code, 1860, S. 161 — Prevention of Corruption Act, 1947, Ss. 6 and 5(2) — Prevention of Corruption Act, 1988, Ss. 19 and 13*

The respondent was a Section Officer in the Office of the Defence Pension Disbursement Section. He was challaned by CBI for demanding and collecting an amount of Rs 200 from a pensioner as reward for disbursing the arrears of pension due to him with the further allegation that he was trapped in the process of receiving the aforesaid amount of bribery on 20-12-1984. The Special Judge convicted him on 30-8-1990 under Section 161 IPC and Section 5(2) of the Prevention of Corruption Act, 1947 and sentenced him to undergo rigorous imprisonment for two years besides payment of fine. In an appeal before the High Court he contended that the sanction to prosecute him was accorded by an officer who was not competent for that purpose. Upholding his contention the High Court set aside the conviction and the sentence. Leaving aside the question of competence of the officer concerned to grant the sanction, the Supreme Court took up the question whether at all the appellate court could reverse the conviction and sentence merely on the ground of want of a valid sanction, and

Held :

Section 465 CrPC debars a court of appeal or revision from reversing a finding (or even an order of conviction and sentence) on account of any error or irregularity in the sanction for the prosecution, unless failure of justice had been occasioned on account of such error or irregularity. For determining whether want of valid sanction had in fact occasioned failure of justice the sub-section (2) of S. 465 enjoins on the court a duty to consider whether the accused had raised any objection on that score at the trial stage. Even if he had raised any such objection at the early stage it is hardly sufficient to conclude that there was failure of justice. It has to be determined on the facts of each case. But an accused who did not raise it at the trial stage cannot possibly sustain such a plea made for the first time in the appellate court. (Para 10)

In a case where the accused failed to raise the question of valid sanction the trial would normally proceed to its logical end by making a judicial scrutiny of the entire materials. If that case ends in conviction there is no question of failure of justice on the mere premise that no valid sanction was accorded for prosecuting the public servant because the very purpose of providing such a filtering check is to safeguard public servants from frivolous or mala fide or vindictive prosecution. But once the judicial filtering process is over on completion of the trial the purpose of providing for the initial sanction would bog down to a surplusage. (Para 11). *Central Bureau of Investigation* v. *V.K. Sehgal*, (1999) 8 SCC 501: 1999 SCC (Cri) 1494: AIR 1999 SC 3706.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 8-10-1999]

Kalpnath Rai v. State (through CBI), (1997) 8 SCC 732: 1998 SCC (Cri) 134, relied on

[6948] — S. 465 — Cognizance taken on defective sanction order — Cognizance taken on a defective sanction order — No objection raised at the trial — *Held, defect is curable under S. 465 CrPC — Appellant not allowed to raise the plea of defect in sanction — Terrorist and Disruptive Activities (Prevention) Act, 1987, Ss. 20-A(2) and 14(3). Lal Singh* v. *State of Gujarat*, (1998) 5 SCC 529: 1998 SCC (Cri) 1360: AIR 1999 SC 1475.

Bench Strength **3**. Coram: *M.M. Punchhi, C.J.* and *K.T. Thomas, S. Rajendra Babu*, JJ. [Date of decision: 1-4-1998]

[6949] — S. 465 — Acquittal on the basis of erroneous finding of absence of proper sanction for prosecution — *Non-interference with, by Supreme Court at a delayed stage — In view of 20 long years having elapsed since the commission of the offence, instead of remanding the matter for disposal on merits, order of acquittal left undisturbed — Constitution of India — Art. 136 — Prevention of Food Adulteration Act, 1954, Ss. 20 and 16(1)(a)(i). State of Maharashtra* v. *Gopalprasad Govindprasad Agarwal*, (1998) 9 SCC 274: 1998 SCC (Cri) 1003: AIR 1999 SC 1507.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *S.B. Majmudar*, JJ. [Date of decision: 20-3-1997]

[6950] — S. 465 — Error, omission or irregularity in sanction for prosecution — Effect of — Held, it is not fatal unless it has occasioned or resulted in failure of justice — *Requirement of sanction under S. 19(1) is a matter of procedure and does not go to the root of the jurisdiction — Prevention of Corruption Act, 1988, S. 19*

The effect of Sections 19(3) and (4) of the PC Act, 1988 is of considerable significance. In Section 19(3), the stress is on "failure of justice" and that too "in the opinion of the court". In Section 19(4), the stress is on raising the plea at the appropriate time. Significantly, the "failure of justice" is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is not considered fatal unless it has resulted in failure of justice or failure of justice has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to the root of the jurisdiction. Section 19(3)(*c*) reduces the rigour of prohibition. (Para 8). *Paul Varghese* v. *State of Kerala*, (2007) 14 SCC 783: AIR 2007 SC 2618: (2007) 2 KLT 529: (2007) 53 AIC 43 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 10-4-2007]

Central Bureau of Investigation v. V.K. Sehgal, (1999) 8 SCC 501: 1999 SCC (Cri) 1494; State v. T. Venkatesh Murthy, (2004) 7 SCC 763: 2004 SCC (Cri) 2140; Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193, relied on

[6951] — S. 465 — Sanction order — Validity of — Challenge to — When not sustainable — *Held, in absence of anything to show that any defect or irregularity in sanction caused failure of justice, plea relating to sanction was without substance — Prevention of Corruption Act, 1988, S. 19* (Para 7). *Shankerbhai Laljibhai Rot* v. *State of Gujarat*, (2004) 13 SCC 487.

Bench Strength **2**. Coram: *Arijit Pasayat* and *C.K. Thakker*, JJ. [Date of decision: 14-9-2004]

[6952] — Ss. 465 and 401 — Offences under the Prevention of Corruption Act — Invalid sanction — Effect of — *Merely because there is any omission, error or irregularity in the matter of according sanction that does not affect the validity of the proceeding unless the court records the satisfaction that* *such error, omission or irregularity has resulted in failure of justice — The said logic applies to the appellate or revisional court also — On facts, sanction granted by the Superintending Engineer of the Karnataka Electricity Board was not sufficient to prosecute the accused — Trial court discharging accused, but granting liberty to prosecution to obtain fresh sanction and file a fresh charge-sheet — Revision before High Court by State — Dismissal of — Held, courts below had not kept in view the requirements of sub-ss. (3) and (4) relating to "failure of justice" — Orders of the courts below set aside — Trial court directed to record findings in terms of sub-ss. (3)(b) and (4) — Karnataka Electricity Board Employees' (Classification, Disciplinary Control and Appeal) Regulations, 1987 — Prevention of Corruption Act, 1988, Ss. 19(3) and (4)*

Allowing the appeal,

Held :

A combined reading of sub-sections (3) and (4) of Section 19 of the Prevention of Corruption Act, 1988 makes the position clear that notwithstanding anything contained in the Criminal Procedure Code, 1973, no finding, sentence and order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in the sanction required under sub-section (1), unless in the opinion of that court a failure of justice has in fact been occasioned thereby. (Para 7)

Clause (*b*) of sub-section (3) shows that no court shall stay the proceedings under the Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice. (Para 8)

Sub-section (4) postulates that in determining under sub-section (3) whether the absence of, or any error, omission or irregularity in the sanction has occasioned or resulted in a failure of justice, the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. (Para 9)

In the instant case neither the trial court nor the High Court appear to have kept in view the requirements of sub-section (3) relating to question regarding "failure of justice". Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice. The same logic also applies to the appellate or revisional court. The requirement of sub-section (4) about raising the issue at the earliest stage has not been also considered. Unfortunately, the High Court by a practically non-reasoned order, confirmed the order passed by the learned trial Judge. The orders are, therefore, indefensible. (Para 14). *State* v. *T. Venkatesh Murthy*, (2004) 7 SCC 763: 2004 SCC (Cri) 2140.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 10-9-2004]

[6953] — Ss. 465 and 482 — Reopening of the case — When not proper — *Plea of alibi raised by the acquitted co-accused accepted by the trial court and upheld by the High Court — No appeal against acquittal filed by State — Supreme Court while hearing appeal against conviction of the convicted co-accused expressing doubt about the genuineness of the said plea of alibi taken by the acquitted co-accused — However, since no appeal had been filed against their acquittal it would not be proper to reopen the case for the occurrence which took place in 1976 and reconsider their acquittal recorded in 1984 — Criminal Trial — Practice and Procedure. Amrik Singh* v. *State of Rajasthan*, (1994) 1 SCC 563: 1994 SCC (Cri) 447.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *N.P. Singh*, JJ. [Date of decision: 17-12-1993]

[6954] — S. 465 — Necessity of enquiry report — Provision in statutory rules [R. 55-A, Civil Services (CCA) Rules in this case] for furnishing copy of enquiry report — Nature of, and effect of non-compliance with — *Such a rule, held, is procedural and mandatory — However, the delinquent seeking the order of his dismissal to be quashed on the ground of non-compliance with the said provision, held, must show that he was prejudiced thereby — Otherwise the said omission would not be fatal to the impugned order — Provisions in other statutes saving an order suffering from defect, error, irregularity or omission, from being set aside unless prejudice or failure of justice is shown, noticed — On facts, held, the delinquent failed to discharge that burden — Hence further held, Service Tribunal erred in quashing the dismissal order — Civil Services (Classification, Control and Appeal) Rules, 1930, R. 55-A (as amended in U.P.) — CPC, 1908, Ss. 99-A & 115 and Or. 21 R. 90*

The respondent was a confirmed Assistant Engineer in the Irrigation Department of U.P. and was later promoted as Executive Engineer. In response to a charge sheet from the Administrative Tribunal, he submitted his explanation. Thereafter a full-fledged enquiry was conducted. The Administrative Tribunal found him guilty and recommended his dismissal. The State Government issued to him a notice to show cause against the proposed dismissal and after obtaining the respondent's reply, obtained the Administrative Tribunal's comments thereon. Thereafter the State Government passed an order on 13-3-1973 dismissing the respondent from service. The U.P. State Public Services Tribunal quashed the order of dismissal principally on the ground that a copy of the enquiry report as required under Rule 55-A of the Civil Services (Classification, Control and Appeal) Rules, 1930 (as amended in U.P.) was not furnished to the respondent. The High Court upheld the Services Tribunal's order. Relying on *Managing Director, ECIL case* (1993) 4 SCC 727, the appellant State contended that in the absence of anything to show that the respondent was prejudiced by the non-furnishing of the enquiry report, the omission would not warrant the setting aside of the dismissal order. On the other hand, the respondent contended that since in the rules governing the service conditions of the respondent there was a requirement of furnishing a copy of the proceedings of the enquiry, which would obviously include the enquiry report, the prejudice theory laid down in *ECIL case* would not apply. The respondent added that in the ECIL case there was no such requirement under the statutory rules, rather the requirement was by virtue of interpretation put forth upon Article 311(2) of the Constitution of India. Allowing the appeal,

Held :

From the case of *ECIL* it is plain that in cases covered by the constitutional mandate i.e. Article 311(2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. Therefore, requirement in the statutory rules of furnishing copy of the enquiry report cannot be made to stand on a higher footing by laying down that question of prejudice is not material therein. (Para 12)

Moreover, every infraction of statutory provisions would not make the consequent action void and/or invalid. The statute may contain certain substantive provisions, e.g., who is the competent authority to impose a particular punishment on a particular employee. Such provision must be strictly complied with as in such cases the theory of substantial compliance may not be available. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touchstone of prejudice. The test would be, whether the delinquent officer had or did not have a fair hearing. (Para 13)

Even in the CPC there are various provisions viz. Sections 99-A and 115 besides Order 21 Rule 90 where merely because there is defect, error or irregularity in the order, the same would not be liable to be set aside unless it has prejudicially affected the decision. Likewise, in the CrPC also, Section 465 lays down that no finding, sentence or order passed by a competent court shall be upset merely on account of any error, omission or irregularity unless in the opinion of the court a failure of justice has, in fact, been occasioned thereby. There is no reason why the principle underlying the aforesaid provisions would not apply in case of the statutory provisions like Rule 55-A of the CCS (CCA) Rules in relation to disciplinary proceeding. Rule 55-A embodies in it nothing but the principles of reasonable opportunity and natural justice. (Para 14)

The provision in Rule 55-A of the Rules for furnishing a copy of enquiry report is a procedural one and of a mandatory character, but even then a delinquent has to show that he has been prejudiced by its non-observance and consequently the law laid down by the Constitution Bench in the case of *ECIL* to the effect that an order passed in a disciplinary proceeding cannot ipso facto be quashed merely because a copy of the enquiry report has not been furnished to the delinquent officer, but he is obliged to show that by non-furnishing of such a report he has been prejudiced, would apply even to cases where there is requirement of furnishing a copy of enquiry report under the statutory provisions and/or service rules. (Para 23)

Undisputedly, after submission of enquiry report the State Government sent a show-cause notice to the delinquent pursuant to which he had shown cause and the disciplinary authority after considering the said show-cause reply, passed the order of dismissal. It is not the stand of the respondent that in the absence of the enquiry report he could not submit an effective show-cause reply before the order of dismissal was passed. Neither from the order passed by the Services Tribunal nor the High Court would it appear that the respondent had raised this point there that he could not file an effective show-cause reply in the absence of enquiry report nor has it been stated that in the show-cause reply it was complained that the delinquent had not been served with a copy of the enquiry report. From these facts, it is not possible to hold that the respondent was prejudiced by non-furnishing of the enquiry report. (Para 24). *State of U.P.* v. *Harendra Arora*, (2001) 6 SCC 392: 2001 SCC (L&S) 959: AIR 2001 SC 2319: 2001 All LJ 1185: (2001) 3 LLN 42.

Bench Strength **2**. Coram: *G.B. Pattanaik* and **B.N. Agrawal**, JJ. [Date of decision: 2-5-2001]

Managing Director, ECIL v. B. Karunakar, (1993) 4 SCC 727: 1993 SCC (L&S) 1184: (1993) 25 ATC 704; Russell v. Duke of Norfolk, (1949) 1 All ER 109 (CA), relied on

R. v. Secy. of State for Transport, ex p Gwent County Council, (1987) 1 All ER 161 (CA); Davis v. Carew-Pole, (1956) 1 WLR 833: (1956) 2 All ER 524; Jankinath Sarangi v. State of Orissa, (1969) 3 SCC 392; K.L. Tripathi v. State Bank of India, (1984) 1 SCC 43: 1984 SCC (L&S) 62; Sunil Kumar Banerjee v. State of W.B., (1980) 3 SCC 304: 1980 SCC (L&S) 369; State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364: 1996 SCC (L&S) 717; Krishan Lal v. State of J&K, (1994) 4 SCC 422: 1994 SCC (L&S) 885: (1994) 27 ATC 590, followed

Managing Director, ECIL v. B. Karunakar, (1993) 4 SCC 727: 1993 SCC (L&S) 1184: (1993) 25 ATC 704, applied

Ridge v. Baldwin, 1964 AC 40: (1963) 2 All ER 66 (HL), considered

— S. 465(1) *See also* Ss. 209, 323 and 465(1)

[6955] — S. 465(1) — "A failure of justice has in fact been occasioned" — Onus of proof, held, is on the accused (Para 17). *State of M.P.* v. *Bhooraji*, (2001) 7 SCC 679: 2001 SCC (Cri) 1373: AIR 2001 SC 3372.

Bench Strength **2**. Coram: **K.T. Thomas** and *K.G. Balakrishnan*, JJ. [Date of decision: 24-8-2001]

[6956] — S. 465(1) — "Court of competent jurisdiction" — Meaning — *Competence will remain unaffected by procedural lapse — No effect of statutory bar to take cognizance of certain cases on the question whether the court was of competent jurisdiction or not*

There is no substance in the contention that Section 465 is restricted to any findings, sentence or order passed by "a court of competent jurisdiction" and that a Special Court under the SC/ST Act which is essentially a Sessions Court would have remained incompetent until the case is committed to it. The expression "a court of competent jurisdiction" envisaged in Section 465 is to denote a validly constituted court conferred with jurisdiction to try the offence or offences. Such a court will not get denuded of its competence to try the case on account of any procedural lapse and the competence would remain unaffected by the non-compliance with the procedural requirement. The inability to take cognizance of an offence without a committal order does not mean that a duly constituted court became an incompetent court for all purposes. If an objection was raised in that court at the earliest occasion on the ground that the case should have been committed by a Magistrate, the same specified court has to exercise a jurisdiction either for sending the records to a Magistrate for adopting committal proceedings or return the police report to the Public Prosecutor or the police for presentation before the Magistrate. Even this could be done only because the court has competence to deal with the case. Sometimes that court may have to hear arguments to decide that preliminary issue. (Paras 19 and 21)

The bar against taking cognizance of certain offences or by certain courts cannot govern the question whether the court concerned is "a court of competent jurisdiction", e.g. courts are debarred from taking cognizance of certain offences without sanction of certain authorities. If a court took cognizance of such offences, which were later found to be without valid sanction, it would not become the test or standard for deciding whether that court was "a court of competent jurisdiction". It is now well settled that if the question of sanction was not raised at the earliest opportunity the proceedings would remain unaffected on account of want of sanction. This is another example to show that the condition precedent for taking cognizance is not the standard to determine whether the court concerned is "a court of competent jurisdiction". (Para 22). *State of M.P.* v. *Bhooraji*, (2001) 7 SCC 679: 2001 SCC (Cri) 1373: AIR 2001 SC 3372.

Bench Strength **2**. Coram: **K.T. Thomas** and *K.G. Balakrishnan*, JJ. [Date of decision: 24-8-2001]

[6957] — S. 465(1) — Procedural irregularity — "Failure of justice" — Essential to show for exercise of power under — Taking cognizance of certain offence by a particular court despite bar against the same is a procedural lapse for which appellate court's order for a de novo trial, held, not justified — *Procedural irregularity or illegality, which does not affect the core of the case, would not justify the appellate court to order a fresh trial — Specified court under SC and ST (Prevention of Atrocities) Act, being a Sessions Court, taking cognizance of offence under the Act without the case being committed by a Magistrate, in accordance with the legal position then prevailing in State of M.P. by virtue of a decision of a Full Bench of High Court of M.P. — But during pendency of appeal before the High Court against the order of conviction and sentence of the trial court, Supreme Court taking the view that committal proceedings are necessary for a specified court under the said Act to take cognizance of offences to be tried — Trial court* *having not adopted that procedure, High Court quashing the entire trial proceedings and directing commencement of the trial de novo by initiating committal proceedings — Held, High Court erred in doing so — It was for the accused to show that "a failure of justice" had occasioned on account of such irregularity in the trial proceedings which accused failed to show — Specified court under the said Act would not cease to be a "court of competent jurisdiction" merely because of such procedural lapse*

The police charge-sheeted eleven persons in connection with an incident for various offences including Section 302 r/w Section 149 IPC and Section 3(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The case started in January 1992 before the Court of Addl. Sessions Judge (MP) which was the specified court as per Section 14 of the said Act. The court proceeded with the trial and in 1996 convicted all the eleven persons under Sections 148, 323, 302/149 IPC and sentenced them to various punishments including imprisonment for life. All the convicted persons filed appeal before the High Court of M P.

In the State of M.P., by virtue of a decision of a Division Bench of the High Court in *Meerabai* v. *Bhujbal Singh*, 1995 Cri LJ 2376 (MP), the legal position that was prevailing was that committal proceedings were necessary for a specified court under the SC/ST Act to take cognizance of the offences to be tried. But that legal position was changed in the State when a Full Bench of the High Court by its judgment dated 23-8-1995 in *Anand Swaroop Tiwari* v. *Ram Ratan Jatav*, 1996 MPLJ 141 (FB) overruled the aforesaid dictum and held "Section 193 of the Code of Criminal Procedure does not apply to proceedings under the (SC/ST) Act and committal orders are not required". The Full Bench, in order to prevent repetition of trials already held or started, took the precautionary measure of directing that "where cognizance has already been taken on the basis of committal orders in police challan cases, it is not necessary for the courts to retrace their steps or to take cognizance afresh". During the pendency of the appeal preferred by the said eleven convicted persons, the Supreme Court in *Gangula Ashok* v. *State of A.P.*, (2000) 2 SCC 504 reiterated the same legal position as was adopted by the Division Bench of the High Court in *Meerabai case*. Consequently, the legal position as was held by the Division Bench of the High Court got revived and the Full Bench decision got eclipsed. Thereupon all the eleven convicted persons filed application before the High Court seeking quashment of the trial proceedings on the ground that the trial was without jurisdiction inasmuch as the specified Court of Session did not acquire jurisdiction to take cognizance of and try the case, in the absence of it being committed by a Magistrate. The High Court upheld the said contention and ordered "the entire trial held by the court below shall stand quashed and the trial court is directed to return the charge-sheet and the connected papers to the prosecution for resubmission to the Magistrate for further proceedings in accordance with law". Hence the present appeal by special leave by the State. The real question before the Supreme Court was whether the High Court necessarily should have quashed the trial proceedings to be repeated again only on account of the declaration of the legal position made by the Supreme Court concerning the procedural aspect about the cases involving offences under the SC/ST Act? Setting aside the judgment of the High Court,

Held :

The trial held by the Sessions Court reaching the judgment impugned before the High Court in appeal was conducted by a court of competent jurisdiction and the same cannot be erased merely on account of a procedural lapse, particularly when the same happened at a time when the law which held the field in the State of Madhya Pradesh was governed by the decision of the Full Bench of the Madhya Pradesh High Court. The High Court should have dealt with the appeal on merits and on the basis of the evidence already on record. To facilitate the said course, the case is remitted back to the High Court for disposal of the appeal afresh on merits in accordance with law and subject to the observations made below. (Para 23)

Section 465 of the Code falls within Chapter XXXV under the caption "Irregular Proceedings". The entire purport of the provisions subsumed in Chapter XXXV is to save the proceedings linked with erroneous steps, unless the error is of such a nature that it had occasioned a failure of justice. Section 465(1) makes it clear that the error, omission or irregularity in the proceedings held before or during the trial or in any enquiry were reckoned by the legislature as possible occurrences in criminal courts. Yet the legislature disfavoured axing down the proceedings or to direct repetition of the whole proceedings afresh. Hence, the legislature imposed a prohibition that unless such error, omission or irregularity has occasioned "a failure of justice" the superior court shall not quash the proceedings merely on the ground of such error, omission or irregularity. (Paras 12, 13 and 15)

It is an uphill task for the accused in this case to show that failure of justice had in fact occasioned merely because the specified Sessions Court took cognizance of the offences without the case being committed to it. The normal and correct procedure, of course, is that the case should have been committed to the Special Court because that court being essentially a Court of Session can take cognizance of any offence only then. But if a specified Sessions Court, on the basis of the legal position then felt to be correct on account of a decision adopted by the High Court, had chosen to take cognizance without a committal order, what is the disadvantage of the accused in following the said course? (Para 17)

After enactment of the Code of Criminal Procedure 1973, the committal court, in police charge-sheeted cases, cannot examine any witness at all. The Magistrate in such cases has only to commit the cases involving offences exclusively triable by the Court of Session. Therefore, after commencement of the 1973 Code it is not possible for an accused to raise a contention that skipping committal proceedings had deprived him of the opportunity to cross-examine witnesses in the committal court and that had caused prejudice to his defence. (Para 18). *State of M.P.* v. *Bhooraji*, (2001) 7 SCC 679: 2001 SCC (Cri) 1373: AIR 2001 SC 3372.

Bench Strength **2**. Coram: **K.T. Thomas** and *K.G. Balakrishnan*, JJ. [Date of decision: 24-8-2001]

State of H.P. v. Gita Ram, (2000) 7 SCC 452: 2000 SCC (Cri) 1390; Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577: 2001 SCC (Cri) 358, relied on

H.N. Rishbud v. State of Delhi, AIR 1955 SC 196: 1955 Cri LJ 526; Ballabhdas Agarwala v. J.C. Chakravarty, AIR 1960 SC 576: 1960 Cri LJ 752, distinguished

[6958] — S. 465(1) — Reversal of finding, sentence or order of trial court — De novo trial — Factors to be considered before passing order for — *While ordering de novo trial, appellate court should have regard to the impact thereof on the bulk of pending cases as well as hardship caused to the persons who had come to depose their versions before the court*

A de novo trial should be the last resort and that too only when such a course becomes so desperately indispensable. It should be limited to the extreme exigency to avert "a failure of justice". Any omission or even the illegality in the procedure which does not affect the core of the case is not a ground for ordering a de novo trial. This is because the appellate court has plenary powers for re-evaluating and reappraising the evidence and even to take additional evidence by the appellate court itself or to direct such additional evidence to be collected by the trial court. But to replay the whole laborious exercise after erasing the bulky records relating to the earlier proceedings, by bringing down all the persons to the court once again for repeating the whole deposition would be a sheer waste of time, energy and costs unless there is miscarriage of justice otherwise. Hence the said course can be resorted to when it becomes unpreventable for the purpose of averting "a failure of justice". The superior court which orders a de novo trial cannot afford to overlook the realities and the serious impact on the pending cases in trial courts which are crammed with dockets, and how much that order would inflict hardship on many innocent persons who once took all the trouble to reach the court and deposed their versions in the very same case. To them and the public the re-enactment of the whole labour might give the impression that law is more pedantic than pragmatic. Law is not an instrument to be used for inflicting sufferings on the people but for the process of justice dispensation. (Para 8). *State of M.P.* v. *Bhooraji*, (2001) 7 SCC 679: 2001 SCC (Cri) 1373: AIR 2001 SC 3372.

Bench Strength **2**. Coram: **K.T. Thomas** and *K.G. Balakrishnan*, JJ. [Date of decision: 24-8-2001]

State of H.P. v. Gita Ram, (2000) 7 SCC 452: 2000 SCC (Cri) 1390, relied on

— S. 465(2) *See* Ss. 306(4)(a) and 465(2)

— Ch. XXXVI *See* Ss. 467 to 473

— S. 467 *See also* S. 197 and 420, 467, 468, 471

[6959] — Ss. 467 to 473 (Ch. XXXVI) — Object of — Explained

The object of having Chapter XXXVI in CrPC is to protect persons from prosecution based on stale grievances and complaints which may turn out to be vexatious. The reason for engrafting the rule of limitation is that due to a long lapse of time necessary evidence will be lost and persons prosecuted will be placed in a defenceless position. This may even result in miscarriage of justice. At the same time it is necessary to ensure that due to delays on the part of the investigating and prosecuting agencies and the application of rules of limitation, the criminal justice system is not rendered toothless and ineffective and the perpetrators of crime are not placed in an advantageous position. Parliament obviously taking note of various aspects, classified offences into two categories. Grave offences for which the punishment prescribed is imprisonment for a term exceeding three years are not brought within the ambit of Chapter XXXVI. The period of limitation is prescribed only for offences for which the punishment specified is imprisonment for a term not exceeding three years and even in such cases a wide discretion is given under Section 473 to the court in the matter of taking cognizance of an offence after the expiry of the period of limitation. (Para 10). *Arun Vyas* v. *Anita Vyas*, (1999) 4 SCC 690: 1999 SCC (Cri) 629: AIR 1999 SC 2071.

Bench Strength 2. Coram: *K. Venkataswami* and **S.S.M. Quadri**, JJ. [Date of decision: 14-5-1999]

— **S. 468** *See* Ss. 167(2) and 468

See also Ss. 167(5) (as substituted for W.B. by Act 24 of 1988) and 468

See also Ss. 190(1)(b) & 204, 200, 156(3), 468 and 401

See also Ss. 197 and 420, 467, 468, 471

See also Ss. 239, 240, 227, 190(1), 156(3) and 468

See also Ss. 374 and 468

See also Ss. 378(4) and 468

See also Ss. 469 and 468

See also Ss. 473 and 468

See also Ss. 482 and 197, 173, 309, 437(6) and 468

See also Ss. 482 and 468

See also Ss. 482, 468, 469(b) & (c), 154 and 473

[6960] — S. 468 — Question of limitation — Nature of — *Held on facts, was not a pure question of law but a mixed question of law and facts and for deciding the said question certain disputed questions of facts were required to be adjudicated upon after giving opportunity to parties to adduce evidence — Said procedure having not been adopted, the trial court committed an error in dismissing the complaint on the ground that the same was barred by limitation and the High Court was not justified in upholding the said order — Hence impugned orders set aside and matter remitted to trial court for decision afresh* (Paras 3 and 4). *Gurubachan Singh Gill* v. *J.S. Bagga*, (2005) 13 SCC 381: (2006) 2 SCC (Cri) 249.

Bench Strength 2. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 16-9-2005]

[6961] — S. 468 — Bar of limitation to taking cognizance of offence — Object — *Maxim vigilantibus, et non dormientibus, jura subveniunt (the vigilant, and not the sleepy, are assisted by the laws) — Inapplicable to offence relating to cruelty on women in matrimonial cases*

The object of introducing S. 468 CrPC was to put a bar of limitation on prosecutions and to prevent the parties from filing cases after a long time, as it was thought proper that after a long lapse of time, launching of prosecution may be vexatious, because by that time even the evidence may disappear. But that consideration cannot be extended to matrimonial offences, where the allegations are of cruelty, torture and assault by the husband or other members of the family to the complainant. The general rule of limitation is based on the Latin maxim: vigilantibus, et non dormientibus, jura subveniunt (the vigilant, and not the sleepy, are assisted by the laws). That maxim cannot be applied in connection with offences relating to cruelty against women. Victim is subjected to such cruelty repeatedly and it is more or less like a continuing offence. It is only as a last resort that a wife openly comes before a court to unfold and relate the day-to-day torture and cruelty faced by her, inside the house, which many of such victims do not like to be made public. As such, courts while considering the question of limitation for an offence under S. 498-A IPC i.e. subjecting a woman to cruelty by her husband or the relative of her husband, should judge that question, in the light of S. 473 CrPC. *Vanka Radhamanohari* v. *Vanka Venkata Reddy*, (1993) 3 SCC 4: 1993 SCC (Cri) 571.

Bench Strength 2. Coram: *Kuldip Singh* and **N.P. Singh**, JJ. [Date of decision: 20-4-1993]

[6962] — S. 468 — Bar of limitation under — Invocation of — Computation of period of limitation — Date relevant for — *Held, the same is the date when the complaint is filed or criminal proceedings are initiated and not the date when the court/Magistrate takes cognizance or issues process — Applying the doctrine of* **actus curiae neminem gravabit**, *further held, a view contrary to the one taken above would lead to injustice and defeat the primary object of procedural law — Connecting provision of limitation in S. 468 CrPC with date of issue of process or taking of cognizance by the court may make it unsustainable and ultra vires Art. 14 of the Constitution — Penal Code, 1860, Ss. 294 and 323*

What should be the relevant date for computation of period of limitation prescribed under Section 468 CrPC was the question involved in the present case.

The instant incident took place on 2-2-1996. A complaint in respect thereof was filed against the respondent within three days of the incident. But the Magistrate took cognizance of the matter and issued summons against the respondent in respect of offences under Sections 294 and 323 IPC after more than one year of the incident. The respondent filed a petition under Section 482 CrPC for quashing the said proceedings on the ground that the said complaint was barred by limitation under Section 468 CrPC. The High Court allowed the said petition. It held that the date relevant and material for deciding the bar of limitation under Section 468 CrPC was the date of taking cognizance by the court and not the date of filing of the complaint. Thus, the High Court opined that since the cognizance in the present case was taken after the expiry of the limitation period prescribed under Section 468 CrPC in relation to offences in question (i.e. one year), the instant complaint was barred by limitation. Hence, the present appeal.

Before the Supreme Court, the appellant (complainant) contended that the question of limitation should be considered on the basis of the date of filing of the complaint. Whereas the respondent (accused) argued that the said question must be considered on the basis of the date of taking cognizance by the court.

Allowing the appeal by setting aside the order of the High Court and directing the Magistrate to proceed with the case,

Held :

For the purpose of computing the period of limitation under Section 468 CrPC, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a court. (Para 52)

The two things, namely, (*1*) filing of complaint or initiation of criminal proceedings; and (*2*) taking cognizance or issuing process are totally different, distinct and independent. So far as the complainant is concerned, as soon as he files a complaint in a competent court of law, he has done everything which is required to be done by him at that stage. Thereafter, it is for the Magistrate to consider the matter, to apply his mind and to take an appropriate decision of taking cognizance, issuing process or any other action which the law contemplates. The complainant has no control over those proceedings. Because of several reasons it may not be possible for the court or the Magistrate to issue process or take cognizance. But a complainant cannot be penalised for such delay on the part of the court nor can he be non-suited because of failure or omission by the Magistrate in taking appropriate action under CrPC. No criminal proceeding can be abruptly terminated when a complainant approaches the court well within the time prescribed by law. In such cases, the doctrine *actus curiae neminem gravabit* (an act of court shall prejudice none) would indeed apply. One of the first and highest duties of all courts is to take care that an act of court does no harm to suitors. (Paras 47 to 49)

CrPC imposes an obligation on the aggrieved party to take recourse to appropriate forum within the period provided by law and once he takes such action, it would be wholly unreasonable and inequitable if he is told that his grievance would not be ventilated as the court had not taken an action within the period of limitation. Such interpretation of law, instead of promoting justice would lead to perpetuate injustice and defeat the primary object of procedural law. (Para 50)

The matter can be looked at from different angle also. Once it is accepted (and there is no dispute about it) that it is not within the domain of the complainant or prosecuting agency to take cognizance of an offence or to issue process and the only thing which the former can do is to file a complaint or initiate proceedings in accordance with law, if that action of initiation of proceedings has been taken within the period of limitation, the complainant is not responsible for any delay on the part of the court or Magistrate in issuing process or taking cognizance of an offence. Now, if he is sought to be penalised because of the omission, default or inaction on the part of the court or Magistrate, the provision of law may have to be tested on the touchstone of Article 14 of the Constitution. It can *possibly* be urged that such a provision is totally arbitrary, irrational and unreasonable. It is settled law that a court of law would interpret a provision which would help sustaining the validity of law by applying the doctrine of reasonable construction rather than making it vulnerable and unconstitutional by adopting rule of *litera legis*. Connecting the provision of limitation in Section 468 CrPC with issuing of process or taking of cognizance by the court *may* make it unsustainable and ultra vires Article 14 of the Constitution. (Para 51)

In the instant case, the complaint was filed within a period of three days from the date of the alleged offence. The complaint, therefore, must be held to be filed within the period of limitation even though cognizance was taken by the Magistrate after the limitation period. (Para 53). *Japani Sahoo* v. *Chandra Sekhar Mohanty*, (2007) 7 SCC 394: (2007) 3 SCC (Cri) 388: AIR 2007 SC 2762: (2007) 3 KLT 760: 2007 Cri LJ 4068.

Bench Strength **2**. Coram: **C.K. Thakker** and *Tarun Chatterjee*, JJ. [Date of decision: 27-7-2007]

Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559: 2004 SCC (Cri) 39, affirmed and followed

Kamal H. Javeri v. Chandulal Gulabchand Kothari, 1985 Cri LJ 1215 (Bom); Basavantappa Basappa Bannihalli v. Shankarappa Marigallappa Bannihalli, 1990 Cri LJ 360 (Kant); Anand R. Nerkar (Dr.) v. Rahimbi Shaikh Madar, 1991 Cri LJ 557 (Bom); Zain Sait v. Intex-Painter, 1993 Cri LJ 2213 (Ker); Malabar Market Committee v. Nirmala, (1988) 2 Ker LT 420; Labour Enforcement Officer (Central) v. C.V. Avarachan, 2004 Cri LJ 2582 (Ker); Hari Jai Singh v. Suresh Kumar Gupta, 2004 Cri LJ 3768 (HP), approved

Surinder Mohan Vikal v. Ascharaj Lal Chopra, (1978) 2 SCC 403: 1978 SCC (Cri) 215; Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397: 1997 SCC (Cri) 415; State of H.P. v. Tara Dutt, (2000) 1 SCC 230: 2000 SCC (Cri) 125; Alexander Rodger v. Comptoir D' Escompte, (1871) LR 3 PC 465: 17 ER 120, relied on

Jagannathan v. State, 1983 Cri LJ 1748 (Mad); Court on its own motion v. Sh. Shankroo, 1983 Cri LJ 63 (HP); Shyam Sunder Sarma v. State of Assam, 1988 Cri LJ 1560 (Gau); Bipin Kalra v. State, 2003 Cri LJ 51 (NOC) (Del); Harihar Nath Garg (Dr.) v. State of M.P., (2003) 3 Crimes 412 (MP); Dandapani v. State, (2002) 1 Crimes 675 (Mad); ARU v. State, 1993 LW (Cri) 127, overruled

[6963] — S. 468 — Prescription of period of limitation for initiating criminal proceedings in relation to petty offences — Rationale behind

The provisions as to limitation have been inserted by Parliament in the larger interest of administration of criminal justice keeping in view two conflicting considerations:

(*i*) the interest of persons sought to be prosecuted (prospective accused);

(*ii*) and organs of State (prosecuting agencies). (Para 20)

The general rule of criminal justice is that "a crime never dies". The principle is reflected in the well-known maxim *nullum tempus aut locus occurrit regi* (lapse of time is no bar to Crown in proceeding against offenders). The Limitation Act, 1963 does not apply to criminal proceedings unless there are express and specific provisions to that effect, for instance, Articles 114, 115, 131 and 132 of the Act. It is settled law that a criminal offence is considered as a wrong against the State and the society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a court of law has no power to throw away prosecution *solely* on the ground of delay. Mere delay in approaching a court of law would not by itself afford a ground for dismissing the case though it may be a relevant circumstance in reaching a final verdict. (Para 14)

But it also cannot be overlooked that no person can be kept under continuous apprehension that he can be prosecuted at "any time" for "any crime" irrespective of the nature or seriousness of the offence. "People will have no peace of mind if there is no period of limitation even for petty offences." (Para 16). *Japani Sahoo* v. *Chandra Sekhar Mohanty*, (2007) 7 SCC 394: (2007) 3 SCC (Cri) 388: AIR 2007 SC 2762: (2007) 3 KLT 760: 2007 Cri LJ 4068.

Bench Strength **2**. Coram: **C.K. Thakker** and *Tarun Chatterjee*, JJ. [Date of decision: 27-7-2007]

Asstt. Collector of Customs v. L.R. Melwani, AIR 1970 SC 962: (1969) 2 SCR 438: 1970 Cri LJ 885, relied on

[6964] — Ss. 468, 473 and 482 — Bar of limitation to taking cognizance of offence — Not absolute — *Court wherever S. 468 is applicable must consider applicability of S. 473 and condone the delay having regard to explanation for the delay and interest of justice — Matrimonial offences relating to cruelty of husband on wife are in the nature of continuing offences to which bar of S. 468 cannot be applied in the interest of justice — Wife (appellant) leaving matrimonial house in 1985 but filing complaint in 1990 alleging maltreatment, torture and harassment for dowry by her husband (respondent) and mother-in-law and remarriage by husband in 1990 — Cognizance of the offences under Ss. 498-A and 494 IPC taken by Magistrate — Petition under S. 482 filed by the husband for quashing the criminal proceedings against him — Held, High Court erred in taking the view that cognizance of offence under S. 498-A IPC barred under S. 468 and quashing the entire proceedings on that ground under S. 482 — Moreover bar under S. 468 not applicable to offence under S. 494 IPC*

In view of the allegation regarding the second marriage by the respondent during the continuance of the first marriage, prima facie an offence under S. 494 IPC was disclosed in the complaint and there was no question of S. 468 CrPC being applicable to an offence under S. 494 IPC as the punishment is for a term extending up to seven years. But nothing has been said by the High Court in respect of the offence under S. 494 IPC. Even in respect of allegation regarding an offence under S. 498-A IPC, the attention of the High Court was not drawn to S. 473 CrPC. In view of the allegation that the complainant was being subjected to cruelty by the respondent, the High Court should have held that it was in the interests of justice to take cognizance even of the offence under S. 498-A IPC ignoring the bar of S. 468 CrPC. Therefore, the order of the High Court has to be set aside.

Courts while considering the question of limitation for an offence under S. 498-A IPC i.e. subjecting a woman to cruelty by her husband or the relative of her husband, should judge that question, in the light of S. 473 CrPC.

In view of S. 473 CrPC a court can take cognizance of an offence not only when it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained, but even in absence of proper explanation if the court is satisfied that it is necessary so to do in the interests of justice. By virtue of the non-obstante clause in S. 473 that section has an overriding effect on S. 468, if the court is satisfied on the facts and in the circumstances of a particular case, that either the delay has been properly explained or that it is necessary to do so in the interests of justice. As such whenever the bar of S. 468 is applicable, the court has to apply its mind on the question, whether it is necessary to condone such delay in the interests of justice. While examining the question, the Court has to take note of the nature of offence, the class to which the victim belongs, including the background of the victim. If the power under S. 473 is to be exercised in the interests of justice, then while considering the grievance by a lady, of torture, cruelty and inhuman treatment, by the husband and the relatives of the husband, the interest of justice requires a deeper examination of such grievances, instead of applying the rule of limitation and saying that with lapse of time the cause of action itself has come to an end.

There is a basic difference between S. 5 of the Limitation Act and S. 473 CrPC. For exercise of power under S. 5 of the Limitation Act, the onus is on the appellant or the applicant to satisfy the court that there was sufficient cause for condonation of the delay, whereas S. 473 enjoins a duty on the court to examine not only whether such delay has been explained but as to whether it is the requirement of the justice to condone or ignore such delay. *Vanka Radhamanohari* v. *Vanka Venkata Reddy*, (1993) 3 SCC 4: 1993 SCC (Cri) 571.

Bench Strength **2**. Coram: *Kuldip Singh* and **N.P. Singh**, JJ. [Date of decision: 20-4-1993]

[6965] — Ss. 468 and 482 — Unreasonably long delay in investigation and trial violates accused's right under Art. 21 — *But court should look at the matter with a realistic and practical approach having regard to the facts of each case — In case of alleged offence under S. 5(2) of Prevention of Corruption Act against appellant public servant where voluminous documents had to be scrutinised, period of 4 years taken in conducting investigation and period of 2 years taken by Govt. in according sanction for prosecution, held on facts, not unreasonably long so as to violate Art. 21 — Benefit of S. 468 CrPC also inapplicable — Constitution of India — Art. 21*

On the basis of some information received by the Anti-Corruption Bureau (ACB) a preliminary enquiry was conducted and on 26-6-1986 an FIR was lodged against the appellant public servant for the offence under Section 5(2) of the Prevention of Corruption Act, 1947. This was immediately followed by raids conducted at the places which the ACB officials believed to be the buildings of the appellant public servant situated at Mumbai and Nasik. The raids and certain other enquiries conducted by them revealed that the appellant public servant had acquired assets worth Rs 33.44 lakhs in the year 1986, which were far in excess of his known sources of income. The investigation was completed by the Assistant Commissioner of Police attached to ACB and he submitted the final report to the Director of ACB in July 1990. After the draft final report was approved, ACB approached the Government of Maharashtra on 6-4-1991 for obtaining sanction to prosecute the appellant public servant. The Government accorded sanction on 22-1-1993 and thereupon the charge-sheet was laid against all the appellants on 4-3-1993 before the Special Court dealing with offences under the Prevention of Corruption Act. The offence alleged against the appellant public servant was under Section 13(2) read with Section 13(1)(*e*) of the Prevention of Corruption Act, 1988. The offence alleged against the appellant ladies was abetment of the main offence pitted against the appellant public servant. All the appellants appeared before the Special Judge on 14-1-1994 when process was issued to them, but the case moved at a slow pace and reached the stage of hearing preliminary arguments for considering whether charge should be framed or not. The appellants filed a writ petition before the High Court on 15-4-1997 for quashing the criminal proceedings on the ground that there was gross delay of 11 years for filing the charge-sheet and that such delay violated Article 21 of the Constitution. According to the appellants, such delay had caused unbearable mental trauma, fear psychosis and tension to them as well as to the other members of the family, besides tremendous humiliation and defamation heaped on them. They also said that the abnormal delay had caused colossal financial losses to the appellants and the impact of it had shattered the prospects of personal, professional and business development of the members of the family. The Assistant Commissioner of Police attached to ACB in his affidavit stated before the High Court that the case involved voluminous records as well as a large number of properties which were situated at various places and that hundreds of documents regarding shares, debentures, fixed deposits and receipts pertaining to hundreds of companies were also to be scrutinized. According to him such a heavy work turned out to be a time-consuming job. However, a Division Bench of the High Court dismissed the writ petition merely because two other writ petitions filed by some others, in some other cases were dismissed. Dismissing the appeal filed by the appellant public servant but allowing the appeals filed by the two ladies,

Held :

There is need for speeding up investigation and trial as undue delay in culminating the criminal proceedings is antithesis to the constitutional protection enshrined in Article 21 of the Constitution. Nonetheless the court has to view it from pragmatic perspectives and the question of delay cannot be considered entirely from an academic angle. In other words, the High Court and the Supreme Court, when approached by the accused to quash proceedings on the ground of delay, must consider each case on its own facts, without being pedantically persuaded merely because delay had occasioned during investigation stage. (Paras 10 and 16)

Viewing the investigation in this case from a realistic angle it is seen that it has spread over to a period of four years i.e. from June 1986 to July 1990. The documents sought to be produced by the prosecution run into fourteen large volumes. Officials of ACB had to take a lot of time to conduct the investigation relating to every item of assets which was suspected to be belonging to the appellant public servant. (Para 18)

For the first time the Code of Criminal Procedure provided periods for completing investigation in regard to offences punishable with sentences up to imprisonment not exceeding three years. Provisions have been incorporated in Chapter 36 of the Code imposing a legal bar on the court to take cognizance of such offences after the lapse of the period of limitation fixed in respect of different categories of offences the punishment of which does not exceed the aforesaid limit. However, the offences relating to corruption were among those excluded from the purview of such periods of limitation. The offence alleged against the appellant is punishable with imprisonment up to seven years. Therefore, criminal proceedings against the appellants cannot be quashed on the mere ground that the investigation consumed a period of four years. (Paras 11 and 19)

The delay of two years taken for obtaining sanction from the Government cannot be attributed to the investigating officers. Though the said time of two years for the Government to decide the question of giving sanction cannot be approved, but considering the number of desks over which the matter had to pass and the voluminous records to be studied at all levels, the said interval cannot be said to be so unreasonably long as to affect the fundamental right of the appellants. The charge-sheet was laid within a few days of obtaining the sanction. Therefore, the criminal prosecution cannot be quashed merely on the ground of delay highlighted by the appellants. (Paras 20 and 21). *Seeta Hemchandra Shashittal* v. *State of Maharashtra*, (2001) 4 SCC 525: 2001 SCC (Cri) 787: AIR 2001 SC 1246: 2001 Cri LJ 1242.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 13-2-2001]

Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93; Hussainara Khatoon (I) v. Home Secy., State of Bihar, (1980) 1 SCC 81: 1980 SCC (Cri) 23; State of A.P. v. P.V. Pavithran, (1990) 2 SCC 340: 1991 SCC (Cri) 7, relied on

[6966] — Ss. 468, 473 and 472 — Belated complaint under Ss. 498-A and 406 IPC — Discharge — Legality — Liberal interpretation of S. 473 in case of offence under S. 498-A in favour of wife — *Wife allegedly beaten by husband and in-laws and turned out of matrimonial home on 13-10-1988 — Complaint under Ss. 498-A and 406 IPC filed on 18-10-1995 and charge-sheet filed by police (after investigation under Magistrate's order) on 22-12-1995 — Offence under S. 498-A IPC, being a continuing offence, in view of S. 468(3) of CrPC the limitation period for both the offences, held, commenced on 13-10-1988 and ended on 12-10-1991 under S. 468(2)(c) CrPC and the complaint was, therefore, time-barred — Hence, in absence of explanation for the delay, the Magistrate rightly discharged the accused for the offence under S. 406 IPC — However, in respect of offence under S. 498-A IPC, the provisions of S. 473 CrPC should have been liberally construed in favour of the wife — The Magistrate not having adverted to the question whether on the facts and circumstances of the case it was necessary in the interest of justice to take cognizance of the offence, his order of acquittal of the accused in respect of offence under S. 498-A IPC, held, unsustainable — High Court was right to that extent in setting aside the order of acquittal — Magistrate directed by Supreme Court to consider the question of limitation as explained herein — Penal Code, 1860, Ss. 498-A and 406*

On 18-10-1995, the respondent wife filed a complaint under, inter alia, Sections 498-A and 406 of IPC and Section 190(1) of CrPC alleging that she was beaten up by her husband, mother-in-law and sisters-in-law for want of dowry. Under the Magistrate's order, the police investigated the complaint under Section 156(3) CrPC and submitted charge-sheet (final report) under Section 498-A IPC on 22-12-1995. On that report the Magistrate took cognizance of the offence under Sections 498-A and 406 IPC and issued summons to the appellants. The case was posted on 23-4-1996 for framing charges. On that date the Magistrate found the complaint to be time-barred and discharged the appellants. The High Court set aside the Magistrate's order and directed the Magistrate to proceed with the case. In the instant appeal, the following two questions arose before the Supreme Court:

(*i*) whether the Magistrate can discharge an accused after taking cognizance of an offence by him but before the trial of the case; and

(*ii*) whether the Magistrate was right in discharging the appellants on the grounds that the complaint was barred by limitation under Section 468 CrPC.

Partly allowing the appeal,

Held :

The reason for engrafting the rule of limitation is that due to a long lapse of time necessary evidence will be lost and persons prosecuted will be placed in a defenceless position. This may even result in miscarriage of justice. (Para 10)

The essence of the offence in Section 498-A is cruelty. It is a continuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation. The last act of cruelty was committed against the respondent, within the meaning of the explanation, on 13-10-1988. Having regard to the provisions of Sections 469 and 472, the period of limitation commenced for the offences under Sections 406 and 498-A from 13-10-1988 and ended on 12-10-1991. But the charge-sheet was filed on 22-12-1995. Therefore, it was clearly barred by limitation under Section 468(2)(*c*) CrPC. (Para 13)

But Section 473 of CrPC enables the court to take cognizance of an offence after the period of limitation, inter alia, if it is satisfied on the facts and in the circumstances of the case that it is necessary so to do in the interests of justice. The expression "in the interest of justice" in Section 473 does not mean in the interest of prosecution. What the court has to see is "interest of justice". The interest of justice demands that the court should protect the oppressed and punish the oppressor/offender. In complaints under Section 498-A the wife will invariably be oppressed. It is, therefore, appropriate for the courts, in case of delayed complaints, to construe liberally Section 473 CrPC in favour of a wife who is subjected to cruelty if on the facts and in the circumstances of the case it is necessary so to do in the interests of justice. When the conduct of the accused is such that applying the rule of limitation will give an unfair advantage to him or result in miscarriage of justice, the court may take cognizance of an offence after the expiry of the period of limitation in the interests of justice. This is only illustrative, not exhaustive. (Para 14)

In the instant case, the complaint was clearly barred by limitation and no explanation was offered for the inordinate delay. Therefore, in regard to Section 406 IPC, the Magistrate rightly held the complaint to be barred by limitation. But regarding offence under Section 498-A the Magistrate did not advert to the second limb of the second part in Section 473 CrPC. The order of the Magistrate on that aspect is unsustainable. (Para 17). *Arun Vyas* v. *Anita Vyas*, (1999) 4 SCC 690: 1999 SCC (Cri) 629: AIR 1999 SC 2071.

Bench Strength **2**. Coram: *K. Venkataswami* and **S.S.M. Quadri**, JJ. [Date of decision: 14-5-1999]

Vanka Radhamanohari v. Vanka Venkata Reddy, (1993) 3 SCC 4: 1993 SCC (Cri) 571, followed

[**Ed.**: The Supreme Court directed the Magistrate to consider the question of limitation taking note of Section 473 CrPC in the light of the observations made herein. (Para 17)]

[6967] — S. 468 — Quashing of proceedings — When warranted — *Petitioner entering into an agreement to sell certain property in Delhi for consideration of Rs 4.5 lakhs out of which Rs 3.5 lakhs was paid by the complainant respondent — Balance amount was to be paid at the time of registration of sale deed and delivery of possession — Respondent alleging that in spite of three legal notices having been given, the petitioner failed to honour the agreement and thus cheated him — He, therefore, filing complaint under S. 406 and S. 420 IPC in the criminal court at* **M** *since the agreement was reached there and the amount paid thereat — Held, such complaint is an abuse of process of the court and hence liable to be quashed — Even if all the averments made in the complaint are taken to be correct, yet the case for prosecution under S. 420 or S. 406 of the Penal Code is not made out so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money — Merely because the petitioner had failed to honour the agreement, it cannot be said that he had cheated the respondent — Further, on facts held, complaint filed at* **M** *against the petitioner who is a resident of Delhi, seems to be an attempt to pressurise the petitioner for coming to terms with the respondent — Respondent granted liberty to pursue such other remedy under the civil law as may be available to him — Contract Act, 1872, Ss. 37, 51 and 52 — Penal Code, 1860, Ss. 406 and 420* (Paras 1, 2, 6 and 7). *Murari Lal Gupta* v. *Gopi Singh*, (2005) 13 SCC 699: (2006) 2 SCC (Cri) 430.

Bench Strength **3**. Coram: *R.C. Lahoti, C.J.* and *G.P. Mathur* and *P.P. Naolekar*, JJ. [Date of decision: 25-10-2005]

[6968] — Ss. 468, 469 and 470(1) — Scope — Bar of limitation to taking cognizance of offences — *On facts, the bar to the offence under S. 500, IPC operated from the day of the offence under S. 469(1)(a), that is, when the complaint under Ss. 406/420, IPC was filed against the present complainant — Date of acquittal of present complainant in those proceedings not relevant — On facts S. 470(1) not applicable*

A complaint for commission of offence under Ss. 406/420, Indian Penal Code was made by the appellant against the respondent on March 15, 1972 which resulted in acquittal on April 1, 1975, confirmed by the High Court on May 15, 1975. The respondent filed the present complaint under S. 500, Indian Penal Code on February 11, 1976. The appellant's application to the High Court under S. 482, Criminal Procedure Code against the issue of summons was rejected.

Held:

According to the complaint, the offence under S. 500, Indian Penal Code was committed on March 15, 1972, which was the date of the offence within the meaning of S. 469(1)*(a)* of the Code, and the period of three years' limitation would be calculated with reference to that date for purposes of the bar provided by S. 468. But the complaint under S. 500, Indian Penal Code was filed on February 11, 1976, much after the expiry of that period. It was therefore not permissible for the Court of the Magistrate to take cognizance of the offence after the expiry of the period of limitation.

The High Court reasoned that no "cause of action" arose till the present respondent was acquitted on April 1, 1975. But the question of "cause of action" could not really arise in this case as the controversy relates to the commission of an offence. The High Court erred in taking a contrary view.

On facts S. 470(1) has no application. It is an essential requirement of the sub-section that the person who seeks its benefit should be able to establish that he was "prosecuting" another prosecution in one court or the other referred to in the sub-section. But it is not the case of the respondent that he was prosecuting the appellant in any other prosecution. It is also not his case that that prosecution related to the "same facts" within the meaning of the proviso to the sub-section. *Surinder Mohan Vikal* v. *A.L. Chopra*, (1978) 2 SCC 403: 1978 SCC (Cri) 215: AIR 1978 SC 986: 1978 Cri LJ 764.

Bench Strength 2. Coram: *S. Murtaza Fazal Ali* and **P.N. Shinghal**, JJ. [Date of decision: 28-2-1978]

[6969] — Ss. 468, 470(4), 472 and 473 — Limitation period for taking cognizance of offence under Ss. 498-A and 406 IPC — *In matrimonial offences, court should adopt a liberal approach and should, having regard to nature of allegations, time taken by police in investigation and the fact that cruelty on wife is a continuing offence and affects society at large, take cognizance of offence even after expiry of the period of limitation specified in S. 468(2) in the interest of justice*

While considering the applicability of Section 468 to the complaints made by the victims of matrimonial offences, the court can invoke Section 473 and can take cognizance of an offence after expiry of the period of limitation keeping in view the nature of allegations, the time taken by the police in investigation and the fact that the offence of cruelty is a continuing offence and affects the society at large. To put it differently, in cases involving matrimonial offences the court should not adopt a narrow and pedantic approach and should, in the interest of justice, liberally exercise power under Section 473 for extending the period of limitation. (Para 25). *Sanapareddy Maheedhar Seshagiri* v. *State of A.P.*, (2007) 13 SCC 165: AIR 2008 SC 787: (2008) 61 AIC 102 (SC): 2008 Cri LJ 1375.

Bench Strength **2**. Coram: *S.B. Sinha* and **G.S. Singhvi**, JJ. [Date of decision: 13-12-2007]

State of Punjab v. Sarwan Singh, (1981) 3 SCC 34: 1981 SCC (Cri) 625; Vanka Radhamanohari v. Vanka Venkata Reddy, (1993) 3 SCC 4: 1993 SCC (Cri) 571; Arun Vyas v. Anita Vyas, (1999) 4 SCC 690: 1999 SCC (Cri) 629; State of H.P. v. Tara Dutt, (2000) 1 SCC 230: 2000 SCC (Cri) 125; Ramesh v. State of T.N., (2005) 3 SCC 507: 2005 SCC (Cri) 735, relied on

Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283; Ramesh Chandra Sinha v. State of Bihar, (2003) 7 SCC 254: 2003 SCC (Cri) 1613; Ajay Aggarwal v. Union of India, (1993) 3 SCC 609: 1993 SCC (Cri) 961, considered

[6970] — S. 468 — Trial of economic offenders — Cannot be dropped merely on ground of inordinate delay — *Gold (Control) Act, 1968, S. 85 — Customs Act, 1962, Ss. 111 and 135 — Constitution of India, Art. 134*

That 20 years have elapsed since the date of seizure of gold under S. 111 r/w S. 135 of the Customs Act is no ground for not proceeding further with the matter inasmuch as the offence in question is a serious economic offence, which undermines the entire economy of the nation. The delay occasioned in the working of the judicial system by the ever-increasing workload cannot provide any alibi for upholding the plea of dropping the proceedings on ground of inordinate delay. *V.K. Agarwal, Asstt. Collector of Customs* v. *Vasantraj Bhagwanji Bhatia*, (1988) 3 SCC 467: 1988 SCC (Cri) 679: AIR 1988 SC 1106: (1988) 16 ECC 164: (1988) 64 Comp Cas 664.

Bench Strength **2**. Coram: **M.P. Thakkar** and *K.N. Singh*, JJ. [Date of decision: 7-4-1988]

[6971] — S. 468 — Taking cognizance of offence after expiry of one year from commission of offence barred under — *Cannot be justified on ground that complaint was filed before the court within one year from the date of commission of offence — Date of filing complaint cannot be treated as date of taking cognizance — Taking cognizance different from filing complaint — Child Marriage Restraint Act, 1929, S. 9. Krishna Pillai* v. *T.A. Rajendran*, 1990 Supp SCC 121: 1990 SCC (Cri) 646.

Bench Strength 3. Coram: *Ranganath Misra, P.B. Sawant* and *K. Ramaswamy*, JJ. [Date of decision: 16-11-1989]

A.R. Antulay v. Ramdas Sriniwas Nayak, (1984) 2 SCC 500: 1984 SCC (Cri) 277, relied on

[6972] — S. 468 — Bar of limitation for taking cognizance of offence — When not applicable — *Held, there does not exist any period of limitation in respect of an offence under S. 494 IPC, as maximum period of punishment which can be imposed therefor is seven years — Penal Code, 1860, S. 494* (Para 13). *M. Saravana Porselvi* v. *A.R. Chandrashekar*, (2008) 11 SCC 520: AIR 2008 SC 2462: (2008) 68 AIC 192 (SC): 2008 Cri LJ 3034.

Bench Strength 2. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 27-5-2008]

[6973] — S. 468 — Delayed trial — Offence alleged committed 20 years back — Case ordered to be closed solely on ground of inordinate delay — *Import and Export (Control) Act, 1947, S. 5 — Constitution of India — Art. 136*

While the accused (respondent 2) has no equity in his favour and the delay after the complaint had been filed has been mostly on account of his mala fide move, but it would not be in the interest of justice to allow a prosecution to start 20 years after the offence has been committed. The magistrate should not be allowed to proceed with trial of the case at this belated stage. Accordingly, the case is directed to be closed against respondent 2 without further delay. *T.J. Stephen* v. *Parle Bottling Co. (P) Ltd.*, 1988 Supp SCC 458: 1988 SCC (Cri) 690: AIR 1988 SC 994: (1988) 16 ECC 185: (1988) 64 Comp Cas 151.

Bench Strength 2. Coram: *Ranganath Misra* and *M.M. Dutt*, JJ. [Date of decision: 22-3-1988]

[6974] — Ss. 468, 473 and 190 — Delay of 9 1/2 years in proceeding with criminal prosecution for a not-so-grave offence of rash and negligent driving under S. 279 r/w S. 304-A/338 IPC — *Held, proceedings must be quashed in view of the inordinate delay — Not saved by Cl. 32 of Assam Frontier (Administration of Justice) Regulation, 1945 — Constitution of India — Art. 21*

The offence of rash and negligent driving is neither a grave and heinous offence nor an offence against the community as such, though all criminal offences are crimes against society. Having regard to the nature of offence there is enormous delay in proceeding with the criminal prosecution by the appellant — 9½ years. Quick justice is a sine qua non of Art. 21. Keeping a person in suspended animation for 9½ years without any cause at all, cannot be with the spirit of the procedure established by law. It is, therefore, just and fair and in accordance with equity to direct that the trial or prosecution of the appellant to proceed no further. If the principles of the Code of Criminal Procedure applied, the taking of cognizance of the offence was barred by S. 468 of the Code.

In the circumstances, it is not necessary in this case to decide whether cognizance was properly taken, when cognizance was taken and whether the extension of period of limitation under S. 473 must precede the taking of the cognizance of the offence? *Srinivas Gopal* v. *Union Territory of Arunachal Pradesh*, (1988) 4 SCC 36: 1988 SCC (Cri) 889: AIR 1988 SC 1729: 1988 BLJR 602.

Bench Strength 2. Coram: **Sabyasachi Mukharji** and *S. Ranganathan*, JJ. [Date of decision: 18-7-1988]

Srinivas Gopal v. Union Territory of Arunachal Pradesh, (1988) 1 Crimes 383 (Gau), reversed

[6975] — Ss. 468 and 472 — Limitation — Offence under S. 406 IPC — *Averment in complaint that the complainant demanded from the accused return of her stridhana properties on 5-12-1987 — Complaint filed on 10-9-1990 is not time barred — In view of this finding question whether it was a continuing offence not decided. Rashmi Kumar* v. *Mahesh Kumar Bhada*, (1997) 2 SCC 397: 1997 SCC (Cri) 415.

Bench Strength 3. Coram: **K. Ramaswamy**, *S.B. Majmudar* and *G.T. Nanavati*, JJ. [Date of decision: 18-12-1996]

[6976] — Ss. 468 and 473 — Appellant found in possession of opium on 31-5-1974 — Challan for offence under S. 9 of Opium Act filed on 29-8-1977 — Application for condoning delay filed only just before conclusion of trial — *Trial court convicting appellant and sentencing him to three years' RI and to pay a fine of Rs 5000 — Conviction and sentence confirmed by High Court — Held, S. 473 CrPC does not lay down that application for condoning delay should be filed at the time of filing the challan itself — Court can condone delay and take cognizance if delay had been properly explained or it is necessary to do so in the* *interest of justice — Hence order of lower courts upheld — Opium Act, 1878, S. 9. Sukhdev Raj* v. *State of Punjab*, 1994 Supp (2) SCC 398: 1994 SCC (Cri) 1480.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 28-9-1993]

[6977] — Ss. 468 and 482 — Exercise of jurisdiction under S. 482 — Consideration of admitted document — Quashing of FIR — Validity of — *On facts, appellant was married to Respondent 1 around 1-12-1993 — However, they were living separately since 1996 — Appellant entered into agreement for divorce as per custom around 24-7-1996, which was registered — She received permanent alimony of Rs 25,000 which was acknowledged by granting stamped receipt therefor — Purported divorce took place accordingly — Respondent 1 married again in 1998 — Appellant filed complaint petition against Respondents 1 to 3 (husband and parents-in-law) in May 2006, inter alia, on premise that first respondent married for the second time — FIR lodged pursuant to the complaint resulted in arrest of respondents — Application for quashing FIR under S. 482 allowed by High Court — Sustainability — Respondents contending mala fide on appellant's part in view of the fact that complaint petition was filed ten years after divorce — Held, customary divorce may be legal or illegal but the fact that such an agreement was entered into and appellant had received Rs 25,000 by way of permanent alimony, stood admitted — Document was a registered one — Held, if contents of agreement are taken to be correct, indisputably parties were living separately for more than ten years — No case under S. 498-A IPC can be said to have been made out and that too at such a distant point of time is the question, particularly in view of bar of limitation as contained in S. 468 CrPC — Even otherwise it is unbelievable that appellant was really harassed by her husband or in-laws — Also, no allegation was made out in regard to commission of offence under S. 494 IPC so far as Respondents 2 and 3 were concerned — If for exercising its jurisdiction under S. 482, High Court took into consideration an admitted document, there was no legal infirmity therein — If it was a case of customary divorce, question in regard to existence of good custom may have to be gone into in a civil proceeding, but a criminal prosecution shall not lie — It was initiated mala fide — It was an abuse of process of court — Hence, FIR rightly quashed — Penal Code, 1860, Ss. 498-A and 494* (Paras 2 to 7, 11, 12, 13 and 14). *M. Saravana Porselvi* v. *A.R. Chandrashekar*, (2008) 11 SCC 520: AIR 2008 SC 2462: (2008) 68 AIC 192 (SC): 2008 Cri LJ 3034.

Bench Strength 2. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 27-5-2008]

— S. 468(1) *See also* Ss. 468(3) (as added in 1978), (1) & (2)

[6978] — Ss. 468(1) & (2)(c) and 167(5)(iii) (as amended in the State of W.B.) — Offence under S. 7(1)(a)(ii), Essential Commodities Act, 1955 *— Time-limit for taking cognizance — Maximum punishment for the said offence, held, is seven years and not two years — Proviso to S. 12-AA(1)(f), Essential Commodities Act limits the jurisdiction of the Special Court to award sentence up to two years and does not make the offence itself punishable only up to two years — Hence, where the offence was committed by contravening cl. 17 of Textile Control Order, 1988 and charge-sheet was filed more than three years after the date of FIR albeit within two years from the date of appearance of the accused in the court, held, S. 468 did not bar the court from taking cognizance of the offence — S. 167(5)(iii), held not applicable — Textile Control Order, 1988 — Cl. 17 — Essential Commodities Act, 1955, Ss. 7(1)(a)(ii), 3, 12-AA(1)(f). Nirmal Kanti Roy* v. *State of W.B.*, (1998) 4 SCC 590: 1998 SCC (Cri) 1100: AIR 1998 SC 2322.

Bench Strength 3. Coram: *M.M. Punchhi, C.J.* and **K.T. Thomas** and *S. Rajendra Babu*, JJ. [Date of decision: 23-4-1998]

— S. 468(2) *See* Ss. 468(3) (as added in 1978), (1) & (2)

See also Ss. 473 and 468(2)

See also Ss. 482, 190, 468(2) and 473

[6979] — Ss. 468(2), 470(3) and 4 — Limitation for taking cognizance of an offence — Effect, if any, of statutory departmental rule creating a bar against institution of judicial proceedings against a retired government employee after a specified time *— Respondent resisting trial against him for misappropriation, bribery, etc. on the ground that he was protected by a departmental rule which provided that: "No judicial proceedings, if not instituted while the government servant was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or in respect of an event which took place more than four years before such institution." — Held, the departmental rule was in the context of right of the Government to withhold or withdraw pension — It did not affect criminal trial under CrPC or the Prevention of Corruption Act — Penal Code, 1860, Ss. 468 and 471 — Prevention of Corruption Act, 1947, Ss. 5(1)(c)(d) r/w S. 5(2) — Maharashtra Civil Services (Pension) Rules, 1982, Rr. 27 and 26*

Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 starts with the caption "Right of Government to withhold or withdraw pension.". Rule 27(1) provides that: "Government may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension the whole or part of any pecuniary loss caused to Government, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement." Rule 27(2)(*b*) provides that: "The departmental proceedings, if not instituted while the government servant was in service, whether before his retirement or during his retirement — (*i*) shall not be instituted save with the sanction of the Government, (*ii*) shall not be in respect of any event which took place more than four years before such institution, and (*iii*) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the government servant during his service." Rule 27(3) similarly provides that: "No judicial proceedings, if not instituted while the government servant was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or in respect of an event which took place more than four years before such institution."

Allowing the appeal by the State,

Held :

If something is to be recovered from pension payable to an employee, then judicial proceedings or departmental enquiry is required to be started within the period prescribed in Rule 27(2) or Rule 27(3) but that would not debar the prosecuting agency from launching prosecution for offence of grave misconduct. Rule 27 is to be read with the previous Rule 26 which provides that future good conduct shall be an implied condition of every grant of pension and the Government may withhold or withdraw pension or part thereof, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct. Rules 26 and 27 however do not lay down any period of limitation for prosecution or cannot supersede the period of limitation prescribed under CrPC. Rule 27 is meant for the purpose of granting, withholding or withdrawing the pension and hence its operation would be in the limited field of granting or withholding pension to the government employees. (Para 9). *State of Maharashtra* v. *Keshav Ramchandra Pangare*, (1999) 9 SCC 479: 2000 SCC (L&S) 175: 2000 SCC (Cri) 247: AIR 1999 SC 3846.

Bench Strength **2**. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 1-11-1999]

State of Punjab v. Kailash Nath, (1989) 1 SCC 321: 1989 SCC (Cri) 128; Prabhakar Govind Sawant v. State of Maharashtra, 1991 Mah LJ 1051, relied on

[**Ed.**: Date of commission of the offences by respondent are not indicated in the judgment but it appears that it was more than four years before institution of criminal proceedings against him. That is why, the respondent pressed into service Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982]

[6980] — Ss. 468(2) and 470(3) — Limitation for taking cognisance of an offence — Time taken for obtaining sanction for prosecution — *Respondent retiring from government service on 31-12-1987 — Sanction for prosecution received from the competent authority on 25-8-1989 and thereafter charge-sheet for commission of various offences under IPC and the Prevention of Corruption Act, 1947 filed against him on 30-10-1990 — Held, there is no period of limitation in CrPC for an offence punishable with an imprisonment exceeding three years — In any case, time required for obtaining sanction for prosecution is excluded under S. 470(3) — Trial against respondent, therefore held, not barred by limitation*

If an offence is punishable with imprisonment for a term exceeding three years then there is no period of limitation prescribed under CrPC. Further, S. 470(3) excludes the time required for obtaining sanction for prosecution. Respondent is charged with offences punishable with imprisonment exceeding three years. No limitation is prescribed under Section 468 of CrPC for such offences. In any case, S. 470(3) CrPC excludes the period required for obtaining sanction for prosecution, where period of limitation is required to be taken into consideration. If at all the limitation is applicable in the present case, the time required for obtaining sanction for prosecution is to be excluded. It cannot be said that prosecution instituted against respondent is barred by limitation. (Para 6). *State of Maharashtra* v. *Keshav Ramchandra Pangare*, (1999) 9 SCC 479: 2000 SCC (L&S) 175: 2000 SCC (Cri) 247: AIR 1999 SC 3846.

Bench Strength **2**. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 1-11-1999]

Keshav Ramchandra Pangare v. State of Maharashtra, 1999 Lab IC 371 (Bom), reversed

— **S. 468(2)(a)** *See* Ss. 469(1)(b), (a) & 468(2)(a)

See also Ss. 469(1)(b) & (a) and 468(2)(c)

See also Ss. 472 and 468(2)(a)

— **S. 468(2)(c)** *See* Ss. 468(1) & (2)(c) and 167(5)(iii) (as amended in the State of W.B.)

See also Ss. 473 and 468(2)(c)

[6981] — Ss. 468(2)(c) and 469(1)(b) — Period of limitation for commencement of trial — *Entire proceedings non est if trial found barred by limitation — Limitation Act, 1963, S. 12*

The object of the Criminal Procedure Code in putting a bar of limitation on prosecutions were clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statutes seek to subserve in clearly in consonance with the concept of fairness of trial as enshrined in Art. 21 of the Constitution of India. It is, therefore, of the utmost importance that any prosecution, whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation.

In the instant case as the charge-sheet clearly mentions that the offence was committed on August 22, 1972, the bar of limitation contained in S. 468(2)(*c*) clearly applies and the prosecution, therefore, is clearly barred by limitation. Even assuming that so far as the offender is concerned, the commission of the offence came to the knowledge of the officer concerned, it would be so according to the charge-sheet on January 5, 1973, the date when the audit report was made. Even if this extreme position be accepted the prosecution would still be barred by limitation under S. 469(1)(b) of the Code of Criminal Procedure, 1973.

The prosecution against the respondent being barred by limitation the conviction as also the sentence of the respondent as also the entire proceedings culminating in the conviction of the respondent therein were non est. *State of Punjab* v. *Sarwan Singh*, (1981) 3 SCC 34: 1981 SCC (Cri) 625: AIR 1981 SC 1054: (1981) 3 SCR 349: 1981 MLJ (Cri) 394: 1981 Cri LJ 722.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision: 2-4-1981]

[6982] — Ss. 468(2)(c) and 473 — Bar of limitation — Offence under S. 418 IPC — Three-year limitation period — Filing of complaint after expiry of — *Alleged action taking place in 1995 — Filing of complaint on 9-8-2002 — No explanation given by complainant regarding his long silence/inaction — Magistrate taking cognizance without even making any reference to either S. 468 or S. 473 which provides for extension of period of limitation if the Magistrate is satisfied that the delay has been properly explained or that it is necessary to do so in the interest of justice — Held, High Court erred in holding that the complaint was not hit by limitation — Penal Code, 1860, S. 418* (Para 14). *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque*, (2005) 1 SCC 122: 2005 SCC (Cri) 283: AIR 2005 SC 9: 2005 Cri LJ 92.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 1-11-2004]

[6983] — Ss. 468(3) (as added in 1978), (1) & (2) — Limitation — Computation of — Where the accused was charged with major offences but was convicted only for minor offences, the period of limitation, held, has to be determined with reference to the offences the accused was charged with and not with reference to the charges he was convicted under — *Penal Code, 1860, Ss. 468, 420 and 120-B IPC — Prevention of Corruption Act, 1947, S. 5(2)*

The two respondents herein were challaned for offences under Sections 468, 420, 120-B IPC and Section 5(2) of the Prevention of Corruption Act, 1947, allegedly committed in the year 1983. The charge-sheet was submitted in November 1987 and cognizance was taken in December 1987. The Special Judge acquitted them of the charges under Sections 468 and 420 IPC and Section 5(2) of the Prevention of Corruption Act but convicted them under Sections 417 and 465 read with Section 109 IPC. The H.P. High Court held that the cognizance of the offences under Sections 417 and 465 IPC taken by the Special Judge on 31-12-1987 was barred by limitation. The High Court further held that Section 473 although empowered court to condone the delay for cogent reasons, the Special Judge had not exercised that power as no such reasons had been recorded. The High Court added that therefore Section 473 could not be pressed into service. Allowing the State's appeal,

Held :

The language of Section 473(3) (as added in 1978) makes it imperative that the limitation provided for taking cognizance in Section 468 is in respect of the *offence charged* and not in respect of *offence finally proved.* Therefore, when the respondents were charged under Section 468 read with Section 120-B, for which the imposable punishment is seven years and Section 5(2) of the Prevention of Corruption Act, 1947, which is punishable with imprisonment for a term which may extend to seven years and for such offences no period of limitation having been provided for in Section 468, the cognizance taken by the learned Special Judge cannot be said to be barred by limitation. (Para 5). *State of H.P.* v. *Tara Dutt*, (2000) 1 SCC 230: 2000 SCC (Cri) 125: AIR 2000 SC 297: 2000 Cri LJ 485.

Bench Strength 3. Coram: **G.B. Pattanaik**, *M. Srinivasan* and *M.B. Shah*, JJ. [Date of decision: 19-11-1999]

State of Punjab v. Sarwan Singh, (1981) 3 SCC 34: 1981 SCC (Cri) 625, explained and distinguished

Tara Dutt v. State of H.P., (1998) 3 Crimes 523 (HP), reversed

— S. 469 *See also* Ss. 468, 469 and 470(1)

[6984] — Ss. 469 and 468 — Applicability of S. 469 — In absence of prescription of any period of limitation by S. 468 in respect of offences providing punishment for more than three years, the question of applicability of S. 469 to such offences, held, does not arise (Para 6). *State of H.P.* v. *Tara Dutt*, (2000) 1 SCC 230: 2000 SCC (Cri) 125: AIR 2000 SC 297: 2000 Cri LJ 485.

Bench Strength 3. Coram: **G.B. Pattanaik**, *M. Srinivasan* and *M.B. Shah*, JJ. [Date of decision: 19-11-1999]

— S. 469(1)(a) *See* Ss. 469(1)(b), (a) & 468(2)(a)

— S. 469(1)(b) *See also* Ss. 468(2)(c) and 469(1)(b)

See also Ss. 482, 468, 469(b) & (c), 154 and 473

[6985] — Ss. 469(1)(b), (a) and 468(2)(a) — Transfer of shares — Default by company — *Complaint alleging commission of offence by respondent under S. 113(2) filed by appellant Registrar of Companies, under S. 621 after expiry of period of six months from the date of the offence as prescribed under S. 468(2)(a) r/w S. 469(1)(a) CrPC but within the period of six months from the date on which the offence came to the knowledge of the Registrar — Held, the complaint was within the period of limitation in view of S. 469(1)(b) CrPC since the expression "person aggrieved" used therein includes Registrar of Companies in respect of offences (except those under S. 545) against the Companies Act — Hence there was no bar of taking cognizance of offence — Distinction between sub-sections (2) and (3) — Transferee who is not a shareholder cannot file a complaint under S. 113(2) — Companies Act, 1956, Ss. 113(2) & (3) and 621*

A complaint was filed by the appellant Registrar of Companies, under Section 113(2) of the Companies Act on 20-8-1992 before the CJM. It was alleged in the complaint that the Company was sent share transfer certificates along with applications for transfer in two batches — on 23-11-1990 and 18-12-1990. The first batch of applications for transfer was received by the Company on 11-12-1990, approved on 29-3-1991 and despatched on 6-4-1991. The second batch of applications was received on 26-12-1990, approved by the Company on 3-4-1991 and despatched on 16-4-1991. Apparently, Section 113(1) was not complied with. This came to the knowledge of the appellant only on 20-7-1992 when the appellant inspected the books of account of the Company under Section 209-A(1)(*i*) of the Act. The CJM dismissed the complaint on the ground that it was barred by limitation under Section 468 CrPC. The appellant filed a petition under Sections 397 and 401 CrPC before the High Court of Madras praying for revision of the order. The High Court not only upheld the order of the trial court but also held that the appellant was incompetent to file a complaint in respect of an offence under Section 113 of the Act. The appellant's contention that the Magistrate overlooked the provisions of Section 469(1)(*b*) CrPC which provides for the computation of the period of limitation from the first day on which the offence comes to the knowledge of "the person aggrieved by the offence or to the police officer" was rejected by the High Court holding that the appellant was neither the person aggrieved nor a police officer and that the prosecution under Section 113 could be launched only on the application of an affected shareholder. According to the High Court, this was clear from sub-section (3) of Section 113. The present appeal against the decision of the High Court dated 17-3-1998 was filed by the Registrar of Companies after a delay of 406 days. The application for condonation of delay filed by the appellant shows that the Department of Legal Affairs took up the matter only on 16-12-1998. No explanation whatsoever has been given for the appellant's inaction during this period of nine months. Remanding the matter back to the CJM for being decided on merits, *Held* :

The phrase "person aggrieved" used in Section 469(1)(*b*) CrPC has not been defined in the Code. However, as far as offences under the Companies Act are concerned, the words must be understood and construed in the context of Section 621 of the

Companies Act under which the appellant is competent to file a written complaint in respect of offences under, inter alia, Section 113 of the Act. If the words "person aggrieved" are read to mean only "the person affected" by the failure of the company to transfer the shares or allot the shares, then the only "person aggrieved" would be the transferee or the allottee, as the case may be. Where the transferee or allottee is not an existing shareholder of the company, if the words "person aggrieved" are read in such a limited manner, it would mean that Section 469(1)(*b*) CrPC would be entirely inapplicable to offences under Section 113 of the Act. There is, in any event, no justification to interpret the words "person aggrieved" as used in Section 469(1)(*b*) restrictively particularly when, as in this case, the statute creating the offence provides for the initiation of the prosecution only on the complaint of particular persons. Having regard to the clear language of Section 621 of the Act, it must be held that the appellant would be a "person aggrieved" within the meaning of Section 469(1)(*b*) CrPC in respect of offence (except those under Section 545) against the Companies Act. (Paras 16 and 17)

Apart from overlooking the provisions of Section 621 of the Act, the High Court erred in construing the provisions of Section 113(2) with reference to Section 113(3). The latter deals with the civil liability of the company and its officers for a breach of Section 113(1) at the instance of the transferee of the shares. Section 113(2) deals with the criminal liability arising out of a violation of Section 113(1). The objects of the two sub-sections are disparate. Section 113(3) is primarily compensatory in nature whereas Section 113(2) is punitive. An application under Section 113(3) can only be made by the transferee. And as already seen, a transferee who is not an existing shareholder of the company cannot file a complaint under Section 113(2) at all. (Para 18). *Registrar of Companies* v. *Rajshree Sugar & Chemicals Ltd.*, (2000) 6 SCC 133: 2000 SCC (Cri) 1019: AIR 2000 SC 1643.

Bench Strength **3**. Coram: *K.T. Thomas*, *D.P. Mohapatra* and **Ruma Pal**, JJ. [Date of decision: 11-5-2000]

Nestle India Ltd. v. State, (1994) 4 Comp LJ 446 (Del); Sulochana v. State Registrar of Chits (Investigation and Prosecution), 1978 Cri LJ 116 (Mad), overruled

Vasantlal Chandulal Majmudar v. Navinchandra Manilal, (1981) 22 Guj LR 436 (Guj), distinguished

Bhagabati Prasad Tantia v. Asstt. Registrar of Companies, (1983) 53 Comp Cas 56 (Cal); Sushil Kumar Lahiri v. Registrar of Companies, (1983) 53 Comp Cas 54 (Cal); Abdul Rahim v. State represented by the Chit Registrar, (1978) 1 LW Cri 195, approved

Registrar of Companies v. Rajashree Sugars and Chemicals Ltd., (1998) 94 Comp Cas 713 (Mad), reversed

[6986] — Ss. 469(1)(b) & (a) and 468(2)(c) — Starting point of limitation — Whether on facts determinable under S. 469(1)(b) or under S. 469(1)(a) — *Complaint under Ss. 18-A, 16, 17 & 17-A of Drugs and Cosmetics Act punishable under Ss. 27(d) and 27(b)(i) thereof — Sample of drugs collected and subsequently found by the public analyst to be not of standard quality — In such circumstances the period of limitation for filing the complaint, held, started under S. 469(1)(b) and not under S. 469(1)(a), i.e., from the date of receipt of the report of Government Analyst and not from the date of collection of samples — Drugs and Cosmetics Act, 1940, Ss. 16, 17, 17-A, 18-A, 27(b)(i) & (d)*

On 29-2-1988 the Senior Drugs Inspector collected samples of certain drugs from a firm and sent the same to the Government Analyst, who in his report dated 2-7-1988 opined that the drugs were not of standard quality. Under the Drug Controller's order dated 3-2-1990, the Drugs Inspector (IB) filed a complaint under Section 18-A read with Sections 16, 17 and 17-A of Drugs and Cosmetics Act being punishable under Sections 27(*d*) and 27(*b*)(*i*) thereof, on 28-6-1991. The High Court held the complaint to be barred by limitation under Section 468(2)(*c*) of CrPC. Allowing the State's appeal,

Held :

On the date of collection of samples from the respondent-firm on 29-2-1988, it could not have been said that any offence was committed as selling of drugs per se is no offence and the quality of the drugs was not known to the Drugs Inspector, the complainant, on that date. It is only when the report of the Government Analyst was received, that it came to light that the provisions of the Act were violated and offence was committed. So on the facts of the present case it cannot be said that Section 469(1)(*a*) is attracted. That the drugs which were offered for sale were sub-standard/adulterated within the meaning of the Act, came to the knowledge of the Drugs Inspector only on 2-7-1988 when the report of the Government Analyst was received by him; and therefore, Section 469(1)(*b*) will be attracted.

Therefore, in the instant case, the limitation for the purpose of Section 468(2)(*c*) will commence from 2-7-1988, the date of knowledge of the commission of offence to the officer concerned under Section 469(1)(*b*) and not from 29-2-1988 (the date of collection of samples by the Drugs Inspector) and as the complaint was filed on 28-6-1991 which is within three years, the complaint is not barred by limitation under Section 468(2)(*c*). *State of Rajasthan* v. *Sanjay Kumar*, (1998) 5 SCC 82: 1998 SCC (Cri) 1260: AIR 1998 SC 1919.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **S.S.M. Quadri**, JJ. [Date of decision: 1-5-1998]

R.S. Arora v. State, 1987 Cri LJ 1215: (1987) 1 FAC 283 (Del); Omprakash Gulabchandji Partani v. Ashok, 1992 Cri LJ 2704 (Bom); Satyanarayana General Traders v. State, (1993) 2 Crimes 203 (AP), approved

— S. 469(1)(c) *See* Ss. 482, 468, 469(b) & (c), 154 and 473

— S. 470(1) *See* Ss. 468, 469 and 470(1)

— S. 470(3) *See* Ss. 468(2) and 470(3)

See also Ss. 468(2), 470(3) and 4

See also Ss. 473 and 470(3)

[6987] — S. 470(3) — Official Secrets Act, 1923 — Ss. 13(3) and 5 — Limitation for taking cognizance of offence — *S. 13(3) of the Act providing that cognizance of offence under the Act can be taken only upon complaint filed by order of or under authority from the appropriate Govt. or by some officer empowered by the appropriate Govt. — Held, "consent" or "sanction" as contemplated by S. 470(3) of the Code is not required for filing complaint under the Act and the period spent for obtaining orders for filing the complaint cannot be excluded under Expln. to S. 470(3) — Granting "consent" or "sanction" under S. 470(3) is a quasi-judicial function whereas passing of order or conferment of authority or empowering an officer for filing a complaint is an administrative function*

A criminal complaint was filed against the petitioner under Section 5(4) read with Sections 5(2) and (3) of the Official Secrets Act, in the Court of Chief Metropolitan Magistrate, Delhi by the Union of India through Deputy Superintendent of Police, Central Bureau of Investigation, SPE, Anti-Corruption Unit, New Delhi. Limitation in the instant case had started from 24-4-1985 and the complaint was filed on 19-5-1988, apparently beyond 25 days of the period of limitation prescribed. The petitioner filed an application under Section 245 CrPC in the trial court for being discharged on the ground inter alia that the complaint was barred by limitation. The plea of the complainant was that the period of 79 days required for obtaining the sanction order should be excluded in computing the period of limitation. Accepting the plea of the complainant, the complaint was held to be within time. The trial Magistrate as well as the High Court held that Section 13(3) of the Act provided the taking of previous consent or sanction of the appropriate Government and the time required for obtaining such consent or sanction was to be excluded in terms of Section 470(3) CrPC. It was contended on behalf of the petitioner that as no sanction or consent was provided to be taken from the Government under Section 13(3) of the Act, the complaint admittedly filed after the period of limitation was required to be dismissed and the accused discharged in terms of Section 245 CrPC. Dismissing the appeal,

Held :

No sanction or consent is provided to be taken from the Government under Section 13(3) of the Act and the period spent in obtaining the orders for filing the complaint cannot be excluded under explanation to sub-section (3) of Section 470 CrPC. "Consent" or "sanction" envisaged under Section 470 CrPC cannot be equated with the "order" or "authority" for the purposes of filing the complaint as envisaged by sub-section (3) of Section 13 of the Act. Specific provisions have been made in various statutes requiring previous consent or sanction for the purposes of launching of prosecution against the accused under those enactments. Explanation to sub-section (3) of Section 470 CrPC obviously refers to such consents and sanctions and not the order or authority as required under the Act. Consent or sanction as are referred to in the Prevention of Corruption Act, Prevention of Food Adulteration Act, various Foodgrains Control Orders, and other similar enactments envisage the application of mind before the grant of such consent or sanction which is a quasi-judicial function, whereas the passing of order, individual or general, or conferment of authority individually or generally, or empowering a person for the purposes of filing a complaint is only an administrative action facilitating in identifying the complainant before the court for the purposes of filing and prosecuting the case under the Act. The legislature, in its wisdom, thought it appropriate to exclude only such period which is required for obtaining the previous consent or sanction of the Government for institution of any prosecution of an offence and not obtaining of orders or authority or naming a person for the purpose of filing the complaint. (Paras 9 and 4)

Sub-section (3) of Section 13 envisages only the filing of the complaint, by order of or under authority from the appropriate Government or by an officer empowered by such Government. It is not possible to accept the contention that the intention of the legislature was to have the section in two parts, one dealing with the grant of consent or sanction by way of order and the other part dealing with the authority of the person to file the complaint. (Para 7)

The mere fact that the complaint was filed 25 days after the expiry of the period of limitation, did not entitle the accused to seek his discharge under Section 245 CrPC because the complainant has, under law, a right to seek for extension of time under Section 473 CrPC. The complainant could satisfy the Magistrate on the facts and circumstances of the case that the delay was explainable which was occasioned on account of their bona fide belief to obtain the sanction for the purpose of filing the complaint. After noticing the averments made in the complaint and perusing the record particularly the order of the Government of India dated 21-4-1988, authorising the Deputy Superintendent of Police, Central Bureau of Investigation, New Delhi to lodge the complaint, it can be safely held that the complainant was entitled to extension of period of limitation under Section 473 CrPC. No useful purpose would be served by again directing the complainant to approach the trial Magistrate for the purposes of seeking extension of the period of limitation. The complainant is held to have explained the delay in filing the complaint which required extension. The complaint is, therefore, held to be within time and the petitioner is not entitled to be discharged on this ground. (Para 10)

It is, however, made clear that the present judgment would not, in any way, affect the continuing proceedings in any court wherein the complaints, under the Act, have been filed after obtaining sanction and the courts have given remission of the period in terms of explanation to sub-section (3) of Section 470 CrPC. All such extensions shall be deemed to be valid even under Section 473 CrPC. (Para 11). *Rakesh Kumar Jain* v. *State*, (2000) 7 SCC 656: 2001 SCC (Cri) 208: AIR 2000 SC 2754: 2000 Cri LJ 3973.

Bench Strength **2**. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 8-8-2000]

Electrical Mfg. Co. Ltd. v. D.D. Bhargava, AIR 1968 SC 247: 1968 Cri LJ 236: (1968) 1 SCR 394, relied on

— S. 470(4) *See* Ss. 468, 470(4), 472 and 473

— S. 471 *See* S. 197 and 420, 467, 468, 471 and 120-B

— S. 472 *See* Ss. 468, 470(4), 472 and 473

See also Ss. 468 and 472

See also Ss. 468 and 473, 472

[6988] — S. 472 — "Continuing offence" — Meaning of

A continuing offence is one which continues and a non-continuing offence is one which is committed once and for all. This question whether a particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and, above all, the purpose which is intended to be achieved by constituting the particular act as an offence. *Bhagirath Kanoria* v. *State of M.P.*, (1984) 4 SCC 222: 1984 SCC (Cri) 590: AIR 1984 SC 1688: 1984 Lab IC 1578: (1984) 2 LLN 731.

Bench Strength **2**. Coram: **Y.V. Chandrachud, C.J.** and *O. Chinnappa Reddy*, J. [Date of decision: 24-8-1984]

[6989] — Ss. 472 and 468(2)(a) — Continuing offence — Refusal to vacate company's quarter after retirement or termination of service — *Held, constitutes a continuing offence within the meaning of S. 472 CrPC and hence period of limitation under S. 468(2)(a) CrPC for taking cognizance of the offence inapplicable*

Continuing offence means "type of crime which is committed over a span of time." The expression 'continuing offence' has not, however, been defined in the Code. The question whether a particular offence is a 'continuing offence' or not must, therefore, necessarily depend upon the language of the statute which creates that offence, the nature of the offence and the purpose intended to be achieved by constituting the particular act as an offence. (Paras 7 and 25). *Gokak Patel Volkart Ltd.* v. *Dundayya Gurushiddaiah Hiremath*, (1991) 2 SCC 141: 1991 SCC (Cri) 315: (1991) 1 LLN 970: (1991) 71 Comp Cas 403.

Bench Strength **2**. Coram: **K.N. Saikia** and *M.M. Punchhi*, JJ. [Date of decision: 14-2-1991]

[6990] — S. 472 — Continuing offence — Reckoning of date of commission of offence — Making of ransom calls after death of victim of kidnapping — *Held, the same was a continuing offence under S. 472 CrPC and offence under S. 364-A IPC did not come to an end on death of victim — Further held, even after death of victim every time a ransom call was made a fresh period of limitation commenced — Accordingly, it would be date on which last ransom call was made and not initial date of abduction, which has to be taken as date of commission of offence — Thus, Juvenile Justice Act no longer applicable to petitioner who had attained age of 18 years by then — Juvenile Justice (Care and Protection of Children) Act, 2000, S. 2(k) — Penal Code, 1860, S. 364-A r/w S. 472 CrPC, 1973*

The main object of the kidnapping committed by the accused was to extort money from the parents of the deceased victim by way of ransom even after the death of the victim, as is evident from the subsequent phone calls asking for ransom. The offence under Section 364-A IPC did not come to an end only on account of the death of the victim since ransom calls had been made even though the victim had been killed. If Section 364-A IPC and Section 472 CrPC are to be read together, it has to be held that even after the death of the victim every time a ransom call was made a fresh period of limitation commenced. Accordingly, it would be the date on which the last ransom call was made which has to be taken to be the date of commission of the offence and, accordingly, the Juvenile Justice Act was no longer applicable to the petitioner, who had attained the age of 18 years by then. (Paras 23 and 29). *Vikas Chaudhary* v. *State (NCT of Delhi)*, (2010) 8 SCC 508.

Bench Strength **2**. Coram: **Altamas Kabir** and *Dr. M.K. Sharma*, JJ. [Date of decision: 11-8-2010]

Vimal Chadha v. Vikas Choudhary, (2008) 15 SCC 216: (2009) 3 SCC (Cri) 790, relied on

State of Bihar v. Deokaran Nenshi, (1972) 2 SCC 890: 1973 SCC (Cri) 114; Hari Ram v. State of Rajasthan, (2009) 13 SCC 211: (2010) 1 SCC (Cri) 987, referred to

[6991] — Ss. 472 and 473 — "Continuing offence" — Meaning and effect of — Overriding provisions of S. 473 to be kept in view while considering any provision prescribing period of limitation for prosecution

As to period of statute of limitation in a continuing offence, the last act of the offence controls for commencement of the period. The concept of continuing offence under S. 472 CrPC does not wipe out the original guilt, but it keeps the contravention alive day by day. Courts when confronted with provisions which lay down a rule of limitation governing prosecutions, in cases of this nature, should give due weight and consideration to the provisions of S. 473 of the Code which is in the nature of an overriding provision. (Paras 7 and 24). *Gokak Patel Volkart Ltd.* v. *Dundayya Gurushiddaiah Hiremath*, (1991) 2 SCC 141: 1991 SCC (Cri) 315: (1991) 1 LLN 970: (1991) 71 Comp Cas 403.

Bench Strength **2**. Coram: **K.N. Saikia** and *M.M. Punchhi*, JJ. [Date of decision: 14-2-1991]

[6992] — S. 472 — Continuing offence — Meaning of — *Permission to depillar — Condition that not more than 150 metres of split galleries shall be left unstowed at any time in the whole panel — Breach of the condition — Held, offence is a continuing one — Plea that the respondents were not the officers concerned when the offence was committed not maintainable — Expression "at any time" — Meaning of — Mines Act, 1952, Ss. 79 Expln. (a) and 73 read with Regn. 100(1) of the Coal Mines Regulations, 1957*

Conditions 3 and 6 of the permission to depillar ran as under:-

3. After splitting is completed all original and split galleries shall be stowed solid with sand.

6. Not more than 150 metres of split galleries shall be left unstowed at any time in the whole panel.

Two principal contentions were advanced in defence before the trial court. They were that the complaint was barred by limitation prescribed under Section 79 of the Act and in any case, Respondents 1 to 4 were not in management of the coal mines in question when the alleged offence was alleged to have been committed and, therefore, they could not be criminally proceeded against. The learned trial Judge accepted both the contentions of Respondents 1 to 4 and consequently acquitted them. In appeal preferred by the appellant, the High Court also confirmed the acquittal accepting the same contentions. Allowing the appeal by special leave,

Held :

If one looks into Conditions 3 and 6 with the object and purpose of the Act in mind, it has to be held that these conditions are not only relatable to what was required at the commencement of depillaring process, but the unstowing for the required length must exist always. The expression "at any time" finding place in Condition 6 has to mean, in the context in which it has been used, "at any point of time", the effect of which is that the required length must be maintained all the time. The accomplishment of object of the Act, one of which is safety in the mines, requires taking of such a view, especially in the backdrop of repeated mine disasters which have been taking, off and on, heavy toll of lives of the miners.

The aforesaid conditions have to be obeyed always, disobedience of which shall become a "continuing offence". So, even if other conditions are held to be falling under completed offence, violation of Conditions 3 and 6 cannot be so treated as to invoke the time-limit prescribed under Section 79 of the Act. Therefore, violation of Conditions 3 and 6 are "continuing offences" and the charge framed is not barred by limitation. Once this conclusion is reached, the plea taken by Respondents 1 to 4 that they were not the officers concerned when the offence was detected, will not hold water. *Union of India* v. *A.B. Shah*, (1996) 8 SCC 540: 1996 SCC (Cri) 688: AIR 1996 SC 3281.

Bench Strength **2**. Coram: *B.L. Hansaria* and **K. Venkataswami**, JJ. [Date of decision: 9-5-1996]

State of Bihar v. Deokaran Nenshi, (1972) 2 SCC 890: 1973 SCC (Cri) 114: AIR 1973 SC 908; LDA v. M.K. Gupta, (1994) 1 SCC 243, followed

Black's Law Dictionary; Stroud's Judicial Dictionary Vol. I, relied on

[6993] — S. 472 — Presumption, and determination of age of accused — Relevant factors — Continuing offence — *In case of continuing offence as provided under S. 472 CrPC, age should be determined with reference to date of commission of the offence — In case of offence of kidnapping for ransom and subsequent murder where deceased was first found missing and a missing report was lodged but telephone calls demanding ransom continued from time to time even after the murder, held, it may be considered to be continuous offence — This aspect was not considered by courts while determining age of the accused, although other factors such as school leaving certificate, rough estimation based on x-ray examination report, etc. taken into consideration — Hence, the matter may be considered afresh by trial court in the light of the provisions of S. 472 CrPC — Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 49 and 2(k)*

The age of a "juvenile in delinquency" must be determined as and when an application is filed. The relevant date for determination of the age of the accused would be the date on which the occurrence took place. What would be the date on which offence had been committed in a given case has to be decided having regard to the fact situation obtaining therein. Section 472 CrPC contemplates a continuing offence. If an offence has been a continuing offence, then the age of the juvenile in delinquency should be determined with reference to the date on which the offence is said to have been committed by the accused. (Paras 11 to 13)

In this case, the prosecution proceeded on the basis that the entire offence had taken place on the date on which the deceased was found missing and a missing report had been lodged. But from the charge-sheet it appears that the appellant had been getting calls for payment of ransom despite the fact that the deceased had, in the meanwhile, been killed. It is one thing to say that a missing report has been filed on a particular date but it is another thing to say that in a case of this nature when the actual offence(s) had taken place would remain uncertain. Giving calls for payment of ransom is an offence. In case of murder coupled with abduction in a given case it may be considered to be a continuous offence. (Para 14)

The Model Rules having come into force, the applicability thereof may have to be considered in a given case but keeping in view the facts of the case. But in the present case the matter may be considered afresh in the light of the provisions of Section 472 CrPC by the trial court. (Para 19). *Vimal Chadha* v. *Vikas Choudhary*, (2008) 15 SCC 216: (2009) 3 SCC (Cri) 790: (2008) 67 AIC 267 (SC): 2008 Cri LJ 3190.

Bench Strength 2. Coram: **S.B. Sinha** and *L.S. Panta*, JJ. [Date of decision: 27-5-2008]

Ravinder Singh Gorkhi v. State of U.P., (2006) 5 SCC 584: (2006) 2 SCC (Cri) 632; Jitendra Ram v. State of Jharkhand, (2006) 9 SCC 428: (2006) 2 SCC (Cri) 623; Jyoti Prakash Rai v. State of Bihar, (2008) 15 SCC 223; Balu v. State of T.N., (2008) 14 SCC 463; Jameel v. State of Maharashtra, (2007) 11 SCC 420: (2008) 1 SCC (Cri) 748, considered

Vikas Chaudhary v. State, (2007) 143 DLT 603, reversed

— S. 473 *See* Ss. 245 and 473

See also Ss. 468, 470(4), 472 and 473

See also Ss. 468 and 473

See also Ss. 468, 473 and 190

See also Ss. 468, 473 and 472

See also Ss. 468, 473 and 482

See also Ss. 468(2)(c) and 473

See also Ss. 472 and 473

See also Ss. 482, 190, 468(2) and 473

See also Ss. 482, 468, 469(b) & (c), 154 and 473

[6994] — S. 473 — Offence under S. 14-B, Employees' Provident Funds Act is a continuing one — *Even otherwise, in a case of this nature, court should give due weight to S. 473 CrPC to condone the delay — However, in peculiar circumstances of the case, proceedings against the accused directed to be dropped — Employees' Provident Funds and Miscellaneous Provisions Act, 1952, S. 14-B. RPF Commr.* v. *K. Mohammed*, 1994 Supp (3) SCC 673: 1995 SCC (L&S) 195.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 29-9-1993]

[6995] — S. 473 — Army Rules, 1954 — R. 14 — Bar of trial on expiry of limitation under S. 122 *— Held, cannot be got over by resorting to R. 14 to terminate the services of the delinquent office — Army Act, 1950 — S. 122 (as it then stood)*

So far as period of limitation of trials by court-martial is concerned Section 122 of the Act is a complete Code in itself for not only it provides in its sub-section (1) the period of limitation for such trials but specifies in sub-section (2) thereof the offences in respect of which the limitation clause would not apply. Since the terms of the above section is absolute and no provision has been made under the Act for extension of time — like Section 473 Criminal Procedure Code — it is obvious that any trial commenced after the period of limitation will be patently illegal. Such a provision of limitation prescribed under the Act cannot be overridden or circumvented by an administrative act, done in exercise of powers conferred under a Rule.

From the opening words of Rule 14(2) it follows that the satisfaction about the inexpediency or impracticability of the trial has to be obtained on consideration of the reports on the officer's misconduct. That necessarily means, that the misconduct and other attending circumstances relating thereto have to be the *sole* basis for obtaining such a satisfaction. But to dispense with a trial on a satisfaction dehors the misconduct — like the bar of limitation in the present case — will be wholly alien to Rule 14(2). *Major Radha Krishan* v. *Union of India*, (1996) 3 SCC 507: 1996 SCC (L&S) 761: AIR 1996 SC 3091.

Bench Strength 2. Coram: **M.K. Mukherjee** and *G.B. Pattanaik*, JJ. [Date of decision: 25-3-1996]

Lt. Col. (T.S.) H.C. Dhingra v. Union of India, (1988) 2 Del Law 109, approved on this point

See criticism of this case in (2001) 5 SCC 593

[6996] — S. 473 — Condonation of delay — *Plea can be entertained and decided by the appellate court where matter pending and need not be remanded to the trial Magistrate for this purpose*

No useful purpose would be served by again directing the complainant to approach the trial Magistrate for the purposes of seeking extension of the period of limitation. The complainant is held to have explained the delay in filing the complaint which required extension. The complaint is, therefore, held to be within time and the petitioner is not entitled to be discharged on this ground. (Para 10). *Rakesh Kumar Jain* v. *State*, (2000) 7 SCC 656: 2001 SCC (Cri) 208: AIR 2000 SC 2754: 2000 Cri LJ 3973.

Bench Strength 2. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 8-8-2000]

[6997] — S. 473 — Court's power to take cognizance after the expiry of limitation period — Mode of exercise of — Held, should be exercised judicially and on well-recognised principles — *Hence, a speaking order is necessary — However, a non-speaking order would not stand, ipso facto, vitiated — On facts, held, no period of limitation was prescribed for the offences charged in the present case*

The discretion conferred on the court by Section 473 CrPC to take cognizance after the expiry of the period of limitation under the conditions stated therein has to be exercised judicially and on well-recognised principles. This being a discretion conferred on the court taking cognizance, wherever the court exercises this discretion, the same must be by a speaking order, indicating the satisfaction of the court that the delay was satisfactorily explained and condonation of the same was in the interest of justice. In the absence of a positive order to that effect it may not be permissible for a superior court to come to the conclusion that the court must be deemed to have taken cognizance by condoning the delay whenever the cognizance was barred and yet the court took cognizance and proceeded with the trial of the offence. However, the provisions are of no application to the instant case since for the offences charged, no period of limitation has been provided in view of the imposable punishment thereunder. (Paras 7 and 8). *State of H.P.* v. *Tara Dutt*, (2000) 1 SCC 230: 2000 SCC (Cri) 125: AIR 2000 SC 297: 2000 Cri LJ 485.

Bench Strength 3. Coram: **G.B. Pattanaik**, *M. Srinivasan* and *M.B. Shah*, JJ. [Date of decision: 19-11-1999]

Arun Vyas v. Anita Vyas, (1999) 4 SCC 690: 1999 SCC (Cri) 629, affirmed and explained

Tara Dutt v. State of H.P., (1998) 3 Crimes 523 (HP), reversed

[6998] — S. 473 — Delay in filing complaint against offence relating to non-compliance with provisions of a welfare legislation is condonable 'in the interest of justice' — *Employees' Provident Funds and Miscellaneous Provisions Act, 1952, S. 14*

In cases of this nature, courts, which are confronted with provisions which lay down a rule of limitation governing prosecutions, will give due weight and consideration to the provisions of S. 473 of the CrPC. Therefore, even otherwise, cognisance of the offence after the expiry of the period of limitation, if any such period is applicable, could be taken in this case under S. 473, CrPC, because the interest of justice so requires. *Bhagirath Kanoria* v. *State of M.P.*, (1984) 4 SCC 222: 1984 SCC (Cri) 590: AIR 1984 SC 1688: 1984 Lab IC 1578: (1984) 2 LLN 731.

Bench Strength 2. Coram: **Y.V. Chandrachud, CJ.** and *O. Chinnappa Reddy*, J. [Date of decision: 24-8-1984]

[6999] — S. 473 — Effect of non-obstante clause — Difference between S. 473 and S. 5 of Limitation Act, 1963 explained

In view of S. 473 a court can take cognizance of an offence not only when it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained, but even in absence of proper explanation if the court is satisfied that it is necessary so to do in the interests of justice. The said S. 473 has a non-obstante clause which means that said section has an overriding effect on S. 468, if the court is satisfied on the facts and in the circumstances of a particular case, that either the delay has been properly explained or that it is necessary to do so in the interests of justice.

At times it has come to notice that many courts are treating the provisions of S. 468 and S. 473 of the Code as provisions parallel to the periods of limitation provided in the Limitation Act and the requirement of satisfying the court that there was sufficient cause for condonation of delay under S. 5 of that Act. There is a basic difference between S. 5 of the Limitation Act and S. 473 of the Code. For exercise of power under S. 5 of the Limitation Act, the onus is on the appellant or the applicant to satisfy the court that there was sufficient cause for condonation of the delay, whereas S. 473 enjoins a duty on the court to examine not only whether such delay has been explained but as to whether it is the requirement of the justice to condone or ignore such delay. As such, whenever the bar of S. 468 is applicable, the court has to apply its mind on the question, whether it is necessary to condone such delay in the interests of justice. While examining the question as to whether it is necessary to condone the delay in the interest of justice, the Court has to take note of the nature of offence, the class to which the victim belongs, including the background of the victim. *Vanka Radhamanohari* v. *Vanka Venkata Reddy*, (1993) 3 SCC 4: 1993 SCC (Cri) 571.

Bench Strength 2. Coram: *Kuldip Singh* and **N.P. Singh**, JJ. [Date of decision: 20-4-1993]

[7000] — S. 473 — Amendment of complaint — Extension of the period of limitation — Permissibility — Delayed amendment application introducing an additional offence under S. 420 IPC — No application for condonation of delay filed — *On facts, held, the amendment should not have been allowed at a later stage — Even otherwise provisions of S. 5 of Limitation Act and S. 473 CrPC, held, are not applicable — Limitation Act, 1963, S. 5 — Negotiable Instruments Act, 1881, Ss. 142(b) proviso and 138 proviso (c)*

Cheques presented to bank on 10-1-2001 were returned to Respondent 1 by the bank alleging that no such account in the name of the appellant was in operation. A legal notice dated 17-1-2001 under Section 138 proviso (b) of the NI Act was sent by speed post. A complaint petition alleging commission of an offence under Section 138 of the NI Act, however, was filed only on 20-4-2001. An application to amend the complaint petition for adding offence under Section 420 IPC was allowed by an order dated 14-8-2001. The appellant's application dated 16-12-2003 for discharge on the premise that the complaint petition was barred by limitation was dismissed. The revision application filed by the appellant before the learned Additional Sessions Judge as well as the criminal writ petition were dismissed.

Allowing the appeal,

Held :

In the facts and circumstances of the case, the High Court was not correct in taking the view that the court as per proviso to Section 142(*b*) of the NI Act, had jurisdiction to allow the amendment of the complaint petition at a later stage. Ex facie, the amendment application was barred by limitation. No application for condonation of delay was filed. The matter might have been different if the Magistrate could have exercised its jurisdiction under Section 5 of the Limitation Act, 1963 or Section 473 CrPC. The provisions of the said Acts are not applicable. In any event, no such application for condonation of delay was filed. (Paras 32 and 26)

The application for amendment of complaint petition was allowed on 14-8-2001 prior to the amendment of the statute in the year 2002. Retrospective effect could not have been given to the proviso appended to Section 142(*b*) of the NI Act since it contains a substantive provision and not a procedural one. Likewise an application for condonation of delay is also not maintainable as the jurisdiction conferred upon the court to condone the delay under the proviso appended to Section 142(*b*) of the NI Act is a substantive provision and not a procedural one. A substantive law, as it is well settled, in absence of an express provision, cannot be given a retrospective effect or retroactive operation. Under the proviso appended to Section 142(*b*), inserted by Act 55 of 2002 additional powers have been conferred upon the court to take cognizance even after expiry of the period of limitation, by conferring on the court a discretion to waive the period of one month prescribed under Section 142(*b*). The provisions of the NI Act being special in nature, the jurisdiction of the court to take cognizance of an offence under Section 138 of the Act was limited to the period of thirty days in terms of the proviso appended thereto. Parliament only with a view to obviate difficulties on the part of the complainant inserted the proviso to Section 142(*b*) of the Act in 2002. (Paras 26, 11 and 13). *Subodh S. Salaskar* v. *Jayprakash M. Shah*, (2008) 13 SCC 689: AIR 2008 SC 3086: (2008) 3 KLT 616: (2008) 145 Comp Cas 121: (2008) 69 AIC 228 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 1-8-2008]

K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510: 1999 SCC (Cri) 1284; Madishetti Bala Ramul v. Land Acquisition Officer, (2007) 9 SCC 650, relied on

[7001] — S. 473 — Invocation of — Propriety — *Question whether the court below was in error in invoking S. 473 — Held on facts, not necessary to be decided* (Para 12). *Bharat Damodar Kale* v. *State of A.P.*, (2003) 8 SCC 559: 2004 SCC (Cri) 39: AIR 2003 SC 4560.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 8-10-2003]

[7002] — Ss. 473 and 468 — Condonation of delay in filing complaint petition after expiry of period of limitation for taking cognizance of offences alleged against appellant under Ss. 166 and 167 IPC — Natural justice — *No notice issued to appellant to show-cause why the delay should not be condoned — Held, appellant entitled to get an opportunity of being heard before the delay could be condoned — Without affording such opportunity to appellant and without applying mind to the grounds taken for condonation of the delay, Judicial Magistrate erred in taking cognizance of the alleged offences long after expiry of the period of limitation*

As an option to get the appellant tried in an ordinary criminal court had been exercised by the respondent, there cannot be any doubt whatsoever that all the prerequisites therefor in regard to the period of limitation as also the necessity to obtain the order of sanction were required to be complied with. A court of law cannot take cognizance of an offence, if it is barred by limitation. Delay in filing a complaint petition therefore has to be condoned. If the delay is not condoned, the court will have no jurisdiction to take cognizance. Similarly unless it is held that a sanction was not required to be obtained, the court's jurisdiction will be barred. (Para 15). *P.K. Choudhury* v. *Commander, 48 Brtf (Gref)*, (2008) 13 SCC 229: AIR 2008 SC 1937.

Bench Strength 2. Coram: **S.B. Sinha** and *V.S. Sirpurkar*, JJ. [Date of decision: 13-3-2008]

State of Maharashtra v. Sharadchandra Vinayak Dongre, (1995) 1 SCC 42: 1995 SCC (Cri) 16, relied on

[7003] — Ss. 473 and 468 — Court can extend period of limitation under, only where period of limitation is prescribed as per provisions of Ch. 36 of the Code and not where the period is prescribed under any other enactment

The extension of period contemplated in Section 473 CrPC is only by way of an exception to the period fixed as per the provisions of Chapter XXXVI of the Code. Section 473 of the Code therefore cannot operate in respect of any period of limitation prescribed under any other enactment. Hence Section 473 cannot be invoked for circumventing the bar contained in Section 64(3) of the KP Act. (Para 10). *P.P. Unnikrishnan* v. *Puttiyottil Alikutty*, (2000) 8 SCC 131: 2000 SCC (Cri) 1460: AIR 2000 SC 2952.

Bench Strength 2. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 5-9-2000]

[7004] — Ss. 473 and 468 — Delay in launching prosecution — Condonation of — *Notice and opportunity of hearing to the accused necessary — Court must pass speaking order — However in the circumstances of the case, High Court not justified in quashing the proceedings on such grounds — Proper course was to remit the case to the trial court with a direction to decide the application for condonation of delay afresh after hearing both sides* (Para 5). *State of Maharashtra* v. *Sharadchandra Vinayak Dongre*, (1995) 1 SCC 42: 1995 SCC (Cri) 16: AIR 1995 SC 231: (1995) 1 Mah LJ 432: (1995) 32 ACC 25: 1995 Cr LR (SC) 114.

Bench Strength 3. Coram: *R.M. Sahai*, **Dr. A.S. Anand** and *N.P. Singh*, JJ. [Date of decision: 7-10-1994]

[7005] — Ss. 473 and 401 — Condonation of delay in filing/re-filing revision petition — *Respondent-accused charge-sheeted under Ss. 121/121-A/122/124-A/120-B IPC on the allegations of being a member of TUM and for conspiring in waging war against the Government of India, discharged by Addl. Sessions Judge at the threshold, holding that prima facie there was no legal evidence to show that the respondent had committed any of the alleged acts — Revision petition along with an application for condoning the delay in filing the petition filed by appellant State — However, Registry of High Court raised certain objections, and the file was received back in the Department for curing the defects — Unfortunately, due to paucity of space, the file got mixed up with other files in the office of the Standing Counsel, and was traced only in June 2003 (order of discharge passed on 30-10-1998) — Revision petition was thereafter re-filed along with an application for condonation of delay in re-filing — High Court dismissed criminal revision petition holding that there was unexplained delay in filing and re-filing the revision petition — Submission by appellant that High Court did not even deal with the explanations given by appellant in explaining the delay and summarily rejected the same and that the conclusions of the trial Judge directing discharge were unsustainable both on facts and in law — Held, proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the* *court — In the instant case appellant had indicated the reasons for the delay in filing and re-filing the revision petition — High Court was required to examine the correctness of the explanation given, keeping in view the principles laid down by Supreme Court in several cases — Explanation offered was plausible and deserved to be accepted — Impugned order set aside and matter remitted to it to hear the criminal revision on merits — Limitation Act, 1963, S. 5 — Penal Code, 1860, Ss. 121/121-A/122/124-A/120-B* (Paras 4 to 8 and 13). *State (NCT of Delhi)* v. *Ahmed Jaan*, (2008) 14 SCC 582.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 12-8-2008]

N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123, followed

State of Nagaland v. Lipok Ao, (2005) 3 SCC 752: 2005 SCC (Cri) 906; Spl. Tehsildar, Land Acquisition v. K.V. Ayisumma, (1996) 10 SCC 634; State of Haryana v. Chandra Mani, (1996) 3 SCC 132, relied on

[7006] — Ss. 473 and 468 — Provision in S. 473 for taking cognizance after expiry of limitation period — Applicability — Where the accused was charged with offences under Ss. 468, 420 and 120-B IPC but was convicted under Ss. 417 and 465 IPC, held, S. 473 was not attracted — *Penal Code, 1860, Ss. 468, 420, 120-B, 417 and 465*. *State of H.P.* v. *Tara Dutt*, (2000) 1 SCC 230: 2000 SCC (Cri) 125: AIR 2000 SC 297: 2000 Cri LJ 485.

Bench Strength 3. Coram: **G.B. Pattanaik**, *M. Srinivasan* and *M.B. Shah*, JJ. [Date of decision: 19-11-1999]

Tara Dutt v. State of H.P., (1998) 3 Crimes 523 (HP), reversed

[7007] — Ss. 473 and 468(2) — Limitation — Condonation of delay — Discretion in respect of, held, should be exercised on relevant considerations — *Date of occurrence 24-9-1994 — Charge-sheet filed in 1998 — Cognizance taken on 4-2-2000 by the CJM condoning the delay on the ground that the proceedings were stayed by the High Court till 5-10-1999 — Having regard to the orders passed by High Court, held, the order dated 11-11-1994, which stayed the further proceedings, stood vacated due to the subsequent order of High Court on 6-2-1995 — Hence, condonation of delay by the CJM on the said ground, held on facts, not proper* (Para 12). *Ramesh Chandra Sinha* v. *State of Bihar*, (2003) 7 SCC 254: 2003 SCC (Cri) 1613: AIR 2003 SC 3635.

Bench Strength 2. Coram: **Shivaraj V. Patil** and *Brijesh Kumar*, JJ. [Date of decision: 18-8-2003]

[7008] — Ss. 473 and 468(2)(c) — Remand — When not warranted — *Though non-application of mind by Magistrate as to the question of extended limitation under S. 473 CrPC deprecated, however, on facts and circumstances of this case, considering delays caused in investigation, etc. and given that case was one relating to offence of cruelty under S. 498-A, adopting a liberal approach that has been stressed by Supreme Court, benefit under S. 473 CrPC allowed — Matter not remanded back to Magistrate to reconsider applicability of S. 473 CrPC — Constitution of India — Art. 136* (Paras 8 and 9). *Ramesh* v. *State of T.N.*, (2005) 3 SCC 507: 2005 SCC (Cri) 735: AIR 2005 SC 1989: 2005 Cri LJ 1732.

Bench Strength 2. Coram: *P. Venkatarama Reddi* and *A.K. Mathur*, JJ. [Date of decision: 3-3-2005]

[7009] — Ss. 473 and 470(3) — Delay — If the delay deserves to be condoned under S. 473, a wrong remission given under S. 470(3) can be deemed valid under S. 473 (Para 11). *Rakesh Kumar Jain* v. *State*, (2000) 7 SCC 656: 2001 SCC (Cri) 208: AIR 2000 SC 2754: 2000 Cri LJ 3973.

Bench Strength 2. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 8-8-2000]

— S. 475 *See also* Ss. 428, 5 and 475, 2(h), (g)

[7010] — S. 475 — Jurisdiction of court martial and ordinary criminal court to try an offence punishable both under Air Force Act and other laws committed by a person while on active service of Air Force — *Inherent jurisdiction of Criminal Courts to try civil offences not barred — Provisions of Air Force Act and S. 475 CrPC envisage an arrangement for proper exercise of such jurisdiction — Conflict of jurisdiction has to be resolved by the Central Govt. whose decision will be final — Accused has no option or right to claim trial by a particular forum — Criminal Court must give notice to the Commanding Officer of the accused for exercising his option — But no particular form of such notice prescribed — Where full and complete information is provided to the authorities requirement of law would stand complied with irrespective of the fact whether such information was given by way of notice or otherwise — On facts, handing over of the custody of the accused to civil authorities in execution of warrant of arrest issued by the criminal court indicates that the authorities did not opt to try the accused by court martial — Army Act, 1950, Ss. 125 and 126 — Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1952, Rr. 3 to 6 — Air Force Act, 1950, Ss. 124, 125 and 72*

When a criminal court and court-martial each have jurisdiction in respect of the trial of the offence, it shall be in the discretion of the officer commanding the group, wing or station in which the accused is serving or such other officer as may be prescribed, in the first instance, to decide before which court the proceedings shall be instituted and if that officer decides that they should be instituted before a "court-martial", to direct that the accused persons shall be detained in air force custody. Thus, the option to try a person subject to the Air Force Act who commits an offence while on "active service" is in the first instance with the Air Force Authorities. The criminal court, when such an accused is brought before it shall not proceed to try such a person or to inquire with a view to his commitment for trial and shall give a notice to the Commanding Officer of the accused, to decide whether they would like to try the accused by a court-martial or allow the criminal court to proceed with the trial. In case, the Air Force Authorities decide either not to try such a person by a court-martial or fail to exercise the option when intimated by the criminal court within the period prescribed by Rule 4 of the 1952 Rules, the accused can be tried by the ordinary criminal court in accordance with the Code of Criminal Procedure. On the other hand if the Authorities under the Act opt to try the accused by the 'court-martial', the criminal court shall direct delivery of the custody of the accused to the Authorities under the Act and to forward to the authorities a statement of the offence of which he is accused. It is explicit that the option to try the accused subject to the Act by a court-martial is with the Air Force Authorities and the accused person has *no option or right to claim trial by a particular forum*. (Para 17)

The defence of the country being of paramount importance, the Air Force Authorities would know best as to whether the accused should be tried by the court-martial or by the ordinary criminal court because the trial by the ordinary criminal court would necessarily involve a member of the force being taken away for trial by the ordinary criminal court and not being available to the authorities and the like considerations. However, in the event the criminal court is of the opinion, for reasons to be recorded, that instead of giving option to the Authorities under the Act, the said court should proceed with the trial of the accused, without being moved by the competent authority under the Act and the Authorities under the Act decide to the contrary, the conflict of jurisdiction shall be resolved by the Central Government under Section 125(2) of the Act and the decision as to the forum of trial by the Central Government in that eventuality shall be final. (Para 17)

On construction of the various provisions of the Air Force Act, Section 475 CrPC and rules framed thereunder the criminal courts are not deprived of their inherent jurisdiction to take cognizance of civil offences under the Code. What those provisions, envisage is concurrent jurisdiction in the criminal courts and the court-martial and an arrangement for the proper exercise of such jurisdiction including, when necessary a way of resolving a conflict of jurisdiction. (Para 18)

The object of giving a notice as envisaged by the Act and the 1952 Rules to the authorities under the Act is to make them fully aware of the pendency of a criminal case against a member of the force and to afford them an opportunity to exercise their discretion of having the member of the force tried either by the court-martial or to allow the ordinary criminal court to proceed with the trial. Though the provisions of the Act and the Code are mandatory in character insofar as they require that the authorities under the Act shall be given the first option to decide whether to try the accused by court-martial or allow his trial by the ordinary criminal court, *no particular form of notice* has been prescribed either under the Act, the Rules or the Code. Whether or not the authorities have been made fully aware and put on notice by the criminal court to enable them to exercise their option, would depend upon the facts and circumstances of each case. It is the substance and not the form of notice which is relevant and important. All that the law envisages is that the authorities under the Act must be made fully aware of the nature of offence, status of the victim and the pendency of the criminal case against a member of the force on "active service", so that the authorities under the Act may exercise their option whether or not to try the accused by a court-martial. Where full and complete 'information' is provided to the authorities, the requirement of law would stand complied with, irrespective of the fact whether the information was given by way of a *notice* or otherwise. (Para 21)

In the present case since, with the full knowledge of the pendency of the criminal case against the member of the Air Force, the Authorities had voluntarily delivered the custody of the appellant, for his trial by the ordinary criminal court, the Authorities would be deemed to have exercised the option of not trying the appellant by a court-martial. The act of the authorities in voluntarily delivering the appellant to the civil authorities for trial unmistakably shows that the Air Force Authorities did not intend to claim the trial of the appellant by a court-martial. The Air Force Authorities have made no grievance at any stage that their right to decide whether or not to try the accused by court-martial had been impinged upon by the criminal court in any manner. They have not questioned the validity of the trial of the appellant by the criminal court at any forum whatsoever. The right to exercise the option is with the authorities and an accused has no right to demand or choose trial by a particular forum. The authorities under the Act have made no grievance and the grievance raised by the appellant is untenable. In the facts and circumstances of the case there has been no lack of compliance with the provisions of the 1952 Rules read with Section 475 of the Code and Sections 72, 124 and 125 of the Air Force Act, by the trial court and the trial of the appellant was not in any way vitiated. (Para 22). *Balbir Singh* v. *State of Punjab*, (1995) 1 SCC 90: 1995 SCC (Cri) 202.

Bench Strength **2**. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 10-11-1994]

Ram Sarup v. Union of India, AIR 1965 SC 247: (1964) 5 SCR 931: (1965) 1 Cri LJ 236, relied on

Ajit Singh v. State of Punjab, AIR 1970 P&H 351: 1970 Cri LJ 1119: 72 Punj LR 396 (FB) approved

Supdt. and Remembrancer of Legal Affairs, W.B. v. Usha Ranjan Roy Choudhury, 1986 Supp SCC 190: 1986 SCC (Cri) 311: AIR 1986 SC 1655, distinguished

[7011] — S. 475 — Jurisdiction of regular criminal courts — *Non-exercise of power by Border Security Force authority to move the Magistrate/Sessions Judge for release of the accused for the purpose of trial before the Border Security Force Court — Trial by regular criminal courts in such a case — Validity — Finding the views taken in the two Division Bench decisions in* Joginder Singh case, *(1971) 3 SCC 86 and* Usha Ranjan Roy case, *1986 Supp SCC 190 to be not identical, case referred to a larger Bench — Border Security Force Act, 1968, Ss. 80 and 81* (Paras 4 and 6). *Devender Roy* v. *Union of India*, (2008) 17 SCC 476.

Bench Strength **2**. Coram: *D.P. Mohapatra* and *Brijesh Kumar*, JJ. [Date of decision: 13-2-2002]

[7012] — S. 475 — Even after opting for trial of an Army Officer by a court martial under the Act, if the trial is found to be not possible or feasible (in this case due to bar of limitation), held, army authorities can send back the officer to ordinary criminal court for standing trial for the same offence — *Sanction of Central Government not necessary — Attachment of the officer to a different unit for completing disciplinary proceedings under the Act must be set aside on his being sent to ordinary criminal court for trial — But order of suspension pending the proceedings against the officer need not be interfered with till his trial by the criminal court is completed or given up or till he is acquitted or his character is vindicated by appropriate authorities — Army Instruction No. 31 of 1986 — Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978 — Army Act, 1950, Ss. 127(1)*

Pursuant to investigations, disciplinary proceedings were contemplated against the respondent Army Officer and he was attached to a different unit and was made to relinquish his acting rank of Lt. Colonel on the basis of Army Instruction No. 1/8/74 as amended by Army Instruction No. 2/76. The Army authorities had opted for a trial of the respondent by a general court martial and suspended the respondent pending the proceedings against him. However, the general court martial could not proceed because of retirement of one of its members and a fresh court martial was not available to be constituted as a reference thereto was barred by limitation. The court martial was therefore dissolved under S. 117 of the Army Act and the respondent was handed over to the civil authorities for being tried by a regular criminal court. A complaint was thereafter filed against the respondent before the Chief Judicial Officer under S. 190(1)(*a*) CrPC, 1898. The respondent filed a writ petition before the High Court praying for restoring him the rank of Lt. Colonel with a declaration that he held that rank continuously and for quashing the order of suspension. The High Court allowed the writ petition and granted the reliefs sought for.

Allowing the appeal in part,

Held :

In view of S. 127 there is no general bar as such prohibiting successive trials by a court martial and by a criminal court. Even where a person has been convicted or acquitted by a court martial of the offence in question, he can be tried for the same offence by a criminal court, with the previous sanction of the Central Government. In the present case, however the question of sanction of the Central Government never arose because the respondent was neither convicted nor acquitted by the court martial. (Para 15)

The only purpose of attachment of any army officer to a different unit is that the disciplinary proceedings against him could be speedily and satisfactorily completed without any interference by him. In view of the respondent being sent to the ordinary criminal court for trial, there was no question of his interfering thereafter with the disciplinary proceedings and in view of that, the order of attachment against him must be set aside and the respondent must be reattached to his original Unit. (Para 16)

Under Army Instruction No. 31 of 1986 the respondent had vacated his appointment and acting rank 21 days after the attachment to a different regiment for purposes of completing the proceedings against him. As he has not yet been acquitted nor has his character been vindicated to the satisfaction of the appropriate authorities at Army Headquarters and he is to be tried by the criminal court, till the trial is completed or given up or till he is acquitted or his character vindicated to the satisfaction of the appropriate authorities, there is no case for revocation of the order of his suspension or restoration of his acting rank. (Para 17). *Chief of Army Staff* v. *Major S.P. Chadha*, (1991) 2 SCC 288: 1991 SCC (Cri) 445: AIR 1991 SC 460: (1991) 2 SLJ 106: 1991 Cri LJ 494: 1991 Lab IC 1368.

Bench Strength **2**. Coram: *Ranganath Misra, C.J.* and **M.H. Kania**, J. [Date of decision: 21-12-1990]

[7013] — S. 475 — Transfer of proceedings in terms of — Non-consideration of prayer in respect of, by Sessions Judge — Plea raised before Supreme Court in respect of — *No definite reply to query whether such a stand was taken before the Sessions Judge — That apart, after disposal of matter by Sessions Judge, a petition was filed before SDJM with reference to S. 475 CrPC and the orders passed thereon attained finality — Hence, the above plea, held, not sustainable* (Para 14). *S.K. Zutshi* v. *Bimal Debnath*, (2004) 8 SCC 31: 2004 SCC (Cri) 2096: AIR 2004 SC 4174: (2004) 3 KLT 505.

Bench Strength **2**. Coram: *S.N. Variava* and **Arijit Pasayat**, JJ. [Date of decision: 10-8-2004]

[7014] — Ss. 475, 190 & 200 to 204 — Where a Magistrate after taking cognizance of offence and issue of process against an officer of Army, Navy or Air Force transfers the case for trail by court martial, held, trial by court-martial mandatory — *Preliminary investigation by departmental court of inquiry to determine existence of a case for trail by court-martial impermissible in such circumstances — Army Act, 1950, Ss. 124, 125 and 127 — Army Rules, 1950, Rr. 22 and 177 — Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978, Rr. 3 to 8*

An Army Officer, Maj. 'S' lodged a complaint in the Court of Addl. CJM that one Col. 'A' had criminally assaulted him thus committing offence under Ss. 323, 352 and 355, IPC and that his superior officer Brig. 'R', to whom he had complained about the incident, was trying to protect Col. 'A' thus committing offence under S. 217, IPC. The Addl. CJM examined Maj. 'S' under S. 200, CrPC, took cognizance of the alleged offences under S. 190(*a*) and on being satisfied of the existence of a prima face case directed issuance of summons to the accused officers. Thereupon Maj.-Gen. 'C' made an application to the Court of the Addl. CJM for handing over the case to the military authorities for disposal under R. 22 of the Army Rules, and S. 125 of the Army Act read with R. 197-A of the Army Rules and the Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, The court also directed that the progress of the case be reported to it at intervals of two months and ultimately intimating the result thereof, for the purpose of determining whether a successive trial was necessary as provided for in the Army Act. The Union of India through the GOC made applications before the Addl. CJM for modification and review of his order. The Addl. CJM maintained that trial by a court-martial was mandatory under S. 475 CrPC and that the preliminary investigations by a departmental court of inquiry was impermissible in the case. However, the Addl. CJM deleted the direction in respect of the venue of the trial and also directed the Army authorities to inform his court as to the progress of the case at intervals of four months instead of two months as directed earlier. The Union of India filed a revision petition before the High Court only questioning the Magistrate's jurisdiction to direct the court-martial to submit progress reports of the case. The High Court directed that the results of the court-martial proceedings be communicated to the Addl. CJM as soon as may be in accordance with R. 7 of the Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978. In appeal before the Supreme Court, however, a more fundamental question was raised viz. whether it was open to the Army authorities to constitute a Court of Inquiry, enter upon an investigation of the charges under R. 22 of the Army Rules and determine whether there is a case for trial by a court-martial. Although the point was not taken before the High Court, the

Supreme Court permitted the point to be raised before it. In the writ petition Maj. 'S' prayed for a number of reliefs.

Held :

The Army authority is not entitled to ignore the proceeding taken by the Addl. CJM and to invoke the provisions of R. 22 and related rules of the Army Rules. The Addl. CJM having held that there is a case for trying the two accused officers and having directed their appearance, the Army authority must proceed to hold a court-martial for their trial or take other effectual proceedings against them as contemplated by the law.

It is open to a Magistrate to inquire into a complaint of an offence alleged to have been committed by a military person, where it falls within his jurisdiction, and to take proceedings either for his trial or for committing the case to the Court of Session for trial. Ss. 200 to 203, CrPC provide the procedure to be followed by a Magistrate taking cognizance of an offence on a complaint. Rule 22 onwards of the Army Rules run parallel to these provisions of the CrPC. Section 475 of the Code refers to a person respecting whom the Magistrate has taken the proceedings envisaged by Ss. 200 to 204 of the Code and has found that there is a case for trial. When such person is delivered to the Commanding Officer of the unit to which he belongs it will be "for the purpose of being tried by a court-martial. Section 475 requires 'a statement of the offence of which he is accused' will also be delivered to the Commanding Officer. The relevance of delivering such statement is to enable the Army authority to appreciate the circumstances in which a court martial is required by the law. It is clear from the provisions of the Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978 that once the criminal court determines that there is a case for trial, and pursuant to the aforesaid rule, delivers the accused to the Commanding Officer or the competent military, naval or air force authority, the law intends that the accused must either be tried by a court martial or some other effectual proceeding must be taken against him. To ensure that proceedings are taken against the accused the Rules require the Commanding Officer or the competent authority to inform the Magistrate of what has been done. This requirement under R. 7(1) of the 1978 Rules is to enable the operation and application of S. 127 of the Army Act which is an exception to Art. 20 made under Art. 33 of the Constitution. Rule 7(2) of the 1978 Rules provides that the State Government in consultation with the Central Government, on a report from the Magistrate to that effect, may take appropriate steps to ensure that the accused does not escape the attention of the law. The policy of our constitutional polity is that no person should be regarded as being above the law. Military, Naval and Air Force personnel are as much subject to the law as members of the civil population. It is not open to the Army authority to take proceedings for determining prima facie whether there is substance in the allegations made against the accused and decline to try him by a court-martial or take other effectual proceedings against him even where a Magistrate has taken cognizance of the offence and finds that there is a case for trying the accused. Section 125 of the Army Act would not authorise the Army authority to take such proceedings. Rule 177 and the connected rules of the Army Rules do not support the view that notwithstanding the proceed- ing taken by the Additional Chief Judicial Magistrate it is open to the Army authority to hold a Court of Inquiry and determine whether there is any case for trying the accused by a court martial. If it is not open to the Army authority to have recourse to R. 22 and investigate the charge directed against the accused officer in this case, for the same reason it is not open to it to hold a Court of Inquiry and supersede the proceedings already taken by the Additional Chief Judicial Magistrate. *Union of India* v. *S.K. Sharma*, (1987) 3 SCC 490: 1987 SCC (Cri) 584: AIR 1987 SC 1878: 1987 Cri LJ 1912.

Bench Strength **2**. Coram: **R.S. Pathak, C.J.** and *V. Khalid*, J. [Date of decision: 29-6-1987]

[7015] — S. 477(1) — Criminal Manuals prepared under, should contain provision for allowing accused to sit down during trial unless it becomes necessary to stand up for any specific purpose — *High Courts directed to take steps for making such provisions in their respective Criminal Manuals. Avtar Singh* v. *State of M.P.*, (1982) 1 SCC 438: 1982 SCC (Cri) 248: AIR 1982 SC 1260: 1982 Cri LJ 1740.

Bench Strength **3**. Coram: *Y.V. Chandrachud, C.J.* and *D.A. Desai* and *A.N. Sen*, JJ. [Date of decision: 8-12-1981]

— S. 479 *See* Ss. 406 and 479

Section 482 — Inherent Powers of High Court

— **S. 482** *See also* S. 561-A, Criminal Procedure Code, 1898, pp. 1304 et seq. in Vol. 2

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(1) Generally

[7016] — S. 482 — Single Judge of High Court not agreeing with the view earlier expressed by another Single Judge of the same High Court on an identical point, held, should refer the matter to a Division Bench instead of deciding the same — *Contract Labour (Regulation and Abolition) Act, 1970, Ss. 10(1) & 1(4). State Bank of India* v. *Labour Enforcement Officer (Central)*, (1997) 10 SCC 258: 1997 SCC (L&S) 1285.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *S.P. Kurdukar*, JJ. [Date of decision: 13-2-1997]

[7017] — S. 482 — Inherent powers can be exercised by the High Courts only — Subordinate criminal courts have no such power. *Randhir Singh Rana* v. *State (Delhi Admn.)*, (1997) 1 SCC 361: AIR 1997 SC 639: 1997 Cri LJ 779.

Bench Strength **2**. Coram: *G.N. Ray* and **B.L. Hansaria**, JJ. [Date of decision: 20-12-1996]

*State v. Mehar Singh, 1974 Cri LJ 970: ILR (1973) 2 Punj 561 (P&H), **overruled***

[7018] — S. 482 — Power under — Held, can be exercised in relation to a matter pending before a "court" — Said court in the context of CrPC would mean a "criminal court" or whence a power is exercised by the court under CrPC

From a bare perusal of Section 482 CrPC, it would be evident that the inherent power of the High Court is saved only in a case where an order has been passed by the criminal court which is required to be set aside to secure the ends of justice or where the proceeding pending before a court amounts to abuse of the process of court. It is, therefore, evident that power under Section 482 CrPC can be exercised by the High Court in relation to a matter pending before a court; which in the context of the Code of Criminal Procedure would mean "a criminal court" or whence a power is exercised by the court under the Code of Criminal Procedure. Once it is held that the criminal court had no power to deal with the property seized under the Act, the question of the High Court exercising its jurisdiction under Section 482 CrPC would not arise. The High Court can exercise such a power only in exercise of its power of judicial review. (Paras 33 and 46). *State of W.B.* v. *Sujit Kumar Rana*, (2004) 4 SCC 129: 2004 SCC (Cri) 984: AIR 2004 SC 1851.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **S.B. Sinha**, JJ. [Date of decision: 20-1-2004]

Divisional Forest Officer v. G.V. Sudhakar Rao, (1985) 4 SCC 573: 1986 SCC (Cri) 34; State of W.B. v. Gopal Sarkar, (2002) 1 SCC 495: 2002 SCC (Cri) 161; State of Karnataka v. K.A. Kunchindammed, (2002) 9 SCC 90: 2003 SCC (Cri) 1085; Section Forester v. Mansur Ali Khan, (2004) 1 SCC 293; Shambhu Dayal Agarwala v. State of W.B., (1990) 3 SCC 549: 1990 SCC (Cri) 489; Commr., Dakshina Kannada District v. Rudolph Fernandes, (2000) 3 SCC 306: 2000 SCC (Cri) 632, followed

[7019] — S. 482 — Power under — Compared with power of Supreme Court under Art. 142 of the Constitution — "Complete justice" — Nature and extent of power to do — *Constitution of India, Arts. 142, 32 and 136*

Though there is no provision like Section 482 CrPC conferring express power on the Supreme Court to quash or set aside any criminal proceedings pending before a criminal court to prevent abuse of process of the court, but the inherent power of the Supreme Court under Article 142 coupled with the plenary and residuary powers under Articles 32 and 136 embraces power to quash criminal proceedings pending before any court to do complete justice in the matter before the Supreme Court. The Supreme Court's power under Article 142(1) to do "complete justice" is entirely of different level and of a different quality. (Para 45). *Monica Kumar (Dr.)* v. *State of U.P.*, (2008) 8 SCC 781: (2008) 3 SCC (Cri) 649: AIR 2008 SC 2781: (2008) 67 AIC 106 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and **L.S. Panta**, JJ. [Date of decision: 27-5-2008]

[7020] — S. 482 — Powers of High Court under S. 482 CrPC and Art. 226 of the Constitution — Distinction between — *Held, the said powers operate in different fields — Constitution of India — Art. 226*

The whole of public law remedies available under Article 226 of the Constitution and the constituent power to issue writs in the nature of mandamus, certiorari, prohibition and quo warranto are neither echoed nor transplanted into Section 482 CrPC. May be both the powers to issue writs and pass appropriate orders under Section 482 CrPC are conferred upon the High Court but they undoubtedly operate in different fields. (Para 56). *Divine Retreat Centre* v. *State of Kerala*, (2008) 3 SCC 542: (2008) 2 SCC (Cri) 9: AIR 2008 SC 1614: (2008) 1 KLT 1042: 2008 Cri LJ 1891: (2008) 64 AIC (SC) 44.

Bench Strength **2**. Coram: *S.H. Kapadia* and **B. Sudershan Reddy**, JJ. [Date of decision: 11-3-2008]

[7021] — S. 482 — Exercise of power under — When permissible — Writ of habeas corpus challenging detention order — Matters at large — *High Court dismissing writ filed by detenu's wife imposing costs of Rs 50,000 on her and directing Department concerned to initiate criminal proceedings against detenu under various sections of IPC, exercising powers under S. 482 CrPC — Propriety of — Held, direction not warranted — Issue before High Court was validity of detention order and curtailment of personal liberty of detenu — It functioned as an appellate court, relying on S. 482 — High Court was not justified in issuing such direction and awarding exemplary costs payable to the sponsoring authority*

It is unfortunate that the High Court while considering the habeas corpus petition filed under Article 226 of the Constitution by the wife of the detenu challenging the order of detention on various grounds, on going through the materials of the Department as an appellate court, relying on Section 482 CrPC directed the Commissioner of Customs to lodge a report with the police within a period of 15 days along with the complete set of relevant documents to enable them to register a case under Sections 199, 420, 468 and 471 IPC against the detenu. The said direction is not warranted considering the fact that the issue before the High Court was about the validity of the detention order and the curtailment of the personal liberty of the detenu and nothing more. The High Court was not justified in issuing such a direction and awarding exemplary costs of Rs 50,000 payable to the sponsoring authority. (Para 43). *Pooja Batra* v. *Union of India*, (2009) 5 SCC 296.

Bench Strength **2**. Coram: *Dalveer Bhandari* and **P. Sathasivam**, JJ. [Date of decision: 27-3-2009]

[7022] — S. 482 — Inherent power — Courts subordinate to High Court, held, have no inherent power under S. 482 or otherwise

The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of CrPC. The courts subordinate to the High Court do not even have any inherent power under Section 482 or otherwise. The power of remand in terms of Section 167 is to be exercised when investigation is not complete. Once the charge-sheet is filed and cognizance of the offence is taken, the court cannot exercise its power under Section 167(2) CrPC. Its power of remand can then be exercised in terms of Section 309(2). The appellants had been granted bail. They are not in custody of the court. They could not be taken in custody ordinarily unless their bail was cancelled. The High Court, therefore was not correct in holding that as further investigation was required, Section 167(2) of the Code gives ample power for grant of police remand. (Paras 15 to 18). *Mithabhai Pashabhai Patel* v. *State of Gujarat*, (2009) 6 SCC 332.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

Raghubir Singh v. State of Bihar, (1986) 4 SCC 481: 1986 SCC (Cri) 511; CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141: 1992 SCC (Cri) 554; State v. Dawood Ibrahim Kaskar, (2000) 10 SCC 438: 1997 SCC (Cri) 636; Dinesh Dalmia v. CBI, (2007) 8 SCC 770: (2008) 1 SCC (Cri) 36; Rama Chaudhary v. State of Bihar, (2009) 6 SCC 346, followed

[7023] — S. 482 — Inherent power — Relevance of English case law

Inherent powers of High Court under Section 482 CrPC are meant to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of court. These inherent powers can be exercised in the following category of cases: (*i*) to give effect to an order under the Code; (*ii*) to prevent abuse of the process of court; and (*iii*) to otherwise secure the ends of justice. Extraordinary power under Section 482 CrPC should be exercised sparingly and with great care and caution. The High Court would be justified in exercising the power to prevent injustice and secure ends of justice. India has largely inherited provisions of inherent powers from English jurisprudence, and therefore principles decided by the English courts are of relevance. Crown Court has inherent power to protect its process from abuse. The English courts have also used inherent power to achieve the same objective. (Paras 17 to 20). *CBI* v. *A. Ravishankar Prasad*, (2009) 6 SCC 351.

Bench Strength **2**. Coram: **Dalveer Bhandari** and *H.S. Bedi*, JJ. [Date of decision: 15-5-2009]

Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1, clarified and applied

Connelly v. Director of Public Prosecutions, 1964 AC 1254: (1964) 2 WLR 1145: (1964) 2 All ER 401 (HL); Director of Public Prosecutions v. Humphrys, 1977 AC 1: (1976) 2 WLR 857: (1976) 2 All ER 497 (HL); R.P. Kapur v. State of Punjab, AIR 1960 SC 866: (1960) 3 SCR 388; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Union of India v. B.R. Bajaj, (1994) 2 SCC 277: 1994 SCC (Cri) 477; B.S. Joshi v. State of Haryana, (2003) 4 SCC 675: 2003 SCC (Cri) 848, relied on

(2) Nature and scope of inherent power

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(i) Generally

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[7024] — S. 482 — Inherent jurisdiction under — Nature and scope of — Held, S. 482 does not confer any new power on High Court but only saves the inherent power possessed by it prior to enactment of new CrPC — *Jurisdiction under S. 482 is not an unlimited arbitrary jurisdiction — Power thereunder to be exercised sparingly, carefully and with caution only where such exercise is justified by the tests laid down in S. 482 itself — The three circumstances under which inherent jurisdiction may be exercised, restated*

There is nothing like unlimited arbitrary jurisdiction conferred on the High Court under Section 482 CrPC. The power under Section 482 has to be exercised sparingly, carefully and with caution only where such exercise is justified by the tests laid down in the Section itself. Section 482 does not confer any new power on the High Court but only saves the inherent power which the Court possessed before the enactment of the Criminal Procedure Code, 1973. There are three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under the CrPC, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. (Para 27). *Divine Retreat Centre* v. *State of Kerala*, (2008) 3 SCC 542: (2008) 2 SCC (Cri) 9: AIR 2008 SC 1614: (2008) 1 KLT 1042: 2008 Cri LJ 1891: (2008) 64 AIC (SC) 44.

Bench Strength 2. Coram: *S.H. Kapadia* and **B. Sudershan Reddy**, JJ. [Date of decision: 11-3-2008]

State of W.B. v. Sujit Kumar Rana, (2004) 4 SCC 129: 2004 SCC (Cri) 984; Kurukshetra University v. State of Haryana, (1977) 4 SCC 451: 1977 SCC (Cri) 613, relied on

[7025] — S. 482 — Inherent power of High Court under — Availability of — When can be exercised — *Held, it can be exercised by High Court either suo motu or on application (i) to secure ends of justice; (ii) to give effect to any order under CrPC; (iii) to prevent abuse of process of any court — There is no other ground on which High Court may exercise its inherent power* (Paras 36 and 29). *D. Venkatasubramaniam* v. *M.K. Mohan Krishnamachari*, (2009) 10 SCC 488: (2009) 82 AIC 245 (SC): (2009) 3 APLJ 205 (SC).

Bench Strength 2. Coram: *R.V. Raveendran* and **B. Sudershan Reddy**, JJ. [Date of decision: 14-9-2009]

[7026] — S. 482 — Inherent powers of High Court — Nature and scope — Reiterated (Paras 25 to 31). *Chunduru Siva Ram Krishna* v. *Peddi Ravindra Babu*, (2009) 11 SCC 203: (2009) 3 SCC (Cri) 1297.

Bench Strength 2. Coram: *S.B. Sinha* and **Dr. M.K. Sharma**, JJ. [Date of decision: 25-3-2009]

Drugs Inspector v. Dr. B.K. Krishnaiah, (1981) 2 SCC 454: 1981 SCC (Cri) 487; MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241: 2002 SCC (Cri) 129, considered and relied on

[7027] — S. 482 — Inherent powers of High Court — Scope, reiterated (Paras 20 to 24). *Jeffrey J. Diermeier* v. *State of W.B.*, (2010) 6 SCC 243.

Bench Strength 2. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 14-5-2010]

[7028] — S. 482 — Nature and purpose — Held, merely recognises and preserves inherent powers of the High Courts — Scope of interference with an order framing charges — Nature of jurisdiction exercised thereagainst — Three circumstances given when said power to be exercised — Considerations involved — *Categories of cases in which said inherent power should be exercised as given in* R.P. Kapur case, *AIR 1960 SC 866, p. 869, para 6 and* Bhajan Lal case, *1992 Supp (1) SCC 335, pp. 378-79, para 102, re-enumerated — Inherent powers* (Para 10). *State of Punjab* v. *Kasturi Lal*, (2004) 12 SCC 195: AIR 2004 SC 4087: 2004 Cri LJ 3866.

Bench Strength 2. Coram: *S.N. Variava* and **Arijit Pasayat**, JJ. [Date of decision: 28-7-2004]

[7029] — S. 482 — Reasons behind grant of inherent powers to High Court under — *Explained — CPC, 1908, S. 151*

No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alique concedit, conceditur et id sine quo res ipsa esse non potest* (when the law gives a person anything, it gives him that without which it cannot exist). (Para 5) . *State of A.P.* v. *Golconda Linga Swamy*, (2004) 6 SCC 522: 2004 SCC (Cri) 1805: AIR 2004 SC 3967.

Bench Strength **2**. Coram: *S.N. Variava* and **Arijit Pasayat**, JJ. [Date of decision: 27-7-2004]

[7030] — S. 482 — Reasons behind grant of inherent powers to High Court under — *Explained — CPC, 1908, S. 151*

No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). (Para 8). *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque*, (2005) 1 SCC 122: 2005 SCC (Cri) 283: AIR 2005 SC 9: 2005 Cri LJ 92.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 1-11-2004]

[7031] — S. 482 — Reasons behind grant of inherent powers to High Court under — Explained *— CPC, 1908, S. 151*

No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in Section 482 CrPC which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). (Para 8). *State of M.P.* v. *Awadh Kishore Gupta*, (2004) 1 SCC 691: 2004 SCC (Cri) 353: AIR 2004 SC 517: 2004 Cri LJ 598.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 18-11-2003]

[7032] — S. 482 — Reasons behind grant of inherent powers to High Court under — Explained *— CPC, 1908, S. 151*

No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in Section 482 CrPC which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). (Para 19). *Minu Kumari* v. *State of Bihar*, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310: AIR 2006 SC 1937: 2006 Cri LJ 2468: (2006) 2 KLT 588: (2006) 3 Guj LR 2013.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-4-2006]

[7033] — S. 482 — Powers under — Held, have no limits — Therefore, utmost care and caution required while invoking such powers

It is well settled that the powers under Section 482 have no limits. Of course, where there is more power, it becomes necessary to exercise utmost care and caution while invoking such powers. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. (Para 6). *B.S. Joshi* v. *State of Haryana*, (2003) 4 SCC 675: 2003 SCC (Cri) 848: AIR 2003 SC 1386: (2003) 2 KLT 1062: 2003 Cri LJ 2028.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *H.K. Sema*, JJ. [Date of decision: 13-3-2003]

(2)(i) Nature and scope of inherent power - Generally *(contd.)*

[7034] — Ss. 482 and 465 — Interference with criminal proceedings — Called for only in case of grave illegality — *Provisions for interference by superior courts should not be allowed to be misused by those who can afford to approach them*

Unless a grave illegality is committed, the superior courts should not interfere. They should allow the court which is seized of the matter to go on with it. There is always an appellate court to correct the errors. One should keep in mind the principle behind S. 465 CrPC. Any and every irregularity or infraction of a procedural provision cannot constitute a ground for interference by a superior court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be corrected at that stage itself. Frequent interference by superior courts at the interlocutory stages tends to defeat the ends of justice instead of serving those ends. It should not be that a man with enough means is able to keep the law at bay. That would mean the failure of the very system. *Santosh De* v. *Archna Guha*, (1994) 2 SCC 420: 1994 SCC (Cri) 546: (1994) 1 Crimes 548: (1994) 31 ACC 250.

Bench Strength **2**. Coram: **B.P. Jeevan Reddy** and *B.L. Hansaria*, JJ. [Date of decision: 3-2-1994]

[7035] — S. 482 — Inherent powers of High Court — Nature and scope

Section 482 CrPC saves the inherent powers of the High Court and its language is quite explicit when it says that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. A procedural code, however exhaustive, cannot expressly provide for all time to come against all the cases or points that may possibly arise, and in order that justice may not suffer it is necessary that every court must in proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions of the Code. It is well-established principle that every court has inherent power to act *ex debito justitiae* to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the court. (Para 6). *Hamida* v. *Rashid*, (2008) 1 SCC 474: (2008) 1 SCC (Cri) 234: (2007) 54 AIC 19 (SC): 2007 Cri LJ 3422: (2008) 105 Cut LT 410: (2007) 4 All LJ 206.

Bench Strength **2**. Coram: **G.P. Mathur** and *A.K. Mathur*, JJ. [Date of decision: 27-4-2007]

Emperor v. Khwaja Nazir Ahmad, AIR 1945 PC 18, relied on

[7036] — S. 482 — Inherent powers of High Court — Nature, scope and ambit of — Reiterated and discussed (Paras 12 to 26). *Gorige Pentaiah* v. *State of A.P.*, (2008) 12 SCC 531.

Bench Strength **2**. Coram: *Dalveer Bhandari* and *J.M. Panchal*, JJ. [Date of decision: 20-8-2008]

Connelly v. Director of Public Prosecutions, 1964 AC 1254: (1964) 2 WLR 1145: (1964) 2 All ER 401 (HL); Director of Public Prosecutions v. Humphrys, 1977 AC 1: (1976) 2 WLR 857: (1976) 2 All ER 497 (HL); R.P. Kapur v. State of Punjab, AIR 1960 SC 866; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; Chandrapal Singh v. Maharaj Singh, (1982) 1 SCC 466: 1982 SCC (Cri) 249; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Roy V.D. v. State of Kerala, (2000) 8 SCC 590: 2001 SCC (Cri) 42; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259, considered and relied on

[7037] — Ss. 482 and 483 — Inherent jurisdiction of High Court — Scope — When can be exercised — *High Court acts ex debito justitiae to do real and substantial justice — Limitations — Apart from inherent jurisdiction, High Court can also exercise supervisory jurisdiction in some cases under S. 483 and also under Art. 227 — Constitution of India, Art. 227*

Whereas inherent power of a court or a tribunal is generally recognised, such power has been recognised under the Code of Criminal Procedure only in the High Court and not in any other court. The High Court apart from exercising its revisional or inherent power indisputably may also exercise its supervisory jurisdiction in terms of Article 227 of the Constitution of India and in some matters in terms of Section 483 thereof. The High Court, therefore, has a prominent place in the Code of Criminal Procedure vis-à-vis the Court of Session which is also possessed of a revisional power. (Para 24). *Popular Muthiah* v. *State*, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

Dharam Pal v. State of Haryana, (2004) 13 SCC 9: (2006) 1 SCC (Cri) 273, relied on

[7038] — S. 482 — Inherent power — Doctrine of — Nature and scope of High Court's power under — When can power be exercised

Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under the Code, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. (Para 7)

While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. (Para 7). *CBI* v. *Ravi Shankar Srivastava*, (2006) 7 SCC 188: (2006) 3 SCC (Cri) 233: AIR 2006 SC 2872.

Bench Strength 2. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 10-8-2006]

[7039] — S. 482 — Applicability — Parameters for — *Parameters to be observed while exercising inherent power under S. 482 by High Court either to prevent abuse of process of any court or otherwise to secure the ends of justice and a note of caution while exercising power of quashing criminal proceeding, restated* (Paras 6 and 7). *Reshma Bano* v. *State of U.P.*, (2008) 5 SCC 791: (2008) 3 SCC (Cri) 86: (2008) 3 All LJ 607: (2008) 64 AIC 7 (SC).

Bench Strength 3. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam* and *Aftab Alam*, JJ. [Date of decision: 3-3-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

[7040] — S. 482 — Inherent jurisdiction of High Court — Scope — Reiterated (Para 7). *Didigam Bikshapathi* v. *State of A.P.*, (2008) 2 SCC 403: (2008) 1 SCC (Cri) 434: AIR 2008 SC 527: 2008 Cri LJ 724: (2008) 106 Cut LT 313.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Tarun Chatterjee*, JJ. [Date of decision: 29-11-2007]

State of Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272; Minu Kumari v. State of Bihar, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310, relied on

[7041] — S. 482 — Inherent jurisdiction of High Court — Scope of — Not to be exercised in the matter covered by specific provisions of the Code — Expressions "abuse of the process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court — *Trial court pronouncing judgment of conviction and posting the case for hearing on sentence — Convicted accused instead of preferring statutory appeal against conviction filing petition under S. 482 — Order of the High Court at that stage staying further proceedings, held, illegal*

The accused were convicted by the trial court for offences under Sections 302 and 307 read with Section 149 IPC, and the case was posted to succeeding days for hearing on sentence. But as the accused failed to appear, the trial court issued non-bailable warrant against them. Instead of appearing before the trial court the accused filed a petition under Section 482 before the High Court alleging misconduct on the part of the trial Judge. The High Court stayed the further proceedings including the operation of non-bailable warrant issued by the trial court.

Allowing the appeal by special leave filed by the informant injured witness,

Held :

It is true that under Section 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. But the expressions "abuse of the process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. It is well-nigh settled that inherent power is not to be invoked in respect of any matter covered by specific provision of the Code or if its exercise would infringe any specific provision of the Code. In the present case, the High Court overlooked the procedural law which empowered the convicted accused to prefer statutory appeal against conviction of the offence. The High Court has intervened at an uncalled for stage and soft-pedalled the course of justice at a very crucial stage of the trial. (Para 2)

(2)(i) Nature and scope of inherent power - Generally *(contd.)*

The order passed by the High Court entertaining the petition of the convicted accused under Section 482 of the Code is, on the face of it, illegal, erroneous and to say the least, unfortunate. It was known to the High Court that the trial court passed proceedings to the effect that final judgment and order convicting the accused were pronounced by the trial court. It was also recorded by the trial court that as the accused were absent, the Court had issued non-bailable warrants. In such a situation, instead of directing the accused to remain present before the Court for resorting to the steps contemplated by the law for passing the sentence, the High Court has stayed further proceedings including the operation of the non-bailable warrants issued by the trial court. It is disquieting that the High Court has overlooked the important legal aspect that the accused have a right of appeal against the order of conviction purported to have been passed by the trial court. In such circumstances the High Court ought not to have entertained a petition under Section 482 of the Code and stonewalled the very efficacious alternative remedy of appeal as provided in the Code. Merely because the accused made certain allegations against the trial Judge the substantive law cannot be bypassed. (Para 9). *Arun Shankar Shukla* v. *State of U.P.*, (1999) 6 SCC 146: 1999 SCC (Cri) 1076: AIR 1999 SC 2554: 1999 Cri LJ 3964.

Bench Strength 2. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 23-7-1999]

See also AIR 1959 SC 542: 1959 Cri LJ 658; (1974) 2 SCC 522: 1974 SCC (Cri) 558; (1980) 1 SCC 43: 1980 SCC (Cri) 72; (1990) 2 SCC 437: 1990 SCC (Cri) 327; (1992) 4 SCC 305: 1993 SCC (Cri) 36

[7042] — S. 482 — Inherent powers under — Limitations on exercise of — Case-law discussed (Para 21). *K.M. Mathew* v. *K.A. Abraham*, (2002) 6 SCC 670: 2002 SCC (Cri) 1480: AIR 2002 SC 2989: (2002) 3 KLT 282.

Bench Strength 2. Coram: *U.C. Banerjee* and **K.G. Balakrishnan**, JJ. [Date of decision: 23-8-2002]

[7043] — S. 482 — Power of High Court under — Object and purpose of — *Held, power under S. 482 CrPC could be exercised to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice — S. 482 has been embodied to cover the lacunae which are sometimes found in the procedural law — However, this extraordinary power is to be used in extraordinary cases*

The appellant, who was tried along with *T* for the commission of offences punishable under Section 13(1)(*d*) read with Section 13(2) of the Prevention of Corruption Act and Section 120-B of the Indian Penal Code, was discharged by the trial court. In revision, the High Court, exercising powers under Section 482 CrPC, set aside the order of the trial court insofar as it related to the appellant and directed the Special Judge to frame charges against him. Setting aside the High Court's impugned order,

Held :

Section 482 CrPC confers upon the High Court inherent powers to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. Every court has inherent power to act *ex debito justitiae* — to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the court. The principle embodied in the section is based upon the maxim: *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. The section has been embodied to cover the lacunae which are sometimes found in the procedural law. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases. (Para 6). *Dinesh Dutt Joshi* v. *State of Rajasthan*, (2001) 8 SCC 570: 2002 SCC (Cri) 24.

Bench Strength 2. Coram: *M.B. Shah* and *R.P. Sethi*, JJ. [Date of decision: 1-10-2001]

[7044] — Ss. 482 and 374 & 378 — Irregular order of court of unlimited jurisdiction — Review or appeal — Whether can be corrected ex debito justitiae by the same Court — *CPC, 1908, Ss. 114 and 99, 100-101 & 109*

Per Mukharji, Oza and Natarajan, JJ.

Orders made by a court of unlimited jurisdiction in the course of contentious litigation are either regular or irregular. If an order is regular it can only be set aside by an appellate court; if it is irregular it can be set aside by the court that made it on application being made to that court either under rules of court dealing expressly with setting aside orders for irregularity or *ex debito justitiae* if the circumstances warranted, namely, where there was a breach of the rules of natural justice etc. *A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602: 1988 SCC (Cri) 372: AIR 1988 SC 1531.

Bench Strength 7. Coram: **Sabyasachi Mukharji**[1], **Ranganath Misra**[2], **G.L. Oza**[1&3], **B.C. Ray**[4], *S. Natarajan*[1], **M.N. Venkatachaliah**[5] and **S. Ranganathan**[6], JJ. [Date of decision: 29-4-1988]

Issacs v. Robertson, (1984) 3 All ER 140 and Nawabkhan Abbaskhan v. State of Gujarat, (1974) 2 SCC 121: 1974 SCC (Cri) 467: (1974) 3 SCR 427, relied on

(ii) S. 482 and other provisions of CrPC

[7045] — Ss. 482 and 362 — Inherent power of High Court under S. 482 — Scope — *Does not extend to what is expressly barred under the Code — Hence cannot be exercised by High Court to review its own earlier decision in view of S. 362*

A case was instituted on a private complaint by the appellant for offences under Ss. 452 and 323, IPC. The Judicial Magistrate First Class, in exercise of power under S. 192(2), CrPC transferred it for inquiry under S. 202, CrPC. The Court of Second Class Magistrate after examining witnesses issued processes against the accused respondents. The respondents challenged the order issuing process by application under S. 482, CrPC mainly on the ground that the First Class Magistrate had transferred the case without taking cognizance of the offence and the subsequent proceedings were, therefore, illegal. The High Court on the basis of its definite finding arrived at after perusal of the record of the proceedings before the Magistrate and on a consideration of the report of the concerned Magistrate that the complaint was taken cognizance of, dismissed the petition. But the respondents once again moved a petition under S. 482 before the High Court. The only ground on which relief was claimed is the alleged irregularity in the transfer of the proceedings. But it was alleged that the record of the proceedings on close scrutiny would indicate that the case had not been taken cognizance of before the transfer. The High Court accepted the case of the respondents and quashed the proceedings by the impugned order. It was contended on behalf a appellant before the Supreme Court that the second application under S. 482, CrPC was not entertainable, since the exercise of power under S. 482 on a second application by the same party on the same ground virtually amounted to the review of the earlier order and was contrary to the spirit of S. 362 of the CrPC and that the High Court was, therefore, clearly in error in having quashed the proceedings by adopting that course.

Allowing the appeal,

Held :

The inherent power of High Court under S. 482 is intended to prevent the abuse of the process of the court and to secure ends of justice. Such powers are as much controlled by principle and precedent as are its express powers by statute. It cannot be exercised to do something which is expressly barred under the Code. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction. Therefore, it cannot be invoked to override bar of review under S. 362. If there had been changes in the circumstances of the case, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at a different conclusion is in effect a review.

The impugned order in this case is in effect one reviewing the earlier order on a reconsideration of the same materials. The High Court has grievously erred in doing so. Even on merits there is no compelling reason to quash proceedings at that stage. *Simrikhia* v. *Dolley Mukherjee*, (1990) 2 SCC 437: 1990 SCC (Cri) 327: AIR 1990 SC 1605: 1990 Cri LJ 1599: (1990) 2 Crimes 271.

Bench Strength **2**. Coram: *A.M. Ahmadi* and **M. Fathima Beevi**, JJ. [Date of decision: 2-3-1990]

[7046] — S. 482 — Scope — Not applicable where specific provisions provided by the Code, such as S. 369, CrPC, 1898 — *CrPC, 1898, S. 561-A*

Inherent power, which S. 561-A purports to save, cannot relate to any of the matters specifically dealt by the Code and as such cannot be invoked to exercise powers which would be inconsistent with any of the specific provisions of the Code. The saving of inherent power is only for giving effect to orders passed under the Code, to prevent abuse of the process of any court or otherwise to secure the ends of justice.

So if S. 369 is understood as applying to judgments on appeal by the High Court, S. 561-A cannot be invoked for enabling the court to review its own order which is specifically prohibited by S. 369. *State of Orissa* v. *Ram Chander Agarwala*, (1979) 2 SCC 305: 1979 SCC (Cri) 462: AIR 1979 SC 87: 1979 Cri LJ 33.

Bench Strength 2. Coram: *Jaswant Singh* and **P.S. Kailasam**, JJ. [Date of decision: 5-10-1978]

(2)(ii) Nature and scope of inherent power - S. 482 and other provisions of CrPC *(contd.)*

[7047] — Ss. 482, 205 and 313 — Inherent powers of High Court under S. 482 — Mode of exercise of — Not permissible contrary to other provisions of CrPC — *Held, have to be exercised sparingly, with circumspection and in rare cases, to correct patent illegalities or to prevent miscarriage of justice — Herein, High Court exceeded its jurisdiction under S. 482, by laying down general directions for lower courts, regarding dispensing with personal attendance of accused and personal examination of accused by court, which were inconsistent with clear language of Ss. 205 and 313* (Paras 12 and 21). *TGN Kumar* v. *State of Kerala*, (2011) 2 SCC 772.

Bench Strength **3**. Coram: **D.K. Jain**, *A.K. Ganguly* and *H.L. Dattu*, JJ. [Date of decision: 14-1-2011]

Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10, relied on

[7048] — S. 482 — Inherent power of High Court — Scope — How and when should be exercised — *Not to be resorted to if there is any specific provision in the Code for redressal*

Section 482 which corresponds to S. 561-A of the old Code and to S. 151 of the Civil Procedure Code proceeds on the same principle and deals with the inherent powers of the High Court. The rule of inherent powers has its source in the maxim "*Quando lex aliquid alicui concedit, concediture et id sine quo res ipsa esse non potest*" which means that when the law gives anything to anyone, it gives also all those things without which the thing itself could not exist.

The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under S. 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.

The inherent power under this section can be exercised by the High Court (1) to give effect to any order passed under the Code; or (2) to prevent abuse of the process of any Court; or (3) otherwise to secure the ends of justice. The power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party. It should not be exercised as against the express bar of law engrafted in any other provision of the Code. *Janata Dal* v. *H.S. Chowdhary*, (1992) 4 SCC 305: 1993 SCC (Cri) 36: AIR 1993 SC 892.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 28-8-1992]

[7049] — Ss. 482 and 362 — Review/Alteration of judgment — Reopening of a case under S. 482 CrPC against the statutory prescription of S. 362 — Permissibility of — *Reopening of order passed on S. 482 CrPC petition finally decided at the instance of interlocutory applications, on grounds other than the ground of clerical or arithmetical mistake contemplated in S. 362 CrPC, held, is impermissible — Court cannot give a go-by to statutory provisions and instead evolve a new provision in the grab of inherent jurisdiction — Power under S. 482 cannot be exercised to reopen or alter an order disposing of a petition decided on merits — To require the High Court to take notice of subsequent developments and pass order accordingly a fresh S. 482 petition should be filed*

The respondent, on the basis of an FIR, was arrested 27-8-1998 under Sections 177, 186 and 506(*ii*) IPC for impersonating himself as a reporter of *Indian Express* while making a hoax call on 26-8-1998 to Revenue Divisional Officer (the RDO) regarding smuggling of sandalwood and teak wood logs. On 2-9-1998, the respondent gave a complaint against the RDO and other officers for having tortured him and for having committed other illegal acts between 26-8-1998 and 28-8-1998. When the departmental proceedings against the RDO and other officers was dropped, the respondent, in October 1998, filed a criminal petition under Section 482 CrPC seeking registration of an FIR, transfer of investigation to CBI and compensation of rupees one lakh.

By a final order dated 1-3-2001, a Single Judge of the High Court disposed of Section 482 CrPC petition refusing to transfer the investigation to CBI and also held that the question of granting compensation would arise at a later stage. On two applications filed 3½ years later by the DSP (SB CID) and the complainant respondent in the disposed of criminal petition, the Single Judge of High Court, by the impugned order, transferred the investigation to CBI and directed the State police to hand over the records to CBI forthwith.

Allowing the appeal partly,

Held :

The High Court, in the exercise of power under Section 482 CrPC fell in error in reopening an issue which was refused earlier in the finally decided and disposed of Section 482 CrPC petition. Section 362 CrPC cannot apply in the facts and circumstances of the present case. There was no clerical or arithmetical error in the order. Section 362 CrPC expressly provides that no court which has signed its judgment and final order disposing of a case, shall alter or review the same except to correct clerical or arithmetical error save as otherwise provided by the court. (Paras 5, 25 and 18)

If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction. Section 482 CrPC cannot be exercised to reopen or alter an order disposing of a petition decided on merits. Section 362 CrPC prohibits reopening of a final order except in the cases of clerical or arithmetical errors. Section 482 CrPC enables the High Court to make such order as may be necessary to give effect to any order under CrPC or to prevent abuse of the process of any court or otherwise to secure the ends of justice. The inherent powers, however, are as much controlled by principle and precedent as are its express powers by statutes. It was not open to the High Court to pass a fresh order in the disposed of petition or even in the pending petition of the DSP (SB CID), Nagapattinam, directing investigation to be made by the CBI Authorities. (Paras 19, 22 and 24). *State* v. *K.V. Rajendran*, (2008) 8 SCC 673: (2008) 3 SCC (Cri) 600: (2008) 230 ELT 577.

Bench Strength **2**. Coram: **Tarun Chatterjee** and *P. Sathasivam*, JJ. [Date of decision: 2-9-2008]

Hari Singh Mann v. Harbhajan Singh Bajwa, (2001) 1 SCC 169: 2001 SCC (Cri) 113; Simrikhia v. Dolley Mukherjee, (1990) 2 SCC 437: 1990 SCC (Cri) 327; Sooraj Devi v. Pyare Lal, (1981) 1 SCC 500: 1981 SCC (Cri) 188; Sankatha Singh v. State of U.P., AIR 1962 SC 1208: 1962 Supp (2) SCR 817, relied on

[7050] — Ss. 482 and 397 — Interlocutory order, petition against — Inherent power under, held, overrides other provisions of CrPC including S. 397 thereof — But it cannot override a statutory bar — *Also, not to be exercised when remedy under CrPC or the statute available — So the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party — General principles for exercise of power under S. 482, restated*

Section 482 CrPC starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under Section 482 can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However, this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers, the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the process of the court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law in some other enactment. (Para 29). *State* v. *Navjot Sandhu*, (2003) 6 SCC 641: 2003 SCC (Cri) 1545: (2003) 104 DLT 794.

Bench Strength **2**. Coram: **S.N. Variava** and *Brijesh Kumar*, JJ. [Date of decision: 9-5-2003]

Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10; Krishnan v. Krishnaveni, (1997) 4 SCC 241: 1997 SCC (Cri) 544; Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; Roy V.D. v. State of Kerala, (2000) 8 SCC 590: 2001 SCC (Cri) 42; Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124; Satya Narayan Sharma v. State of Rajasthan, (2001) 8 SCC 607: 2002 SCC (Cri) 39; State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539, relied on

[7051] — Ss. 482 and 397(2) — Scope — Inherent power of High Court under to quash trial proceedings at initial stages, held, not barred by S. 397(2)

Section 482 of the present Code is the ad verbatim copy of S. 561-A of the old Code. This provision confers a separate and independent power on the High Court alone to pass orders ex debito justitiae in cases where grave and substantial injustice has been done or where the process of the court has been seriously abused. It is not merely a revisional power meant to be exercised against the orders passed by subordinate courts. It was under this section that in the old Code,the High Courts used to quash the proceedings or expunge uncalled for remarks against witnesses or other persons or

(2)(ii) Nature and scope of inherent power - S. 482 and other provisions of CrPC *(contd.)*

subordinate courts. Thus, the scope, ambit and range of S. 561-A (which is now S. 482) is quite different from the powers conferred by the present Code under the provisions of S. 397. It may be that in some cases there may be overlapping but such cases would be few and far between. It is well-settled that the inherent powers under S. 482 of the present Code can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. Further, the power being an extraordinary one, it has to be exercised sparingly. If these consideration are kept in mind, there will be no inconsistency between Ss. 482 and 397(2) of the present Code. *MCD* v. *Ram Kishan Rohtagi*, (1983) 1 SCC 1: 1983 SCC (Cri) 115: AIR 1983 SC 67: 1983 Cri LJ 159.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *E.S. Venkataramiah*, JJ. [Date of decision: 1-12-1982]

[7052] — Ss. 482, 341 and 397(2) — High Court has inherent jurisdiction under S. 482 to interfere with an appellate order passed under S. 341, though such order is not revisable under S. 397(2) — *High Court under S. 482 must apply its mind for being satisfied whether the order directing complaint to be filed was expedient in the interest of justice — High Court's refusal to invoke its inherent power, without applying its mind, therefore, not justified — Case remitted to High Court. Lalit Mohan Mondal* v. *Benoyendra Nath Chatterjee*, (1982) 3 SCC 219: 1982 SCC (Cri) 697: AIR 1982 SC 785: 1982 Cri LJ 625: 1982 MLJ (Cri) 329.

Bench Strength 2. Coram: *S. Murtaza Fazal Ali* and *V. Balakrishna Eradi*, JJ. [Date of decision: 14-4-1981]

[7053] — Ss. 482 & 357 — S. 482 which saves the inherent powers of High Court cannot override express provision contained in S. 357 which saves that power

The application made by the heirs of the deceased for compensation cannot be made under S. 482 since S. 357 expressly confers power on the court to pass an order for payment of compensation in the circumstances mentioned therein. That does not, however, affect the power of the High Court to deal with the application because though the application was wrongly described as having been made under S. 482 the High Court could deal with it as if it were made under S. 357 of the Code. *Palaniappa Gounder* v. *State of T.N.*, (1977) 2 SCC 634: 1977 SCC (Cri) 397: AIR 1977 SC 1323: 1977 Cri LJ 992: (1977) 3 SCR 132: (1978) 1 MLJ 13 (SC).

Bench Strength 2. Coram: **Y.V. Chandrachud** and *P.K. Goswami*, JJ. [Date of decision: 4-3-1977]

[7054] — Ss. 482 and 397 — Invocation of inherent power of High Court after dismissal of revision petition — *Inherent power should be sparingly and cautiously exercised — When revision petition filed by accused persons under S. 397 had earlier been dismissed by High Court, held, it erred in entertaining petition filed by them under S. 482 seeking the same relief, in absence of any special circumstances — On merits also the High Court erred in passing the order it did*

Pursuant to a complaint lodged with the police by the appellant against the respondents, a case was registered against Respondents 1 to 9 under various provisions of IPC. As charge under Section 395 IPC was not added and names of four persons (Respondents 10 to 13) were wrongly dropped, applications were filed by the appellant for inclusion of charge under Section 395 IPC and names of those four respondents. The Magistrate allowed the applications and committed the case to Sessions Court, whereafter the Addl. Sessions Judge, being the trial court, framed charges against all the respondents, including the four respondents and adding the charge under Section 395 IPC. The respondents, except the said four, were on bail granted under Section 436 CrPC and after addition of the non-bailable offence under Section 395 IPC the Magistrate as well as the Addl. Sessions Judge had issued non-bailable warrants against the accused persons. A revision having been preferred before the High Court under Section 397 CrPC challenging the order of the Magistrate taking cognizance of the offence under Section 395 IPC and for impleading the four respondents, the High Court observed that issuance of non-bailable warrants was not proper. When the High Court directed the accused persons to appear before the trial court and furnish their bail bonds, the counsel for the accused did not press his petition so far as taking of cognizance against them was concerned. Thereafter, the respondents filed a petition under Section 482 CrPC. The High Court held that the Magistrate, being the court of committal, had no power to add the four respondents as accused persons without adopting procedure as prescribed under Section 203 of the Code, and allowed the petition of the respondents and set aside the order of the court by which cognizance of offence under Section 395 IPC was taken. It remanded the case to the Magistrate to hold enquiry as per the provisions of Section 203(2) of the Code with direction that if he finds that a case under Section 395 IPC is made out, he will pass necessary orders against the accused persons and commit the case to the Sessions Judge, if necessary. Allowing the appeal, setting aside the order of the High Court and upholding the order of the Addl. Sessions Judge,

Held :

The object of criminal trial is to render public justice and to assure punishment to the criminals keeping in view that the trial is concluded expeditiously. Delaying tactics or protracting the commencement or conclusion of the criminal trial is required to be curbed effectively, lest the interest of public justice may suffer. Though the power of the High Court under Section 482 of the Code is very wide, yet the same must be exercised sparingly and cautiously, particularly in a case where the petitioner is shown to have already invoked the revisional jurisdiction under Section 397 of the Code. Only in cases where the High Court finds that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may, in its discretion, prevent the abuse of the process or miscarriage of justice by exercise of jurisdiction under Section 482 of the Code. (Para 7)

When the earlier revision petition filed under Section 397 of the Code had been dismissed as not pressed, the accused-respondents could not be allowed to invoke the inherent powers of the High Court under Section 482 of the Code for the grant of the same relief. No special circumstances were spelt out in the subsequent application for invoking the jurisdiction of the High Court under Section 482 and the impugned order is liable to be set aside on this ground alone. It is not possible to accept the contention that as the earlier application had been dismissed as not pressed, the accused had acquired a right to challenge the order adding the offence under Section 395 of the Code and arraying four persons as accused persons by way of subsequent petition under Section 482 of the Code. (Paras 7 and 8)

Even on merits, the High Court committed a mistake of law by referring to the provisions of Section 203 of the Code and after setting aside the impugned order directing the Judicial Magistrate to hold enquiry as per Section 203(2) of the Code before deciding the inclusion of offence under Section 395 IPC or impleadment of the respondents as accused persons. Chapter XV of the Code comprising of Sections 200 to 203 deals with the complaints to the Magistrate and the procedure prescribed for dealing with such complaints. In the instant case, no complaint was filed before the Magistrate by the complainant requiring him to follow the procedure under Chapter XV. Reference to sub-section (2) of Section 203 of the Code is misconceived inasmuch as no such sub-section exists in the statute-book. (Para 9). *Rajinder Prasad* v. *Bashir*, (2001) 8 SCC 522: 2002 SCC (Cri) 28: AIR 2001 SC 3524.

Bench Strength **2**. Coram: *M.B. Shah* and **R.P. Sethi**, JJ. [Date of decision: 19-9-2001]

Krishnan v. Krishnaveni, (1997) 4 SCC 241: 1997 SCC (Cri) 544; Raghubans Dubey v. State of Bihar, AIR 1967 SC 1167: (1967) 2 SCR 423: 1967 Cri LJ 1081; SWIL Ltd. v. State of Delhi, (2001) 6 SCC 670, relied on

(2001) 1 Raj Cri Cas 33, reversed

[7055] — Ss. 482 and 397 — Scope — High Court's power under either provision, held, is separate from that under the other. *Jitender Kumar Jain* v. *State of Delhi*, (1998) 8 SCC 770.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 23-1-1995]

[7056] — Ss. 482 and 397/401 — Order obtained from High Court under S. 482 without disclosing that an earlier revision petition had been dismissed by the High Court not sustainable — *However, interim order passed by the High Court will operate for 10 days — In the meantime applicants in the application under S. 482 can move the High Court to obtain appropriate order. Murlidhar* v. *State of U.P.*, 1995 Supp (3) SCC 662: 1995 SCC (Cri) 1110.

Bench Strength **3**. Coram: *A.M. Ahmadi, C.J.* and *M.K. Mukherjee* and *S.C. Sen*, JJ. [Date of decision: 6-1-1995]

[7057] — Ss. 482 and 397(3) — High Court's inherent jurisdiction under S. 482, held, remains unaffected by provisions of S. 397(3) — *Fact that the impugned order was an interlocutory order of the Court of Session, held, immaterial*

Even if it is an interlocutory order, the High Court's inherent jurisdiction under Section 482 is not affected by the provisions of Section 397(3) CrPC. That the High Court may refuse to exercise its jurisdiction under Section 482 on the basis of self-imposed restriction is a different aspect. It cannot be denied that for securing the ends of justice, the High Court can interfere with the order which causes miscarriage of justice or is palpably illegal or is unjustified. (Para 17). *Puran* v. *Rambilas*, (2001) 6 SCC 338: 2001 SCC (Cri) 1124: AIR 2001 SC 2023: 2001 Cri LJ 2566.

Bench Strength **2**. Coram: *M.B. Shah* and **S.N. Variava**, JJ. [Date of decision: 3-5-2001]

Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10; Krishnan v. Krishnaveni, (1997) 4 SCC 241: 1997 SCC (Cri) 544, relied on

(2)(ii) Nature and scope of inherent power - S. 482 and other provisions of CrPC *(contd.)*

[7058] — Ss. 482 and 397(3) — Inherent power under S. 482 cannot be utilised for exercising powers expressly barred by the Code — Hence second revision after dismissal of the first one by Sessions Court not maintainable. *Dharampal* v. *Ramshri*, (1993) 1 SCC 435: 1993 SCC (Cri) 333: AIR 1993 SC 1361: (1993) 1 Crimes 304: (1993) 1 An WR 60 (SC): (1993) 1 BLJR 361.

Bench Strength **2**. Coram: **P.B. Sawant** and *R.M. Sahai*, JJ. [Date of decision: 7-1-1993]

Overruled in (1997) 4 SCC 241

[7059] — Ss. 482 and 397(3) — Petition under S. 482 — Maintainability — *Court of Session dismissing the revision petition — Petition under S. 482 filed against such revisional order, held, should not have been dismissed by High Court merely because in such a case a second revision petition before High Court did not lie — It was otherwise open to High Court not to interfere in the matter when examining the case under S. 482. Jitender Kumar Jain* v. *State of Delhi*, (1998) 8 SCC 770.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 23-1-1995]

[7060] — Ss. 482 and 397(3) — Second revision after dismissal of the first one by the Sessions Court not maintainable — *Inherent power cannot be utilised for exercising powers expressly barred by the Code. Deepti* v. *Akhil Rai*, (1995) 5 SCC 751: 1995 SCC (Cri) 1020.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **G.T. Nanavati**, JJ. [Date of decision: 14-9-1995]

[7061] — Ss. 482 & 399(3) and 245(1) & 246(1) — Dismissal of revision by Sessions Judge — *Held, does not bar the High Court from exercising its inherent powers — However, the High Court should not act as a second revisional court — Nor can it enter into merits of the case and pronounce upon the truth and correctness of the complaint or defence — It can interfere only to prevent abuse of process of court or otherwise to secure ends of justice*

While it is true that availing of the remedy of the revision to the Sessions Judge under Section 399 does not bar a person from invoking the power of the High Court under Section 482, it is equally true that the High Court should not act as a Second Revisional Court under the garb of exercising inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the learned Sessions Judge has declined to exercise his revisory power in the matter. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of court or that the interests of justice otherwise call for quashing of the charges. (Para 12)

In the present case the High Court has gone beyond the purview of Section 482 in quashing the charge. The High Court has not held that the evidence adduced by the complainant, oral and documentary, if unrebutted, would not have warranted the conviction of the accused within the meaning of Section 245(1) CrPC nor has it held that on the evidence adduced, the learned Magistrate could not have reasonably formed an opinion that there is ground for presuming that the accused has committed an offence, as contemplated by Section 246(1) CrPC. (Para 14)

The Sessions Judge has expressed the opinion that since the Magistrate has framed the charge on a proper consideration of oral and documentary evidence and on forming the requisite opinion, no interference is called for. As against this, the judgment of the High Court shows that it has entered into the merits of the case and pronounced upon the truth and correctness of the complaint and the defence. While acting under Section 482 and that too after the learned Sessions Judge had declined to interfere in the matter, the High Court ought not to have entered the arena of appreciation of evidence nor should it have recorded a finding that the complaint was the result of political differences or that it was more a matter of prestige than a genuine proceeding. (Paras 16 and 17). *Ganesh Narayan Hegde* v. *S. Bangarappa*, (1995) 4 SCC 41: 1995 SCC (Cri) 634: 1995 Cri LJ 2935.

Bench Strength **2**. Coram: **B.P. Jeevan Reddy** and *S.B. Majmudar*, JJ. [Date of decision: 20-4-1995]

Dhanalakshmi v. R. Prasanna Kumar, 1990 Supp SCC 686: 1991 SCC (Cri) 142; State of Bihar v. Murad Ali Khan, (1988) 4 SCC 655: 1989 SCC (Cri) 27, followed

S. Bangarappa v. Ganesh N. Hegde, 1992 Cri LJ 3788 (Kant), reversed

[7062] — Ss. 482 and 401 — Maintainability — Review application before High Court under S. 482 for review of its judgment and order passed in revision, held, cannot be entertained — *Appeal against trial court's order of conviction dismissed by appellate court — In revision High Court found that appellate court had elaborately dealt with the evidence on record and rightly dismissed the appeal — Application filed before High Court purportedly under S. 482 for recalling its judgment and order passed in revision — Held, High Court rightly took the view that application under S. 482* *was not maintainable. Mohd. Yaseen* v. *State of U.P.*, (2007) 7 SCC 49: (2007) 3 SCC (Cri) 297: (2007) 5 All LJ 326: (2007) 56 AIC 10 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 17-7-2007]

State of Orissa v. Ram Chander Agarwala, (1979) 2 SCC 305: 1979 SCC (Cri) 462; Hari Singh Mann v. Harbhajan Singh Bajwa, (2001) 1 SCC 169: 2001 SCC (Cri) 113, relied on

[7063] — Ss. 482 and 401 — Revisional jurisdiction of High Court — Power to act suo motu where punishment inadequate — *Effect of S. 377 — Supreme Court would not interfere with such exercise of power — Constitution of India — Art. 136 — CrPC, 1898, Ss. 561-A and 499*

The High Court is not required to act in revision merely through a conduit application at the instance of an aggrieved party. The High Court, as an effective instrument for administration of criminal justice, keeps a constant vigil and wherever it finds that justice has suffered, it takes upon itself as its bounden duty to act suo motu where there is flagrant abuse of the law. The character of the offence and the nature of disposal of a particular case by the subordinate court prompt remedial action on the part of the High Court for the ultimate social good of the community, even though the State may be slow or silent in preferring an appeal provided for under the new Code. The High Court in a given case of public importance reacts to public concern over the problem and may act suo motu on perusal of newspaper reports disclosing imposition of grossly inadequate sentence upon such offenders.

Section 377 does not exclude revisional jurisdiction of the High Court to act suo motu for enhancement of sentence in appropriate cases. What is an appropriate case has to be left to the discretion of the High Court.

The Supreme Court will be slow to interfere with exercise of such discretion under Art. 136 of the Constitution.

Section 401 expressly preserves the power of the High Court, by itself, to call for the records without the intervention of another agency and has kept alive the ancient exercise of power when something extraordinary comes to the knowledge of the High Court. The provisions under S. 401 read with S. 386(*c*)(*iii*) CrPC, 1973 are clearly supplemental to those under S. 377 whereby appeals are provided for against inadequacy of sentence at the instance of the State Government or Central Government, as the case may be. *Nadir Khan* v. *State (Delhi Admn.)*, (1975) 2 SCC 406: 1975 SCC (Cri) 622: AIR 1976 SC 2205: 1976 Cri LJ 1721.

Bench Strength 1. Coram: **P.K. Goswami**, J. [Date of decision: 3-6-1975]

[7064] — Ss. 482 and 397 — Availability of alternative remedy of filing revision under S. 397, held, could not be a ground to dismiss application under S. 482 — *Even where a revision application is barred, remedies under Arts. 226/227 of the Constitution would be available — Even in cases where a second revision before High Court after dismissal of first one by Sessions Court is barred under S. 397(3), the inherent power of the Court is available — Inherent power of High Court is not conferred by statute but has merely been saved thereunder — On facts, criminal complaint filed against the appellants — Cognizance taken thereof and summons issued to them — High Court dismissing their application under S. 482, without entering into the merits, inter alia, on the ground of availability of alternative remedy of filing revision under S. 397 — Sustainability — Held, High Court's judgment unsustainable, hence, set aside, with the direction for considering the matter afresh on merits — Constitution of India — Arts. 226 and 227 — CPC, 1908, S. 115* (Paras 1, 6, 7, 2 and 12). *Dhariwal Tobacco Products Ltd.* v. *State of Maharashtra*, (2009) 2 SCC 370.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 17-12-2008]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866; Som Mittal v. Govt. of Karnataka, (2008) 3 SCC 574: (2008) 2 SCC (Cri) 1: (2008) 1 SCC (L&S) 910; Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675; Krishnan v. Krishnaveni, (1997) 4 SCC 241: 1997 SCC (Cri) 544; Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338: 2004 SCC (Cri) 1927; Amar Nath v. State of Haryana, (1977) 4 SCC 137: 1977 SCC (Cri) 585; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; CBI v. Ravi Shankar Srivastava, (2006) 7 SCC 188: (2006) 3 SCC (Cri) 233, relied on

Vishwanath Ramkrishna Patil v. Ashok Murlidhar Sonar, (2006) 5 Mah LJ 671; Keki Bomi Dadiseth v. State of Maharashtra, (2002) 3 Mah LJ 246, approved

V.K. Jain v. Pratap V. Padode, (2005) 30 Mah LJ 778, overruled

[7065] — Ss. 482 and 483 — Exercise of power under — Scope — *Held, power of High Court can be exercised not only in terms of S. 482 but also in terms of S. 483 thereof* (Para 7). *Dhariwal Tobacco Products Ltd.* v. *State of Maharashtra*, (2009) 2 SCC 370.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 17-12-2008]

[7066] — Ss. 482 and 407 — High Court's power to transfer cases pending before different courts within its jurisdiction to a single court — *Cases lodged against a company and its former Director (respondent) by different people who were said to have been defrauded by them — Despite the fact that the order in* V.K. Sharma *case stated that the said order was not to be treated as a precedent, High Court mechanically following the said case*

(2)(ii) Nature and scope of inherent power - S. 482 and other provisions of CrPC *(contd.)*

and transferring the cases pending in different courts in the State of Punjab against the respondent to the Special Judicial Magistrate, Patiala — Decisions in V.K. Sharma *and* P.K. Sharma cases *on the point in question, held, were passed contrary to law — Hence, overruled — Reliance placed by respondent on Ss. 218 and 220 CrPC to justify his plea for the consolidation of cases, held, was of no assistance — Further, it was also not a case where the High Court had sought to invoke its jurisdiction under S. 482 and transfer the cases so as to prevent the abuse of the process of any court or to secure the ends of justice — Hence, High Court's impugned order set aside* (Paras 3, 7, 8, 9 and 6). *State of Punjab* v. *Rajesh Syal*, (2002) 8 SCC 158: 2002 SCC (Cri) 1867: AIR 2002 SC 3687.

Bench Strength **3**. Coram: *B.N. Kirpal, K.G. Balakrishnan* and *Arijit Pasayat*, JJ. [Date of decision: 4-10-2002]

V.K. Sharma v. Union of India, (2000) 9 SCC 449: 2001 SCC (Cri) 467; P.K. Sharma v. Union of India, WP (Crl.) Nos. 72-75 of 2000, dated 5-5-2000 (SC), overruled

[7067] — Ss. 482, 436 and 81 — Bailable offence — Forfeiture/Cancellation of bail granted by Magistrate under S. 482 on ground of violation of principles of natural justice — Bail cancelled on ground that complainant's right of being heard not complied with by Magistrate while granting bail — Sustainability — *Magistrate in an alleged offence under Ss. 399 and 500 IPC for defamatory remarks made by accused against complainant on a TV channel granting bail the very same day by noticing that offences alleged to have been committed were bailable — High Court cancelling bail on the ground that opportunity of hearing was not given to the complainant, held, unsustainable — Penal Code, 1860, Ss. 399 and 500*

The respondent filed a complaint case against the appellant-accused on the ground that the appellant-accused gave a defamatory interview against him on a TV channel. When the appellant-accused approached the Magistrate for grant of bail, the same was granted the very same day without hearing the respondent complainant by noticing that the offences alleged to have been committed were bailable offences under Sections 499 and 500 IPC. The High Court in a Section 482 CrPC petition filed by the respondent complainant cancelled the bail of the appellant-accused on the ground that the principles of natural justice had not been followed in as much as the complainant was not heard on the issue of grant of bail. Aggrieved thereagainst, the appellant-accused invoked the remedy under Article 136 of the Constitution of India.

Allowing the appeal,

Held :

The bail granted to the appellant for alleged commission of bailable offence could not have been cancelled by the High Court on the ground that the respondent complainant was not heard by the Magistrate while granting bail and that the principles of natural justice were violated. Principles of natural justice are not a "mantra" to be applied in a vacuum in all cases. The question as to what extent, the principles of natural justice are required to be complied with, will depend upon the facts of the case. They are not required to be complied with when it will lead to an empty formality. Therefore, the order of the High Court cancelling the bail granted to the appellant is hereby set aside and the order passed by the Magistrate is restored. (Paras 19 to 21)

The right to claim bail granted by Section 436 CrPC in a bailable offence is an absolute and indefeasible right. In bailable offences there is no question of discretion in granting bail as the words of Section 436 are imperative. As soon as it appears that the accused person is prepared to give bail, the police officer or the court before whom he offers to give bail, is bound to release him on such terms as to bail as may appear to the officer or the court to be reasonable. It would even be open to the officer or the court to discharge such person on his executing a bond as provided in Section 436 instead of taking bail from him. (Paras 10 and 9)

The only choice available to the officer or the court is as between taking a simple recognizance of the accused and demanding security with surety. The persons contemplated by Section 436 cannot be taken into custody unless they are unable or willing (*sic* unwilling) to offer bail or to execute personal bonds. There is no manner of doubt that bail in a bailable offence can be claimed by the accused as of right and the officer or the court, as the case may be, is bound to release the accused on bail if he is willing to abide by reasonable conditions which may be imposed on him. (Para 10). *Rasiklal* v. *Kishore*, (2009) 4 SCC 446.

Bench Strength **2**. Coram: *R.V. Raveendran* and **J.M. Panchal**, JJ. [Date of decision: 20-2-2009]

State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364: 1996 SCC (L&S) 717; Karnataka SRTC v. S.G. Kotturappa, (2005) 3 SCC 409: 2005 SCC (L&S) 484, relied on

[7068] — Ss. 482, 436 and 81 — Forfeiture/Cancellation of bail granted by Magistrate in a bailable offence — Illustrations of subsequent conduct given that might be prejudicial to fair trial, thereby enabling invocation of inherent power under S. 482 to cancel bail

A person accused of a bailable offence is entitled to be released on bail pending his trial, but he forfeits his right to be released on bail if his conduct subsequent to his release is found to be prejudicial to a fair trial. And this forfeiture can be made effective by invoking the inherent powers of the High Court under Section 482 CrPC. Bail granted to an accused with reference to bailable offence can be cancelled only if the accused (*1*) misuses his liberty by indulging in similar criminal activity, (*2*) interferes with the course of investigation, (*3*) attempts to tamper with evidence of witnesses, (*4*) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (*5*) attempts to flee to another country, (*6*) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (*7*) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. (Paras 12 and 13). *Rasiklal* v. *Kishore*, (2009) 4 SCC 446.

Bench Strength **2**. Coram: *R.V. Raveendran* and **J.M. Panchal**, JJ. [Date of decision: 20-2-2009]

Arun Kumar v. State of Bihar, (2008) 3 SCC 203: (2008) 1 SCC (Cri) 716, distinguished

[7069] — **Ss. 482 and 433 — Premature release of convict — High Court has no jurisdiction under Art. 226 or S. 482 to commute the sentence and release a prisoner** — *It can only direct the appropriate Govt. to consider the commutation of sentence and prematurely release a particular convict if he has served the mandatory minimum sentence — High Court erred in directing release of the convict on ground that the State had not filed any counter-affidavit — Constitution of India, Art. 226. UT, Chandigarh* v. *Charanjit Kaur*, (1996) 7 SCC 492.

Bench Strength **2**. Coram: *K. Ramaswamy* and *G.B. Pattanaik*, JJ. [Date of decision: 15-2-1996]

[7070] — **Ss. 482 and 439 — Powers under S. 482 — Invocation of, for grant of bail** — *Held, not permissible when there is a specific provision in the Code for the same — Said power when to be exercised, explained*

The High Court has also invoked powers under Section 482 CrPC while granting bail to the respondents. Section 482 CrPC saves the inherent power of the High Court. The High Court possesses the inherent powers to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. The power has to be exercised to prevent abuse of the process of the court or to otherwise secure the ends of justice. But this power cannot be resorted to if there is a specific provision in the Code for the redressal of the grievance of the aggrieved party. There being a specific provision for grant of bail, the High Court clearly erred in taking recourse to Section 482 CrPC while enlarging the respondents on bail. (Para 16). *State of Gujarat* v. *Salimbhai Abdulgaffar Shaikh*, (2003) 8 SCC 50: AIR 2003 SC 3224.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 8-9-2003]

Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10, relied on

[7071] — **Ss. 482 and 451 — Release of confiscated vehicle involved in a forest offence during pendency of proceedings — Grounds for** — *High Court directing release of such vehicle since expeditious disposal of proceedings not possible and on grounds of equity — Propriety of — Held, though power of the High Court to direct interim release is undisputed but it is to be exercised for good reasons and in exceptional cases only — Delay in disposal of proceedings, held, not a sufficient ground — Further held, while doing so minimum condition of furnishing a bank guarantee is to be strictly complied with — Karnataka Forest Rules, 1969, R. 69 — Forest Act, 1927, S. 53 — Karnataka Forest Act, 1963 (5 of 1964), Ss. 62, 63, 71-A and 71-G* (Paras 6, 8 to 10). *Section Forestor* v. *Mansur Ali Khan*, (2004) 1 SCC 293: 2004 SCC (Cri) 333: AIR 2004 SC 1251.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 11-12-2003]

State of Karnataka v. K. Krishnan, (2000) 7 SCC 80: 2000 SCC (Cri) 1289, relied on

[7072] — **S. 482 and Ss. 438/439 — Conversion of application filed under S. 482 to one for bail — Impermissibility** — *Bail granted to Respondent 1-accused without serving notice on the appellant, inspite of such direction given by the court — Hence, impugned order set aside and matter remanded for fresh consideration* (Paras 2, 4 and 5). *Savitri Goenka* v. *Kusum Lata Damani*, (2007) 14 SCC 373: (2007) 60 AIC 31 (SC): 2008 Cri LJ 441.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 2-11-2007]

[7073] — **Ss. 482, 397, 401, 239, 240 and 173 — Jurisdiction of High Court to quash criminal proceedings — Held, once charges are framed High Court, in its revisional jurisdiction, not justified in quashing the same relying upon documents other than those referred to in Ss. 239 and 240** — *Nor would the High Court be justified in invoking its inherent jurisdiction to quash the proceedings except where forensic exigencies and formidable compulsions justify such a course — Even in such exceptional cases High Court can look into only those documents which are relevant and unimpeachable — Quashing of criminal proceedings on the basis of affidavits filed by the parties not proper*

(2)(ii) Nature and scope of inherent power - S. 482 and other provisions of CrPC *(contd.)*

If charges are framed in accordance with S. 240 CrPC on a finding that a prima facie case has been made out the person arraigned may, if he feels aggrieved invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted under S. 173 CrPC and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. To put it differently, once charges are framed under S. 240 CrPC the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Ss. 239 and 240 CrPC; nor would it be justified in invoking its inherent jurisdiction under S. 482 CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. Even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.

In the present case instead of adverting to and confining its attention to the documents referred to in Ss. 239 and 240 CrPC the High Court has dealt with the rival contentions of the parties raised through their respective affidavits at length and on a threadbare discussion thereof passed the impugned order. The course so adopted cannot be supported; firstly, because finding regarding commission of an offence cannot be recorded on the basis of affidavit evidence and secondly, because at the stage of framing of charge the Court cannot usurp the functions of a trial court to delve into and decide upon the respective merits of the case. *Minakshi Bala* v. *Sudhir Kumar*, (1994) 4 SCC 142: 1994 SCC (Cri) 1181.

Bench Strength **2**. Coram: *S.C. Agrawal* and **M.K. Mukherjee**, JJ. [Date of decision: 10-5-1994]

[7074] — Ss. 482, 397, 166-A and 401 — Public interest litigation — Standing — Revision petition — Maintainability — *Bofors gun deal case — FIR registered by CBI against named and unnamed persons including politicians and govt. officials already involved in receiving bribe/kickbacks in the deal — Investigation commenced — Application moved by CBI before Special Judge for issue of letter rogatory to Switzerland for assistance in investigation — Miscellaneous petition filed under Art. 51-A before Special Judge by an advocate claiming to be Secretary of an organisation devoted to uphold rule of law, fight against injustice and abide by the Constitution, inter alia for not issuing the letter rogatory on mere formal request of CBI unless allegations against named persons established — Petition dismissed — Revision petition filed before High Court by the advocate challenging not only the order of dismissal but also the very registration of FIR and investigation carried on by CBI — Revision petition dismissed on ground of absence of locus standi of the petitioner-advocate but suo motu cognizance taken in exercise of powers under Ss. 397, 401 and 482 and the office directed to register a case under title 'Court on its own Motion v. State and CBI' — Held, the advocate had no locus standi and High Court's suo motu action interfering with FIR and investigation illegal and perverse — Constitution of India, Arts. 51-A & 136. Janata Dal* v. *H.S. Chowdhary*, (1992) 4 SCC 305: 1993 SCC (Cri) 36: AIR 1993 SC 892.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 28-8-1992]

[7075] — Ss. 482, 227 and 190 — Magistrate issuing process against more persons on the basis of private complaint — *Power of High Court to interfere with such exercise of power — Propriety of High Court going into merits at such stage — Right of such accused to pray for discharge upon committal under S. 227. Hareram Satpathy* v. *Tikaram Agarwala*, (1978) 4 SCC 58: 1978 SCC (Cri) 496: AIR 1978 SC 1568: 1978 Cri LJ 1687.

Bench Strength **2**. Coram: **Jaswant Singh** and *P.S. Kailasam*, JJ. [Date of decision: 24-8-1978]

[7076] — Ss. 482 and 204 — Recourse to S. 482 — Estoppel to taking recourse to, based on conduct — Challenge to process issued under S. 204 *— Held, party aggrieved cannot be estopped from having recourse to S. 482 (it being the only course open to it to challenge process issued under S. 204, as affirmed in this case) because of his conduct in successfully having kept trial in abeyance by filing one proceeding after another — Complaint filed against company and four of its Directors under S. 138, Negotiable Instruments Act, 1881 — Company challenging validity of statutory notice issued under and issuance of process based thereon all the way to Supreme Court under Art. 136 — However, SLP dismissed as withdrawn — Thereafter appellant, a Director of said company, challenging validity of said statutory notice and issuance of process based thereon all the way up to the present appeal — Supreme Court and High Court in earlier proceedings had directed question of validity of said statutory notice issued under S. 138, Negotiable Instruments Act, 1881 to be considered at trial* *stage — Even in light of the same, and conduct of appellant in initiating one proceeding after another, even up to the Supreme Court, thereby successfully managing to keep trial in abeyance in proceedings initiated in 1996, held, an accused person (the appellant) cannot be prevented from taking recourse to a remedy which is available in law — Hence, while permission sought by the appellant from Supreme Court to file a petition under S. 482 is not being granted, the statutory right available to him in law cannot be denied — The court concerned entertaining the application under S. 482, would undoubtedly take the said conduct of appellant into account — Evidence Act, 1872, S. 115* (Para 19). *Subramanium Sethuraman* v. *State of Maharashtra*, (2004) 13 SCC 324: 2005 SCC (Cri) 242: AIR 2004 SC 4711: 2004 Cri LJ 4609: (2005) 1 Mah LJ 626.

Bench Strength **3**. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *Tarun Chatterjee*, JJ. [Date of decision: 17-9-2004]

[**Ed.**: *See also* Art. 136, '(g)(3) Exercise of power under by Supreme Court — Relief — Conduct of parties', pp. 783 et seq.,

'(b)(2) *Plenary jurisdiction under Art. 136', pp. 247 et seq., and*

'(c)(4) *Equity jurisdiction — Conduct of parties', pp. 291 et seq. in Complete Digest of Supreme Court Cases*, **Vol. 8.**]

[7077] — Ss. 482 and 227, 239 & 245 — Jurisdiction of High Court under, for quashing criminal proceedings — Held, can be exercised even when application for discharge of the accused pending with the trial Judge — *Such power should be exercised cautiously to prevent abuse of process of court — FIR lodged by GM of a Finance Company roping in the appellants and their family members in order to coerce them to refund the amount borrowed by them from the Company — Consequent proceedings initiated for alleged offence under Ss. 406/420 IPC — Complaint under S. 138 of Negotiable Instruments Act already pending against the appellants and others — Held on facts, FIR and the criminal prosecution for the alleged offence under Ss. 406/420 IPC amounted to abuse of process of law and hence the proceedings liable to be quashed — Constitution of India, Art. 227*

Respondent 2, GM of a Finance Company, lodged a first information report against seven persons including the two appellants alleging that they as Directors of an Automobile Company had taken a short-term loan of Rs 50 lakhs from the Finance Company but the cheques drawn by them by way of repayment of the loan with interest on presentation were dishonoured by the bank for insufficient funds. Police submitted a charge-sheet for offence under Sections 406/420 IPC against the two appellants and their family members describing all of them as Directors of the said Automobile Company. But during investigation the appellants were found to be not Directors of the said Company. In counter-affidavit filed on behalf of the complainant, apart from making an omnibus statement that the first appellant with dishonest intention and misrepresentation got the loan, nothing had been said as to what those misrepresentations were, how the Finance Company was duped, what were the roles played by the appellants and others in the alleged offence and why the charge-sheet was filed only against the appellants and their family members leaving out the other Directors of the Automobile Company. Though criminal complaint under Section 138 of the Negotiable Instruments Act was already pending at the time of filing the FIR but the charge-sheet relating to the alleged offence under Sections 406/420 IPC did not show if the investigating agency looked into the complaint filed under Section 138 of the said Act. The appellants filed an application under Section 482 CrPC seeking quashing of the criminal proceedings pending against them under Sections 406/424 IPC in the Court of CJM. The High Court dismissed the application.

Allowing the appeal,

Held :

In the present case the whole attempt of the complainant is evidently to rope in all the members of the family particularly the appellants who are the parents of the Managing Director of the Automobile Company without regard to their role or participation in the alleged offences with the sole purpose of getting the loan due to the Finance Company by browbeating and tyrannising the appellants with criminal prosecution. A criminal complaint under Section 138 of the Negotiable Instruments Act is already pending against the appellants and other accused. They would suffer the consequences if offence under Section 138 is proved against them. In any case there is no occasion for the complainant to prosecute the appellants under Sections 406/420 IPC and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed. Accordingly, the judgment of the High Court is set aside and prosecution of the appellants under Sections 406/420 IPC is quashed. (Paras 14 and 15)

Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter,

(2)(ii) Nature and scope of inherent power - S. 482 and other provisions of CrPC *(contd.)*

which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. The Supreme Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. Merely because the accused persons had already filed an application in the Court of Additional Judicial Magistrate for their discharge, it cannot be urged that the High Court cannot exercise its jurisdiction under Section 482 of the Code. Though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial. (Paras 8 and 7). *G. Sagar Suri* v. *State of U.P.*, (2000) 2 SCC 636: 2000 SCC (Cri) 513: AIR 2000 SC 754: 2000 Cri LJ 824: 2000 All LJ 496.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **D.P. Wadhwa, JJ.** [Date of decision: 28-1-2000]

State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; Kurukshetra University v. State of Haryana, (1977) 4 SCC 451: 1977 SCC (Cri) 613; Chandrapal Singh v. Maharaj Singh, (1982) 1 SCC 466: 1982 SCC (Cri) 249; Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; Ashok Chaturvedi v. Shitul H. Chanchani, (1998) 7 SCC 698: 1998 SCC (Cri) 1704, relied on

***Followed in** All Cargo Movers India (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776*

[7078] — Ss. 482 and 250 — Quashment — Commercial transactions — Misuse of — Criminal proceedings — Need for exercise of power under S. 250 — *If allegations in the complaint, taken at their face value, disclose a criminal offence, complaint cannot be quashed merely because it relates to a commercial transaction or breach of contract for which civil remedy is available or has been availed — A commercial transaction or dispute may also involve criminal offence — If it is found that a frivolous criminal complaint had been filed knowing well that remedy lay only in civil law, person who filed such complaint should himself be made accountable in accordance with law at the end of such proceeding — Court should exercise power under S. 250 CrPC frequently where there is malice or frivolousness or ulterior motives on the part of the complainant*

The appellant Indian Oil Corporation (IOC) entered into a contract with the respondent NEPC India Ltd., agreeing to supply aircraft fuel. According to the appellant, in respect of the fuel supplied under the contract, the respondent committed default in making payments. The respondent hypothecated its two aircrafts to the appellant under a deed. It was stipulated in clause (2) of the deed that the hypothecation was by way of charge and as security for payment of the amounts due. Clause (3) read with the schedule set out the instalments' schedule for payment of the amount due. Under clause (6), NEPC India declared that it would not assign, sell, pledge, charge, underlet or otherwise encumber or part with the possession, custody or beneficial interest in respect of the two aircrafts without the previous written consent of IOC. It also undertook not to do any act which may diminish the value of the hypothecated property without clearing the entire outstanding amount. Clause (9) provided that if NEPC India failed to pay any of the instalments with interest within the stipulated time, or if any undertaking or assurance given by NEPC India was found to be false, IOC shall have the "right to take possession of the hypothecated property" and sell the same by public auction or by private contract and appropriate the sale proceeds towards the outstanding dues without recourse to court of law. Clause (12) confirmed that NEPC India had handed over the title deeds relating to the aircraft to IOC, and agreed to receive them back only after paying the amounts due. As the respondent failed to pay the first two instalments as per the schedule, appellant stopped supply of fuel. However, subsequently, under a fresh agreement, a revised payment schedule was agreed upon and the appellant agreed to recommence supply of aircraft fuel on "cash-and-carry" basis. But this agreement also came to an end as the instalments were not paid. Apprehending that the respondent may remove one of the hypothecated aircraft from Coimbatore Airport to a place outside its reach, the appellant filed a suit in the High Court seeking a mandatory injunction to the authorities concerned to detain the aircraft so as to enable it to take possession thereof. The High Court granted an interim injunction. In regard to the other hypothecated aircraft kept at Chennai Airport the appellant filed another suit in City Civil Court for a similar mandatory injunction. The appellant then filed two complaints against NEPC India and its two directors under Section 200 CrPC alleging that NEPC India unauthorisedly and clandestinely removed the engines and certain other parts from the two hypothecated aircrafts so as to defeat IOC's right to take possession of the two aircrafts in view of default in payments made by NEPC India and further that such act was against the terms of the hypothecation deed and would amount to offences punishable under Sections 378 (theft), 403 (dishonest misappropriation of property), 405 (criminal breach of trust), 415 (cheating), 425 (mischief) of the Penal Code, 1860. The respondents thereupon filed petitions under Section 482 CrPC for quashing the said two complaints on the following grounds:

(*i*) The complaints related to purely contractual disputes of a civil nature in respect of which IOC had already sought injunctive reliefs and money decrees.

(*ii*) Even if all the allegations in the complaints were taken as true, they did not constitute any criminal offence as defined under Sections 378, 403, 405, 415 or 425 IPC.

The High Court by a common judgment allowed both the petitions and quashed the two complaints. It accepted the second ground urged by the respondents herein, but rejected the first ground. The said order of the High Court is under challenge in these appeals. On the rival contentions urged, the following points arose for consideration:

(*i*) Whether existence or availment of civil remedy in respect of disputes arising from breach of contract, bars remedy under criminal law?

(*ii*) Whether the allegations in the complaint, if accepted on face value, constitute any offence under Sections 378, 403, 405, 415 or 425 IPC?

Held :

A given set of facts may make out: (*a*) purely a civil wrong; or (*b*) purely a criminal offence; or (*c*) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed of, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not. (Para 12)

In this case, it is no doubt true that IOC has initiated several civil proceedings to safeguard its interests and recover the amounts due. These acts show that civil remedies were and are available in law and IOC has taken recourse to such remedies. But it does not follow therefrom that criminal law remedy is barred or IOC is estopped from seeking such remedy. (Para 15)

The respondents, no doubt, have stated that they had no intention to cheat or dishonestly divert or misappropriate the hypothecated aircraft or any parts thereof. But these are defences that will have to be put forth and considered during the trial. Defences that may be available, or facts/aspects when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At this stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not. (Para 16)

The High Court was, therefore, justified in rejecting the contention of the respondents that the criminal proceedings should be quashed in view of the pendency of several civil proceedings. (Para 17)

However, there is a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. (Para 13)

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. (Para 14). *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753.

Bench Strength 2. Coram: *H.K. Sema* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

(2)(iii) Nature and scope of inherent power - Suo motu exercise of inherent power

Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; Central Bureau of Investigation v. Duncans Agro Industries Ltd., (1996) 5 SCC 591: 1996 SCC (Cri) 1045; State of Bihar v. Rajendra Agrawalla, (1996) 8 SCC 164: 1996 SCC (Cri) 628; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., (2000) 3 SCC 269: 2000 SCC (Cri) 615; Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168: 2000 SCC (Cri) 786; M. Krishnan v. Vijay Singh, (2001) 8 SCC 645: 2002 SCC (Cri) 19; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283, relied on

(iii) Suo motu exercise of inherent power

[7079] — Ss. 482, 374(2), 386 and 397 — High Court can exercise its inherent jurisdiction suo motu in the interest of justice — *It can do so while exercising other jurisdiction such as appellate or revisional jurisdiction — No formal application for invoking inherent jurisdiction necessary — Inherent jurisdiction can be exercised in respect of substantive as well as procedural matters — It can be exercised in respect of incidental or supplemental power irrespective of nature of proceedings*

In respect of the incidental or supplemental power, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammelled by procedural restrictions in that:

(*i*) Power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(*ii*) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor.

(*iii*) However, the power under Section 482 CrPC is not unlimited. It can inter alia be exercised where the Code is silent, where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists. (Para 30). *Popular Muthiah* v. *State*, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245.

Bench Strength 2. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10; Raj Kapoor v. State, (1980) 1 SCC 43: 1980 SCC (Cri) 72; State v. Navjot Sandhu, (2003) 6 SCC 641: 2003 SCC (Cri) 1545; State of W.B. v. Sujit Kumar Rana, (2004) 4 SCC 129: 2004 SCC (Cri) 984, relied on

[7080] — Ss. 482 and 156 — Suo motu exercise of inherent powers — Interference with police investigation — Change of IO in midway (on basis of anonymous petition addressed to a named High Court Judge in this case) — Impermissibility — *Held, High Court in exercise of its inherent jurisdiction cannot change the IO in the midstream and appoint any agency of its own choice to investigate into a crime on whatsoever basis — More particularly on basis of complaints or anonymous petitions addressed to a named Judge — Accused or complainant/informant cannot choose its own investigating agency to investigate a crime in which it may be interested*

The investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions under Chapter XII CrPC. However, unfettered discretion does not mean any unaccountable or unlimited discretion and act according to one's own choice. The power to investigate must be exercised strictly on the condition of which that power is granted by CrPC itself. (Para 39)

Therefore, the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint any agency of its own choice to investigate into a crime on whatsoever basis and more particularly on the basis of complaints or anonymous petitions addressed to a named Judge. Such communications cannot be converted into suo motu proceedings for setting the law in motion. Neither the accused nor the complainant or informant is entitled to choose its own investigating agency to investigate a crime in which it may be interested. (Para 40)

In the present case, the contents of the petition submitted by the victim and also the allegations made in the anonymous complaint reveal no cause for issuing directions relieving the investigating officer of his statutory power and duty to investigate the crime in question. Neither has the anonymous petition nor the complaint made by the victim been directed against the investigating officer complaining of any bias or any attempt on his part to destroy the available evidence. It is difficult to discern the basis for arriving at the conclusion that the entire attempt of the investigating officer was to exonerate the accused and make the complainant as the accused. The investigation was in progress as is evident from the case diary. The special investigation team also proceeded on the same lines as that of the investigating officer and similar observations as the one made by the investigating officer are found in the report of the special investigation team. (Paras 34, 35 and 37). *Divine Retreat Centre* v. *State of Kerala*, (2008) 3 SCC 542: (2008) 2 SCC (Cri) 9: AIR 2008 SC 1614: (2008) 1 KLT 1042: 2008 Cri LJ 1891: (2008) 64 AIC (SC) 44.

Bench Strength 2. Coram: *S.H. Kapadia* and **B. Sudershan Reddy**, JJ. [Date of decision: 11-3-2008]

Emperor v. Khwaja Nazir Ahmad, AIR 1945 PC 18; S.N. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653: 1970 SCC (Cri) 258; State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272; M.C. Abraham v. State of Maharashtra, (2003) 2 SCC 649: 2003 SCC (Cri) 628; State of W.B. v. S.N. Basak, AIR 1963 SC 447: (1963) 2 SCR 52; Hazari Lal Gupta v. Rameshwar Prasad, (1972) 1 SCC 452: 1972 SCC (Cri) 208; Nirmaljit Singh Hoon v. State of W.B., (1973) 3 SCC 753: 1973 SCC (Cri) 521, relied on

M.C. Mehta (Taj Corridor Scam) v. Union of India, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264, considered

CBI v. Ravi Shankar Srivastava, (2006) 7 SCC 188: (2006) 3 SCC (Cri) 233; Popular Muthiah v. State, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404, distinguished

(3) Maintainability

[7081] — Ss. 482 and 397 — High Court's inherent jurisdiction can be invoked against final and not purely interlocutory orders — *Availability of revisional jurisdiction under S. 397 does not exclude jurisdiction under S. 482 — However, court should exercise its inherent jurisdiction only in extraordinary situations*

Per Krishna Iyer, J.

Nothing in the Code, not even Section 397 can affect the amplitude of the inherent power preserved in S. 482. Even so, easy resort to inherent power is not right except under compelling circumstances. Inherent power should not invade areas set apart for specific power under the same Code. However, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. Interlocutory orders pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face. In between is a *tertium quid*, where it is more than a purely interlocutory order and less than a final disposal. The present case falls under that category where the accused complain of harassment through the court's process. In this case the High Court can exercise its inherent power. *Raj Kapoor* v. *State*, (1980) 1 SCC 43: 1980 SCC (Cri) 72: AIR 1980 SC 258: 1980 MLJ (Cri) 439: (1980) 17 ACC 110.

Bench Strength 2. Coram: **V.R. Krishna Iyer**[1] and **R.S. Pathak**[2], JJ. [Date of decision: 26-10-1979]

[7082] — S. 482 — Non-exercise of discretionary power under — Propriety — Question whether appellants were partners of the firm and responsible for conduct of its business, held, was a disputed question of fact — *Hence, High Court was absolutely right in dismissing the petition — Negotiable Instruments Act, 1881, S. 138* (Paras 1 to 3). *Venkateshwaran* v. *Singaravel Yarn Traders*, (2009) 16 SCC 757.

Bench Strength 2. Coram: *V.S. Sirpurkar* and *R.M. Lodha*, JJ. [Date of decision: 27-5-2009]

[7083] — S. 482 — High Court's interference at interlocutory stage — *Held, High Court cannot arrive at a conclusion under, on the guilt or innocence of the accused on the basis of material on record at a stage prior to the leading of evidence by the prosecution — Prosecution should be afforded sufficient opportunity to adduce all the available evidence before such a conclusion is drawn. State of Punjab* v. *Devinder Kumar*, (1983) 2 SCC 384: 1983 SCC (Cri) 501: AIR 1983 SC 545: 1983 Cri LJ 980.

Bench Strength 2. Coram: **E.S. Venkataramiah** and *A.N. Sen*, JJ. [Date of decision: 7-4-1983]

[7084] — Ss. 482 and 397 — Interlocutory order, petition against — Inherent power under, held, overrides other provisions of CrPC including S. 397 thereof — But it cannot override a statutory bar — *Also, not to be exercised when remedy under CrPC or the statute available — So the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party — General principles for exercise of power under S. 482, restated*

Section 482 CrPC starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under Section 482 can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However, this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers, the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the process of the court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to

(3) Maintainability *(contd.)*

be quashed because they are initiated illegally, vexatiously or without jurisdiction. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law in some other enactment. (Para 29). *State* v. *Navjot Sandhu*, (2003) 6 SCC 641: 2003 SCC (Cri) 1545: (2003) 104 DLT 794.

Bench Strength 2. Coram: **S.N. Variava** and *Brijesh Kumar*, JJ. [Date of decision: 9-5-2003]

Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10; Krishnan v. Krishnaveni, (1997) 4 SCC 241: 1997 SCC (Cri) 544; Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; Roy V.D. v. State of Kerala, (2000) 8 SCC 590: 2001 SCC (Cri) 42; Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124; Satya Narayan Sharma v. State of Rajasthan, (2001) 8 SCC 607: 2002 SCC (Cri) 39; State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539, relied on

[7085] — S. 482 — Power of High Court to interfere with a criminal proceeding in a Subordinate Court — Scope of — Interference at interlocutory stage

The High Court was right in declining to grant relief to the appellants, as it is now well-settled that the High Court does not ordinarily interfere at an interlocutory stage of a criminal proceeding pending in a subordinate court. It is also not a matter in which the Supreme Court would interfere in exercise of its extraordinary powers under Art. 136 of the Constitution, especially when the case is at its threshold and evidence has still to be adduced as to whether the minerals extracted could or could not be used as a major mineral for certain purposes. *P. Vijayapal Reddy* v. *State*, (1978) 4 SCC 63: 1978 SCC (Cri) 501: AIR 1978 SC 1590: (1978) 37 FLR 228.

Bench Strength 2. Coram: **Jaswant Singh** and *P.S. Kailasam*, JJ. [Date of decision: 10-8-1978]

[7086] — Ss. 482, 156 & 154 — Petition under S. 482 — Maintainability — Anonymous petition seeking direction for investigation sent directly in name of a Judge of High Court — *No information/complaint lodged with police — Held, such a petition ought not to have been entertained by High Court under S. 482*

What is the scope, content and ambit of the inherent power conferred on the High Court under Section 482 CrPC was under consideration in the present appeal.

The High Court exercising power under Section 482 CrPC directed investigation of the crime in question to be taken away from the investigating officer concerned and entrusted the same to a special investigation team constituted by it. The High Court also directed the said authority to investigate/inquire into various other allegations levelled in an anonymous petition filed against the appellant institution. The said judgment arose out of the proceedings suo motu initiated by the Court on the basis of anonymous petition addressed to the Judge concerned.

As regards the facts of the case, one *M*, a female remand prisoner, sent a petition to the District Judge concerned. In that petition she alleged that while she was taking shelter in the appellant institution, she had been subjected to molestation and exploitation and became pregnant from the Head of that institution. When she came out of the said institution to attend her sister's marriage, she was implicated in a false theft case and lodged in the jail.

The District Judge forwarded the said petition to the Magistrate concerned to do the needful. The Magistrate recorded the statement of the victim and thereafter an investigation into the matter was ordered. Subsequently, a case was registered under Section 376(*g*) IPC at the police station concerned.

Thereafter, the District Judge received an anonymous petition addressed to a High Court Judge. The District Judge addressed a letter to the Registrar General, High Court enclosing the said petition. The petition was accompanied by photocopies of certain press reports and three video CDs. In his covering letter, the District Judge referred to the facts leading to the registration of the above case under Section 376(*g*) IPC.

The matter was placed before the High Court Judge concerned who ordered the Registry to verify and report whether *M* had sent any petition to the High Court and if so, what action was taken on that petition. The Registry resubmitted to the High Court an earlier file and informed that *M* had earlier sent a complaint to the High Court, narrating her agonies. The matter was placed before Justice *K*. As per the order of Justice *K*, the petition was sent to the Superintendent of Police for an enquiry. As per the report of the Registry, presumably, in pursuance of the said direction, a case was registered under Section 376(*g*) IPC and consequently the matter before the High Court was closed.

On resubmission of the file, the High Court after noticing the facts leading to the closing of the matter before the High Court, observed that in the meanwhile another petition was received from *M* by the High Court. The High Court noticed that in the said petition, *M* had raised serious allegations regarding the investigation. Hence, the High Court opined that even though there was an earlier order to close the file before the High Court, the subsequent petition ought to have been treated as a separate petition praying for an order for proper investigation and separate action taken. As per the High Court, the said petition could also be clubbed with the anonymous petition. Thus, the High Court directed the Registry to treat the anonymous petition along with the subsequent petition received in the court as petitions praying for an order for proper investigation and register the same as a suo motu criminal miscellaneous case. The Registry complied with said directions. Thereafter the High Court passed the impugned judgment. Hence, the present appeal.

Allowing the appeal,

Held :

Here is a case where no information has been given to the police by any informant alleging commission of any cognizable offence by the appellant and the persons associated with the appellant institution. It is a peculiar case of its own kind where an anonymous petition is sent directly in the name of a Judge of the High Court, which was suo motu taken up as a proceeding under Section 482 CrPC. The High Court ought not to have entertained such a petition for taking the same on file under Section 482 CrPC. (Para 54). *Divine Retreat Centre* v. *State of Kerala*, (2008) 3 SCC 542: (2008) 2 SCC (Cri) 9: AIR 2008 SC 1614: (2008) 1 KLT 1042: 2008 Cri LJ 1891: (2008) 64 AIC (SC) 44.

Bench Strength **2**. Coram: *S.H. Kapadia* and **B. Sudershan Reddy**, JJ. [Date of decision: 11-3-2008]

(4) Alternative remedy/Exhaustion of remedies/Jurisdictional bar

[7087] — S. 482 — Maintainability of application under — Statutory appeal pending — *Held, not barred due to pendency of appeal before tribunal under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 against forfeiture of properties. Union of India* v. *Haji Mastan Mirza*, (1984) 2 SCC 427: 1984 SCC (Cri) 271: AIR 1984 SC 681: 1984 Cri LJ 610: (1984) 2 ECC 137.

Bench Strength **3**. Coram: *S. Murtaza Fazal Ali*, **A. Varadarajan** and *Ranganath Misra*, JJ. [Date of decision: 23-2-1984]

[7088] — S. 482 — Exercise of power under — Stay of proceedings under Forest Act — *Held, High Court in exercise of such power erred in staying proceedings under S. 44(2-A) of A.P. Forest Act, 1967 merely because of subsequent initiation of prosecution under S. 45 of that Act. Divl. Forest Officer* v. *G.V. Sudhakar Rao*, (1985) 4 SCC 573: 1986 SCC (Cri) 34: AIR 1986 SC 328.

Bench Strength **2**. Coram: **A.P. Sen** and *D.P. Madon*, JJ. [Date of decision: 31-10-1985]

[7089] — S. 482 — Exercise of power under, where bar of jurisdiction of criminal court in the matter concerned existing under the relevant Act — Legality — *Confiscation proceeding before authorised officer under Forest Act — Interim release of vehicles involved in forest offence during pendency of — Direction in respect of, made by High Court exercising jurisdiction under S. 482 — Held, not justified — Forest Act, 1927 — S. 52 [as amended by W.B. Act 22 of 1988, S. 10] and Ss. 59-A to 59-G [as inserted by W.B. Act 22 of 1988, S. 17]*

The High Court exceeded its jurisdiction in releasing the vehicles in exercise of its jurisdiction under Section 482 CrPC. Once a confiscation proceeding is initiated in terms of Section 59-G of the Act, the jurisdiction of the criminal court in this behalf stands excluded. The criminal court although indisputably has the jurisdiction to deal with the property which is the subject-matter of offence in terms of the provisions of the Code of Criminal Procedure but once a confiscation proceeding is initiated, the said power cannot be exercised by the Magistrate. (Paras 41 and 31). *State of W.B.* v. *Sujit Kumar Rana*, (2004) 4 SCC 129: 2004 SCC (Cri) 984: AIR 2004 SC 1851.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **S.B. Sinha**, JJ. [Date of decision: 20-1-2004]

Divisional Forest Officer v. G.V. Sudhakar Rao, (1985) 4 SCC 573: 1986 SCC (Cri) 34; State of W.B. v. Gopal Sarkar, (2002) 1 SCC 495: 2002 SCC (Cri) 161; State of Karnataka v. K.A. Kunchindammed, (2002) 9 SCC 90: 2003 SCC (Cri) 1085; Section Forester v. Mansur Ali Khan, (2004) 1 SCC 293; Shambhu Dayal Agarwala v. State of W.B., (1990) 3 SCC 549: 1990 SCC (Cri) 489; Dy. Commr., Dakshina Kannada District v. Rudolph Fernandes, (2000) 3 SCC 306: 2000 SCC (Cri) 632, followed

[7090] — S. 482 — Inherent jurisdiction cannot be exercised if an enactment contains a specific bar — *Prevention of Corruption Act, 1988, S. 19(3)(c)*

Per Variava, J.

Section 19(3)(*c*) Prevention of Corruption Act, 1988 provides:

(*a*) that no court should stay the proceedings under the Act on any ground, and

(*b*) that no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

The latter part of clause (*c*) of Section 19(3) as stated in (*b*) above is identical to Section 397(2) CrPC which deals with the revisional power of the court. If Section 19 was only to deal with revisional powers then the portion set out in (*b*) above would have been sufficient. The legislature has, therefore,

(4) Alternative remedy/Exhaustion of remedies/Jurisdictional bar *(contd.)*

by adding the words "no court shall stay the proceedings under this Act on any other ground" clearly indicated that no stay could be granted by use of any power on any ground. This therefore would apply even where a court is exercising inherent jurisdiction under Section 482 CrPC. (Para 14)

Further, Section 482 CrPC starts with the words "Nothing in this Code". Thus the inherent power can be exercised even if there was a contrary provision in the Criminal Procedure Code. Section 482 of the Criminal Procedure Code does not provide that inherent jurisdiction can be exercised notwithstanding any other provision contained in any other enactment. Thus if an enactment contains a specific bar then inherent jurisdiction cannot be exercised to get over that bar. (Para 15)

There is no substance in the submission that Section 19 would not apply to a High Court. Section 5(3) of the said Act shows that the Special Court under the said Act is a Court of Session. Therefore the power of revision and/or the inherent jurisdiction can only be exercised by the High Court. (Para 16)

Since in a large number of cases stays have been granted by the High Courts in matters under the Prevention of Corruption Act, even though there is a specific bar against the grant of any stay the Registrars of all the High Courts are directed to list all cases in which such stay is granted before the Court concerned so that appropriate action can be taken by that Court in the light of this decision. The Registrar of the Supreme Court is directed to send a copy of this order to the Registrars of all the High Courts. (Para 20)

Per Thomas, J. (concurring)

Clause (*b*) of Section 19(3) contains the prohibition against stay of proceedings under this Act, but it is restricted to the sanction aspect alone. The mere fact that yet another prohibition was also tagged with the above does not mean that the legislative ban contained in clause (*c*) is restricted only to a situation when the High Court exercises powers of revision. It would be a misinterpretation of the enactment if a court reads into clause (*c*) of Section 19(3) a power to grant stay in exercise of the inherent powers of the High Court. (Paras 26 and 28)

The prohibition contained in clause (*c*) of Section 19(3) is couched in a language admitting of no exception whatsoever. When Parliament imposed an undiluted ban against granting stay of any proceedings involving an offence under the Prevention of Corruption Act, 1988 on any ground whatsoever, no court shall circumvent the said ban through any means. The reason which prompted Parliament to divest all the courts in India of the power to stay the proceedings in the trial courts involving any such offence, is to foreclose even the possible chance of delaying such trials on account of any party to such proceedings raising any question before the High Court during the pendency of trial proceedings. (Para 22). *Satya Narayan Sharma* v. *State of Rajasthan*, (2001) 8 SCC 607: 2002 SCC (Cri) 39: AIR 2001 SC 2856.

Bench Strength 2. Coram: *K.T. Thomas* and **S.N. Variava**, JJ. [Date of decision: 25-9-2001]

Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Indra Sawhney v. Union of India, (2000) 1 SCC 168: 2000 SCC (L&S) 1, relied on

ITO v. M.K. Mohd. Kunhi, AIR 1969 SC 430: (1969) 2 SCR 65, distinguished

[7091] — S. 482 — Inherent powers of High Court — Scope — Limits of — Alternative remedy — Availability of — Effect — *Held, inherent power has to be exercised sparingly with circumspection and in rare cases and that too to correct patent illegalities or when some miscarriage of justice is done — Practice of High Courts in entertaining petitions under S. 482, when there was an effective alternative remedy available, deprecated — Ends of justice would be better served if valuable time of the Court is spent in hearing those appeals rather than entertaining petitions under S. 482 CrPC at an interlocutory stage which are often filed with some oblique motive in order to circumvent the prescribed procedure, as in the instant case, or to delay the trial which enable the accused to win over the witnesses by money or muscle power or they may become disinterested in giving evidence, ultimately resulting in miscarriage of justice* (Paras 7, 8 and 13). *Hamida* v. *Rashid*, (2008) 1 SCC 474: (2008) 1 SCC (Cri) 234: (2007) 54 AIC 19 (SC): 2007 Cri LJ 3422: (2008) 105 Cut LT 410: (2007) 4 All LJ 206.

Bench Strength 2. Coram: **G.P. Mathur** and *A.K. Mathur*, JJ. [Date of decision: 27-4-2007]

Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10; State v. Navjot Sandhu, (2003) 6 SCC 641: 2003 SCC (Cri) 1545, relied on

[7092] — S. 482 — Maintainability of petition under — Alternative remedy/Exhaustion of remedies — *Bail granted to accused for alleged offences under Ss. 324, 352 and 506 IPC (bailable offences) on the same day (13-6-2005) they were arrested and produced before the CJM for seeking remand — He, however, clarifying that if the case was converted into a more serious offence, the accused would not get any benefit of the bail being granted to them — Victim succumbing to injuries on night intervening 16-6-2005/17-6-2005 — Offence thereafter converted into S. 304 IPC —*

Petition filed by respondent-accused under S. 482 seeking a direction to CJM to permit them to remain on same bail even after conversion of the offence into one under S. 304 IPC, allowed by impugned order — Held, petition could not have been entertained when there was specific provision (S. 439) in CrPC for redressal of the grievance of the aggrieved party

The respondent-accused could have applied for bail afresh after the offence had been converted into one under Section 304 IPC. They deliberately did not do so and filed a petition under Section 482 CrPC in order to circumvent the procedure whereunder they would have been required to surrender as the bail application could be entertained and heard only if the accused were in custody. No order adverse to the respondent-accused had been passed by any court nor was there any miscarriage of justice or any illegality. In such circumstances, the High Court committed manifest error of law in entertaining a petition under Section 482 CrPC and issuing a direction to the subordinate court to accept the sureties and bail bonds for the offence under Section 304 IPC. The effect of the order passed by the High Court is that the accused after getting bail in an offence under Sections 324, 352 and 506 IPC on the very day on which they were taken into custody, got an order of bail in their favour even after the injured had succumbed to the injuries and the case had been converted into one under Section 304 IPC without any court examining the case on merits, as it stood after conversion of the offence. The procedure laid down for grant of bail under Section 439 CrPC, though available to the respondent-accused, having not been availed of, the exercise of power by the High Court under Section 482 CrPC is clearly illegal and the impugned order passed by it has to be set aside. (Para 10)

Further, charge under Sections 302/34 was framed against the respondent-accused by the trial court and some subsequent orders were passed by the High Court by which the accused were ordered to remain on bail for the offence under Section 302 read with Section 34 IPC on furnishing fresh sureties and bail bonds only on the ground that they were on bail in the offence under Section 304 IPC. These orders also deserve to be set aside on the same ground. (Para 11)

The respondent-accused directed to be taken into custody and made clear that it will be open to the respondent-accused to apply for bail for the offences for which they are charged before the appropriate court and in accordance with law. (Para 12). *Hamida* v. *Rashid*, (2008) 1 SCC 474: (2008) 1 SCC (Cri) 234: (2007) 54 AIC 19 (SC): 2007 Cri LJ 3422: (2008) 105 Cut LT 410: (2007) 4 All LJ 206.

Bench Strength **2**. Coram: **G.P. Mathur** and *A.K. Mathur*, JJ. [Date of decision: 27-4-2007]

Arun Shankar Shukla v. State of U.P., (1999) 6 SCC 146: 1999 SCC (Cri) 1076, relied on

[7093] — S. 482 — Quashing of criminal proceedings — Cognizance of offence by criminal court not barred under the RBI Act — Criminal proceedings, hence, not quashed — *Offence under Ss. 420 and 120-B IPC, as well as S. 138 of the Negotiable Instruments Act — Held, taking cognizance of criminal proceedings is not barred under the RBI Act — Bar under Ss. 45-QA and 58-E of the RBI Act applies only to offences committed under the RBI Act — High Court, held, rightly acted by not quashing the order of cognizance taken by the criminal court — Penal Code, 1860, Ss. 420 and 120-B — Negotiable Instruments Act, 1881, S. 138 — Reserve Bank of India Act, 1934, Ss. 45-QA and 58-E. Prudential Capital Mkt. Ltd.* v. *State of Bihar,* (2000) 9 SCC 539: 2001 SCC (Cri) 644: AIR 2000 SC 3668.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 3-4-2000]

[7094] — Ss. 482, 190, 228, 240 and 246 — Quashing of criminal proceedings — Relevant considerations — Consideration of the relevant statute to decide whether it provided complete immunity to the accused from prosecution — Permissibility of — *Kar Vivad Samadhan Scheme, 1998, S. 91 [of Finance (No. 2) Act, 1998]*

In the present case, the High Court came to the conclusion that it was permissible to look into the Kar Vivad Samadhan Scheme (KVSS), 1998 (which granted immunity from prosecution for any offence under any direct/indirect tax enactment on settlement of tax dues) to decide as to whether the present prosecution was legally launched or not and could continue or not. The Public Prosecutor argued that for the purposes of framing charges under the provisions of CrPC what could be seen was the material produced by the prosecution in charge-sheet and no other material. Therefore, the High Court could not have looked into the KVSS, 1998.

Held :

The High Court was right in examining the KVSS, 1998 to decide whether it provided complete immunity from the prosecution since that was the mainstay of the appellants' attack against the prosecution. (Para 17). *M. Natarajan* v. *State*, (2008) 8 SCC 413: (2008) 3 SCC (Cri) 507: (2008) 226 ELT 679.

Bench Strength **2**. Coram: *P.P. Naolekar* and **V.S. Sirpurkar**, JJ. [Date of decision: 7-5-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

(5) Procedure re filing of application under/Delay/laches

[7095] — S. 482 — Quashing of charges — Delay in filing of petition for — Condonation of — Propriety — *Respondent approaching High Court after the order of discharge passed in favour of the main accused attained finality in 1994 as a result of dismissal of SLP by Supreme Court — In such circumstances, held, High Court rightly condoned the delay — No illegality or perversity in the exercise of power by High Court* (Para 6). *CBI* v. *Akhilesh Singh*, (2005) 1 SCC 478: AIR 2005 SC 268: 2005 All LJ 195.

Bench Strength 2. Coram: **K.G. Balakrishnan** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 8-12-2004]

(6) Proper mode of disposal/Exercise of power under/Matters to be considered

See also Section 482, '(11)(vi) Quashment of proceedings — Proper mode of disposal/exercise of power under/Matters to be considered', below

[7096] — S. 482 — Inherent powers of High Court — Mode of exercise of — Held, have to be exercised sparingly and judiciously and only for the purposes mentioned in S. 482 in most appropriate cases. *Mary Angel* v. *State of T.N.*, (1999) 5 SCC 209: 1999 SCC (Cri) 1296: AIR 1999 SC 2245: 1999 Cri LJ 3513.

Bench Strength 2. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 13-5-1999]

[7097] — S. 482 — Inherent powers of High Court under — Ingredients required for exercising — *Held, while exercising inherent powers under S. 482, High Court must be satisfied that either: (i) an order passed under CrPC would be rendered ineffective; or (ii) process of any court would be abused; or (iii) ends of justice would not be secured* (Para 7). *Pratibha* v. *Rameshwari Devi*, (2007) 12 SCC 369: (2008) 1 SCC (Cri) 399: (2007) 59 AIC 159 (SC): 2008 Cri LJ 329.

Bench Strength 2. Coram: *A.K. Mathur* and **Tarun Chatterjee**, JJ. [Date of decision: 17-9-2007]

[7098] — S. 482 — High Court not justified in going into the merits of the case when exercising inherent jurisdiction — *CrPC, 1898, S. 561-A. Supdt. and Remembrancer of Legal Affairs* v. *Ashutosh Ghosh*, (1979) 4 SCC 381: 1979 SCC (Cri) 991: AIR 1979 SC 1195.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 16-1-1979]

[7099] — S. 482 — Plenary power of High Court — Exercise of, is vitiated when based on irrelevant or extraneous considerations

Every court has its plenary powers to deliberate upon every issue agitated before it as well as any other issue arising on the materials placed before it in the manner known to law after giving a prior notice and affording an opportunity of being heard. This power of discharging the statutory functions whether discretionary or obligatory should be in the interest of justice and confined within the legal permissibility. In doing so, the Judge should disengage himself of any irrelevant and extraneous materials which come to his knowledge from any source other than the one presented before him in accordance with law and which are likely to influence his mind one way or the other. *Union of India* v. *W.N. Chadha*, 1993 Supp (4) SCC 260: 1993 SCC (Cri) 1171: AIR 1993 SC 1082: 1993 Cri LJ 859.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 17-12-1992]

[7100] — S. 482 — Disposal of petition under, by a cryptic and unreasoned order, held, not justified — *Matter remitted to High Court for fresh disposal with a direction to pass a reasoned order* (Paras 4 and 5). *Manjit Kaur* v. *State of Punjab*, (2005) 12 SCC 310.

Bench Strength 2. Coram: *P. Venkatarama Reddi* and *A.K. Mathur*, JJ. [Date of decision: 14-2-2005]

(7) Exercise of power/Directions in matters other than quashment of proceedings

[7101] — S. 482 — Interlocutory order — Ineffectual and/or needless interference by High Court must be avoided — *Terrorist attack on Parliament — Terrorists shot dead — Telephone numbers recovered from them — Communication intercepted thereby, during course of investigation — Prosecution using intercepted communication as evidence — Accused-respondents H, S and N filing Criminal Misc. Appln., appeal under S. 34 POTA r/w S. 482 CrPC and petition under S. 482 CrPC r/w Arts. 226 and 227 respectively to challenge the interlocutory order passed by Special Court which dismissed the applications made by respondents for eschewing/exclusion of evidence relating to intercepted communication — Single Judge of High Court setting aside the interlocutory order of Special Judge — But by that time the evidence had already been recorded and no abuse of process of court could then be prevented — Even ends of justice did not warrant interference at that stage — Matter should have been relegated for statutory appeal after final hearing — So, on facts, there was no miscarriage of justice or palpable illegality which justified interference by the High Court*

On facts, the order dated 11-7-2002 passed by the Special Judge was clearly an interlocutory order. The order of the Special Judge is based on an interpretation of the various provisions of POTA. The Special Judge undoubtedly had authority and jurisdiction to interpret the various provisions of POTA and other laws. The Special Judge had jurisdiction to decide whether the evidence collected by interception could be used for proving a charge under POTA. The Special Judge was acting within the limits of his authority in passing the impugned order. Neither the power under Article 227 nor the power under Section 482 enabled the High Court to correct an error in interpretation even if the High Court felt that the order of the Special Court was erroneous. Even if the High Court did not agree with the correctness of that order, the High Court should have refused to interfere as the order could be corrected in the appeal under Section 34 POTA. To be remembered that by the time the impugned order was passed, the evidence had already been recorded. Thus there was no abuse of process of court which could now be prevented. Even the ends of justice did not require interference at this stage. In fact the ends of justice required that the statutory intent of Section 34 POTA be given effect to. The High Court should have directed the respondents to raise all such points in the statutory appeal, if any required to be filed, under Section 34 POTA. If in the appeal the Division Bench felt that the order was not correct or that it was erroneous it would set aside the order, eschew the evidence and not take the same into consideration. Thus no prejudice was being caused or would be caused to the respondents. Their rights were fully protected as per the provisions of POTA. At this stage there was no miscarriage of justice or palpable illegality which required immediate interference. Thus, even if powers under Article 227 or under Section 482 could have been exercised, this was a case where the High Court should not have exercised those powers. (Paras 30 and 31). *State* v. *Navjot Sandhu*, (2003) 6 SCC 641: 2003 SCC (Cri) 1545: (2003) 104 DLT 794.

Bench Strength **2**. Coram: **S.N. Variava** and *Brijesh Kumar*, JJ. [Date of decision: 9-5-2003]

[7102] — S. 482 — Direction to fail authorities as to proper treatment in jail — Convicts of tender age found guilty of dacoity — Action of accused motivated by sincere but misguided attempt to relieve the poor — *Proper sentence and proper treatment in jail needed — Direction to jail authorities under S. 482 given*

The court has responsibility to see that punishment serves social defence which is a validation of deprivation of citizen's liberty. Correctional treatment with a rehabilitative orientation is an imperative of modern penology which has abandoned *jus talionis*. A hospital setting and a humanitarian ethos must pervade our prisons if the retributive theory, which is but vengeance in disguise, is to disappear and deterrence as a punitive objective gain success not through the hardening practice of inhumanity inflicted on prisoners but by reformation and healing whereby the creative potential of the prisoner is unfolded. These values have their roots in Art. 19 of the Constitution which sanctions deprivation of freedoms provided they render a *reasonable* service to social defence, public order and security of the State. By cruel treatment within the cell the psyche of the accused is injured and the injury never improves. Therefore, within the jail, the seven appellants shall not be treated with any tinge of brutality — a caveat which has become necessary when it is remembered that they are treated as 'Naxalites' and the witnesses who have given evidence against them have been hurriedly rewarded officially by the Chief Minister. The writ of the rule of law, runs within the jail system and it shall not permit inhumanity. On appropriate motion made to the court showing violation of the residual rights of the prisoner by unnecessary cruelty and unreasonable impositions and denials and deprivations within the prison setting, the judicial process will call to order the prison authorities and make them respect the fundamental rights of the appellants. More importantly these adolescents, when ushered into jail with sex-starved inmates, become homosexual offerings with nocturnal dogfights. These unspeakable prison facts perhaps receive indifferent attention on Home Ministry files, but must weigh with the court in inducing it to direct that the young appellants are separated dusk to dawn from sadistic adults. Hence, these prisoners must be oriented on a human course, be treated as 'B' class prisoners, allowed opportunities of improving themselves and nourishing their minds with wholesome reading so that on return thence they turn a new leaf retaining the flavour of their self-sacrificing spirit to change 'the sorry scheme of things entire' but without blood-letting barbarities and boomeranging terrorism. Prison justice is part of social justice.

The fact that in another State under the same circumstances, the accused would have been treated as 'children' has a vicarious impact on the sentencing discretion. *Lingala Vijay Kumar* v. *Public Prosecutor*, (1978) 4 SCC 196: 1978 SCC (Cri) 579: AIR 1978 SC 1485: 1978 Cri LJ 1527.

Bench Strength **3**. Coram: **V.R. Krishna Iyer**, *D.A. Desai* and *O. Chinnappa Reddy*, JJ. [Date of decision: 2-8-1978]

(7) Exercise of power/Directions in matters other than quashment of proceedings *(contd.)*

[7103] — S. 482 — Application for extension of time for the payment of fine imposed by the court — *Where the first application for the said relief was rejected, filing of two more applications for extension of time, which also stood dismissed, held, was not proper — However, even though the accused was ill-advised to file so many applications after each rejection, appeal allowed granting one month's time to make the deposit of fine — Penal Code, 1860, S. 324. Mahendra Singh* v. *State of Bihar*, (2002) 10 SCC 678: 2004 SCC (Cri) 1158: AIR 2002 SC 387.

Bench Strength 2. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 16-2-2001]

[7104] — S. 482 — Compensation — Claim petition under S. 482 misconceived — Belated claim, when not fatal — *Petition under S. 482 claiming compensation of Rs 3 lakhs for permanent disability (amputation of hand above forearm) as a result of bullet injuries sustained by respondent during terrorist upsurge in State of Punjab — Claim made in addition to "special ex gratia grant" of Rs 20,000 provided by State Govt. for such disability sustained "in terrorist violence/security forces acting in aid of civil power" as also Rs 3378 as medical expenses — Claim made 10 years after payment of these amounts by Govt. — Respondent since appointed as a Chowkidar in a govt. school — High Court directed State Govt. to pay a further sum of Rs 80,000 to respondent within 3 months in final settlement of the claim — Held, claim misconceived, as it was claimed under S. 482 CrPC and not in a writ petition — However, belated approach not to be treated as fatal — In view of "special ex gratia grant" fixing limit of the amount to be paid under the Govt. notification, question of respondent making any claim in terms of the notification for a higher amount did not arise — But the medical expenses paid were low compared to the normal expenses which appear to have been spent for operations and treatment; hence respondent entitled to Rs 20,000 towards medical expenses — An additional amount of Rs 17,000 shall be paid to respondent within two months in view of the claim made by him — Constitution of India — Arts. 226, 136 and 134. State of Punjab* v. *Kuldip Singh*, (2007) 6 SCC 218: (2007) 3 SCC (Cri) 68: 2007 Cri LJ 3751: (2007) 56 AIC 265 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *D.K. Jain*, JJ. [Date of decision: 21-6-2007]

[7105] — S. 482 — During pendency of civil suit for injunction petitioner filing an application under, before the High Court alleging that he was dispossessed with the help of police while giving effect to ad interim injunction order — Direction for police assistance issued — *Similar directions issued on petitioner's contempt petition — Civil court granting absolute injunction in favour of the petitioner — Appeal against such order pending before the appellate court — Held, orders passed by the High Court have become infructuous — In view of subsequent events namely, passing of absolute injunction and pendency of appeal against said order appellate court directed to dispose of the matter without being influenced by the order of the High Court. Govindamma* v. *Veluswami*, 1994 Supp (3) SCC 758: AIR 1994 SC 751: 1994 Cri LJ 256.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 4-3-1993]

[7106] — S. 482 — Exercise of power by High Court under, when justified — *Film producer utilising deposits made by public in his investment company for production of film — On closure of the investment company film remaining unfinished — Semi-processed film and negatives seized by police during investigation in criminal case against accused — Held, High Court justified in invoking power under S. 482 for directing handing over the semi-processed film and negatives to another experienced producer and willing producer having regard to various factors including requirement of further investments and expertise — High Court's refusal to hand over the semi-processed film and negatives to the accused- producer for completing the film also justified as accused had no funds and as factors of prudence and equity constitute sufficient deterrents for taking the risk of accepting accused's prayer. Sajan K. Varghese* v. *State of Kerala*, (1989) 2 SCC 208: 1989 SCC (Cri) 339: AIR 1989 SC 1058: (1989) 2 KLT 243.

Bench Strength 2. Coram: *R.S. Pathak, C.J.* and **S. Natarajan**, J. [Date of decision: 15-2-1989]

[7107] — Ss. 482 and 24 — High Court rejecting the prayer for change of prosecutor, in exercise of its inherent powers — Applicability — No further challenge to the said order — *Hence, held, the order attained finality and could not be assailed before the Supreme Court — More so when the appointment had been unsuccessfully challenged in a separate proceeding and was not incidental to the present proceedings — Constitution of India — Art. 136* (Paras 6 and 7). *Varada Rama Mohana Rao* v. *State of A.P.*, (2004) 4 SCC 427: 2004 SCC (Cri) 1289.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 25-3-2004]

Satyadhyan Ghosal v. Deorajin Debi, AIR 1960 SC 941: (1960) 3 SCR 590, distinguished

[7108] — S. 482 — Nature of power under — Release of property confiscated under PCA — Whether can be released on deposit of appropriate amount — *Appellants' father convicted by trial court and punished with imprisonment of one year and fine of Rs 20,000 — Certain items of property, including a house, directed to be sold by public auction and sale proceeds to be taken by the State — Father dying during pendency of appeal — However, High Court in due course sustaining the conviction though the sentence of imprisonment stood abated due to death — Legal heirs filing application under S. 482 CrPC for release of confiscated items on account of their sentimental attachment with them and offering to deposit Rs 6 lakhs plus, or such other sum as considered appropriate by court — Application dismissed by High Court on the ground that it had no power under S. 482 CrPC to pass such order — Held, the present value and not the past value of the seized property was relevant — High Court rightly rejected appellants' prayer — Prevention of Corruption Act, 1988, Ss. 16, 13(2) and 13(1)(e) — Prevention of Corruption Act, 1947, S. 5(2) proviso* (Para 7). *N. Naveen Kumar* v. *State of A.P.*, (2008) 9 SCC 800: (2008) 3 SCC (Cri) 880.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 17-10-2008]

[7109] — S. 482 — Scope of High Court's jurisdiction under — Magistrate's order to release the goods seized by Sales Tax Authorities in favour of respondent subject to furnishing a personal bond — *High Court passing order under S. 482 modifying the Magistrate's order to the extent that respondent shall not be required to furnish the bond — Pursuant to a subsequent application under S. 482 filed by respondent, order passed by High Court directing appellants not to search and seize the goods and not to interfere with the functioning of business of respondent — Held, order beyond jurisdiction of High Court — Such order could be passed in exercise of its writ jurisdiction and not under S. 482*

Pursuant to a prayer made by the respondent the Magistrate passed an order directing release of certain goods, seized by Sales Tax authorities, in favour of the respondent subject to his furnishing a personal bond of Rs one lakh. The respondent filed an application under Section 482 CrPC before the High Court praying that the part of the order of the Magistrate by which the respondent was required to file the personal bond be quashed and that the Magistrate be directed not to compel him to file the said bond and the opposite party be directed that they may check and seize the goods only after delivery of the goods to the consignee by the respondent. The High Court allowed the application and modified the order of the Magistrate to the extent that the respondent shall not be required to file the personal bond. After disposal of that application, the respondent moved another application for modification of the order of the High Court made under Section 482 praying that the appellants be restrained from conducting search and seizure of the goods prior to their delivery to the consignees and also restraining from interfering with the functioning of the Agency in which he was a partner. The High Court allowed the application and passed an order accordingly. In the present appeal the appellant State questioned the subsequent order passed by the High Court under Section 482.

Allowing the appeal,

Held :

After the High Court allowed the first application of the respondent under Section 482 CrPC directing that the respondent shall not be required to furnish the personal bond, nothing further remained to be done. In the garb of an application for modification of that order, the respondent could not file an application which was in effect a review application praying for other reliefs. Yet the High Court passed an order directing the appellants not to search and seize the goods and not to interfere with the Agency. These are matters which were entirely beyond the scope of the application under Section 482 CrPC and beyond the jurisdiction of the High Court exercising jurisdiction under Section 482 CrPC. It does not arise out of any order passed by a court, nor was there any allegation of abuse of the process of the court, nor was it a case of manifest injustice caused to a party. A direction like the one which the High Court has given in its impugned order could be given by the High Court in exercise of its writ jurisdiction in an appropriate case and not under Section 482 CrPC. In any event, since the application under Section 482 stood disposed of, the review of that order by the High Court in the garb of modifying that order is wholly unwarranted. (Para 8). *State of U.P.* v. *Surendra Kumar*, (2005) 9 SCC 161.

Bench Strength 2. Coram: **B.P. Singh** and *Arun Kumar*, JJ. [Date of decision: 16-12-2004]

[7110] — Ss. 482, 144 and 145 — Abuse of the process of court — *Appellants put in possession of house in execution of eviction decree with the aid of police force — But respondent 4 continuing to assert his possession and filing a title suit — Pursuant to a firing*

(7) Exercise of power/Directions in matters other than quashment of proceedings *(contd.)*

incident proceeding under S. 144 drawn up by SDM and both the parties restrained from entering upon the property but later appellants allowed to take possession — Three months thereafter application moved by respondent 4 for initiating proceedings under S. 145 but the same dismissed in view of delivery of possession to appellants in execution of the eviction decree and the order becoming final in absence of challenge — Application then made by respondent 4 under S. 482 before High Court substantially for the same relief as claimed before SDM — High Court directing that the house shall be in possession of police till disposal of a title suit of respondent 4 — Held, application was a gross abuse of process of court and hence High Court's order liable to be set aside. Ravi Raman Prasad v. *State of Bihar,* (1993) 2 SCC 3: 1993 SCC (Cri) 489: AIR 1994 SC 109: (1993) 1 Crimes 709.

Bench Strength **3**. Coram: *L.M. Sharma, C.J.* and *K. Ramaswamy* and *N. Venkatachala*, JJ. [Date of decision: 2-2-1993]

[7111] — Ss. 482, 148(3), 342, 359, 357, 358 and 227 — Inherent powers of High Court — Scope — Power to award costs if included — Frivolous and vexatious petition — *Held, S. 482 is independent of other provisions of the Code — Where no express power is available to do a particular thing but the existence of such power is not negated by the express provisions either, held, High Court can exercise inherent powers for doing justice according to law — Hence, although under CrPC the specific provisions for awarding costs are only Ss. 148(3), 342 and 359, held, in appropriate cases High Court can award costs for the purposes of S. 482, albeit this jurisdiction is to be exercised sparingly and judiciously — Maxim "expressio unius est exclusio alterius" cannot be applied to deny such power to High Court — On facts, High Court's order imposing exemplary costs of Rs 10,000 on each of the applicants while rejecting their frivolous/vexatious application under S. 482, upheld — Penal Code, 1860, Ss. 498-A, 406, 420 and 315 — Dowry Prohibition Act, 1961, Ss. 3 and 4*

Consequent to an FIR and investigation pursuant thereto, a charge-sheet was filed against the first informant's husband and five others under Sections 498-A, 406, 420, 315 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. The case was committed to the Sessions Court. Four of the said five others were subsequently discharged by the trial court under Section 227 CrPC. In the revision case filed by the complainant, the High Court set aside the order of discharge and held that there was sufficient material to frame charges. Accordingly, the trial court framed charges against those four accused persons also. The said four persons then filed a revision case on the ground that there was no prima facie case for framing charges against them. While dismissing this revision case, the High Court observed that the proceedings had been dragged on for eight years and that the revisionists had suppressed the decision of the High Court in the complainants' revision case and had not, despite the High Court's direction to the trial court to finish the trial expeditiously, allowed the trial court to do so. The High Court, therefore, imposed costs of Rs 10,000 each on the appellants to be paid to the informant (complainant), and directed the trial court to dispose of the case within two months. In the instant appeal, the appellants (revisionists before the High Court) contended that the High Court had no jurisdiction to impose costs except as provided under Sections 148(3), 342 and 359 of the CrPC and that the inherent powers of the High Court could not be exercised contrary to the said provisions. Dismissing the appeal,

Held :

Section 482 CrPC stands independently from the other provisions of the Code and it expressly saves the inherent powers of the High Court. Therefore, to prevent abuse of the process of the court or otherwise to secure the ends of justice, the High Court is empowered to pass "such order" which may include order to pay costs to the informant (complainant) and the language of the section does not in terms place any fetter. This power is not conditioned or controlled by any other section nor is curtailed by any provisions which empower the court to award costs. (Paras 8 and 22)

If there is an express provision governing the particular subject-matter then there is no scope for invoking or exercising the inherent powers of the Court because the Court is required to apply, in the manner and mode prescribed, the provisions of the statute. But the highest court in the State could exercise inherent powers for doing justice according to law where no express power is available to do a particular thing and express power does not negative the existence of such power. It is true that under the Criminal Procedure Code, specific provisions for awarding costs are only Sections 148(3), 342 and 359 of the CrPC. At the same time, there is no specific bar that in no other case, costs could be awarded. Further, in view of provision for awarding costs under Section 59 in non-cognizable cases, it may be inferred that in a cognizable case and in an appeal or revision arising therefrom, the High Court cannot exercise its inherent power for awarding costs dehors the said provisions. But such an inference is not possible in cases where the High Court is exercising powers under Section 482. In cognizable cases also under Section 357 while awarding compensation out of the fine imposed on the accused, inter alia, the Court is required to take into consideration expenses properly incurred in the prosecution. Hence, exercise of such power would, on the contrary, be in conformity and not in conflict with the powers conferred under Sections 148(3), 342 and 357 or 359 of the CrPC. In appropriate cases, where it is necessary to pass such an order, the Court may award costs for the purposes mentioned in Section 482. (Paras 8, 12, 16 and 22)

The operation of the maxim "*expressio unius est exclusio alterius*" has to be restricted with regard to the sections which empower the Court to grant costs in certain cases by holding that for the cases mentioned in those sections, the Court cannot exercise its inherent jurisdiction of granting costs or pass an order of granting costs in a method and mode different from what is provided by the said sections. Application of this maxim in the present case would lead to inconsistency and injustice because in cases where the Court finds that a petition under Section 482 is an abuse of the process of law and an unjustifiable petition for some ulterior motive including dragging of the proceedings of the court, it can pass any other order, but not the order for costs. (Para 18). *Mary Angel* v. *State of T.N.*, (1999) 5 SCC 209: 1999 SCC (Cri) 1296: AIR 1999 SC 2245: 1999 Cri LJ 3513.

Bench Strength **2**. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 13-5-1999]

A.T. Sankaralinga Mudaliar v. Narayana Mudaliar, AIR 1922 Mad 502: 23 Cri LJ 583 (FB), overruled

Lasu Janu Pawar v. Emperor, AIR 1948 Bom 169: 49 Cri LJ 203; P. Veerappa Naidu v. Avudayammal, AIR 1925 Mad 438: 26 Cri LJ 707, impliedly overruled

Pampapathy v. State of Mysore, AIR 1967 SC 286: 1966 Supp SCR 477; Raghubir Saran (Dr.) v. State of Bihar, AIR 1964 SC 1: (1964) 2 SCR 336; Guardians of West Ham Union v. Churchwardens of St. Matthew, Bethnal Green, 1896 AC 477: 75 LT 286; Bombay Civil Fund Act, 1882, Re, Pringle v. Secy. of State for India, (1888) 40 Ch D 288: 60 LT 796, relied on

State of Orissa v. Ram Chander Agarwala, (1979) 2 SCC 305: 1979 SCC (Cri) 462, explained and distinguished

[7112] — S. 482 — Abuse of the process of court — Forum shopping — Impermissibility — Imposition of costs — *Obtaining ad interim order in a contempt application after failing to get such order in suit from the trial court and Division Bench of High Court, held, amounted to abuse of process of court and forum shopping and disentitled the person doing so to equity — Hence, such act condemned — Appeal dismissed with costs of Rs 50,000 — CPC, 1908, Ss. 151, 35 and 35-A — Contempt of Courts Act, 1971, Ss. 10 and 17*

TM Bank Ltd. (the company) was incorporated and registered under the Companies Act, 1956. Members of the appellant Association held a large number of shares in the company. As its annual general meetings (AGM) for a number of years could not be held, a date was fixed for holding of the 82nd AGM. The appellant, however, filed a suit before a Single Judge of the High Court. In *Tamilnad Mercantile Bank (1) case*, (2008) 15 SCC 529 the Supreme Court directed the Single Judge to consider the application for grant of injunction filed by the appellants afresh on merits. It also allowed the Single Judge to issue necessary directions for the 83rd AGM including extension of time therefor.

The 83rd AGM was proposed to be held on a certain date. In the said suit, the Single Judge passed an order of injunction dated 26-7-2006 allowing the AGM to be held in respect of certain items of the agenda but to be adjourned in respect of items relating to election of new Directors in place of those retiring by rotation. The AGM was held complying therewith.

On an application filed by a party, the Board of Directors passed a resolution on 13-5-2007 to transfer a certain number of shares.

At the instance of the Bank, a Single Judge of the High Court by an order dated 27-3-2008: (*i*) appointed *R*, a retired High Court Judge to chair the 83rd, 84th and 85th AGMs, (*ii*) extended the time for the said AGMs up to 6-6-2008.

In a subsequent suit, challenging the transfer of a certain number of shares and seeking permanent injunction restraining the transferees thereof from exercising any rights as shareholders, the Single Judge by an order dated 29-4-2008, declined to postpone the AGM scheduled to be held on 5-6-2008 but added that any resolution passed therein should not be implemented until further orders of that Court. He added that disputes relating to the AGM would be dealt with only by that Court and none other. After consulting all the shareholders the AGM was held under the chairmanship of *R* on the scheduled date. The appellant had not submitted any petition at that stage but did so at a later stage.

The appellant filed an application in the said subsequent suit for an order of injunction restraining the election of Directors but prior to hearing thereof the AGM had already been held.

The appellant preferred an intra-court appeal against the order dated 29-4-2008 which was, in turn, dismissed by a Division Bench.

(7) Exercise of power/Directions in matters other than quashment of proceedings *(contd.)*

Thereafter, a contempt petition was filed against one *G*, the MD of the Bank for disobedience of the order of the Single Judge dated 26-7-2006. The contempt petition sought: (*i*) *G* to be punished for contempt, (*ii*) annulment of the 83rd, 84th and 85th AGMs on the ground of being contrary to the Court's order dated 26-7-2006. The said matter came up before another Single Judge. The orders passed by the earlier Single Judge from time to time were not disclosed therein. Therefore, the Single Judge passed an ad interim ex parte order restraining *G*, the MD from implementing the resolution or item of business in relation to the election of Directors passed at the AGM till the disposal of the contempt petition.

T and *S* who were elected in the AGM, preferred intra-court appeals under Section 19(1) of the Contempt of Courts Act, 1971 against the said order passed in the contempt petition. A Division Bench of the High Court held the said appeals to be maintainable. The appellant then filed the present appeal by special leave. The question involved in the appeal was whether the purported interim order passed by the Single Judge in contempt proceeding should have been interfered with or not by the Division Bench.

In the subsequent suit, noting that the plaintiff therein had obtained in the contempt petition the same relief which they had failed to get in the said suit, from the Single Judge, from the Division Bench and from the Supreme Court and that they had been concealing the said facts in the contempt case, the Single Judge held them to be disentitled to the equitable relief of injunction. A Division Bench upheld that order.

Before the Supreme Court, the appellant contended that (*i*) *T* and *S* being not a party to the contempt proceeding could not have maintained an appeal, (*ii*) an appeal under Section 19(1) of the Contempt of Courts Act, 1971 was not maintainable against an ad interim order of injunction, (*iii*) the ad interim order of injunction passed in the contempt case did not satisfy the test of a "judgment" and thus the Division Bench could not even have entertained an intra-court appeal.

The respondents contended (*i*) as an interim order of injunction was obtained upon suppression of facts, an intra-court appeal was maintainable both under Section 19(1) of the Contempt of Courts Act, 1971 as also under Clause 15 of the Letters Patent of the Madras High Court, (*ii*) no interference was called for with the impugned judgment as the appellant had taken recourse to forum shopping, and, the appellant being guilty of the abuse of the process of the court, was not entitled to any equitable relief.

Dismissing the appeals with costs assessed at Rs. 50,000,

Held :

The chain of events clearly show that although in the subsequent orders it was not expressly stated that it was in continuation of the earlier order dated 26-7-2006, undoubtedly agenda items relating to election of new Directors were allowed to be taken up in the 83rd Annual General Meeting resulting in the election of the Directors. (Para 29)

The High Court appointed *R* to chair the meeting. Strangely enough the contempt petition was filed against the Managing Director alone who had no role to play in the matter of holding of the meeting. Action of the Court was not sought for against *R* who acted as an officer of the Court. Full disclosure as regards the subsequent proceedings was not made therein. The contempt petition was taken up by a Judge who was not acquainted with the fact of the matter. (Para 31)

The orders of the High Court speak in two voices. The doctrine of amity or comity requires that different courts exercising separate jurisdiction pass similar orders. (Para 48)

It is also well settled that even an irregular order can be set aside by the same court or by a higher court. (Para 49)

Argument (*i*) of the appellant if accepted, would lead to strange results. Admittedly *T* and *S* were not parties to the suit. They were elected during the pendency of the suit, whether legally or otherwise. The order granting injunction against the Managing Director had affected their valuable right. They were elected for a limited period. The principle of corporate democracy demands that the Bank functions through its elected Directors. The endeavour on the part of the appellant had been to see that old Directors may continue despite the expiry of their tenure. When, however, day-to-day affairs of the Bank were left at the hands of the Managing Director and the two representatives of Reserve Bank of India, an attempt was made to see that the newly elected Directors do not assume their office. In this attempt the appellant has succeeded so far by adopting measures which amount to an abuse of process of court. (Paras 29 to 32)

The superior courts of the country must discourage forum shopping. A person seeking equity must do equity. A party cannot take recourse to a machination which amounts to abuse of process of court. (Para 51)

If two views are possible, a contempt petition would not lie. (Para 52)

Apart from the fact that the appellant did not approach the Court with clean hands and was thus not entitled to any equitable relief, the manner in which the interim order was passed by the Single Judge in the contempt proceedings was not justified. The suit related to the 83rd Annual General Meeting. The contempt application related to election of Directors of the Bank at the 83rd, 84th and 85th Annual General Meetings. Although the sub-application was directed to be posted for 23-7-2008 the order of injunction was not limited to that date. It was directed to continue till disposal of the contempt application; though it was stated earlier that the ad interim injunction was till 21-7-2008. It does not contain any reason. There is no finding as regards existence of a prima facie case. There is no finding that *G* had prima facie committed the contempt. The order is not a speaking one. Ordinarily a direction could not be issued in contempt proceedings without arriving at a finding as to how the Managing Director of the Bank could be said to have flouted the order. Indisputably, in view of the interim order dated 20-6-2008 the respondents were prejudiced. They were, thus, "persons aggrieved". As persons aggrieved they could move the higher court. If an interim order was passed wholly without jurisdiction, an appeal would lie thereagainst. In a situation where order has been passed adverse to the interest of the alleged contemnor an appeal would be maintainable particularly where a judgment has been passed by a court which is beyond its jurisdiction. (Paras 35, 37 and 40). *Tamilnad Mercantile Bank Shareholders Welfare Assn. (2)* v. *S.C. Sekar,* (2009) 2 SCC 784.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 5-12-2008]

Lewis & Spelling: The Law of Injunctions, p. 10, referred to

Isaacs v. Robertson, 1985 AC 97: (1984) 3 WLR 705: (1984) 3 All ER 140 (PC); V.R. Dalal v. Yougendra Naranji Thakkar, (2008) 15 SCC 625; Udyami Evam Khadi Gramodyog Welfare Sanstha v. State of U.P., (2008) 1 SCC 560; Sushila Raje Holkar v. Anil Kak, (2008) 14 SCC 392; Municipal Corpn., Jabalpur v. Om Prakash Dubey, (2007) 1 SCC 373: (2007) 1 SCC (L&S) 256; Purshotam Dass Goel v. Justice B.S. Dhillon, (1978) 2 SCC 370: 1978 SCC (Cri) 195; R.N. Dey v. Bhagyabati Pramanik, (2000) 4 SCC 400; Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda, (2006) 5 SCC 399, relied on

D.N. Taneja v. Bhajan Lal, (1988) 3 SCC 26: 1988 SCC (Cri) 546; Ashoke Kumar Rai v. Ashoke Arora, 96 CWN 278; Ashis Chakraborty v. Hindusthan Lever Sramik Karmachari Congress, 96 CWN 673: (1992) 1 CHN 160, considered

(8) Interference with investigation/FIR

See also extensively under '(11) Quashment of proceedings', below

See also under Sections 155-159 in Vol. 1, pp. 390 et seq.

[7113] — **S. 482 — Arrest and search by an officer not empowered or authorised, in violation of Ss. 41 and 42, ADPS Act being per se illegal would vitiate the trial — In such case powers under S. 482 CrPC can be invoked to quash the proceedings** — *Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 41 & 42*

The appellant was searched by the Excise Inspector, Devikulam. On the allegation of recovering "ganja" from his possession the appellant was taken into custody. Under Section 20(*b*)(*i*) of the Narcotic Drugs and Psychotropic Substances Act, 1985 a charge was laid against him by the Excise Inspector whereas the statutory notification under which he became competent so to do, was issued by the Government of Kerala in GOMs No. 168/92/TD, authorising officers of and above the rank of Excise Inspectors of the Excise Department to file complaints under Section 36-A(1)(*d*) of the NDPS Act, on the ground that the Excise Inspector was not authorised to file the charge-sheet against the appellant and, therefore, the complaint was not maintainable, the appellant was discharged under Section 227 CrPC. The said Excise Inspector, Devikulam, however, filed a fresh charge-sheet against the appellant. The case was committed to the Court of the Additional Sessions Judge. The appellant filed a Crl. MC before the High Court of Kerala praying that the entire proceedings in sessions case be quashed. By the order under challenge the High Court dismissed the petition. Allowing the appeal and setting aside the order of the High Court, allowing the Crl. MC and quashing the proceedings in the sessions case,

Held :

No officer than an empowered officer can resort to Section 41(2) or exercise powers under Section 42(1) of the NDPS Act or make a complaint under clause (*d*) of sub-section (1) of Section 36-A of the NDPS Act. It follows that any collection of materials, detention or arrest of a person or search of a building or conveyance or seizure effected by an officer not being an empowered officer or an authorised officer under Section 41(2) of the NDPS Act, lacks sanction of law and is inherently illegal and as such the same cannot form the basis of a proceeding in respect of offences under Chapter IV of the NDPS Act and use of such a material by the prosecution vitiates the trial. (Para 16)

(8) Interference with investigation/FIR *(contd.)*

The power under Section 482 CrPC has to be exercised by the High Court, inter alia, to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. So, exercise of power under Section 482 CrPC to quash proceedings in a case like the one on hand, would indeed secure the ends of justice. (Para 18)

In the present case the search and recovery were by an officer who was not empowered so to do. If the proceedings in the instant case are not quashed, the illegality will be perpetuated resulting in grave hardship to the appellant by making him to undergo the ordeal of trial which is vitiated by the illegality and which cannot result in conviction and sentence. It is a fit case to exercise power under Section 482 CrPC to quash the impugned proceedings. (Para 20). *Roy V.D.* v. *State of Kerala*, (2000) 8 SCC 590: 2001 SCC (Cri) 42: AIR 2001 SC 137.

Bench Strength **2**. Coram: **S.S.M. Quadri** and *S.N. Phukan*, JJ. [Date of decision: 10-11-2000]

State of Punjab v. Baldev Singh, (1999) 6 SCC 172: 1999 SCC (Cri) 1080, distinguished

State of Punjab v. Balbir Singh, (1994) 3 SCC 299: 1994 SCC (Cri) 634, relied on

[7114] — S. 482 — Investigation — Persons authorised to carry out — Investigation if on facts was not by authorised officer — *Pursuant to an information, case registered under Ss. 13(1)(e) and 13(2), PC Act, 1988 and investigation started by Deputy Superintendent of Police, SPE, but under order of Superintendent of Police, SPE, completed by Inspector (SPE) — The said order containing reasons for entrustment of investigation to the Inspector — Moreover, the time-lag (about two-and-a-half years in this case) between registration of FIR and the said order itself showing application of mind by the Superintendent of Police to the authorisation — In such circumstances, held, High Court erred in concluding that the investigation was not conducted by an officer authorised under S. 17, PC Act — Hence, High Court's order under S. 482 CrPC quashing the investigation and consequent proceedings, set aside — Prevention of Corruption Act, 1988, Ss. 17 second proviso, 13(1)(e) & 13(2)*

After receiving a secret information on 4-7-1992, it was found on verification that the respondent while posted as an officer in the Excise Department had earned moveable and immovable properties allegedly disproportionate to his known sources of income during the check period commencing from 1-1-1982 to 4-8-1992. Resultantly a case under Sections 13(1)(*e*) and 13(2) of the Act was registered against him. The initial investigation was conducted by a Deputy Superintendent of Police, Special Police Establishment, Gwalior and thereafter by an Inspector, SPE, who was stated to have been duly authorised by the Superintendent of Police, SPE, vide Order No. SPE/2766/94 dated 12-12-1994 issued under Section 17 of the Prevention of Corruption Act, 1988. After investigation, sanction was obtained and charge-sheet was filed. Exercising its powers under Section 482 CrPC, the M.P. High Court quashed the investigations and consequent proceedings on the ground that for the offence punishable under Section 13(1)(*e*) of the Act the investigation had not been conducted by an authorised officer in terms of Section 17 of the Act. Similar was the question involved in the connected cases.

Allowing the State's appeals,

Held :

Admittedly in the instant cases, even in the absence of the authority of the SP the investigating officer was in law authorised to investigate the offence falling under Section 13 of the Act with the exception of one under sub-section (1)(*e*) thereof. After registration of the FIR the Superintendent of Police is shown to be aware and conscious of the allegations made against the respondents, the FIR registered against them and pending investigations. The reasons for entrustment of investigation to the Inspector can be discerned from the order itself. The appellant State is, therefore, justified in submitting that the Superintendent of Police had applied his mind and passed the order authorising the investigation by an Inspector under the peculiar circumstances of the case. The High Court should not have construed liberally in favour of the accused the provisions of an Act which had been legislated to curb the illegal and corrupt practices of public officers. (Para 14)

The High Court was not right in holding that merely because the order of the Superintendent of Police was in typed pro forma that showed the non-application of mind or could be held to have been passed in a mechanical and casual manner. The order rather clearly indicates the name of the accused, the number of the FIR, the nature of the offence and power of the Superintendent of Police permitting him to authorise a junior officer to investigate. The time between the registration of the FIR and authorisation in terms of the second proviso to Section 17 shows further the application of mind and the circumstances which weighed with the Superintendent of Police to pass the order. (Para 15). *State of M.P.* v. *Ram Singh*, (2000) 5 SCC 88: 2000 SCC (Cri) 886: AIR 2000 SC 870: 2000 Cri LJ 1401.

Bench Strength **2**. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 1-2-2000]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, distinguished

[7115] — S. 482 — FIR — Second FIR — Quashment, refused — Second FIR covering partly the same subject-matter and period — Legality of such FIR and investigation pursuant thereto — If to be quashed — *Offence under S. 13(1)(e) read with S. 13(2) of Prevention of Corruption Act — FIR against, in respect of the period 1-8-1978 to 24-8-1989 and investigation pursuant thereto culminating in submission of 'B' report which, after a public notice accepted by the trial court — Subsequently another FIR filed making the same allegation against the same officer for the period 1-8-1978 to 25-7-1995 — Such a second FIR, held, not by itself illegal — Hence, could not be quashed and investigation pursuant thereto could not be restrained under S. 482 — However, the investigating authority will have essentially to take into account the results of the earlier investigation — Prevention of Corruption Act, 1988, Ss. 13(1)(e) and 13(2)*

The appellant was a Class I officer in the Karnataka Administrative Service. At the instance of the police, an FIR lodged against him under Sections 13(1)(*e*) and 13(2) of the Prevention of Corruption Act in respect of check period of 1-8-1978 to 24-8-1989 alleging that he had assets disproportionate to his known sources of income. The Investigating Officer submitted a 'B' Report before the Special Judge, who after issuing a public notice inviting objections, accepted the report. On 25-7-1995 another FIR was filed at the instance of the police against the appellant in respect of the period 1-8-1978 to 25-7-1995 under the same provisions and making similar allegations. The appellant filed a petition under Section 482, CrPC before the Karnataka High Court seeking quashment of the second FIR on the ground that in view of the result of the earlier investigation the inclusion of the same check period in the second FIR was not proper. However, the High Court refused relief and observed that the second FIR contained a set of fresh allegations in respect of fresh alleged assets during a fresh check period. Disapproving of the said observations but otherwise approving of the High Court's decision,

Held :

There is no provision in the Criminal Procedure Code or the Prevention of Corruption Act to sustain the appellant's contention that the present FIR itself is bad in law. There is no provision in the CrPC which debars the filing of an FIR and investigating into the alleged offences merely because for an earlier period, namely, 1-8-1978 to 24-8-1989, there was an FIR which was duly investigated into and culminated in a 'B' Form Report which was accepted by a competent court. At the same time, it has to be held that the conclusion of the High Court that the present proceeding relates to fresh alleged assets and a fresh check period is not wholly correct. Though the earlier period also could be a subject-matter of investigation for a variety of reasons like some assets not being taken into account or some materials brought during investigation not being taken into account, yet at the same time, the results of the earlier investigation cannot be totally obliterated and ignored by the investigating agency. But that cannot be a ground for quashing of the FIR itself and for injuncting the investigating authority to investigate into the offence alleged.

The appellant is right in contending that the assets which were valued in the earlier investigation proceeding at a particular value cannot be valued higher in the present proceedings unless any positive ground is there for such revaluation. *M. Krishna* v. *State of Karnataka*, (1999) 3 SCC 247: 1999 SCC (Cri) 397: AIR 1999 SC 1765.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision: 19-2-1999]

[7116] — S. 482 — Quashing of FIR — Criminal writ petition seeking — *High Court's view that writ jurisdiction need not be exercised as even if charge-sheet filed, remedies were open for seeking discharge from appropriate court — Writ petition pending for nine years in High Court — Proceedings arising out of the complaint having been stayed — High Court not correct in opining that writ jurisdiction cannot be exercised for quashing the FIR, though quashing of FIR to be resorted to rarely — After lapse of nine years, having regard to facts and circumstances of the case, held, it would not be fair not to examine grievance of the writ petitioner on the ground that they could seek discharge*

(8) Interference with investigation/FIR *(contd.)*

if charge-sheet filed — Writ petition must be decided afresh on its own merits — Constitution of India — Art. 226. P.N. Poddar v. *State of Maharashtra*, (2007) 15 SCC 705.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 9-8-2004]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

[7117] — S. 482 — Quashing of FIR — Held, can be ordered when FIR does not disclose the offence alleged — *FIR registered against Appellant 1, a constituted attorney and MD of Oxford University Press; Appellant 2, publisher and printer of the offending book; and author of the book alleging commission of offences under Ss. 153, 153-A and 34 IPC — Supreme Court directed in its earlier decision dated 15-4-2007 [(2007) 5 SCC 1] that as FIR did not disclose offences alleged therein, respondents shall not proceed against the author for those offences — Present two appellants seeking clarification about their position — Held, manifestly tenor and import of the judgment reported at (2007) 5 SCC 1 was to grant the same and identical relief to the appellants which was granted to the author, though by inadvertence or mistake names of appellants had not been recorded in the judgment — Penal Code, 1860, Ss. 153, 153-A and 34 — Constitution of India — Arts. 226, 136 and 19(1)(a). Manzar Sayeed Khan* v. *State of Maharashtra*, (2009) 12 SCC 157.

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and *L.S. Panta* and *D.K. Jain*, JJ. [Date of decision: 16-4-2009]

Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1: (2007) 2 SCC (Cri) 417, clarified and followed

[7118] — S. 482 — Power to quash FIR/charge-sheet — Scope — *Held, said power is exercised by the court to prevent abuse of the process of law and court but such a power could be exercised only when the complaint filed by the complainant or the charge-sheet filed by the police did not disclose any offence or when the said complaint is found to be frivolous, vexatious or oppressive — Case law pertinent thereto discussed* (Paras 14 to 25). *Shakson Belthissor* v. *State of Kerala*, (2009) 14 SCC 466: (2009) 80 AIC 192 (SC).

Bench Strength **2**. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 6-7-2009]

Alpic Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513, followed

Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; Drugs Inspector v. Dr. B.K. Krishnaiah, (1981) 2 SCC 454: 1981 SCC (Cri) 487; MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288: 1987 SCC (Cri) 82; Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241: 2002 SCC (Cri) 129; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567, considered and relied on

Chunduru Siva Ram Krishna v. Peddi Ravindra Babu, (2009) 11 SCC 203: (2009) 3 SCC (Cri) 1297; V.V.S. Rama Sharma v. State of U.P., (2009) 7 SCC 234: (2009) 3 SCC (Cri) 356, relied on

[7119] — Ss. 482, 190 and 157 — Investigation and trial — Superior Court's inherent powers or writ jurisdiction to interfere with, when and how can be exercised — Legal position summarised — *Constitution of India — Arts. 226 and 32* (Paras 16 to 20). *S. Khushboo* v. *Kanniammal*, (2010) 5 SCC 600.

Bench Strength **3**. Coram: *K.G. Balakrishnan, C.J.* and *Deepak Verma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 28-4-2010]

Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., (2000) 3 SCC 269: 2000 SCC (Cri) 615; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283; Shakson Belthissor v. State of Kerala, (2009) 14 SCC 466: (2010) 1 SCC (Cri) 1412; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516, relied on

[7120] — Ss. 482, 154, 190, 204 and 173 — Refusal to quash FIR — Arising of new cause of action for invocation of S. 482 CrPC after cognizance of offence is taken subsequent to filing of charge-sheet — Permissibility of

The High Court has refused to quash a first information report as a different standard therefor was required to be applied. However, when materials are collected and a charge-sheet is filed on the basis whereof the Magistrate takes cognizance of the offence, the same would give rise to a new cause of action. An order taking cognizance of an offence on the basis of a charge-sheet filed by the investigating officer and/or directing issuance of summons on a complaint petition, would attract the provisions of Section 482 CrPC if a case has been made out for invocation thereof. (Para 26). *Devendra* v. *State of U.P.*, (2009) 7 SCC 495: (2009) 3 SCC (Cri) 461.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

[7121] — S. 482 — Exercise of jurisdiction — Stay of proceedings — Bona fides of applicant — Non-appearance of accused applicant before trial court — Relevance — *Held, a S. 482 application on plea that investigation not proper at instance of accused who did not choose to even appear before Sessions Judge before whom matter was pending, should immediately have put High*

Court on guard before entertaining petition which had no bona fides whatsoever — Said application was liable to be dismissed straightaway (Paras 32 and 39). *Virender Prasad Singh* v. *Rajesh Bhardwaj*, (2010) 9 SCC 171: (2010) 3 SCC (Cri) 1169: 2010 Cri LJ 4275: (2010) 95 AIC 182 .

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 16-8-2010]

Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332: (2009) 2 SCC (Cri) 1047; Ramachandran v. R. Udhayakumar, (2008) 5 SCC 413: (2008) 2 SCC (Cri) 631, relied on

Rubabbuddin Sheikh v. State of Gujarat, (2010) 2 SCC 200: (2010) 2 SCC (Cri) 1006, distinguished on facts

[7122] — Ss. 482, 154 and 155 — Exercise of power under S. 482 to quash FIR which made out prima facie commission of offence — Impermissibility — *Held, neither the jurisdiction under Art. 226 nor power under S. 482 CrPC can be exercised to quash an FIR which made out prima facie commission of offence — Penal Code, 1860, S. 279 — FIR under, prima facie indicating commission of offence by accused — Quashment of, by High Court under Art. 226 — Impermissibility — Bombay Animal Preservation Act, 1954 (72 of 1954), Ss. 5, 6 and 8 — Prevention of Cruelty to Animals Act, 1960, S. 11(1)(d)*

Respondents 1 to 6, who had filed writ petition before the High Court, were not accused. Therefore, they could not have prayed for and, in fact, had not prayed to quash the FIR filed by Appellant 1 and the proceedings pursuant thereto. Prayer for quashing the FIR could have been made only by the accused, who had been named therein. But none of them had chosen to invoke jurisdiction of the High Court either under Section 482 CrPC or under Article 226 of the Constitution to get the FIR quashed. The quashing of FIR at the instance of third parties is unknown to law. Further, it is well settled that neither power under Section 482 CrPC nor jurisdiction under Article 226 can be exercised by the High Court to quash the complaint if prima facie commission of offences is made out. (Paras 20 and 19)

Appellant 1 had averred in his complaint that close to 2000 goats and sheep were being transported in eight trucks, in a cramped manner, denying them even food and water in the process that carrying of more than 200 animals in a truck was cruelty by itself. The complaint has been quashed without taking into account the contents thereof or discussing them. The examination of the complaint lodged by Appellant 1 prima facie indicates commission of offences mentioned therein by the accused. (Para 21)

Even before the investigation could be completed and report submitted to the competent court by the investigating agency, the High Court arrived at a premature conclusion that no offences under Section 279 IPC and under Sections 5, 6 and 8 of the Bombay Animal Preservation Act, 1954 were made out against the accused and quashed the criminal proceedings. Such a relief to the accused, who had not approached the High Court for quashing the FIR, could not have been granted in a petition filed by the owners of goats and sheep seeking custody of the livestock notwithstanding wide amplitude of power available under Article 226 of the Constitution. (Para 22)

The High Court has concluded that the offences as alleged in the FIR under Section 279 IPC and Section 11(1)(*d*) of the Act or Sections 5, 6 and 8 of the Bombay Animal Preservation Act, 1954 were not made out and also recorded another finding that excessive number of animals were carried in the vehicles due to which they were subjected to unnecessary pain and suffering. These findings are contradictory to each other in terms. (Para 24). *Bharat Amratlal Kothari* v. *Dosukhan Samadkhan Sindhi*, (2010) 1 SCC 234.

Bench Strength 2. Coram: *H.S. Bedi* and **J.M. Panchal**, JJ. [Date of decision: 4-11-2009]

Dosukhan Samdakhan Sindhi v. State of Gujarat, 2009 Cri LR 101 (Mah & Guj), reversed

[7123] — Ss. 482, 157, 169, 170, 173 and 190 — Inherent power under S. 482 — Scope of — Interference with investigation — Suo motu invocation of S. 482 on basis of a letter to High Court — When permissible — *Informant wife writing letter to High Court that police were inactive in not arresting all accused persons who were involved in murder of her husband — Informant wife also stating that main culprits were moving freely — Senior police officers at intervention of MLA discarding a supervision report implicating all accused persons and making a new report on the basis of polygraph test and alibi provided by MLA — Effect — High Court quashing second supervision report of senior officers and directing additional charge-sheet to be filed based on first supervision report — Whether within scope of S. 482 — Though normally courts cannot interfere, High Court in exercise of its inherent power under S. 482, held, can interfere with investigation to do justice to the parties — Suo motu invocation of power by High Court not interfered with*

The High Court in exercise of inherent powers under Section 482 CrPC entertained a letter written by the informant wife of the deceased. The wife was aggrieved by the inaction of the police in not arresting

(8) Interference with investigation/FIR *(contd.)*

all the accused persons who had murdered her husband. The supervisory report of the Additional SP was sufficient for the Magistrate to frame charges against all the accused persons. The polygraph test performed by the Additional SP confirmed the presence of all the accused persons who had participated in the assault with different types of weapons. Even the senior police officers accepted the same. The Additional SP was of the view that investigation of other twelve accused required thorough investigation. But later at the intervention of an MLA, the senior police officers conducted a second test and differed with the original test note of the Additional SP.

The Division Bench of the High Court by its impugned order strongly disapproved the role played by the MLA and senior police officers in interfering with the process of investigation. The Division Bench of the High Court, therefore, directed the appropriate authorities to take action against all the accused persons, according to law, based upon the supervision note issued by the Additional SP and quashed all actions taken on the basis of the test report of the IG of Police. Further directions were given to the investigating authority to act in accordance with the decision in *Dinesh Dalmia case*, (2007) 8 SCC 770, regarding filing of charge-sheet even if the accused persons had not been arrested.

It was submitted on behalf of the appellant-accused that the direction to file additional charge-sheet was contrary to the provisions of law and could not, therefore, be sustained.

Dismissing the appeal of the accused,

Held :

No interference is called for with the impugned order of the High Court. The High Courts in exercise of their inherent and plenary powers are entitled to intervene to set right the illegality and/or mala fide action on the part of the investigating authorities when it notices such illegality and/or mala fide action on the part of the investigating authorities. While the courts should not intervene in matters of investigation, which power, under the scheme of CrPC has been vested in the police authorities, an exception has also been made that in certain circumstances the court could intervene in order to do justice to the parties. The courts and in particular the High Courts, are the guardians of the life and liberty of the citizens and if there is any flavour of deliberate misuse of the authority vested in the investigating authority, the High Court or the Supreme Court may certainly step in to correct such injustice or failure of justice. (Paras 48 to 52)

The High Court, therefore, had power to interfere with the directions given by the Director General of Police to the Inspector General of Police to submit a fresh test note despite the supervisory report which had been submitted by the Additional SP indicating that a case had been made out to go to trial as against all the nineteen accused. Although the supervisory report submitted by the Additional SP had been duly accepted not only by the Inspector General of Police, but also by the Director General of Police, which was sufficient for the Magistrate to frame a charge against all the accused persons, a fresh direction was given to the Inspector General of Police, to submit a test note. Such a direction given after the intervention of an MLA who has gone to the extent of providing an alibi for two of the accused, *J* and *S*, claiming that they were present in his house when the incident had occurred, not only exudes an unpleasant flavour, but raises doubts about the bona fides of the police authorities at the highest level. In fact, it is on account of such intervention that initially charge was filed only against four of the accused and thereafter three more. No steps were taken as far as the remaining twelve accused were concerned and it is only when the action of the said MLA was questioned before the High Court, that charge was also filed against the remaining twelve accused persons. (Paras 49 and 50)

In the peculiar facts and circumstances of this case, it was necessary for such a direction to be given by the High Court in order to prevent an injustice from being done on account of the intervention of influential persons, which not only had the effect of negating the supervisory report of the Additional SP but also resulted in an attempt to shield some of the accused persons. (Para 53). *Kedar Narayan Parida* v. *State of Orissa*, (2009) 9 SCC 538.

Bench Strength **2**. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 16-9-2009]

Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117: (1967) 3 SCR 668; Comptroller and Auditor General of India v. K.S. Jagannathan, (1986) 2 SCC 679: 1986 SCC (L&S) 345: (1986) 1 ATC 1; H.S. Bains v. State (UT of Chandigarh), (1980) 4 SCC 631: 1981 SCC (Cri) 93, relied on

[7124] — Ss. 482 and 156 — Interference by High Court under S. 482 during investigation by police — Limitations of — Overstepping limits of judicial interference — Impermissibility — Offences under Ss. 406/420 IPC — *Held, it is statutory obligation and duty of police to investigate into crime and courts normally ought not to inter-*

fere and guide investigating agency as to in what manner investigation has to proceed — Jurisdiction under S. 482 conferred on High Court has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the test laid down in provision itself — Herein, interference by High Court, without recording any reasons, with investigation, which is within exclusive domain of police, by virtually directing police to investigate case from a particular angle and take certain steps, which the police, depending upon evidence collected and host of other circumstances, may or may not have attempted to take in its discretion, held, was overstepping limits of judicial interference — Penal Code, 1860, Ss. 406 and 420

In the instant case, the respondent lodged an FIR against the appellants alleging commission of offences under Sections 406 and 420 IPC. The police, having registered the case against the appellants, commenced its investigation. Even while the investigation was in progress, for some inexplicable reasons, the respondent moved the High Court under Section 482 CrPC, seeking directions to the police. The petition was filed within one week of registration of the crime, by which time the police had already started serious investigation. None of the appellants were impleaded as party-respondents to the petition filed under Section 482 CrPC. The State alone was impleaded as the respondent.

The High Court disposed of the same observing, inter alia, that it was obligatory on the part of the police to conduct investigation in accordance with law, including recording of statements from witnesses, arrest, seizure of property, perusal of various documents and filing of charge-sheet. The High Court accordingly directed the police to expedite and complete the investigation. The impugned order resulted in drastic consequences far-reaching in nature. Hence the present appeals.

Allowing the appeals,

Held :

It is the statutory obligation and duty of the police to investigate into the crime and the courts normally ought not to interfere and guide the investigating agency as to in what manner the investigation has to proceed. The High Court, without recording any reason whatsoever, directed the police that it is obligatory on their part to record statements from witnesses, arrest, seize property and file charge-sheet. It is difficult to discern as to how such directions resulting in far-reaching consequences could have been issued by the High Court in exercise of its jurisdiction under Section 482 CrPC, which also resulted in much harassment of the appellants. The High Court interfered with the investigation of crime, which is within the exclusive domain of the police, by virtually directing the police to investigate the case from a particular angle and take certain steps which the police, depending upon the evidence collected and host of other circumstances, may or may not have attempted to take any such steps in its discretion. (Paras 24, 25 and 31)

It is not necessary that every investigation should result in arrest, seizure of the property and ultimately in filing of the charge-sheet. The police, in exercise of its statutory power coupled with duty, upon investigation of a case, may find that a case is made out requiring it to file charge-sheet or may find that no case as such is made out. It needs no reiteration that the jurisdiction under Section 482 CrPC conferred on the High Court has to be exercised sparingly, carefully and with caution only where such exercise is justified by the test laid down in the provision itself. (Para 32)

There was no allegation of dereliction of any duty on the part of the investigating agency. There was also no allegation of any collusion and deliberate delay on the part of the investigating agency in the matter of investigation into the case, that had been promptly registered on the information lodged by the respondent. (Para 17)

The impugned order must be held to be an order passed overstepping the limits of judicial interference. Even in public interest litigation proceedings, appropriate directions may be issued and the purpose in issuing such directions is essentially to ensure performance of statutory duty by the investigating agency. The duty of the court in such proceedings is to ensure that the agencies do their duties in compliance with law. (Paras 28 and 29)

The High Court, in the instant case, did not even advert to the relevant facts. As stated in the order itself, it was more guided by the arguments made across the Bar that the police has not taken any steps to arrest the persons and seize the amounts involved in this case from the appellants though there is no such factual foundation as such laid in the petition. The High Court has altogether ignored the counter filed by the police that the police had already examined ten witnesses within a short span of time after the registration of crime and recorded their statements. (Para 30)

The submission made by the respondent that the High Court did not issue any directions but merely disposed of the petition with the observations reminding the police of its duty, is not impressive.

(8) Interference with investigation/FIR *(contd.)*

The question that arises for consideration is whether there was any occasion or necessity to make those "observations" even if they are to be considered to be observations and not any directions. It is not even remotely suggested that there was any deliberate inaction or failure in the matter of discharge of duties by the police. There was no allegation of any subversion of processes of law facilitating the accused to go scot-free nor is there any finding as such recorded by the High Court in its order. (Para 35)

For the aforesaid reasons, the impugned judgment of the High Court cannot be sustained, and hence, is set aside. (Para 42). *D. Venkata- subramaniam* v. *M.K. Mohan Krishnamachari*, (2009) 10 SCC 488: (2009) 82 AIC 245 (SC): (2009) 3 APLJ 205 (SC).

Bench Strength 2. Coram: *R.V. Raveendran* and **B. Sudershan Reddy**, JJ. [Date of decision: 14-9-2009]

King Emperor v. Khwaja Nazir Ahmad, (1943-44) 71 IA 203: AIR 1945 PC 18; State of W.B. v. S.N. Basak, AIR 1963 SC 447: (1963) 2 SCR 52; State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272; M.C. Mehta (Taj Corridor Scam) v. Union of India, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264; M.C. Abraham v. State of Maharashtra, (2003) 2 SCC 649: 2003 SCC (Cri) 628, relied on

[7125] — S. 482 — Inherent power — Doctrine of — Nature and scope of High Court's power under — When can power be exercised

Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under the Code, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. (Para 7)

While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. (Para 7). *CBI* v. *Ravi Shankar Srivastava*, (2006) 7 SCC 188: (2006) 3 SCC (Cri) 233: AIR 2006 SC 2872.

Bench Strength 2. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 10-8-2006]

[7126] — S. 482 — Deficiency alleged in authorisation by Superintendent of Police authorising Inspector to investigation — Quashment on basis of — Sustainability — *Quashing of proceedings was improper since impugned order was elaborate with reasons clearly discernible — Besides, High Court failed to take into consideration provisions of S. 19(3), PC Act — Prevention of Corruption Act, 1988, S. 17 r/w Ss. 13(1)(e) & (2) and 19(3)*

On the authorisation of Superintendent of Police, an FIR was registered against the respondent on 12-6-2000 in respect of offences punishable under Section 13(1)(*e*) read with Section 13(2) of the PC Act. Search was conducted in the house of the respondent on 15-6-2000/16-6-2000 and certain records and documents relating to the respondent, his son-in-law, his daughter and son were seized. By the impugned order the High Court accepted the Section 482 CrPC petition dated 11-7-2000 filed by the respondent and quashed the proceedings.

Allowing the appeal,

Held :

The second reason indicated by the High Court to quash the proceedings also has no substance. The question relates to the alleged deficiency in authorisation made by the Superintendent of Police authorising the Inspector to investigate the case. If one looks at the order passed, which formed the subject-matter of challenge in *Ram Singh case*, (2000) 5 SCC 88 it is crystal clear that the order passed in the present case by the Superintendent of Police is more elaborate and the reasons are clearly discernible. Even otherwise, the effect of Section 19(3) of the PC Act relating to prejudice has been completely lost sight of by the High Court. (Paras 13 and 16). *Supdt. of Police, Karnataka Lokayukta* v. *B. Srinivas*, (2008) 8 SCC 580: (2008) 3 SCC (Cri) 587: (2008) 69 AIC 49 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 18-8-2008]

State of M.P. v. Ram Singh, (2000) 5 SCC 88: 2000 SCC (Cri) 886, relied on

[7127] — S. 482 — Where criminal proceedings are initiated on the basis of illicit material collected on search and arrest which are per se illegal and vitiate the trial itself, power under S. 482 can be exercised to quash the proceedings as continuance of such proceedings would amount to abuse of process of the court

The power under Section 482 CrPC has to be exercised by the High Court, inter alia, to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. So, exercise of power under Section 482 CrPC to quash proceedings in a case like the one on hand, would indeed secure the ends of justice. (Para 18). *Roy V.D.* v. *State of Kerala*, (2000) 8 SCC 590: 2001 SCC (Cri) 42: AIR 2001 SC 137.

Bench Strength **2**. Coram: **S.S.M. Quadri** and *S.N. Phukan*, JJ. [Date of decision: 10-11-2000]

[7128] — Ss. 482 and 173(8) — Quashing of criminal proceedings — Initially case not registered against appellant but subsequently having regard to fresh materials coming to light pursuant to a preliminary inquiry, case registered under S. 13(1)(d) of Prevention of Corruption Act and under S. 120-B IPC against persons including appellant — Registration of case, held on facts, not actuated by mala fides or extraneous considerations — *Fresh facts having come to notice, investigating agency was justified in registering the case — High Court was justified in declining to interfere with the statutory functions of the investigating officer and to quash the criminal proceedings — Constitution of India — Art. 226*

The appellant was the Chief Minister of the State of Kerala for the period 1991-95. Kerala State Civil Supplies Corporation entered into a contract with M/s Power & Energy Pvt. Limited, Singapore for the purchase of import of 15,000 MT of Palmolein. The Comptroller & Auditor General of India (CAG) submitted his report dated 11-2-1994 for the year ending on 31-3-1993. One *V* who was the opposition MLA in the Kerala Assembly raised the allegation of corruption with regard to import of Palmolein in the Assembly. One *K*, Chief Editor of a newspaper filed a petition in the High Court under Art. 226 for the issuance of appropriate direction directing the respondent State to conduct investigation and register appropriate crime against the persons guilty in the matter of import of Palmolein. The writ petition was dismissed. *V* then presented a first information report before the Superintendent of Police, Vigilance (Hqrs.) praying for registering a case for offences under Section 13(1)(*c*) and (*d*) of the Prevention of Corruption Act and Sections 406, 409, 420, 201, 34 and 120-B IPC against the persons named therein which included the appellant as one of the accused persons. The Superintendent of Police informed that the Vigilance Department was not to initiate inquiry suo motu even when a complaint is made in person or in a signed petition. *V* thereupon filed a writ petition in the High Court praying for issuance of direction to the Deputy Superintendent of Police, Vigilance (Hqrs.) to register a crime case pursuant to the FIR lodged by him and to investigate the same in accordance with law. A Single Judge of the High Court referred to various documents attached with the FIR and found that as the complaint under Section 154 CrPC had not been filed before the officer in charge of the police station, the fifth respondent was not obliged to register a case. The writ petition was therefore, dismissed. The writ appeal filed against the order of the Single Judge was also dismissed by a Division Bench. The appellant laid down his office as Chief Minister in March 1995 whereafter elections to the State Assembly were held, in which the party and the Front of the appellant lost and the Left Democratic Front Government came into power on 20-5-1996. On 18-6-1996 the Commissioner-Secretary requested the Director of Vigilance, Investigation to submit inquiry report to the Government at the earliest after conducting a preliminary inquiry into the allegations raised in the Legislative Assembly pertaining to the Palmolein deal in which corruption worth crores of rupees had been alleged. The Superintendent of Police, Vigilance conducted a preliminary inquiry up to March 1997 whereafter a criminal case was registered under Section 13(1)(*d*) of the Prevention of Corruption Act and under Section 120-B IPC against 7 persons including the appellant. The appellant filed a criminal miscellaneous case under Section 482 CrPC in the High Court praying therein that all proceedings pursuant to the aforesaid criminal case be quashed. The High Court dismissed the petition on the ground that as fresh matter had come into the notice of the investigating agency, there was no bar for it to register a case and conduct investigation. The present appeal has been filed against the aforesaid order of the High Court. Referring to letter

(8) Interference with investigation/FIR *(contd.)*

dated 18-6-1996 filed as Annexure R-2 with the counter-affidavit in the Supreme Court, terming it to be actuated by extraneous considerations and assailing the government order dated 12-5-1992 (Annexure R-1) as illegal, the appellant prayed for quashing of the FIR and the subsequent proceedings initiated against him. It is submitted that the source of power for registering the FIR referable to the aforesaid government order being illegal and violative of the mandate of judgment of the Supreme Court in *Vineet Narain* v. *Union of India*, (1998) 1 SCC 226 the appellant cannot be subjected to the harassment of a criminal trial. The impugned FIR is stated to be amounting to overriding the judgments of the High Court and the Supreme Court passed in earlier litigation praying for registration of the FIR against the appellant. The registration of the FIR has been termed to be amounting to contempt of court having been filed without any new material. Political rivalry is alleged to be the prime consideration for registration of the case against the appellant. Dismissing the appeal by the accused,

Held :

After going through the pleadings of the parties and keeping in view the rival submissions, it is clear that the registration of the FIR against the appellant and others cannot be held to be the result of mala fides or actuated by extraneous considerations. The menace of corruption cannot be permitted to be hidden under the carpet of legal technicalities. In such matters probes conducted are required to be determined on facts and in accordance with law. The allegations of mala fides were, admittedly, not the basis for challenging the registration of the FIR in the High Court. If during the conduct of a preliminary inquiry the commission of an offence comes to light on the basis of new materials, the respondent officials were obliged to register a case and present it in a competent court of jurisdiction for holding of trial and adjudication. The government order (Annexure R-1) is not shown to have been used against the appellant in any way. The aforesaid order in fact protects the interests of the officials saving them from unnecessary harassment. Mere apprehension of the order being used against some persons is no ground to hold it illegal or unconstitutional particularly when its legality or constitutionality has not been challenged. Prima facie it does not hamper or interfere with the statutory functions of an investigating officer who has, otherwise, statutory rights to hold and complete the investigation in accordance with the provisions of the Code of Criminal Procedure. The aforesaid government order has not been shown to be in any way illegal or unconstitutional so far as the rights of the appellant are concerned. (Para 8). *K. Karunakaran* v. *State of Kerala*, (2000) 3 SCC 761: 2001 SCC (Cri) 183: AIR 2000 SC 3381: 2000 Cri LJ 2278.

Bench Strength **2**. Coram: *G.B. Pattanaik* and **R.P. Sethi**, JJ. [Date of decision: 29-3-2000]

K. Karunakaran v. State of Kerala, 1997 Cri LJ 3618 (Ker), affirmed

[7129] — S. 482 — Quashing of criminal proceedings — Sought on the grounds of (i) bar of limitation, and (ii) lack of authority of Drugs Inspector, Vijayawada, A.P. to lodge the complaint as he could not have assumed jurisdiction under the notification issued by Govt. of A.P. which was confined to Telangana area of A.P. only — *Complaint filed within the period of limitation (i.e. one year), but cognizance taken by court beyond the limitation period — Held, complaint not barred by limitation — Further held, the notification was applicable to the entire State of A.P. and not restricted to Telangana area only — Thus, High Court was justified in dismissing the petition under S. 482 CrPC* (Paras 10, 11, 8 and 13). *Bharat Damodar Kale* v. *State of A.P.*, (2003) 8 SCC 559: 2004 SCC (Cri) 39: AIR 2003 SC 4560.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 8-10-2003]

[7130] — S. 482 — Quashing of proceedings by High Court (i) where investigation was not completed; and (ii) where charge-sheet had been filed; by appreciating the evidence — Permissibility — *Held, impermissible — Where investigation was incomplete, it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial — Further held, even at the stage where charge is framed, the Court has to only prima facie be satisfied about the existence of sufficient ground for proceeding against the accused and for that limited purpose it can evaluate material and documents on record but it cannot appreciate the evidence — On facts further held, High Court in exercise of its powers under S. 482 erred in directing renewal of licence — Moreover, conclusions of High Court, after referring to submissions made by a person who was not even a party to the proceedings are utterly fallacious, were based on surmises and conjectures, unsupported by evidence — Hence, impugned orders set aside*

FIR No. 61 of 2000 was registered for alleged commission of offences under Sections 120-B, 420, 468 and 471 of Penal Code, 1860 read with Sections 13(2) and 13(1)(*a*) of the Prevention of

Corruption Act, 1988, against respondent *S*. Criminal Appeal No. 920 of 2003 and the appeal relatable to SLP (Crl.) No. 3199 of 2004 relates to this FIR where investigation was in progress.

Vigilance PS Case No. 25 of 2000 was registered against respondent *B* (father of respondent *N*) on the allegation that he had acquired assets disproportionate to his known source of income. During investigation business premises of *N* were searched and incriminating materials/documents were seized for which FIR No. 43 of 2000 was lodged against *N* and *S*. Appeal relatable to SLP (Crl.) No. 3190 of 2004 relates to FIR No. 43 of 2000 where charge-sheet had been filed.

The High Court in each case while exercising power under Section 482 of the Criminal Procedure Code, 1973, quashed the proceedings. While doing so, it even directed grant of renewal of licence to a company where *N* was a Director and in one of the cases referred to submissions purportedly made on behalf of *B* who was not even a party to the proceedings. Hence the present appeal by the appellant State.

Setting aside High Court's orders and directing completion of investigation within six months in proceedings related to FIR No. 61 of 2000,

Held :

The exercise of power under Section 482 CrPC is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of CrPC. The inherent powers have been conferred, apart from express provisions of law, which are necessary for proper discharge of functions and duties imposed upon it by law. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under CrPC, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. (Para 8)

While exercising the powers under the Section 482 CrPC, the High Court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. In exercise of the powers the court would be justified in quashing any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. (Para 8)

However, the inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. But no hard-and-fast rule as regards cases in which such power can be exercised can be laid down. (Para 11)

Some categories of cases in which inherent power can and should be exercised to quash the proceedings are:

(*i*) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(*ii*) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(*iii*) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

However, in dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The inherent power should be exercised sparingly and that too in the rarest of rare cases. (Paras 9 and 10)

When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the

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investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (Para 11)

In the instant case the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 CrPC, it is not permissible for the Court to act as if it was a trial court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about the existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate the evidence. (Para 14)

The learned Single Judges did not keep in view the correct position in law while allowing the petitions filed by the respondents. It is baffling as to how a learned Single Judge while exercising powers under Section 482 CrPC could even direct grant of renewal of licence. It is also baffling how the learned Single Judge referred to submissions purportedly made by the learned counsel for *B* who was not even a party. The conclusions are based on surmises and conjectures without any material to support them and are utterly fallacious. Besides, grant of relief to *B* who was not a party is equally indefensible. (Para 15)

When the factual position of the case at hand is considered in the light of principles of law highlighted, the inevitable conclusion is that the High Court was not justified in quashing the investigation and proceedings in the connected case and the charge-sheet filed. Therefore the High Court's impugned orders are indefensible and are accordingly quashed. (Paras 16 and 17). *State of Orissa* v. *Saroj Kumar Sahoo*, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272: (2006) 1 KLT 366.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Tarun Chatterjee*, JJ. [Date of decision: 7-12-2005]

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Raghubir Saran (Dr.) v. State of Bihar, (1964) 2 SCR 336: AIR 1964 SC 1: (1964) 1 Cri LJ 1; R.P. Kapur v. State of Punjab, (1960) 3 SCR 388: AIR 1960 SC 866: 1960 Cri LJ 1239; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539; State of M.P. v. Awadh Kishore Gupta, (2004) 1 SCC 691: 2004 SCC (Cri) 353; Jehan Singh v. Delhi Admn., (1974) 4 SCC 522: 1974 SCC (Cri) 558; Dhanalakshmi v. R. Prasanna Kumar, 1990 Supp SCC 686: 1991 SCC (Cri) 142; State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; State of Kerala v. O.C. Kuttan, (1999) 2 SCC 651: 1999 SCC (Cri) 304; State of U.P. v. O.P. Sharma, (1996) 7 SCC 705: 1996 SCC (Cri) 497; Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397: 1997 SCC (Cri) 415; Satvinder Kaur v. State (Govt. of NCT of Delhi), (1999) 8 SCC 728: 1999 SCC (Cri) 1503; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401, relied on

Chand Dhawan v. Jawahar Lal, (1992) 3 SCC 317: 1992 SCC (Cri) 636, considered

[7131] — Ss. 482, 156, 154 and 157 — Inherent jurisdiction — Exercise of power under S. 482 CrPC/Art. 226 of the Constitution — Extent of — Suo motu direction to police to investigate in cognizable offence — *Passing of, on basis of vague allegations made in an anonymous petition/letter and without even arriving at any prima facie conclusion that said allegations revealed commission of any cognizable offence — Held, was not justified — High Court in exercise of its jurisdiction either under S. 482 or Art. 226 could not have directed investigation by constituting a special investigation team on strength of anonymous petition*

Investigation cannot be ordered by the High Court in exercise of its inherent jurisdiction under Section 482 CrPC based on vague and indefinite allegations made in an unsigned petition without even arriving at any prima facie conclusion that the contents thereof reveal commission of any cognizable offence. (Paras 46 and 50)

Even a police officer can act on the basis of information received or otherwise and proceed to investigate provided he has reason to suspect the commission of a cognizable offence which he is empowered to investigate under Section 156 CrPC. If the essential requirements of the penal provisions are not prima facie disclosed by a first information report and the police officer has no reason to suspect the commission of a cognizable offence, no investigation can be undertaken by him based on the information received or otherwise. (Para 49)

Thus, the High Court cannot set the law in motion against the named and unnamed individuals based on the information received by it without recording the reasons that the information received by it prima facie disclosed the commission of a cognizable offence. Setting criminal law in motion is fraught with serious consequences, which cannot lightly be undertaken by the High Court even in exercise of its jurisdiction under Article 226 of the Constitution. The High Court in exercise of its whatsoever jurisdiction cannot direct investigation by constituting a special investigation team on the strength of anonymous petitions. The High Courts cannot be converted into station houses. (Para 50)

On a careful perusal of the order passed by the High Court Judge, it is found that the said Judge initiated suo motu proceedings without even examining as to whether the contents of the anonymous letter and material sent along with it disclosed any prima facie case for ordering an investigation. The High Court has merely quoted certain allegations made against the appellant and others and proceeded on the basis of those allegations made in the anonymous petition without forming any prima facie opinion with regard to those allegations. (Paras 46 and 48). *Divine Retreat Centre* v. *State of Kerala*, (2008) 3 SCC 542: (2008) 2 SCC (Cri) 9: AIR 2008 SC 1614: (2008) 1 KLT 1042: 2008 Cri LJ 1891: (2008) 64 AIC (SC) 44.

Bench Strength **2**. Coram: *S.H. Kapadia* and **B. Sudershan Reddy**, JJ. [Date of decision: 11-3-2008]

Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya, (2002) 5 SCC 521: 2002 SCC (L&S) 775, relied on

Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400, distinguished on facts

[7132] — Ss. 482, 156, 190(1)(b) and 204 — Power under S. 482 to interfere with police investigation — Held, High Court was not justified in quashing police investigation pending against respondent — *CBI directed to investigate the case against respondent and submit final form to court concerned after completion of investigation — Court to apply its mind and pass appropriate order upon receipt of said report — In case the court decides to summon the respondent, she could move the High Court for quashing the proceeding under S. 482 — Penal Code, 1860, Ss. 120-B & 420 — Prevention of Corruption Act, 1988, S. 13(1)(d) r/w S. 13(2)* (Paras 3 and 4). *CBI* v. *Laxmi Dhaul*, (2007) 14 SCC 497.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 1-2-2006]

[7133] — Ss. 482, 156 and 154 — Petition under S. 482 — Maintainability — Anonymous petition seeking direction for investigation sent directly in name of a Judge of High Court — *No information/complaint lodged with police — Held, such a petition ought not to have been entertained by High Court under S. 482*

What is the scope, content and ambit of the inherent power conferred on the High Court under Section 482 CrPC was under consideration in the present appeal.

The High Court exercising power under Section 482 CrPC directed investigation of the crime in question to be taken away from the investigating officer concerned and entrusted the same to a special investigation team constituted by it. The High Court also directed the said authority to investigate/inquire into various other allegations levelled in an anonymous petition filed against the appellant institution. The said judgment arose out of the proceedings suo motu initiated by the Court on the basis of anonymous petition addressed to the Judge concerned.

As regards the facts of the case, one *M*, a female remand prisoner, sent a petition to the District Judge concerned. In that petition she alleged that while she was taking shelter in the appellant institution, she had been subjected to molestation and exploitation and became pregnant from the Head of that institution. When she came out of the said institution to attend her sister's marriage, she was implicated in a false theft case and lodged in the jail.

The District Judge forwarded the said petition to the Magistrate concerned to do the needful. The Magistrate recorded the statement of the victim and thereafter an investigation into the matter was ordered. Subsequently, a case was registered under Section 376(*g*) IPC at the police station concerned.

Thereafter, the District Judge received an anonymous petition addressed to a High Court Judge. The District Judge addressed a letter to the Registrar General, High Court enclosing the said petition. The petition was accompanied by photocopies of certain press reports and three video CDs. In his covering letter, the District Judge referred to the facts leading to the registration of the above case under Section 376(*g*) IPC.

The matter was placed before the High Court Judge concerned who ordered the Registry to verify and report whether *M* had sent any petition to the High Court and if so, what action was taken on that petition. The Registry resubmitted to the High Court an earlier file and informed that *M* had earlier sent a complaint to the High Court, narrating her agonies. The matter was placed before Justice *K*. As per the order of Justice *K*, the petition was sent to the Superintendent of Police for an enquiry. As per the report of the Registry, presumably, in pursuance of the said direction, a case was registered under Section 376(*g*) IPC and consequently the matter before the High Court was closed.

On resubmission of the file, the High Court after noticing the facts leading to the closing of the matter before the High Court, observed that in the meanwhile another petition was received from *M* by the High Court. The High Court noticed that in the said petition, *M* had raised serious allegations regarding the investigation. Hence, the High Court opined that even though there was an earlier order to close the file before the High Court, the subsequent

(8) Interference with investigation/FIR *(contd.)*

petition ought to have been treated as a separate petition praying for an order for proper investigation and separate action taken. As per the High Court, the said petition could also be clubbed with the anonymous petition. Thus, the High Court directed the Registry to treat the anonymous petition along with the subsequent petition received in the court as petitions praying for an order for proper investigation and register the same as a suo motu criminal miscellaneous case. The Registry complied with said directions. Thereafter the High Court passed the impugned judgment. Hence, the present appeal.

Allowing the appeal,

Held :

Here is a case where no information has been given to the police by any informant alleging commission of any cognizable offence by the appellant and the persons associated with the appellant institution. It is a peculiar case of its own kind where an anonymous petition is sent directly in the name of a Judge of the High Court, which was suo motu taken up as a proceeding under Section 482 CrPC. The High Court ought not to have entertained such a petition for taking the same on file under Section 482 CrPC. (Para 54). *Divine Retreat Centre* v. *State of Kerala*, (2008) 3 SCC 542: (2008) 2 SCC (Cri) 9: AIR 2008 SC 1614: (2008) 1 KLT 1042: 2008 Cri LJ 1891: (2008) 64 AIC (SC) 44.

Bench Strength **2**. Coram: *S.H. Kapadia* and **B. Sudershan Reddy**, JJ. [Date of decision: 11-3-2008]

[7134] — Ss. 482, 156 and 173 — Power under S. 482 — When can be exercised, restated — Interference under S. 482 with statutory power of police to investigate in cognizable offence, held, not permissible — *Hence, where investigation in matter still under progress and no police report under S. 173 CrPC submitted to Magistrate concerned, quashing of entire proceedings by High Court under S. 482, held, was not justified*

Section 482 CrPC saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. This power can be exercised to quash the criminal proceedings pending in any court but the power cannot be exercised to interfere with the statutory power of the police to conduct investigation in a cognizable offence. (Para 15)

In the present case, the High Court ought not to have interfered with and quashed the entire proceedings in exercise of power conferred by Section 482 CrPC when the matter was still at the investigation stage. No report as contemplated by Section 173 CrPC had been submitted by the in-charge of the police station concerned to the Magistrate empowered to take cognizance of the offence. The sweeping remark made by the High Court that the initiation of criminal proceedings was abuse of process of court and miscarriage of justice, was wholly unjustified in the circumstances of the case. (Paras 15 and 16). *State of Karnataka* v. *Pastor P. Raju*, (2006) 6 SCC 728: (2006) 3 SCC (Cri) 179: AIR 2006 SC 2825: (2006) 102 Cut LT 612: (2006) 3 KLT 830.

Bench Strength **2**. Coram: **G.P. Mathur** and *Dalveer Bhandari*, JJ. [Date of decision: 4-8-2006]

Union of India v. Prakash P. Hinduja, (2003) 6 SCC 195: 2003 SCC (Cri) 1314; H.N. Rishbud v. State of Delhi, (1955) 1 SCR 1150: AIR 1955 SC 196: 1955 Cri LJ 526; State of W.B. v. S.N. Basak, (1963) 2 SCR 52: AIR 1963 SC 447: (1963) 1 Cri LJ 341; Abhinandan Jha v. Dinesh Mishra, (1967) 3 SCR 668: AIR 1968 SC 117: 1968 Cri LJ 97; State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272, followed

King Emperor v. Khwaja Nazir Ahmad, (1943-44) 71 IA 203: AIR 1945 PC 18, relied on

[7135] — Ss. 482, 156(3) and 154 — Quashing of subsequent complaints/FIRs filed by same party after lodging an FIR — Permissibility — *Held, prayer made for, on ground that second FIR is not legally permissible — Held, subsequent complaints were not in relation to same offence or occurrence and did not pertain to same parties as alleged in the first report — Distinctions made by High Court between the subsequent complaints and the first report, were fully justified — Hence, subsequent complaints could not be quashed — High Court rightly declined to exercise its powers under S. 482 to quash the said complaints — Exercise of extraordinary powers under Art. 136 of the Constitution to interfere in the matter, held, not called for*

The complaints, which were filed in respect of malfeasance and misfeasance within the jurisdiction of the Ahmedabad Police, were not in respect of the same cognizable offence or the same occurrence giving rise to one or more cognizable offences, nor were they alleged to have been committed in the course of the same transaction or the same occurrence as the ones alleged in First CR No. 67 of 2001. (Para 13)

There is a further distinction in that while First CR No. 67 of 2001 pertained to cases concerning one *K* and entities associated with him in the crime, the subsequent complaints pertained to other parties. Further, the FIR being investigated pertained only to criminal acts relating to the Mandvi branch (Mumbai) of the bank in question, while the subsequent complaints being investigated by the State Police pertained to criminal acts at the Shahibaug

(Ahmedabad) branch of the Bank. The distinctions drawn by the High Court are fully justified. The High Court was right in observing that the FIRs, which were under challenge before it, were regarding independent and distinct offences. Hence, the FIRs could not be prohibited on the ground that some other FIR had been filed against the petitioner in respect of other allegations made against the petitioner. (Para 14)

The High Court was correctly cognizant of limitations while exercising its powers under Section 482 CrPC, which should not in any event, be exercised lightly. The High Court was justified in declining to exercise its powers under Section 482 CrPC and in refusing to interfere with the orders passed by the learned Chief Metropolitan Magistrate. Finally, considering the nature of the allegations involved and the facts and circumstances of the present case, the Supreme Court too is not inclined to exercise its extraordinary powers under Article 136 of the Constitution to interfere. (Para 15). *Rameshchandra Nandlal Parikh* v. *State of Gujarat*, (2006) 1 SCC 732: (2006) 1 SCC (Cri) 481: AIR 2006 SC 915: (2006) 194 ELT 140: (2006) 2 Guj LR 1365: 2006 Cri LJ 964.

Bench Strength **2**. Coram: *Y.K. Sabharwal, C.J.* and **B.N. Srikrishna**, J. [Date of decision: 13-1-2006]

T.T. Antony v. State of Kerala, (2001) 6 SCC 181: 2001 SCC (Cri) 1048, considered and distinguished on facts

[7136] — Ss. 482, 173 and 197 — High Court's power to quash criminal proceedings under — Scope — Petition for quashing criminal proceeding at a stage anterior to trial court's decision on taking cognizance of offence on the basis of police report submitted to it — Maintainability — *High Court, treating the affidavits filed and documents produced before it by the petitioner-accused as evidence, quashing the proceeding — Held, High Court committed serious error in putting an end to the prosecution at its inception by going into merits in a pre-trial on consideration of the affidavits and documents which, unless proved to be true and reliable in regular trial, cannot form the basis of any decision regarding commission of offence — High Courts by easily entertaining such writ petitions encouraged accused to delay the trials by diverse tricks — Constitution of India — Art. 226*

Per Kuldip Singh, J.

At a stage when the police report under S. 173 CrPC has been forwarded to the Magistrate after completion of the investigation and the material collected by the Investigating Officer is under the gaze of judicial scrutiny, the High Court would do well to discipline itself not to undertake quashing proceedings in exercise of its inherent jurisdiction. In this case the High Court fell into grave error in appreciating the documents and affidavits produced before it by treating them as evidence, delving into the disputed questions of fact in its jurisdiction under Art. 226/227 and pronouncing the respondents to be innocent and quashing the criminal proceedings by converting itself into a trial court. This was not at all a case where High Court should have interfered in the exercise of its inherent jurisdiction. The appreciation of evidence is the function of the criminal courts the Special Judge was seized of the matter. He had heard the arguments on the question of cognisance and had reserved the orders. The High Court did not even permit the Special Judge to pronounce the orders. The High Court, under the circumstances, could not have assumed jurisdiction and put an end to the process of investigation and trial provided under the law.

Per K. Ramaswamy, J. (supplementing)

Entertaining the writ petitions against charge-sheet and considering the matter on merit on the guise of prima facie evidence to stand an accused for trial amounts to pre-trial of a criminal trial under Art. 226 or 227 even before the competent Magistrate or the Sessions Court takes cognizance of the offence. The charge- sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent court. It is not the case that no offence had been made out in the charge-sheets and the first information report. Grossest error of law has been committed by the High Court in making pre-trial of a criminal case in exercising its extraordinary jurisdiction under Art. 226. Once the proceedings are entertained the further proceedings get stayed.

The documents relied on by the accused-respondents were subject to proof at the trial and if proved to be true and relevant, then only they might serve as a defence for the respondents at the trial. The commission of offence cannot be decided on affidavit evidence. The High Court has taken short course "in annihilating the still-born prosecution" by going into the merits on the plea of proof of prima facie case and adverted to those facts and gave findings on merits.

Expeditious trial of a criminal case is the cardinal rule. Delay feeds injustice to social order and entertaining writ petitions would encourage to delay the trial by diverse tricks. It is not to suggest that under no circumstances a writ petition should be entertained. But an accused with a view to delay

(8) Interference with investigation/FIR *(contd.)*

the trial, resorts to writ proceedings, raises several contentions including one on merit and have the proceedings kept pending. The result would be that the people would lose faith in the efficacy of rule of law.

In *Swapan Kumar Guha* and *Madhavrao J. Scindia cases*, the Supreme Court cannot be said to have laid down as a proposition of law that in every case the court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation, and should exercise the power under S. 482 or Art. 226 to quash the proceedings or the charge-sheet. *State of Bihar* v. *P.P. Sharma*, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192: AIR 1991 SC 1260.

Bench Strength **2**. Coram: **Kuldip Singh**[1] and **K. Ramaswamy**[2], JJ. [Date of decision: 2-4-1991]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: (1960) 3 SCR 388: 1960 Cri LJ 1239, relied on

State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561: 1982 SCC (Cri) 283; Madhavrao J. Scindia v. Sambhajirao C. Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234, distinguished

[7137] — Ss. 482, 173(8) & (2) and 156(1) — Exercise of power under S. 482 CrPC — Further investigation — Choice of investigating agency — *Held, the same can be decided by High Court* (Para 8). *Ramachandran* v. *R. Udhayakumar*, (2008) 5 SCC 413: (2008) 2 SCC (Cri) 631: (2008) 67 AIC 52 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 13-5-2008]

[7138] — Ss. 482, 173(8) and 228 — Further investigation and supplementary charge-sheet — Direction as to — Sustainability — *Direction made by High Court to police to file additional investigation report and supplementary charge-sheet in relation to further investigation in which appellant's involvement in offence came to light and to secure order for committing the case to Sessions Court — Challenge to — Grounds of challenge were that (i) the said direction was not required, (ii) even on the basis of additional report, there was no material against appellant, and (iii) by the impugned order, appellant was denied opportunity to challenge before Sessions Court framing of charge by it — Held, appellant could raise all his objections/contentions at the time of framing of charges by the Sessions Court — Appeal disposed of accordingly — Penal Code, 1860 — Ss. 302/149, 143, 147, 148 & 120-B* (Paras 4 and 5). *State of Karnataka* v. *T.B. Ramakrishna Reddy*, (2007) 14 SCC 791.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *P.P. Naolekar*, JJ. [Date of decision: 20-3-2006]

[7139] — Ss. 482, 311, 391, 173(8), 216 and 24 — Interference with criminal trial — Direction for further investigation after commencement of trial — When warranted — *Held, can be issued by Supreme Court or High Court in case of failure of investigating agency to perform its duty and complete failure of justice — Direction for further investigation sought by appellant in case of his sister's death on ground that charge against accused husband pertaining to a less serious offence (under S. 306 IPC) was framed whereas facts and circumstances indicated commission of a more serious offence (under S. 302 IPC) — However, in this case since 47 witnesses had already been examined and a direction for further investigation may delay the trial, the trial court may alter the charge in exercise of its discretionary jurisdiction under S. 311 CrPC and recourse to S. 391 is also open — Having regard to these considerations, held, direction for further investigation need not be issued — However, appellant should be permitted to engage a lawyer on his behalf for assisting the Public Prosecutor — Constitution of India — Arts. 136, 142 and 226*

The deceased was married to Respondent 4. They went to USA but there they were allegedly not leading a happy married life. The deceased came back to India with her children and purchased a house in 1994. She died in 1998. Respondent 5 gave a certificate that she died of heart failure. The appellant, the deceased's brother, made complaints to various authorities whereupon the deceased's body was exhumed and sent for post-mortem examination. As per final opinion, she died of organophosphate insecticide poisoning. The investigating officer issued a final form stating that the deceased could have committed suicide.

The appellant filed a writ petition seeking direction for further investigation in terms of Section 173(8) CrPC by CBI. The High Court directed that further investigation be conducted by CB-CID. Thereafter, another final report was submitted by CB-CID charging Respondent 4 for offence under Section 306 IPC and Respondent 5 for offence under Section 201 IPC. Cognizance of the offence was taken, trial commenced and 47 witnesses, including the appellant, were examined. The appellant filed an application before the High Court purported to be under Section 482 CrPC praying for further investigation in the case by CBI. The High Court dismissed the petition observing that the case was ripe for trial after framing of charges and that the charges could be altered at any time under Section 216 CrPC by the trial court.

In appeal before the Supreme Court it was submitted on behalf of the appellant that the High Court was not correct to take the said view without taking into consideration two important developments in the case viz. a case of heart attack was made out at an initial stage, whereafter a case of abetment of suicide was made out, which would go to show as to how the investigation had been carried out both by the general police or by CB-CID in the State. Before the Supreme Court certain circumstances were pointed out which, according to the appellant, would clearly show that Respondent 4 murdered the deceased. The Additional Solicitor General urged that it is possible that adequate materials had not been collected during investigation and in the event it is found that the investigating officers have failed to perform their statutory duties, the Supreme Court may issue appropriate direction in exercise of its jurisdiction under Article 142 of the Constitution.

Disposing of the appeal,

Held :

Proper and fair investigation on the part of the investigating officer is the backbone of rule of law. The job of the investigating officer is to make investigation in right direction. The investigation must be in consonance with the ingredients of the offence. It cannot be haphazard or unmethodical. A proper and effective investigation into a serious offence and particularly in a case where there is no direct evidence assumes great significance as collection of adequate materials to prove the circumstantial evidence becomes essential. Unfortunately, the appellant has not been treated fairly. When a death has occurred in a suspicious circumstance and in particular when an attempt had been made to bury the dead body hurriedly and upon obtaining apparently an incorrect medical certificate, it was expected that upon exhumation of the body, the investigating authorities of the State shall carry out their statutory duties fairly. The appellant alleges that no fair investigation has been conducted. It is clearly a matter of great concern that the authorities did not become alive to the situation. (Paras 15 and 18)

It is also not known, whether the circumstances enumerated by the appellant herein had been duly taken note of and investigation in this behalf had been carried out. Although CBI in its counter-affidavit has supported the impugned judgment of the High Court but it without looking into the documents opined that although the said circumstances are relevant but they themselves had not proved commission of offence of murder of the deceased by Respondent 4 herein. It was not expected of CBI to file such an affidavit. Even the learned Additional Solicitor General appearing on behalf of CBI was not satisfied therewith. The investigating officer and particularly CB-CID should have made a thorough investigation. If the allegations made by the appellant are correct, the same depicts a sordid state of affairs. (Paras 16 and 17)

Indisputably, in a given case, the Supreme Court can direct an investigation by CBI. The powers of the Supreme Court both under Articles 32 and 142 of the Constitution are plenary in nature. The High Court or the Supreme Court in exercise of the said power is entitled to reach injustice wherever it is found. (Paras 22, 25 and 26)

However, a Division Bench of the Supreme Court in *Rajesh* v. *Ramdeo*, (2001) 10 SCC 759 at para 2 refused to direct a fresh and further investigation opining that since the investigation agency had already filed the charge-sheet on the basis of which the accused persons were being proceeded against, in case of availability of any further material, the court may alter the charge framed. In the circumstances, the Bench concluded that the High Court overstepped its jurisdiction in issuing the direction calling upon further investigation into the matter which "would be an abuse of the process of the court". This decision albeit is not supported by any reason. It has not taken into consideration the binding precedents. But as at present advised, a contrary view need not be taken. However, in *Hasanbhai Valibhai Qureshi case*, the Supreme Court observed: "Coming to the question whether a further investigation is warranted, the hands of the investigating agency or the court should not be tied down on the ground that further investigation may delay the trial, as the ultimate object is to arrive at the truth." As such an option is maintainable; if any occasion arises, recourse may be taken thereto. A direction for further investigation, thus, can be issued where there had been complete failure of justice and in a case where the investigating and prosecuting agencies were found to have not performed their role in the manner they were expected to do. (Paras 29 to 31 and 33)

Although it is not beyond the jurisdiction of the Supreme Court to direct further investigation by CBI as contradistinguished from reinvestigation at this stage, but it is not necessary to do so keeping in view the fact that 47 witnesses including the appellant himself have already been examined and recourse thereto can be taken if during trial a case therefor is found to be have been made out. The present is not a case where cognizance had not been taken. It is not even a case where a direction under

(8) Interference with investigation/FIR *(contd.)*

Section 173(8) CrPC can be issued at this stage. It is also not a case to interfere with the trial of the case. (Paras 38 and 26)

The trial court even is not powerless. It, if a case is made out, can exercise its discretionary jurisdiction under Section 311 CrPC as also Section 391 thereof. In the event of open marshalling of the evidence, it comes to the opinion that a case has been made out for alteration of charge; it indisputably can do so in exercise of its power under Section 311 CrPC. In a given case again it can consider the question from the viewpoint of the appellant as regards the existence of circumstances which point to the guilt of Respondent 4. The trial court is directed, if any occasion arises therefor, to exercise its power under Section 311 upon considering the facts and circumstances of this case. (Paras 35 and 37)

Further, it is a fit case where the appellant should be permitted to engage a lawyer on his behalf who would assist the Public Prosecutor. The counsel for the State assured the Supreme Court that the same shall not be objected to. It is hoped that in the event the State is of the opinion that the prosecution should be conducted by a Public Prosecutor of repute and having sufficient experience, it would not hesitate to appoint one. (Para 36). *Sasi Thomas* v. *State*, (2006) 12 SCC 421: (2007) 2 SCC (Cri) 72: (2007) 50 AIC 385 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 24-11-2006]

Paramjit Kaur v. State of Punjab, (1996) 7 SCC 20: 1996 SCC (Cri) 167; Gudalure M.J. Cherian v. Union of India, (1992) 1 SCC 397; Ramesh Kumari v. State (NCT of Delhi), (2006) 2 SCC 677: (2006) 1 SCC (Cri) 678; Shashikant v. CBI, (2007) 1 SCC 630; Amar Chand Agarwalla v. Shanti Bose, (1973) 4 SCC 10: 1973 SCC (Cri) 651; Hasanbhai Valibhai Qureshi v. State of Gujarat, (2004) 5 SCC 347: 2004 SCC (Cri) 1603; Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158: 2004 SCC (Cri) 999, relied on

Rajesh v. Ramdeo, (2001) 10 SCC 759: 2003 SCC (Cri) 1054, doubted

[7140] — Ss. 482, 374(2), 386 and 397 — While exercising appellate jurisdiction, High Court, in suo motu exercise of its inherent power, can direct further investigation of the case against persons who were not charge-sheeted and were not accused at the stage of trial but whom High Court felt should have been included in the challan — *But High Court should exercise the inherent jurisdiction sparingly and only after applying its mind to the material on record so as to be satisfied about existence of a strong prima facie case against such persons and also whether any useful purpose is served by issuing such directions particularly after a long lapse of time — Moreover, having regard to facts and circumstances of the present case, High Court should also give an opportunity of hearing to those persons before issuing the directions — But High Court cannot direct the State to take advice of Public Prosecutor as regards the provisions whereunder those persons had to be charged, nor can it direct CB/CID to reinvestigate and prosecute those persons since it cannot direct to reinvestigate the case from a particular angle or by a particular agency*

According to the prosecution, *N*, *M* and *P* came on a motorcycle and stopped near a bus stand. *P* shouted to kill the deceased and left the scene on the motorcycle leaving behind *N* and *M*. Thereupon, *N* took out a sickle and assaulted the deceased who started running and entered into a nearby hotel. *N* and *M* chased the deceased and both of them assaulted the deceased inside the hotel as a result of which the deceased died. A first information report in respect of the incident was lodged by PW 1.

However, no charge-sheet was filed against *P* and *M*, nor copy of the charge-sheet was sent to the first informant. The Magistrate before whom the charge-sheet was filed also did not inform the first informant which was mandatory. *N* alone was committed to the Court of Session. Before the Sessions Judge, all the eyewitnesses allegedly took the names of *P* and *M* as having also played active roles in the entire episode. But the Sessions Judge was neither called upon to exercise nor he suo motu exercised his jurisdiction under Section 319 CrPC. In this situation *N* alone was tried and convicted for commission of offence under Section 302 IPC and sentenced to life imprisonment. *N* filed an appeal before the High Court. A Division Bench of the High Court opined that no case was made out to interfere with the judgment of the Sessions Court. The High Court further opined that there was evidence at every stage implicating *P* and *M* in the crime. According to the High Court, action on the part of the investigating officers leaving out the names of *P* and *M* from the array of the accused was not a bona fide error. The High Court also felt that the District Judge ought to have conducted himself fairly in the matter of exercising his jurisdiction under Section 319. The High Court, therefore, made certain adverse comments against the investigating officers, the Public Prosecutors as also the trial Judge for conducting themselves in the manner in which they had discharged their duties. It directed that prosecution of *P* and *M* be launched, that State Public Prosecutor shall advise the State as to under what section they have to be charged and tried and that CB/CID shall take over the mater and reinvestigate and prosecute the appellant and *M*. It also directed the Director General of Police to deeply probe into the lapses on the part of the investigating officers concerned and take follow-up action irrespective of long lapse of time (10 years since the occurrence).

In view of the rival contentions raised in the case, the following questions came up for consideration before the Supreme Court:

(*i*) Whether the High Court while exercising its appellate jurisdiction under Section 374(2) read with Section 386 CrPC could direct further investigation of the case against the persons whom the High Court felt should have been included in the challan on the basis of the materials on record available before the appellate court?

(*ii*) Whether only because of the fact that the appellate power of the High Court in terms of Sections 374(2), 386 and 391 does not contain any specific power to direct further investigation, the High Court lacked jurisdiction for seeking recourse to its inherent and supervisory powers under Sections 482 and 483 CrPC in a case of this nature?

(*iii*) Whether the impugned judgment is wholly unsustainable as prior to issuing the impugned direction, the principles of natural justice had not been complied with?

Allowing the appeals,

Held :

Section 386 CrPC provides for the power of the appellate court. Indisputably, stricto sensu in terms thereof the appellate court cannot direct a person to stand trial. Its jurisdiction is specified thereunder. While exercising its appellate power, the jurisdiction of the High Court although is limited but there exists a distinction but a significant one being that the High Court can exercise its revisional jurisdiction and/or inherent jurisdiction not only when an application therefor is filed but also suo motu. There may not, therefore, be an embargo for the High Court to exercise its extraordinary inherent jurisdiction while exercising other jurisdictions in the matter. Keeping in view the intention of Parliament, while making the new law the emphasis of Parliament being "a case before the court" in contradistinction from "a person who is arrayed as an accused before it" when the High Court is seized with the entire case although would exercise a limited jurisdiction in terms of Section 386, the same, cannot be held to limit its other powers and in particular that of Section 482 CrPC in relation to the matter which is not before it. The High Court while, thus, exercising its revisional or appellate power, may exercise its inherent powers. Inherent power of the High Court can be exercised both in relation to substantive as also procedural matters. (Paras 26, 27 and 29)

In respect of the incidental or supplemental power, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammelled by procedural restrictions in that:

(*i*) Power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(*ii*) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor.

(*iii*) However, the power under Section 482 CrPC is not unlimited. It can inter alia be exercised where the Code is silent, where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists. (Para 30)

There exists a distinction between two classes of cases viz. (*i*) where application of Section 482 is specifically excluded, and (*ii*) where there is no specific provision but limitation of the power which is sought to be exercised has specifically been stated. The inherent power of the High Court can be invoked in respect of the matters covered by the provisions of the Code unless there is specific provision to redress the grievance of the aggrieved party. The said power overrides other provisions of the Code but evidently cannot be exercised in violation/contravention of a statutory power created under any other enactment. (Paras 32, 34 and 35)

The power to direct enquiry may not, thus, be held to be confined only to the original but also to the appellate jurisdiction. Such a power can be exercised also as against the persons who were not the accused at the stage of trial. Such a power can be exercised even after the trial is over. (Paras 41 and 43)

But the inherent power of the High Court is required to be exercised sparingly. The High Court may or may not in a given situation, particularly having regard to lapse of time, exercise its discretionary jurisdiction. For the said purpose, it was not only required to apply its mind to the materials on record but was also required to consider as to whether any purpose would be served thereby. (Para 56)

(8) Interference with investigation/FIR *(contd.)*

The High Court, however, was not correct in issuing a direction to the State to take advice of the State Public Prosecutor as to under what section the appellant has to be charged and tried or directing CB, CID to take up the matter and reinvestigate and prosecute the appellant herein. Such a power does not come within the purview of Section 482 CrPC. Investigation of an offence is a statutory power of the police. The State in its discretion may get the investigation done by any agency unless there exists an extraordinary situation. (Para 46)

Yet again, it is for the Public Prosecutor to discharge his duties in terms of the provisions of the Code of Criminal Procedure. The High Court, thus, has no role to play in such matters. Ordinarily, it is for the Public Prosecutor himself to see to whom and how to render his advice or as to whether the State would like to proceed against an accused or not. (Para 47)

The High Court while passing the impugned judgment did not bear the said principles in mind. It went beyond its jurisdiction in directing the prosecution of the appellant. In a case of this nature, where a superior court exercises its inherent jurisdiction, it indisputably should remind itself about the inherent danger in taking away the right of an accused. The High Court should have been circumspect in exercising the said jurisdiction. When a power under Section 173(8) CrPC is exercised, the court ordinarily should not interfere with the statutory power of the investigating agency. It cannot issue directions to investigate the case from a particular angle or by a particular agency. In the instant case, not only the High Court had asked reinvestigation into the matter, but also directed examination of the witnesses who had not been cited as prosecution witnesses. It furthermore directed prosecution of the appellant which was unwarranted in law. (Para 48)

In this case, the High Court was dealing with an extraordinary situation because:

(*i*) Rightly or wrongly the Magistrate had accepted the final form and did not direct any further enquiry.

(*ii*) Although the investigating officer or the court did not intimate the first informant about filing of the final form in respect of the appellant, it cannot be said that the first informant was not aware thereof.

(*iii*) The first informant neither filed any protest petition nor filed any complaint petition.

(*iv*) Even during the trial, no application was filed before the learned Sessions Judge for summoning the appellant on behalf of the State or the complainant.

(*v*) The learned Sessions Judge did not exercise his power suo motu.

(*vi*) The High Court was hearing an appeal preferred by a convicted person and exercised its extraordinary jurisdiction after 10 years.

(*vii*) Even if it could direct further investigation, it was required to apply its mind as regards existence of a very strong prima facie case therefor and particularly in view of the fact that a period of 10 years had lapsed in the meanwhile.

(*viii*) Had an opportunity of hearing been given, the State also could have shown that for valid reasons the investigating officer did not think it fit to proceed against the appellant and that there were otherwise justifiable reasons to file the final form. (Para 53)

Having regard to the peculiar facts and circumstances of the case, it must be held that before issuing the impugned directions, the High Court should have given an opportunity of hearing to the appellants. (Para 57)

However, this direction is not intended to lay down the law that while the Magistrate directs a further investigation or while a Sessions Judge exercises his jurisdiction under Section 319 CrPC, an accused is entitled to be heard; he is not as he has no right therefor and, thus, the question of hearing him at that stage would not arise. (Para 52). *Popular Muthiah* v. *State*, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

Dinesh Dutt Joshi v. State of Rajasthan, (2001) 8 SCC 570: 2002 SCC (Cri) 24; R.P. Kapur v. State of Punjab, (1960) 3 SCR 388: AIR 1960 SC 866: 1960 Cri LJ 1239; State of Karnataka v. M. Devendrappa, (2002) 3 SCR 89: 2002 SCC (Cri) 539; Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10; Raj Kapoor v. State, (1980) 1 SCC 43: 1980 SCC (Cri) 72; State v. Navjot Sandhu, (2003) 6 SCC 641: 2003 SCC (Cri) 1545; State of W.B. v. Sujit Kumar Rana, (2004) 4 SCC 129: 2004 SCC (Cri) 984, relied on

[7141] — Ss. 482 and 156 — Suo motu exercise of inherent powers — Interference with police investigation — Change of IO in midway (on basis of anonymous petition addressed to a named High Court Judge in this case) — Impermissibility — *Held, High Court in exercise of its inherent jurisdiction cannot change the IO in the midstream and appoint any agency of its own choice to investigate into a crime on whatsoever basis — More particularly on basis of complaints or anonymous petitions addressed to a named Judge — Accused or complainant/informant cannot choose its own investigating agency to investigate a crime in which it may be interested*

The investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions under Chapter XII CrPC. However, unfettered discretion does not mean any unaccountable or unlimited discretion and act according to one's own choice. The power to investigate must be exercised strictly on the condition of which that power is granted by CrPC itself. (Para 39)

Therefore, the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint any agency of its own choice to investigate into a crime on whatsoever basis and more particularly on the basis of complaints or anonymous petitions addressed to a named Judge. Such communications cannot be converted into suo motu proceedings for setting the law in motion. Neither the accused nor the complainant or informant is entitled to choose its own investigating agency to investigate a crime in which it may be interested. (Para 40)

In the present case, the contents of the petition submitted by the victim and also the allegations made in the anonymous complaint reveal no cause for issuing directions relieving the investigating officer of his statutory power and duty to investigate the crime in question. Neither has the anonymous petition nor the complaint made by the victim been directed against the investigating officer complaining of any bias or any attempt on his part to destroy the available evidence. It is difficult to discern the basis for arriving at the conclusion that the entire attempt of the investigating officer was to exonerate the accused and make the complainant as the accused. The investigation was in progress as is evident from the case diary. The special investigation team also proceeded on the same lines as that of the investigating officer and similar observations as the one made by the investigating officer are found in the report of the special investigation team. (Paras 34, 35 and 37). *Divine Retreat Centre* v. *State of Kerala*, (2008) 3 SCC 542: (2008) 2 SCC (Cri) 9: AIR 2008 SC 1614: (2008) 1 KLT 1042: 2008 Cri LJ 1891: (2008) 64 AIC (SC) 44.

Bench Strength **2**. Coram: *S.H. Kapadia* and **B. Sudershan Reddy**, JJ. [Date of decision: 11-3-2008]

Emperor v. Khwaja Nazir Ahmad, AIR 1945 PC 18; S.N. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653: 1970 SCC (Cri) 258; State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272; M.C. Abraham v. State of Maharashtra, (2003) 2 SCC 649: 2003 SCC (Cri) 628; State of W.B. v. S.N. Basak, AIR 1963 SC 447: (1963) 2 SCR 52; Hazari Lal Gupta v. Rameshwar Prasad, (1972) 1 SCC 452: 1972 SCC (Cri) 208; Nirmaljit Singh Hoon v. State of W.B., (1973) 3 SCC 753: 1973 SCC (Cri) 521, relied on

M.C. Mehta (Taj Corridor Scam) v. Union of India, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264, considered

CBI v. Ravi Shankar Srivastava, (2006) 7 SCC 188: (2006) 3 SCC (Cri) 233; Popular Muthiah v. State, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404, distinguished

[7142] — Ss. 482, 397, 166-A and 401 — Public interest litigation — Standing — Revision petition — Maintainability — Bofors gun deal case *— FIR registered by CBI against named and unnamed persons including politicians and govt. officials already involved in receiving bribe/kickbacks in the deal — Investigation commenced — Application moved by CBI before Special Judge for issue of letter rogatory to Switzerland for assistance in investigation — Miscellaneous petition filed under Art. 51-A before Special Judge by an advocate claiming to be Secretary of an organisation devoted to uphold rule of law, fight against injustice and abide by the Constitution, inter alia for not issuing the letter rogatory on mere formal request of CBI unless allegations against named persons established — Petition dismissed — Revision petition filed before High Court by the advocate challenging not only the order of dismissal but also the very registration of FIR and investigation carried on by CBI — Revision petition dismissed on ground of absence of locus standi of the petitioner-advocate but suo motu cognizance taken in exercise of powers under Ss. 397, 401 and 482 and the office directed to register a case under title 'Court on its own Motion v. State and CBI' — Held, the advocate had no locus standi and High Court's suo motu action interfering with FIR and investigation illegal and perverse — Constitution of India, Arts. 51-A & 136. Janata Dal* v. *H.S. Chowdhary*, (1992) 4 SCC 305: 1993 SCC (Cri) 36: AIR 1993 SC 892.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 28-8-1992]

[7143] — Ss. 482, 173(8), (2) & (3), 156 and 158 — Stay on proceedings — Re-examination of completed investigation by officer of DGP rank after filing of charge-sheet and committal of proceedings to Sessions Court — Sustainability of direction for *— No reason indicated in impugned order necessitating change of investigation agency — Only consideration that weighed with the High Court was that there was no supervision report of a particular level of police officer and it wanted assistance of a DGP-level police officer to advise it on correctness of investigation — Held, there was no provision under which such direction could be issued, particularly when charge-sheet had been filed — Further held, such a course was not necessary unless High Court had examined charge-sheet*

(8) Interference with investigation/FIR *(contd.)*

which was filed and recorded its findings that investigation was not properly conducted or further investigation was required under S. 173(8) — High Court had not even looked into charge-sheet nor had examined the same — Merely because there appeared to be no supervision of DIG-level or IG-level officer, High Court could not have simply called for opinion of DGP without recording any finding — Direction to stay criminal proceedings until report from DGP was received unwarranted — High Court failed to consider even question of its own jurisdiction in the matter by conveniently observing that it is a matter which is to be considered at stage of final hearing of case — It thus failed to apply its mind — Impugned order unsustainable — Sessions Judge directed to proceed with the matter — Penal Code, 1860, Ss. 302, 201 and 120-B (Paras 2, 3, 26, 27, 29, 31 and 33). *Virender Prasad Singh* v. *Rajesh Bhardwaj*, (2010) 9 SCC 171: (2010) 3 SCC (Cri) 1169: 2010 Cri LJ 4275: (2010) 95 AIC 182 .

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 16-8-2010]

Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332: (2009) 2 SCC (Cri) 1047; Ramachandran v. R. Udhayakumar, (2008) 5 SCC 413: (2008) 2 SCC (Cri) 631, relied on

Rubabbuddin Sheikh v. State of Gujarat, (2010) 2 SCC 200: (2010) 2 SCC (Cri) 1006, distinguished on facts

[7144] — Ss. 482 and 173(8) — Inherent jurisdiction under S. 482 — Scope of — High Court not interfering with Magistrate's direction for further investigation when Magistrate directed such investigation after submission of final report for the second time — Justifiability of such non-interference — *High Court's power to interfere in Magistrate's direction of further investigation, reiterated, is limited — Therefore, High Court under S. 482 CrPC not interfering with Magistrate's direction for further investigation, on facts, held, justified*

A son *MA* was involved in a dispute with his sister *ME* and mother *S* over a farmhouse. The first FIR for alleged offences under Sections 147, 148, 149, 452, 232, 427 and 506 IPC was lodged by *ME* for alleged raiding of the farmhouse by *MA* and 40 others and attacking *S*. The accused were allegedly arrested on the spot. SLPs (Crl.) Nos. 6061-62 of 2008 arose out of the first FIR (FIR No. 960 of 1999). The second FIR (FIR No. 960-A of 1999) was lodged by *MA* against *ME* and her farm employees alleging grievous hurt by a gunshot injury. *MA* also alleged forgery of documents whereof mutation records of the farmhouse were altered. SLP (Crl.) No. 5419 of 2008 arose out of the second FIR.

Charge-sheet was filed on the first FIR. On the second FIR, a final report was made stating that no case was made out. When a writ order (in WP No. 7230 of 1999) was passed by the High Court directed impartial inquiry, the DSP concerned, after seeking opinion of the Public Prosecutor, reopened the second FIR. Apprehending arrest, *ME* and *S* also moved the writ jurisdiction, whereupon, the High Court disposed off the matter directing fair, honest investigation without coercive steps against parties. An SLP in this regard was also disposed off directing transfer of investigation to CB CID and continuation of protection to *ME*.

On the first FIR, *MA*'s trial was concluded and he was convicted. Thereafter, during pendency of appeal in the High Court, he was released on bail and his sentence was suspended. On the second FIR, charge-sheet was filed against *S* & *ME* and cognizance was taken. A petition under Section 482 CrPC (CMA No. 620 of 2006) to quash proceedings against them was dismissed but the High Court directed the trial court to consider exemption of personal attendance of *S* in terms of Section 205 CrPC and observed that they deserved protection. This was the impugned order in SLP (Crl.) No. 5419 of 2008.

SLPs (Crl.) Nos. 6061-62 of 2008 related to the issue of further investigation against *ME* and others with regard to embezzlement of Rs 13,50,000. The said further investigation was requested by CB CID after charge-sheet had been filed and Section 482 petition was disposed off. The said further investigation was allowed by the Magistrate and not interfered with by the High Court while exercising jurisdiction under Section 482 CrPC (CMA No. 518 of 2008).

Disposing of the appeals,

Held :

So far as the criminal appeals arising out of Special Leave Petitions (Crl.) Nos. 6061-62 of 2008 and Special Leave Petitions (Crl.) Nos. 6136-37 of 2008 are concerned, there cannot be any doubt whatsoever that the jurisdiction of the High Court under Section 482 is limited. (Para 42)

In Crime Case No. 960-A of 1999, the Supreme Court had directed CB CID to complete the investigation. It was, thus, obligatory on its part to complete the investigation and submit an appropriate report to the Court. Even otherwise the Magistrate has granted such permission. It is, however, not the case of *S* that the Magistrate had accepted the final report. Even in such a case, the Magistrate was bound to give notice to the complainant who could have objected thereto. A protest petition was also maintainable. (Paras 28, 25 and 27)

The investigation in Crime No. 960-A of 1999 runs from one extreme end to the other. Final reports were prepared twice. However, the Deputy Superintendent of Police, CB CID on the second final report so prepared sought to obtain the legal opinion of the Public Prosecutor. Such a course adopted may be irregular but it is not denied or disputed that a vital aspect of the matter of the investigation had not been carried out. It is not the case of the appellants i.e. *S* and *ME* that the opinion given by the Public Prosecutor was incorrect. (Para 25). *Manoj Narain Agrawal* v. *Shashi Agrawal*, (2009) 6 SCC 385.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 15-4-2009]

Kamlapati Trivedi v. State of W.B., (1980) 2 SCC 91: 1980 SCC (Cri) 347; Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322: 1979 SCC (Cri) 479; State of A.P. v. A.S. Peter, (2008) 2 SCC 383: (2008) 1 SCC (Cri) 427; Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P., (1999) 5 SCC 740: 1999 SCC (Cri) 1047, relied on

[7145] — S. 482 — Investigation — Direction for — Quashment — When not warranted — Direction for investigation by Magistrate under — Requirements for — Power if properly exercised *— Magistrate allowing application filed by respondent SEPCO under S. 156(3) CrPC, and forwarding original complaint alleging commission of offences under Ss. 405, 406, 418, 420, 427, 503, 504, 506/34 and 120-B IPC, to SHO concerned directing him to register FIR after due enquiry, and to submit charge-sheet after investigation — Sustainability — Held, for proceeding under S. 156(3) what is required is a bare reading of complaint and whether it discloses a cognizable offence — Magistrate then instead of applying his mind to the complaint for deciding whether or not there are sufficient grounds for proceeding, may direct police to investigate — In instant case, offences alleged were all cognizable offences, and hence, Magistrate committed no illegality in passing direction for investigation, warranting any interference by High Court under Art. 226 of the Constitution — Single Judge as well as Division Bench rightly refused to interfere with such limited order — Moreover, challenge at this stage by appellants was premature and High Court rightly rejected their request — Constitution of India — Arts. 226 and 136 — Penal Code, 1860, Ss. 405, 406, 418, 420, 427, 503, 504, 506/34 and 120-B — CrPC, 1973 — S. 156(3)* (Paras 15 to 24)

The Magistrate only ordered investigation under Section 156(3) CrPC. The Magistrate perused the complaint without examining the merits of the claim that there is sufficient ground for proceeding or not and directed the police officer concerned for investigation under Section 156(3) CrPC. As rightly observed by the Single Judge of the High Court, the Magistrate did not bring into motion the machinery of Chapter XV CrPC. He did not examine the complainant or his witnesses under Section 200 CrPC which is the first step in the procedure prescribed under the said Chapter. The question of taking the next step of the procedure envisaged in Section 202 did not arise. Instead of taking cognizance of the offence, the Magistrate has merely allowed the application filed by the complainant/SEPCO under Section 156(3) CrPC and sent the same along with its annexure for investigation by the police officer concerned. (Para 22)

To proceed under Section 156(3) CrPC, what is required is a bare reading of the complaint and if it discloses a cognizable offence, then the Magistrate instead of applying his mind to the complaint for deciding whether or not there is sufficient ground for proceeding, may direct the police for investigation. In the case on hand, the Single Judge and the Division Bench of the High Court rightly pointed out that the Magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for proceeding and, therefore, the Magistrate has not committed any illegality in directing the police for investigation. As a matter of fact, even after receipt of a report under Section 173, the Magistrate under Section 190(1)(*b*) may or may not take cognizance of offence. In other words, he is not bound to take cognizance upon submission of the police report by the investigating officer, hence, by directing the police to file charge-sheet or final report and to hold investigation, it cannot be construed that the Magistrate has exceeded his power as provided in Section 156(3). (Para 23). *Srinivas Gundluri* v. *SEPCO Electric Power Construction Corpn.*, (2010) 8 SCC 206.

Bench Strength **2**. Coram: **P. Sathasivam** and *Anil R. Dave*, JJ. [Date of decision: 30-7-2010]

Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252: 1976 SCC (Cri) 380; Tula Ram v. Kishore Singh, (1977) 4 SCC 459: 1977 SCC (Cri) 621, relied on

Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234, distinguished on facts

Nirmaljit Singh Hoon v. State of W.B., (1973) 3 SCC 753: 1973 SCC (Cri) 521, cited

(8) Interference with investigation/FIR *(contd.)*

[7146] — Ss. 482, 468, 469(b) & (c), 154 and 473 — Quashing of FIR after filing of charge-sheet not permissible — *High Court erred in quashing the FIR on ground of delay in filing it without applying its mind to the limitation provisions contained in Ss. 468, 469(b), (c) and 473 of the Code. State of Punjab* v. *Dharam Vir Singh Jethi*, 1994 SCC (Cri) 500.

Bench Strength **2**. Coram: *A.M. Ahmadi* and *Yogeshwar Dayal*, JJ. [Date of decision: 12-4-1993]

Distinguished in Suneet Gupta v. Anil Triloknath Sharma, (2008) 11 SCC 670

[7147] — Ss. 482 and 2(c) & (d), 154 — Quashment of FIR — Contents of complaint/FIR — Relevance of — *Held, for the purpose of finding out commission of a cognizable offence, High Court, while exercising power under S. 482, is only required to look into allegations made in complaint/FIR for concluding whether a prima facie offence has been made out by complainant in complaint/FIR or not* (Para 22). *Pratibha* v. *Rameshwari Devi*, (2007) 12 SCC 369: (2008) 1 SCC (Cri) 399: (2007) 59 AIC 159 (SC): 2008 Cri LJ 329.

Bench Strength **2**. Coram: *A.K. Mathur* and **Tarun Chatterjee**, JJ. [Date of decision: 17-9-2007]

[7148] — Ss. 482 and 154 — Abuse of process of court — FIR not making out any offence — Rightly quashed — Cheque given by the appellant to respondents bouncing — *Appellants filing FIR under Ss. 420/406/468 alleging therein that respondents by an act of conspiracy committed criminal breach of trust by presenting for encashment blank cheques signed by the appellant for a purpose other than that for which the cheque had been given to them and thereby causing to the appellant loss of a certain amount — Apart from the fact that the said allegations did not make out the offence of cheating or criminal breach of trust, attendant circumstances indicating that FIR was lodged to pre-empt the filing of complaint under S. 138 of Negotiable Instruments Act against the appellant — In such circumstances, held, High Court was well within its jurisdiction to quash the FIR as amounting to abuse of the process of court — Hence, High Court's decision called for no interference under Art. 136 — Negotiable Instruments Act, 1881, S. 138 — Penal Code, 1860, Ss. 420/406/468 — Constitution of India — Art. 136* (Para 5). *Sunil Kumar* v. *Escorts Yamaha Motors Ltd.*, (1999) 8 SCC 468: 1999 SCC (Cri) 1466: AIR 2000 SC 27.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision: 27-10-1999]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401; Punjab National Bank v. Surendra Prasad Sinha, 1993 Supp (1) SCC 499: 1993 SCC (Cri) 149, considered

[7149] — Ss. 482 and 154 — High Court in exercise of its inherent powers cannot quash an FIR just after it was filed, without notice to the complainant. *Kurukshetra University* v. *State of Haryana*, (1977) 4 SCC 451: 1977 SCC (Cri) 613: AIR 1977 SC 2229: 1977 Cri LJ 1900.

Bench Strength **3**. Coram: **Y.V. Chandrachud**, *P.K. Goswami* and *P.N. Shinghal*, JJ. [Date of decision: 22-3-1977]

[7150] — Ss. 482 and 154 — Inherent power under, to quash FIR when cannot be exercised — Allegations in FIR disclosing commission of a cognizable offence — *Several aspects of the FIR still to be investigated by the police — Held, High Court erred in quashing the FIR — At that stage the High Court could not go into the question whether offences alleged in the FIR were made out or not — Statutory power of police to investigate cannot be interfered with in exercise of inherent power by High Court — Approach of the High Court in treating the whole matter as though it was an appeal against conviction not proper. Union of India* v. *B.R. Bajaj*, (1994) 2 SCC 277: 1994 SCC (Cri) 477: AIR 1994 SC 1256: 1994 Cri LJ 2086.

Bench Strength **2**. Coram: **K. Jayachandra Reddy** and *G.N. Ray*, JJ. [Date of decision: 18-1-1994]

State of Haryana v. Ch. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36, followed

[7151] — Ss. 482 and 154 — Power to quash criminal proceeding — Where FIR ex facie makes out no offence criminal proceeding instituted on the basis of such FIR liable to be quashed — Cheating, forgery, etc — *Allegations same against all accused — Prosecution of bank officials and account-holders for withdrawing certain amount from bank by making false credit entries in books of account and connected credit and debit vouchers — No particulars of alleged entries given in FIR — Absence of deliberate intention to cause any wrongful gain or wrongful loss — High Court rightly held that allegations made in FIR did not constitute any offence of cheating or forgery as such proceedings amounted to abuse of process of court — Failure to make entries in books of account cannot be characterised as false entries — Since allegations same against all accused persons entire proceedings and not only against one, as High Court did, liable to be quashed — Penal*

Code, 1860, Ss. 420, 468, 471 and 120-B — Prevention of Corruption Act, 1947, S. 5(2) read with S. 5(1)(d). State of U.P. v. *R.K. Srivastava*, (1989) 4 SCC 59: 1989 SCC (Cri) 713: AIR 1989 SC 2222: 1989 Cri LJ 2301.

Bench Strength **3**. Coram: **M.M. Dutt**, *S. Ratnavel Pandian* and *Dr. T.K. Thommen*, JJ. [Date of decision: 11-8-1989]

[7152] — Ss. 482 and 154 — Quashing of FIR — Where only FIR was registered and no investigation had yet commenced, High Court cannot quash the FIR

By lodging FIR alone no investigation is conducted by the police. It is the first step towards starting investigation by the police. If the High Court was of the opinion that investigation had to be conducted by the Bureau then also there was no need to quash the FIR. The inherent powers of the High Court as recognised in Section 482 of the Code are reserved to be used "to give effect to any orders under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice". The High Court overlooked the reality that by quashing the FIR it did not achieve any one of the above factors. On the contrary, the result of quashing the FIR had rendered the allegations of offences made against a person to remain consigned in stupor perennially. Hence, instead of achieving the ends of criminal justice, the impugned order would achieve the reverse of it. (Para 19). *State of W.B.* v. *Narayan K. Patodia*, (2000) 4 SCC 447: 2000 SCC (Cri) 812: AIR 2000 SC 1405: 2000 Cri LJ 1811: (2000) 120 STC 370.

Bench Strength **2**. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 6-4-2000]

[7153] — S. 482 — Inherent powers of High Court — Quashing of FIR in exercise of — Scope

High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence. For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence. Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus. If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. It is furthermore well known that no hard-and-fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint. (Paras 15 and 16). *R. Kalyani* v. *Janak C. Mehta*, (2009) 1 SCC 516.

Bench Strength **2**. Coram: **S.B. Sinha** and *Aftab Alam*, JJ. [Date of decision: 24-10-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401; Hamida v. Rashid, (2008) 1 SCC 474: (2008) 1 SCC (Cri) 234; Sunita Jain v. Pawan Kumar Jain, (2008) 2 SCC 705: (2008) 1 SCC (Cri) 537; State of Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272; Kailash Verma v. Punjab State Civil Supplies Corpn., (2005) 2 SCC 571: 2005 SCC (Cri) 538; Monica Kumar (Dr.) v. State of U.P., (2008) 8 SCC 781; Popular Muthiah v. State, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245, considered and relied on

[7154] — S. 482 — Quashing of FIR — Specific allegations and definite material to prima facie sustain allegations — Need for — Abetment of suicide — *Suicide note of deceased as well as FIR failing to depict any intention of accused (superior officer of deceased) that deceased might commit suicide — Hence held, if prosecution was allowed to continue on basis of such absurd allegations it would be difficult for every superior officer to work — Merely because a person had a grudge against his superior officer and committed suicide on account of that grudge, even honestly feeling that he was wronged, it would still not be a proper allegation for basing charge under S. 306 IPC — As far as S. 294(b) IPC was concerned, there was nothing in FIR or in suicide note to prima facie satisfy ingredients thereof — Neither was there any proximity nor any nexus between so-called suicide (if at all it was one for which also there was no material on record) and any of the alleged acts on part of appellant — Courts in such cases have to be extremely careful as main person is not available for cross-examination by appellant-accused — Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential), it would be hazardous to ask appellant-accused to face trial — Penal Code, 1860, Ss. 306 and 294(b)* (Paras 13 to 18). *Madan Mohan Singh* v. *State of Gujarat*, (2010) 8 SCC 628.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 17-8-2010]

(8) Interference with investigation/FIR *(contd.)*

Netai Dutta v. State of W.B., (2005) 2 SCC 659: 2005 SCC (Cri) 543; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

[7155] — Ss. 482 and 154 — Quashing of FIR by High Court by entering into the factual arena — Propriety — *Held, the same was wholly impermissible — High Court acted more as an investigating agency at a stage when the FIR was under investigation — Hence, High Court's order set aside* (Paras 2 and 3). *State of Punjab* v. *Subhash Kumar*, (2004) 13 SCC 437.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 6-8-2004]

[7156] — Ss. 482 and 154, 155, 156, 157, 162, 169, 170, 173 — Interference with statutory right of police to make investigation into cognizable offence pursuant to lodging of FIR — *A just balance has to be struck between citizen's rights under Arts. 19 and 21 and expansive power of police to make investigation — After registering the FIR and commencing investigation, registering of second FIR or successive FIRs in respect of the same incident and crime and making of fresh investigations pursuant thereto would be irregular which call for interference by High Court under Arts. 226/227 or S. 482 CrPC and interference by Supreme Court under Art. 136 with the fresh investigation to prevent abuse of statutory power of investigation or otherwise to secure ends of justice — Constitution of India — Arts. 226/227 & 136 and 19 & 21*

The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 CrPC. (Para 19)

In the case on hand the second FIR was filed in respect of the same incident and on the same facts after about three years. (Para 22)

The right of the police to investigate into a cognizable offence is a statutory right over which the court does not possess any supervisory jurisdiction under CrPC. This plenary power of the police to investigate a cognizable offence is, however, not unlimited. It is subject to certain well-recognised limitations. (Paras 23 and 24)

A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. The sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. A case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution. Where the police transgresses its statutory power of investigation the High Court under Section 482 CrPC or Articles 226/227 of the Constitution and the Supreme Court in an appropriate case can interdict the investigation to prevent abuse of the process of the court or otherwise to secure the ends of justice. (Paras 27 and 25)

In the present case in truth and substance the essence of the offence in Crimes Nos. 353 and 354 of 1994 is the same as in Crime No. 268 of 1997. In sending information in regard to the same incident, duly enclosing a copy of the report of the Commission of Inquiry to the Inspector General of Police for appropriate action, the Additional Chief Secretary adopted the right course of action. Perhaps the endorsement of the Inspector General of Police for registration of a case misled the subordinate police officers and the said letter with regard to the incident was registered again under Section 154 CrPC which would be the second FIR and, on the facts of this case, was irregular and a fresh investigation by the investigating agency was unwarranted and illegal. On that date the investigations in the earlier cases (Crimes Nos. 353 and 354 of 1994) were pending. The correct course of action should have been to take note of the findings and the contents of the report, streamline the investigation to ascertain the true and correct facts, collect the evidence in support thereof, form an opinion under Sections 169 and 170 CrPC, as the case may be, and forward the report/reports under Section 173(2) or Section 173(8) CrPC to the Magistrate concerned. The course adopted in this case, namely, the registration of the information as the second FIR in regard to the same incident and making a fresh investigation is not permissible under the scheme of the provisions of CrPC. Therefore, the investigation undertaken and the report thereof cannot but be invalid. The same is, therefore, quashed leaving it open to the investigating agency to seek permission in Crime No. 353 or 354 of 1994 of the Magistrate to make further investigation, forward further report or reports and thus proceed in accordance with law. (Para 28). *T.T. Antony* v. *State of Kerala*, (2001) 6 SCC 181: 2001 SCC (Cri) 1048: AIR 2001 SC 2637.

Bench Strength **2**. Coram: **S.S.M. Quadri** and *S.N. Phukan*, JJ. [Date of decision: 12-7-2001]

Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322: 1979 SCC (Cri) 479; M. Krishna v. State of Karnataka, (1999) 3 SCC 247: 1999 SCC (Cri) 397, distinguished

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Emperor v. Khwaja Nazir Ahmad, AIR 1945 PC 18: 46 Cri LJ 413, relied on

[7157] — Ss. 482 and 154, 211 & 210 — Quashing of FIR for offences under Ss. 498-A and 406 IPC — Stage up to which possible — *Where charge-sheet already filed and charges also framed, held, question of quashing FIR does not arise — Penal Code, 1860, Ss. 498-A and 406* (Para 14). *Manjula Sinha* v. *State of U.P.*, (2007) 12 SCC 503: (2008) 3 SCC (Cri) 271: (2007) 5 All LJ 245.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 11-7-2007]

[7158] — Ss. 482 and 156 — Locus standi of institution against which investigation ordered by High Court without providing any opportunity of hearing to it — *Held, was entitled to invoke jurisdiction under Art. 136*

No judicial order can ever be passed by any court without providing a reasonable opportunity of being heard to the person likely to be affected by such order and particularly when such order results in drastic consequences of affecting one's own reputation. The impugned order of the High Court directing enquiry and investigation into allegations against the appellant institution in respect of which not even a complaint/information has been lodged with the police is violative of principles of natural justice. The Director of the appellant institution has been impleaded as a party respondent in the criminal petition and the whole of the allegations in the anonymous petition are levelled against the appellant and in such a situation it was imperative for the High Court to put the appellant on notice before passing the impugned order. The appellant undoubtedly is aggrieved by the impugned order and, therefore, entitled to invoke the jurisdiction under Article 136 of the Constitution. (Paras 51 to 53). *Divine Retreat Centre* v. *State of Kerala*, (2008) 3 SCC 542: (2008) 2 SCC (Cri) 9: AIR 2008 SC 1614: (2008) 1 KLT 1042: 2008 Cri LJ 1891: (2008) 64 AIC (SC) 44.

Bench Strength **2**. Coram: *S.H. Kapadia* and **B. Sudershan Reddy**, JJ. [Date of decision: 11-3-2008]

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Union of India v. W.N. Chadha, 1993 Supp (4) SCC 260: 1993 SCC (Cri) 1171, distinguished on facts

[7159] — Ss. 482, 154 and 156(2) — Quashing of FIR — High Court to proceed entirely on the basis of allegations made in the complaint — If the FIR prima facie discloses commission of an offence the High Court should be reluctant to interfere — *Hence High Court erred in quashing the FIR at the stage of investigation overlooking the clear provisions of S. 156(2)*

The legal position is well settled that if an offence is disclosed the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. It is also settled by a long course of decisions of the Supreme Court that for the purpose of exercising its power under Section 482 CrPC to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations. (Para 14)

Hence, in the present case, the High Court committed a grave error in accepting the contention of the respondent that the investigating officer had no jurisdiction to investigate the matters on the alleged ground that no part of the offence was committed within the territorial jurisdiction of the police station at Delhi. The appreciation of the evidence is the function of the courts when seized of the matter. At the stage of investigation, the material collected by an investigating officer cannot be judicially scrutinized for arriving at a conclusion that the police station officer of a particular police station would not have territorial jurisdiction. (Para 15). *Satvinder Kaur* v. *State (Govt. of NCT of Delhi)*, (1999) 8 SCC 728: 1999 SCC (Cri) 1503: AIR 1999 SC 3596.

Bench Strength **2**. Coram: *K.T. Thomas* and **M.B. Shah**, JJ. [Date of decision: 5-10-1999]

(8) Interference with investigation/FIR *(contd.)*

[7160] — Ss. 482 and 157 & 154 — Investigation by police — Judicial review — *Investigation stayed at the outset by High Court under Art. 226 — State's appeal before Supreme Court — Court will not go into the question of reliability and proof of allegations made in FIR — Non-filing of written statement on behalf of the State in reply to averments made by accused before High Court explaining and denying the allegations contained in FIR will not lead to any averse inference*

As the entire matter stands only at the stage of the registration of the case and the investigation has not at all proceeded with on account of the order of stay granted by the High Court, it is not necessary for the Court at this stage to embark upon an enquiry whether the allegations in the first information report are reliable or not and thereupon to render a finding whether any of the allegations is proved. These are matters which can be examined only by the concerned court after the entire materials are placed before it on a thorough investigation. Court is not called upon to examine the truth or otherwise of each of the instances of the alleged corruption indicted in complaint in snippet form and thereafter string them together and express any opinion either way, since in our view any such opinion may affect the case of either party or cripple the course of investigation.

The non-filing of a written statement by a competent authority of the State Government by way of reply to the averments made in the writ petition cannot also be said to be such a serious flaw at this stage on the part of the appellants that the averments of the respondents can be held as having disproved the entire crimination alleged in the FIR. No adverse inference could be drawn on the mere non-filing of a written statement by the State Government in cases of this nature especially when the matter relates to serious disputed facts, yet to be investigated. The stage is premature and as such the government could not be expected to have in its possession all the details in support of the allegations made in the complaint before any enquiry or investigation is launched and completed. The police officials also cannot be expected to give a detailed reply to the averments made in the writ petition when the investigation has not at all been proceeded with. *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426: AIR 1992 SC 604: 1992 Cri LJ 527.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 21-11-1990]

[7161] — Ss. 482 and 173(2) — Quashing of FIR by relying on investigation report under S. 173(2) — Permissibility — *Question whether High Court entitled to consider investigation report submitted before it — Investigation report neither filed before Magistrate nor a copy of the same supplied to appellant — On facts, held, High Court was wrong in directing report to be submitted before it — It acted in excess of its jurisdiction by relying on investigation report — It is well settled that it is for investigating agency to submit report to Magistrate who may accept or reject it — In compliance with S. 173(2), after completion of investigation, the officer in charge of police station shall forward his report not to High Court where proceedings under S. 482 is pending but to a Magistrate empowered to take cognizance of offence on such police report — Using report of investigating agency for quashing the FIR or a criminal proceeding, held, cannot be sustained — Hence, it was impermissible for High Court to entertain report of investigating agency before the same could be forwarded and filed before Magistrate concerned in compliance with S. 173(2) — Nor can the High Court direct report to be submitted before it* (Paras 17, 18, 20 and 21). *Pratibha* v. *Rameshwari Devi*, (2007) 12 SCC 369: (2008) 1 SCC (Cri) 399: (2007) 59 AIC 159 (SC): 2008 Cri LJ 329.

Bench Strength **2**. Coram: *A.K. Mathur* and **Tarun Chatterjee**, JJ. [Date of decision: 17-9-2007]

M.C. Abraham v. State of Maharashtra, (2003) 2 SCC 649: 2003 SCC (Cri) 628; Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117; Union of India v. Prakash P. Hinduja, (2003) 6 SCC 195: 2003 SCC (Cri) 1314, relied on

[7162] — Ss. 482 and 173(8) — Quashing of investigation when not justified — *Case registered under Ss. 420, 408 r/w 34 IPC against respondents pursuant to complaint made by appellant company — Nine months later case closed by Investigating Officer — But after transfer of the Investigating Officer, further investigation commenced under direction of Superintendent of Police — State representing that investigation not yet complete and definite conclusion would be reached only on its completion — High Court taking the view that necessary ingredients to make out offence under S. 415 IPC not satisfied, quashing the investigation under S. 482 — Held, High Court was not justified in quashing the investigation which was still under way — Constitution of India — Art. 226*

The investigation into an offence is a statutory function of the police and the superintendence thereof is vested in the State Government and the court is not justified without any compelling and justifiable reason to interfere with the investigation. *Jayant Vitamins Ltd.* v. *Chaitanyakumar*, (1992) 4 SCC 15: 1992 SCC (Cri) 793: AIR 1992 SC 1930: (1992) 2 An WR 41 (SC).

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *G.N. Ray*, JJ. [Date of decision: 6-8-1992]

(9) Adverse remarks and their expunction

[7163] — S. 482 — Expunction of remarks — Observation of High Court against a doctor that he was not fit to be retained in Government service — *Such observation mainly based on statement of the Investigating Officer who was himself responsible for the irregularities alleged to have been committed by the doctor — Doctor not disowning those irregularities which by themselves could happen in discharge of official duty — Held, observation of the High Court amounts to condemning the doctor without being heard — Observation quashed — Constitution of India — Art. 136. I.B. Gupta (Dr.)* v. *State of U.P.*, 1994 Supp (2) SCC 37: 1994 SCC (Cri) 691.

Bench Strength **2**. Coram: *K. Jayachandra Reddy* and *N.P. Singh*, JJ. [Date of decision: 8-4-1993]

[7164] — S. 482 — Disparaging remarks made by High Court against a non-material witness on the basis of erroneous view taken in the case, held in the circumstances, uncalled for and must be expunged — *Constitution of India — Art. 136*

Harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before courts of law unless it is really necessary for the decision of the case, as an integral part thereof to animadvert on that conduct. Having regard to the hearsay nature of evidence of the appellant who was not a material witness in the case, it was not necessary at all for the High Court to have animadverted on the conduct of the appellant for the purpose of allowing the appeal of the first respondent. Even assuming that a serious evaluation of the evidence of the appellant was really called for in the appeal, the remarks of the appellate Judge should be in conformity with the settled practice of courts to observe sobriety, moderation and reserve. The higher the forum and the greater the powers, the greater the need for restraint and the more mellowed the reproach should be. *Niranjan Patnaik* v. *Sashibhusan Kar*, (1986) 2 SCC 569: 1986 SCC (Cri) 196: AIR 1986 SC 819: 1986 Cri LJ 911.

Bench Strength **2**. Coram: *V. Balakrishna Eradi* and **S. Natarajan**, JJ. [Date of decision: 11-4-1986]

[7165] — S. 482 — Uncalled for observations — Restraint — Necessity — *Held, observations coming from higher courts may have their own effect of influencing course of events and process of law — Hence, no uncalled-for observations should be made while disposing of matters, more so, without hearing persons likely to be affected*

In the present case, the High Court did not record any reasons whatsoever why and for what reasons, the matter required its interference. The High Court is not expected to make any casual observations without having any regard to the possible consequences that may ensue from such observations. Observations coming from the higher courts may have their own effect of influencing the course of events and process of law. For that reason, no uncalled-for observations are to be made while disposing of the matters and that too without hearing the persons likely to be affected. The case on hand is itself a classic illustration as to how such observations could result in drastic consequences of far-reaching in nature. (Para 37). *D. Venkatasubramaniam* v. *M.K. Mohan Krishnamachari*, (2009) 10 SCC 488: (2009) 82 AIC 245 (SC): (2009) 3 APLJ 205 (SC).

Bench Strength **2**. Coram: *R.V. Raveendran* and **B. Sudershan Reddy**, JJ. [Date of decision: 14-9-2009]

[7166] — S. 482 — Expunging of remarks made by High Court under — *Interim order of stay preventing a person, charged with serious offences under Official Secrets Act and Atomic Energy Act, from going abroad obtained by State from a Single Judge of High Court by filing fresh petition under Art. 227 of the Constitution read with S. 482 CrPC, stating correct facts, instead of approaching the Division Bench before which the main writ petition of that person was pending — Held, procedure adopted being legal and correct facts having been stated for obtaining the stay order, no mala fides, legal or factual, can be imputed to the State and Public Prosecutor — Hence strictures passed against them by High Court of 'sharp practice', suppression of facts, fraud etc. unwarranted. State of Maharashtra* v. *Dr. Budhikota Subbarao*, (1993) 3 SCC 71: 1993 SCC (Cri) 597.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **R.M. Sahai**, JJ. [Date of decision: 16-3-1993]

[7167] — S. 482 — High Court in exercise of its inherent jurisdiction may, in certain cases, pass adverse remarks against investigator, prosecutor or judicial officer even though they may not be before it and may also later on direct expunction thereof suo motu or at the instance of the person aggrieved

In certain situations, the court exercises a wider jurisdiction e.g. it may pass adverse remarks against an investigator or a prosecutor or a judicial officer, although they are not before it. Expunction of such remarks may also be directed by the High Court at a later stage even suo motu or at the instance of the person aggrieved. (Para 28). *Popular Muthiah* v. *State*, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

Distinguished in Divine Retreat Centre v. State of Kerala, (2008) 3 SCC 542

(9) Adverse remarks and their expunction *(contd.)*

[7168] — S. 482 — Passing of strictures by High Court — Passing of strictures by higher court against the lower court/authority merely because the higher court prefers a different view not justified (Para 16). *Amresh Tiwari* v. *Lalta Prasad Dubey*, (2000) 4 SCC 440: 2000 SCC (Cri) 806: AIR 2000 SC 1504: 2000 Cri LJ 2226: 2000 All LJ 1095.

Bench Strength **3**. Coram: *K.T. Thomas, D.P. Mohapatra* and **S.N. Variava**, JJ. [Date of decision: 11-4-2000]

[7169] — S. 482 — Petition for expunction of adverse remarks by member of subordinate judiciary — In limine dismissal of — Propriety — Adverse remarks made against appellant Judicial Magistrate, First Class by Sessions Judge — *Appellant Magistrate acquitting two accused in a dowry case — Sessions Judge convicting one of the two accused in a trial for altogether different offences, and making said remarks against appellant in its judgment — High Court dismissing appellant's petition under S. 482 CrPC for expunction of said remarks, in limine — The evidence relating to the dowry case which had been heard by the appellant not before the Sessions judge in the case in which strictures were passed but only a copy of the judgment given by the appellant on record in the sessions trial — Held, it cannot be understood how the Sessions Judge without record and evidence of the case came to the conclusion that acquittal by the appellant was not justified — Instead of remanding the case back to the High Court, having regard to the long pendency of the matter and having perused the material before it, Supreme Court itself ordering expunction of said remarks — Constitution of India — Art. 136*

The appellant as a judicial officer (Judicial Magistrate, Ist Class, Dhanbad), by judgment dated 6-5-1997 trying a case under Section 498-A IPC and Sections 3/4 of the Dowry Prohibition Act, acquitted the two accused who had been charged for the said offence, giving them the benefit of doubt. The Sessions Judge, Dhanbad, trying altogether a different case for offences under Sections 364, 302 and Section 201 read with Section 34 of the Penal Code, by judgment dated 7-2-1998 convicted one of the accused and acquitted the other. In the course of the judgment, the Sessions Judge made observations in respect of the order of acquittal dated 6-5-1997 which had been passed by the appellant. Soon after passing the judgment, learned District and Sessions Judge by issue of notice dated 3-3-1998 to the appellant, asked him to furnish explanation as to the circumstances under which the order of acquittal was passed. In that notice it was stated that the order of acquittal was based on extraneous considerations.

This appeal was directed against the judgment of the High Court whereby petition filed under Section 482 CrPC by the appellant for expunging the remarks against him as contained in the judgment of learned Sessions Judge dated 7-2-1998, was dismissed.

Allowing the appeal,

Held :

It does not appear that the evidence that had been led in the case decided by the appellant was before the Sessions Judge in the case in which the said strictures were passed. Only a copy of the judgment was placed on the record of the sessions trial by the accused by way of defence. Moreover, it was a detailed judgment setting out the evidence in the case and recording reasons for the order of acquittal. It cannot be understood how the Sessions Judge without record and evidence of the case came to the conclusion that the acquittal by the appellant was not justified and the accused should have been convicted. (Para 5)

In this appeal the question is not about the validity or otherwise of the show-cause notice dated 3-3-1998 issued to the appellant asking him to furnish explanation as to the circumstances under which the order of acquittal was passed but is about the correctness of the strictures passed and the order of the High Court declining to expunge the remarks when a petition under Section 482 was filed by the appellant. The only reason given by the High Court is that the case does not require interference. The petition was dismissed in limine without issuance of notice to the respondents. Further, it appears that the observations in the impugned judgment of the High Court that no show-cause notice had been issued to the appellant, are also not correct, since the show-cause notice dated 3-3-1998 had been issued. A perusal of petition under Section 482 CrPC shows that the notice dated 3-3-1998 had been annexed thereto. (Para 5)

In view of the aforesaid factual position, ordinarily the case would have been remanded to the High Court for fresh decision of the petition under Section 482 CrPC. But, having regard to the long pendency of the matter and having perused the material placed before it, the Supreme Court has no doubt that on the present facts and circumstances, there was no justification for passing the strictures against the appellant. In this view, the strictures passed against the appellant in para 20 of the judgment dated 7-2-1998 rendered in Sessions Trial No.

364 of 1995 by the Sessions Judge, Dhanbad are expunged. (Paras 6 and 7). *Anjani K. Verma* v. *State of Bihar*, (2004) 11 SCC 188.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *S.B. Sinha*, JJ. [Date of decision: 24-3-2004]

[7170] — Ss. 482 and 156(3) — Powers of High Court under S. 482 against a complaint case — Held, do not extend to making comments on averments contained in the complaint — *Petition under S. 482 for issuing directions to CJM and CBI regarding investigation in cases — CJM under S. 156(3) directing CBI to conduct investigation — High Court upholding no necessity of entrusting investigation to CBI or any other agency — Sessions Judge setting aside CJM's order — Setting aside impugned judgment, held, High Court should not have commented on averments made in complaint when it was yet to be forwarded by the Magistrate to the police — Finding on merits at a premature stage of pending investigation, held, would be prejudicial to investigation agency and accused as well. Om Prakash Chugh* v. *State of Haryana*, (2000) 10 SCC 612: 2001 SCC (Cri) 1515: AIR 2000 SC 2477.

Bench Strength **2**. Coram: *K.T. Thomas* and *D.P. Mohapatra*, JJ. [Date of decision: 1-2-2000]

[7171] — Ss. 482 and 354 — Disparaging remarks affecting character, professional competence and integrity made by High Court against a police officer conducting investigation — *CMP filed before High Court by certain other police personnel for expunction of strictures passed against them by Sessions Judge — Held, adverse comments against the appellant police officer were beyond the scope of inquiry in the CMP — High Court committed procedural error in not affording hearing to the appellant in compliance with principles of natural justice and also failed to keep in mind the settled principles laid down in Mohd. Naim case before making the disparaging remarks — On merits also such comments unwarranted — High Court not justified in passing remarks of such serious nature against the appellant — Hence the remarks expunged — CPC, 1908, Or. 20, R. 4. S.K. Viswambaran* v. *E. Koyakunju*, (1987) 2 SCC 109: 1987 SCC (Cri) 289: AIR 1987 SC 1436: 1987 Cri LJ 1175.

Bench Strength **2**. Coram: *B.C. Ray* and **S. Natarajan**, JJ. [Date of decision: 3-3-1987]

[7172] — Ss. 482 and 437 — Adverse remarks — If warranted — *Granting bail on the ground of an infirmity in evidence in the criminal trial, held, was not a glaring mistake or impropriety so as to attract adverse remarks and suggestion for initiation of action against the Judge-Subordinate, from the High Court Judge — Proper course to be adopted in such a case, stated — Constitution of India, Art. 235*

The appellant was a Judicial Officer in the Superior Judicial Service in the State of Bihar. In a case, in which a bail application had been rejected by his predecessor, he granted bail on the ground that the evidence of test identification parade of the culprits gathered by the investigation, an evidence important in a dacoity case, was highly suspicious inasmuch as the witnesses who were made to participate in the same, had already on their own disclosed the names of the accused committing the crime, to the Investigating Officer. A Single Judge of the High Court, while setting aside the appellant's order and cancelling the bail, passed serious remarks against the appellant and proposed disciplinary action against him. Allowing his appeal and expunging the said remarks,

Held :

The courts exercising bail jurisdiction normally do and should refrain from indulging in elaborate reasoning in their orders in justification of grant or non-grant of bail. For, in that manner, the principle of "presumption of innocence of an accused" gets jeopardized; and the structural principle of "not guilty till proved guilty" gets destroyed, even though all sane elements have always understood that such views are tentative and not final, so as to affect the merit of the matter. Here, the appellant has been caught and exposed to a certain adverse comment and action solely because in reasoning he had disclosed his mind while granting bail. This may have been avoidable on his part, but in terms not such a glaring mistake or impropriety so as to visit the remarks that the High Court has chosen to pass on him as well as to initiate action against him, as proposed.

Whenever any such intolerable error is detected by or pointed out to a superior court, it is functionally required to correct that error and may, here and there, in an appropriate case, and in a manner befitting, maintaining the dignity of the court and independence of judiciary, convey its message in its judgment to the officer concerned through a process of reasoning, essentially persuasive, reasonable, mellow but clear, and result-orienting, but rarely as a rebuke. The premise that a Judge committed a mistake or an error beyond the limits of tolerance, is no ground to inflict condemnation on the Judge-Subordinate, unless there existed something else and for exceptional grounds. *Kashi Nath Roy* v. *State of Bihar*, (1996) 4 SCC 539: 1996 SCC (Cri) 789: AIR 1996 SC 3240.

Bench Strength **2**. Coram: *M.M. Punchhi* and *K.T. Thomas*, JJ. [Date of decision: 18-4-1996]

Lala Pandey v. State of Bihar, Cri Misc. No. 12034 of 1991, modified

(9) Adverse remarks and their expunction *(contd.)*

[7173] — S. 482 r/w Art. 227 of Constitution of India — Adverse remarks by High Court against Metropolitan Magistrate — On facts directed to be expunged — *Conduct of subordinate judiciary — Power of superior court to express its opinion and make even critical observations regarding the conduct of judicial and quasi-judicial authorities, held, is undeniable, but the power is to be exercised only when necessary for the purpose of reaching a decision on the main controversy before it and only after giving the person or authority criticised a chance to explain — Any passage in an order or judgment may be expunged if (i) the passage is wholly irrelevant and unjustifiable; (ii) retaining it would cause serious harm to the persons to whom it refers; and (iii) expunction would not affect the reasons for the judgment — Petitioner a Metropolitan Magistrate issuing process under Ss. 380, 201 and 120-B IPC against PWD officials who had constructed, for courtroom of Metropolitan Magistrate, a judge's dais, which was not fit to be used as it was too high, almost reaching the ceiling fan, and later without consultation or authority had cut off a portion of it — Officials filing petition under S. 482 CrPC r/w Art. 227 of Constitution of India, seeking to have proceedings quashed — Held, High Court rightly quashed the criminal proceedings against the PWD officials, but erred in observing that petitioner Metropolitan Magistrate had been guilty of "gross abuse of process of court" of "defying all judicial norms" and that she had aimed to "pressurise" the officials into functioning as "desired by her" — These remarks were not necessary for the decision of the case — Adverse remarks expunged from order of High Court and also CR of petitioner — Penal Code, 1860, Ss. 380, 201 and 120-B*

K, the special leave petitioner in the present case was a serving judicial officer posted as Metropolitan Magistrate in Delhi. The controversy arose after the construction of a judge's dais for the petitioner's courtroom. The dais according to the petitioner *K* was not fit to be used, being shaped like a box and much too high; if she were to use it, her head would touch the ceiling fan and also the angle was such that she would be unable to see the arguing counsel, the litigants and the courtroom staff. The PWD officials responsible for the job made no response even to the District and Sessions Judge, who tried to communicate with them. The petitioner *K* then initiated proceedings under the Contempt of Courts Act, 1971 and issued show-cause notices to some of the PWD officials.

While the contempt proceedings were pending, PWD people came and cut off part of the dais and removed that portion. At this point *K* took cognizance of offences under Sections 380, 201 and 120-B IPC and issued process against the PWD officers and directed them to appear before her.

The accused persons filed a petition under Section 482 CrPC r/w Article 227 of the Constitution and sought the quashing of both sets of proceedings. Meanwhile, being satisfied with their response to the contempt notice, *K* herself directed that it be discharged. The High Court ultimately heard the petition only in respect of the offences under IPC. The High Court directed that the criminal proceedings be quashed and observed in the operative part of its order that "the Magistrate wanted to rope in the petitioners in a criminal case in order to pressurise them to have the dais in Courtroom No. 8 and other civil work as noted in the petition carried out as desired by her"; that *K* was guilty of "defying all judicial norms" and that her order was a "gross abuse of the process of court".

Aggrieved by the critical observations of the High Court, *K* came in SLP before the Supreme Court and sought to have the remarks expunged. It was pointed out on her behalf that the remarks had been mentioned in her annual confidential record and would thus adversely affect her future career.

Disposing of the petition,

Held :

A Judge entrusted with the task of administering justice should be bold and feel fearless while acting judicially and giving expression to his views and constructing his judgment or order. It should be no deterrent to formation and expression of an honest opinion and acting thereon so long as it is within four-corners of law that any action taken by a subordinate judicial officer is open to scrutiny in judicial review before a superior forum with which its opinion may not meet approval and the superior court may upset his action or opinion. The availability of such fearlessness is essential for the maintenance of judicial independence. However, sobriety, cool, calm and poise should be reflected in every action and expression of a Judge. (Para 7)

The primary purpose of pronouncing a verdict is to dispose of the matter in controversy between the parties before it. A Judge is not expected to drift away from pronouncing upon the controversy, to sitting in judgment over the conduct of the judicial and quasi-judicial authorities whose decisions or orders are put in issue before him, and indulge in criticising and commenting thereon unless the conduct of an authority or subordinate functionary or anyone else than the parties comes of necessity under review and expression of opinion thereon going to the extent of commenting or criticising becomes necessary as a part of reasoning requisite for arriving at a conclusion necessary for deciding the main controversy or it becomes necessary to have animadverted thereon for the purpose of arriving at a decision on an issue involved in the litigation. This applies with added force when the superior court is hearing an appeal or revision against an order of a subordinate judicial officer and feels inclined to animadvert on him. (Para 8)

Again, derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct. (Para 14)

The courts do have power to express opinion, make observations and even offer criticism on the conduct of anyone coming within their gaze of judicial review but the question is one of impelling need, justification and propriety. (Para 9)

A Subordinate Judge faced with disparaging and undeserving remarks made by a court of superior jurisdiction is not without any remedy. He may approach the High Court invoking its inherent jurisdiction seeking expunction of objectionable remarks which jurisdiction vests in the High Court by virtue of its being a court of record and possessing inherent powers as also the power of superintendence. (Para 11)

However, if a similar relief is sought for against remarks or observations contained in judgment or order of the High Court the aggrieved judicial officer can, in exceptional cases, approach the Supreme Court also invoking its jurisdiction under Articles 136 and/or 142 of the Constitution. (Para 11)

Any passage from an order or judgment may be expunged or directed to be expunged subject to satisfying the following tests: (*i*) that the passage complained of is wholly irrelevant and unjustifiable; (*ii*) that its retention on the records will cause serious harm to the persons to whom it refers; (*iii*) that its expunction will not affect the reasons for the judgment or order. (Para 11)

Though the power to make remarks or observations is there but on being questioned, the exercise of power must withstand judicial scrutiny on the touchstone of following tests: (*a*) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (*b*) whether there is evidence on record bearing on that conduct justifying the remarks; and (*c*) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. The overall test is that the criticism or observation must be judicial in nature and should not formally depart from sobriety, moderation and reserve. (Para 12)

Under the constitutional scheme control over the district courts and courts subordinate thereto has been vested in the High Courts. The control so vested is administrative, judicial and disciplinary. The role of High Court is also of a friend, philosopher and guide of judiciary subordinate to it. The strength of power is not displayed solely in cracking a whip on errors, mistakes or failures; the power should be so wielded as to have propensity to prevent and to ensure exclusion of repetition if committed once innocently or unwittingly. "Pardon the error but not its repetition". (Para 15)

The existence of power in higher echelons of judiciary to make observations even extending to criticism incorporated in judicial orders cannot be denied. However, the High Courts have to remember that criticisms and observations touching a subordinate judicial officer incorporated in judicial pronouncements have their own mischievous infirmities. Firstly, the judicial officer is condemned unheard which is violative of principles of natural justice. A member of subordinate judiciary himself dispensing justice should not be denied this minimal natural justice so as to shield against being condemned unheard. (Para 15)

Secondly, the harm caused by such criticism or observation may be incapable of being undone. Such criticism of the judicial officer contained in a judgment, reportable or not, is a pronouncement in the open and therefore becomes public. (Para 15)

Thirdly, human nature being what it is, such criticism of a judicial officer contained in the judgment of a higher court gives the litigating party a sense of victory not only over his opponent but also over the Judge who had decided the case against him. This is subversive of judicial authority of the deciding Judge. Fourthly, seeking expunging of the observations by a judicial officer by filing an appeal or petition of his own reduces him to the status of a litigant arrayed as a party before the High Court or Supreme Court — a situation not very happy from the point of view of the functioning of the judicial system. (Para 15)

And last but not the least, the possibility of a single or casual aberration of an otherwise honest, upright and righteous Judge being caught unawares in the net of adverse observations cannot be ruled out. Such an incident would have a seriously demoralising effect not only on him but also on his colleagues. If all this is avoidable why should it not be avoided? (Para 15)

Also, the remarks made in a judicial order of the High Court against a member of subordinate judiciary even if expunged would not completely restitute and restore the harmed Judge from the loss of dignity and honour suffered by him. (Para 17)

However, the foregoing must not be understood as meaning that any conduct of a subordinate judicial officer unbecoming of him and demanding a rebuff should be simply overlooked. But there is an alternate safer and advisable course available to choose. The conduct of a judicial officer, unworthy of him, having come to the notice of a Judge of the High Court hearing a matter on the judicial side, the lis may be disposed of by pronouncing upon the merits thereof as found by him but avoiding in the judicial pronouncement criticism of, or observations on the "conduct" of the subordinate judicial officer who had decided the case under scrutiny. Simultaneously, but separately, in-office proceedings may be drawn up inviting attention of Hon'ble Chief Justice to the facts describing the conduct of the Subordinate Judge concerned by sending a confidential letter or note to the Chief Justice. It will thereafter be open to the Chief Justice to deal with the subordinate judicial officer either at his own level or through the Inspecting Judge or by placing the matter before the full court for its consideration. The action so taken would all be on the administrative side. The Subordinate Judge concerned would have an opportunity of clarifying his position or putting forth the circumstances under which he acted. He would not be condemned unheard and if the decision be adverse to him, it being on administrative side, he would have some remedy available to him under the law. He would not be rendered remediless. (Para 16)

In the present case it may be that the learned Metropolitan Magistrate in initiating contempt proceedings and taking cognizance of substantive offences under the Indian Penal Code against the officials of Public Works Department was not properly advised or was at the worst indulging in a misadventure and therefore to the extent of quashing of the proceedings by the High Court no interference may be required. Also no one has come up to the Supreme Court complaining against the merits of that part of the order of the High Court by which criminal proceedings have been quashed. Nevertheless, the ill-advised move or misadventure of the learned Metropolitan Magistrate was neither a misconduct nor an outcome of malice. Though she acted in a way which did not meet the approval of the High Court, the facts and the circumstances of the case point out that her only desire was to make her courtroom functional. Probably she felt aggrieved, rather agitated, by the apathy of the Public Works Department people who were taking things too easy, unmindful of the practical difficulties faced by the Presiding Judge occupying the courtroom and discharging judicial functions. The fact remains that the observations were made by the High Court without affording the Metropolitan Magistrate an opportunity of explaining or defending herself. The remarks were not necessary for the decision of the case by the High Court as an integral part thereof. (Para 19)

Expunging of the remarks will not affect the reasons for the judgment of the High Court. On the other hand, the remarks have a potential to prejudice the career of the appellant. (Para 19)

The following portions occurring in the judgment of the High Court are directed to be expunged:

"The manner in which the cognizance of the said offences came to be taken clearly suggest that the Magistrate wanted to rope in the petitioners in a criminal case in order to pressurise them to have the dais in Courtroom No. 8 and other civil work as noted in the petition carried out as desired by her"

"defying all judicial norms"

"being gross abuse of process of court". (Para 21). *K, A Judicial Officer, In re*, (2001) 3 SCC 54: AIR 2001 SC 972: 2001 Cri LJ 1157: (2001) 1 KLT 707: (2001) 1 SLR 581.

Bench Strength **2**. Coram: *Dr. A.S. Anand, C.J.* and **R.C. Lahoti**, J. [Date of decision: 8-2-2001]

A.M. Mathur v. Pramod Kumar Gupta, (1990) 2 SCC 533; Niranjan Patnaik v. Sashibhusan Kar, (1986) 2 SCC 569: 1986 SCC (Cri) 196; Raghubir Saran (Dr.) v. State of Bihar, AIR 1964 SC 1: (1964) 2 SCR 336: (1964) 1 Cri LJ 1; State of U.P. v. Mohd. Naim, AIR 1964 SC 703: (1964) 2 SCR 363: (1964) 1 Cri LJ 549, relied on

Panchanan Banerji v. Upendra Nath Bhattacharji, AIR 1927 All 193: 27 Cri LJ 1407: 25 All LJ 100; Philip William Ravanshawe Hardless v. Gladys Isabel Hardless, AIR 1940 Lah 82, approved

(10) Practice and Procedure

[7174] — S. 482 — New plea — Contention of law — *Held, contention of law not urged in application under S. 561-A to the High Court can be allowed to be taken at the stage of arguments — CrPC, 1898, S. 561-A. Deepak Sarkar* v. *State of Bihar*, (1977) 1 SCC 494: 1977 SCC (Cri) 128: AIR 1977 SC 1665: 1977 Cri LJ 1437.

Bench Strength **3**. Coram: **P.N. Bhagwati**, *A.C. Gupta* and *P.N. Shinghal*, JJ. [Date of decision: 9-12-1976]

[7175] — Ss. 482, 203 and 227 — Issue of show-cause before setting aside impugned order — *Before setting aside the discharge order passed by the trial court in favour of the appellant, the High Court should have served a notice upon him asking him to show cause as to why the aforesaid order be not set aside — Matter remanded to High Court for disposal afresh — Prevention of Corruption Act, 1988, S. 13(1)(d) r/w S. 13(2) — Penal Code, 1860, S. 120-B*

The admitted position is that before exercising the powers under Section 482, the High Court did not think it proper to serve a notice upon the appellant asking him to show cause against the proposed order for setting aside the order of discharge passed in his favour by the trial court. Under such circumstances, without commenting upon the merits of the case, it is held that the ends of justice would be served if the case is remanded back to the High Court for passing fresh orders after affording the appellant an opportunity of being heard. (Para 7). *Dinesh Dutt Joshi* v. *State of Rajasthan*, (2001) 8 SCC 570: 2002 SCC (Cri) 24.

Bench Strength **2**. Coram: *M.B. Shah* and *R.P. Sethi*, JJ. [Date of decision: 1-10-2001]

[7176] — S. 482 — Procedure of oral applications and oral appeals and grant of interim orders of stay by Court on that basis deprecated — *Constitution of India, Art. 226. Eastern Spg. Mills* v. *Rajiv Poddar*, 1989 Supp (2) SCC 385: AIR 1985 SC 1668.

Bench Strength **3**. Coram: *D.A. Desai, V. Balakrishna Eradi* and *R.B. Misra*, JJ. [Date of decision: 3-5-1984]

See Samarias Trading Co. (P) Ltd. v. S. Samuel, (1984) 4 SCC 666

[7177] — Ss. 482/397 — Whether High Court has jurisdiction under, to grant relief in respect of which no specific prayer made by the party in the petition — *Whether Supreme Court in appeal under Art. 136 would take serious notice where High Court grants such a relief*

Per A.P. Sen, J.

The High Court was not justified in quashing the entire proceedings when no such prayer was made in the application under S. 482, CrPC. In the revision all that the respondent wanted was that the magistrate should not proceed to record the plea of the accused persons under S. 251 without perusing the enquiry report under S. 91.

Per Chinnappa Reddy, J. (concurring)

The prayer in the application before the High Court was merely to quash the order of the magistrate and not to quash the complaint itself as the High Court has done. But that was only a technical defect and the Supreme Court does not take serious notice of it in an appeal under Art. 136 where the Court is very naturally concerned with substantial justice and not with shadow puppetry.

Per Baharul Islam, J. (dissenting)

The omission in the prayer portion of a petition of a part of the claim, particularly in a criminal case, is not fatal. The High Court in its revisional jurisdiction can always grant suitable relief justified by law as well as facts and circumstances of a particular case.

That apart, Art. 136 of the Constitution gives wide and discretionary power to the Supreme Court. This power is to be sparingly exercised to meet ends of justice, to enhance justice and remove miscarriage of justice in a particular case. It does not exercise such powers for academic reasons but for practical purpose. *Sewakram Sobhani* v. *R.K. Karanjia*, (1981) 3 SCC 208: 1981 SCC (Cri) 698: AIR 1981 SC 1514.

Bench Strength **3**. Coram: **O. Chinnappa Reddy**[2], **A.P. Sen**[1] and **Baharul Islam**[3], JJ. [Date of decision: 1-5-1981]

(11) Quashment of proceedings

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(i) Power of quashment under — Nature and scope

[7178] — S. 482 — Expression "the rarest of rare cases" used after "sparingly and with circumspection" — Use of, while describing scope of S. 482 CrPC, considered — Held, those words merely emphasise and reiterate what is intended to be conveyed by the words "sparingly and with circumspection" — *Expression "the rarest of rare cases" is not used in the sense in which it is used with reference to punishment for offences under S. 302 IPC, but to emphasise that power under S. 482 CrPC to quash the FIR or criminal proceedings should be used sparingly and with circumspection — It may not therefore be correct to say that the words "the rarest of rare cases" are appropriate only when considering death sentence for an offence under S. 302 IPC or that those words are inappropriate when referring to the ambit of the power to be exercised under S. 482 CrPC*

The appellant filed a petition under Section 482 CrPC for setting aside the order passed by the court below taking cognizance of an offence punishable under Section 30(3) of the Karnataka Shops and Commercial Establishments Act, 1961 for violation of Section 25 of the Act, in the complaint lodged against him, and for quashing the complaint. The High Court rejected the prayer for quashing the complaint, but altered the offence in respect of which cognizance was taken. The said order of the High Court was challenged by the appellant in appeal before the Supreme Court.

In view of the difference of opinion on legal issues, the appeal was directed to be placed before the Chief Justice of India for appropriate orders, though both the learned Judges concurred that the appeal should be dismissed. The matter was accordingly placed before the Bench of three Judges.

Though the learned Judges did not set down the legal issues, the following two issues were discerned from their opinions:

(*i*) Whether the power under Section 482 CrPC should be exercised "sparingly" or "sparingly and with circumspection and in the rarest of rare cases"?

(*ii*) Whether the recommendations and directions relating to anticipatory bail and enforcement of the directions relating to arrest laid down in *Joginder Kumar case*, (1994) 4 SCC 260 were warranted in this case?

Answering the said questions,

Held :

When the words "the rarest of rare cases" are used after the words "sparingly and with circumspection" while describing the scope of Section 482 CrPC, those words merely emphasise and reiterate what is intended to be conveyed by the words "sparingly and with circumspection". They mean that the power under Section 482 CrPC to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression "the rarest of rare cases" is not used in the sense in which it is used with reference to punishment for offences under Section 302 IPC, but to emphasise that the power under Section 482 CrPC to quash the FIR or criminal proceedings should be used sparingly and with circumspection. It may not therefore be correct to say that the words "the rarest of rare cases" are appropriate only when considering death sentence for an offence under Section 302 IPC or that those words are inappropriate when referring to the ambit of the power to be exercised under Section 482 CrPC. (Paras 9 and 7). *Som Mittal* v. *Govt. of Karnataka*, (2008) 3 SCC 574: (2008) 1 SCC (L&S) 910: (2008) 2 SCC (Cri) 1: AIR 2008 SC 1528: 2008 Cri LJ 1927: (2008) 63 AIC 42 (SC).

Bench Strength **3**. Coram: **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *J.M. Panchal*, JJ. [Date of decision: 21-2-2008]

Kurukshetra University v. State of Haryana, (1977) 4 SCC 451: 1977 SCC (Cri) 613; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

[7179] — S. 482 — Quashing of criminal proceedings — Scope of High Court's power to quash criminal proceedings in exercise of power under Arts. 226 and 227 or S. 482 CrPC — *Nomenclature under which petition filed not relevant — Petition under Art. 226 can be treated as one under Art. 227 or S. 482 CrPC — Power of the court to discharge the accused at the stage of framing of charge or existence of remedy of appeal and revision not a bar to invoke the jurisdiction of the High Court under Art. 227 or 482 CrPC — Constitution of India — Arts. 226 and 227*

It is settled that the High Court can exercise its power of judicial review in criminal matters. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226.

Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code. It may not however, be lost sight of that provisions exist in the code of revision and appeal but some time for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution.

No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial. *Pepsi Foods Ltd.* v. *Special Judicial Magistrate*, (1998) 5 SCC 749: 1998 SCC (Cri) 1400: AIR 1998 SC 128: 1998 Cri LJ 1.

Bench Strength **2**. Coram: *Sujata V. Manohar* and **D.P. Wadhwa**, JJ. [Date of decision: 4-11-1998]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Waryam Singh v. Amarnath, AIR 1954 SC 215: 1954 SCR 565; Bathutmal Raichand Oswal v. Laxmibai R. Tarta, (1975) 1 SCC 858; Nagendra Nath Bora v. Commr. of Hills Division, AIR 1958 SC 398: 1958 SCR 1240, followed

Distinguished on facts in Divine Retreat Centre v. State of Kerala, (2008) 3 SCC 542

[7180] — S. 482 — Nature and scope of power under Art. 142 of the constitution — Circumstances when criminal proceedings can be quashed, laid down — *Considerations for exercise of power under S. 482 CrPC to be kept in view — Constitution of India, Art. 142*

Regarding the nature and ambit of power under Article 142 of the Constitution it has been held advisable to leave it undefined and uncatalogued so that it remains elastic enough to be moulded to suit the given situation; even where no alternative remedy is efficacious due to lapse of time. What would be the need of "complete justice" in a cause or matter would depend upon the facts and circumstances of each case and while exercising that power the Court would take into consideration the express provisions of a substantive statute. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of the Supreme Court. Once the Supreme Court has seisin of a cause or matter before it, it has power to issue any order or direction to do "complete justice" in the matter. There is no doubt regarding the well-settled law that in case of persons against whom *prima facie* case is made out and charge-sheet is filed in the competent court, it is that court which will then

(11)(i) Power of quashment under — Nature and scope *(contd.)*

deal with the case on merits in accordance with law and the High Court should not, except in extraordinary circumstances, exercise its jurisdiction under Section 482 CrPC so as to quash the prosecution proceedings after they have been lodged. (Paras 44 to 46)

Under Article 142 of the Constitution of India, the Supreme Court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any "cause" or "matter" pending before it. The expression "cause" or "matter" would include any proceeding pending in court and it would cover almost every kind of proceeding in court including civil or criminal. If the Court is satisfied that the proceedings in a criminal case are being utilised for oblique purposes or if the same are continued on manufactured and false evidence or if no case is made out on the admitted facts, it would be in the ends of justice to set aside or quash the criminal proceedings. Once the Supreme Court is satisfied that the criminal proceedings amount to abuse of process of court, it would quash such proceedings to ensure justice. (Para 45)

Though there is no provision like Section 482 CrPC conferring express power on the Supreme Court to quash or set aside any criminal proceedings pending before a criminal court to prevent abuse of process of the court, but the inherent power of the Supreme Court under Article 142 coupled with the plenary and residuary powers under Articles 32 and 136 embraces power to quash criminal proceedings pending before any court to do complete justice in the matter before the Supreme Court. The Supreme Court's power under Article 142(1) to do "complete justice" is entirely of different level and of a different quality. (Para 45). *Monica Kumar (Dr.)* v. *State of U.P.*, (2008) 8 SCC 781: (2008) 3 SCC (Cri) 649: AIR 2008 SC 2781: (2008) 67 AIC 106 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and **L.S. Panta**, JJ. [Date of decision: 27-5-2008]

DDA v. Skipper Construction Co. (P) Ltd., (1996) 4 SCC 622; Vinay Chandra Mishra, In re, (1995) 2 SCC 584; Kerala SEB v. Kurien E. Kalathil, (2000) 6 SCC 293, relied on

[7181] — S. 482 — Exercise of power under — *Circumstances under which the inherent jurisdiction may be exercised, reiterated: (i) to give effect to an order under the Code; (ii) to prevent an abuse of the process of court; and (iii) to otherwise secure the ends of justice — No inflexible rule can be laid down therefor though* (Para 15). *V.P. Shrivastava* v. *Indian Explosives Ltd.*, (2010) 10 SCC 361: (2010) 159 Comp Cas 529.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 24-9-2010]

[7182] — S. 482 — Inherent power under, when to be exercised — Reiterated, inherent power under S. 482 must be exercised in rarest of rare cases (Para 39). *Sunita Jain* v. *Pawan Kumar Jain*, (2008) 2 SCC 705: (2008) 1 SCC (Cri) 537: (2008) 64 AIC 212 (SC): (2008) 2 KLJ 304.

Bench Strength **2**. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 25-1-2008]

[7183] — S. 482 — Inherent power of High Court under — Saving of — Purpose — *Held, is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution — Herein, it is exercise of inherent power by High Court that had ultimately resulted in harassment of appellants, which was unfortunate* (Para 23). *D. Venkatasubramaniam* v. *M.K. Mohan Krishnamachari*, (2009) 10 SCC 488: (2009) 82 AIC 245 (SC): (2009) 3 APLJ 205 (SC).

Bench Strength **2**. Coram: *R.V. Raveendran* and **B. Sudershan Reddy**, JJ. [Date of decision: 14-9-2009]

[7184] — S. 482 — Inherent powers of High Court — Scope and ambit — Reiterated

Though the powers possessed by the High Court under Section 482 are very wide but these should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The inherent powers possessed by the High Court are to be exercised very carefully and with great caution so that a legitimate prosecution is not stifled. Nevertheless, where the High Court is convinced that the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused or where the allegations made in the FIR or the complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, the powers of the High Court under Section 482 should be exercised. (Para 20). *Fakhruddin Ahmad* v. *State of Uttaranchal*, (2008) 17 SCC 157: (2008) 6 All LJ 249: (2009) 1 ECrN 455 (SC): 2008 Cri LJ 4377: (2008) 3 APLJ 163 (SC).

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 5-9-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

[7185] — S. 482 — Scope and power under — Restated — Further held, Court must be careful to see that its decision in exercise of this power is based on sound principles — *Power should not be exercised to stifle legitimate prosecution but*

Court's failing to use the power for advancement of justice can also lead to grave injustice (Paras 13 to 26). *Preeti Gupta* v. *State of Jharkhand*, (2010) 7 SCC 667.

Bench Strength **2**. Coram: **Dalveer Bhandari** and *K.S. Radhakrishnan*, JJ. [Date of decision: 13-8-2010]

Connelly v. Director of Public Prosecutions, 1964 AC 1254: (1964) 2 WLR 1145: (1964) 2 All ER 401 (HL); Director of Public Prosecutions v. Humphrys, 1977 AC 1: (1976) 2 WLR 857: (1976) 2 All ER 497 (HL); R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283; Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259, relied on

[7186] — S. 482 — Principles for exercise of power under, reiterated — Applicability of *Bhajan Lal, principles*, explained — *Held, though powers possessed by High Courts under S. 482 are very wide but these should be exercised in appropriate cases,* ex debito justitiae *to do real and substantial justice for the administration of which alone courts exist — However, inherent powers do not confer an arbitrary jurisdiction on High Court to act according to whim or caprice — Powers have to be exercised sparingly, with circumspection and in the rarest of rare cases, where the Court is convinced, on the basis of material on record, that allowing proceedings to continue would be an abuse of process of court or that ends of justice require that proceedings ought to be quashed — Although in* Bhajan Lal case, *1992 Supp (1) SCC 335, Supreme Court by way of illustration formulated as many as seven categories of cases, wherein extraordinary power under S. 482 could be exercised by High Court to prevent abuse of process of court, yet it was clarified that it was not possible to lay down precise and inflexible guidelines or any rigid formula or to give an exhaustive list of circumstances in which such power could be exercised — In the facts and circumstances of instant case, High Court, in exercise of its jurisdiction under S. 482, should have quashed complaint under S. 138, NI Act — Negotiable Instruments Act, 1881, S. 138* (Paras 17 to 19, 21 and 22). *Jugesh Sehgal* v. *Shamsher Singh Gogi*, (2009) 14 SCC 683: (2009) 80 AIC 9 (SC).

Bench Strength **2**. Coram: **D.K. Jain** and *R.M. Lodha*, JJ. [Date of decision: 10-7-2009]

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Kurukshetra University v. State of Haryana, (1977) 4 SCC 451: 1977 SCC (Cri) 613; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Som Mittal v. Govt. of Karnataka, (2008) 3 SCC 574: (2008) 1 SCC (L&S) 910: (2008) 2 SCC (Cri) 1, relied on

[7187] — S. 482 — Quashing of criminal proceedings — Limitations in exercise of inherent powers possessed by High Court under S. 482 or Art. 227 and how and when can the powers be exercised, discussed — *Constitution of India, Art. 227*

Though the powers possessed by the High Courts under Section 482 CrPC or Article 227 of the Constitution are very wide but these should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. The powers have to be exercised sparingly, with circumspection and in the rarest of rare cases, where the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed. (Para 14). *Pankaj Kumar* v. *State of Maharashtra*, (2008) 16 SCC 117: AIR 2008 SC 3077: (2008) 68 AIC 93 (SC): 2008 Cri LJ 3944: (2009) 2 LLN 798: (2009) 122 FLR 790.

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 11-7-2008]

Som Mittal v. Govt. of Karnataka, (2008) 3 SCC 574: (2008) 2 SCC (Cri) 1: (2008) 1 SCC (L&S) 910; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Kurukshetra University v. State of Haryana, (1977) 4 SCC 451: 1977 SCC (Cri) 613; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

[7188] — S. 482 — Quashment of criminal proceedings — Jurisdiction of High Court under — Scope, reiterated

The High Court in exercise of its jurisdiction under Section 482 CrPC cannot go into the truth or otherwise of the allegations and appreciate the evidence if any available on record. Normally, the High Court would not intervene in the criminal proceedings at the preliminary stage, when the investigation/enquiry is pending. (Para 29)

Interference by the High Court in exercise of its jurisdiction under Section 482 CrPC can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair minded and informed observer can ever reach a just and

(11)(i) Power of quashment under — Nature and scope *(contd.)*

proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint. (Para 30). *M.N. Ojha* v. *Alok Kumar Srivastav*, (2009) 9 SCC 682: (2009) 82 AIC 134 (SC).

Bench Strength **2**. Coram: *R.V. Raveendran* and **B. Sudershan Reddy**, JJ. [Date of decision: 21-8-2009]

State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; Kurukshetra University v. State of Haryana, (1977) 4 SCC 451: 1977 SCC (Cri) 613, relied on

[7189] — Ss. 482, 397 and 401 — Quashing of charges/complaint/FIR — Principles restated

Where there could be some material found in the charge-sheet, then it would not be the function of the court to examine the charge-sheet with a view as to whether the accused could be convicted or not. That would be a premature exercise. (Para 12). *CBI* v. *V.K. Bhutiani*, (2009) 10 SCC 674.

Bench Strength **2**. Coram: *V.S. Sirpurkar* and *Deepak Verma*, JJ. [Date of decision: 11-8-2009]

State v. M. Krishna Mohan, (2007) 14 SCC 667: (2009) 1 SCC (Cri) 922; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

[7190] — S. 482 — Inherent powers — Exercise of — Scope — Reiterated — *Court, under its inherent powers can neither intervene at an uncalled for stage nor can it "soft-pedal the course of justice" at crucial stage of investigation/proceedings — Power to be exercised with due care and caution — Constitution of India — Art. 226 — Nature and scope of Art. 226 — Inherent power, Arts. 226 and 227* (Paras 13 to 25). *State of Maharashtra* v. *Arun Gulab Gawali*, (2010) 9 SCC 701.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 27-8-2010]

State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561: 1982 SCC (Cri) 283; Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Ajay Mitra v. State of M.P., (2003) 3 SCC 11: 2003 SCC (Cri) 703; R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; Dhanalakshmi v. R. Prasanna Kumar, 1990 Supp SCC 686: 1991 SCC (Cri) 142; Ganesh Narayan Hegde v. S. Bangarappa, (1995) 4 SCC 41: 1995 SCC (Cri) 634; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283; State of Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272; B.S. Joshi v. State of Haryana, (2003) 4 SCC 675: 2003 SCC (Cri) 848; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; Alpic Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513: 2001 SCC (Cri) 565; M.N. Damani v. S.K. Sinha, (2001) 5 SCC 156: 2001 SCC (Cri) 823, relied on

[7191] — S. 482 — Exercise of inherent power — Scope of — Issues referred to larger Bench — *Held [per H.K. Sema, J.], exercise of power under S. 482 CrPC is not the rule but an exception — Said power must be exercised sparingly, with circumspection and in the rarest of rare cases — Inherent power can be invoked either to prevent abuse of process of any court or otherwise to secure ends of justice — Said power is not intended to scuttle justice at the threshold — Per Markandey Katju, J. [partly dissenting], though power under S. 482 CrPC is to be exercised sparingly, it cannot be said that it should be exercised in the rarest of rare cases — In present case, refusal by High Court to quash the order taking cognizance of offence under Karnataka Shops and Commercial Establishments Act, 1961 (8 of 1962), held, not liable to be interfered with — Maintainability of complaint to be decided at the time of consideration of charge — Karnataka Shops and Commercial Establishments Act, 1961 (8 of 1962), Ss. 25 & 30(1)*

Per H.K. Sema, J.

It has been consistently held that the power under Section 482 CrPC must be exercised sparingly, with circumspection and in the rarest of rare cases. Exercise of inherent power under Section 482 CrPC is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to court that the trial would likely to end in acquittal. In other words, the inherent power of the court under Section 482 can be invoked by the High Court either to prevent abuse of process of any court or otherwise to secure the ends of justice. (Para 9)

Thus, while it is true that so long as the inherent power of Section 482 CrPC is in the statute book, exercise of such power is not impermissible but it must be noted that such power has to be exercised sparingly with circumspection and in the rarest of rare cases, the sole aim of which is to secure the ends of justice. The power under Section 482 is not intended to scuttle justice at the threshold. (Para 18)

Per Markandey Katju, J. (partly dissenting)

It is agreed that the power under Section 482 CrPC is to be exercised sparingly. But it cannot be agreed that the said power should be exercised in "the rarest of rare cases". The expression "the rarest of rare cases" was used in connection with Section 302 IPC to hold that death penalty should only be imposed in the rarest of rare cases vide the Constitution Bench decision in *Bachan Singh case*, (1980) 2 SCC 684.

The said expression cannot be extended to a petition under Section 482 CrPC. (Paras 36 and 37)

In the present case, there is no infirmity in the order passed by the High Court warranting interference under Article 136 of the Constitution. The trial court shall decide the matter expeditiously uninfluenced by any observations made by the Supreme Court or the High Court. It shall decide the maintainability of the complaint at the time of consideration of the charge. (Paras 20, 24 and 21). *Som Mittal* v. *Govt. of Karnataka*, (2008) 3 SCC 753: (2008) 1 SCC (L&S) 895: (2008) 2 SCC (Cri) 73: AIR 2008 SC 1126: (2008) 2 LLN 690: (2008) 65 AIC 187 (SC): 2008 Cri LJ 1610.

Bench Strength **2**. Coram: **H.K. Sema**[1] and **Markandey Katju**[2], JJ. [Date of decision: 29-1-2008]

State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272; Hazari Lal Gupta v. Rameshwar Prasad, (1972) 1 SCC 452: 1972 SCC (Cri) 208; Jehan Singh v. Delhi Admn., (1974) 4 SCC 522: 1974 SCC (Cri) 558; Kurukshetra University v. State of Haryana, (1977) 4 SCC 451: 1977 SCC (Cri) 613; State of Bihar v. Murad Ali Khan, (1988) 4 SCC 655: 1989 SCC (Cri) 27; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580, considered

East India Commercial Co. Ltd. v. Collector of Customs, AIR 1962 SC 1893: (1963) 3 SCR 338; T. Prem Sagar v. Standard Vacuum Oil Co., AIR 1965 SC 111: (1964) 5 SCR 1030; Boothalinga Agencies v. V.T.C. Poriaswami Nadar, AIR 1969 SC 110: (1969) 1 SCR 65; S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89: 2005 SCC (Cri) 1975, distinguished on facts

Followed in Monica Kumar (Dr.) v. State of U.P., (2008) 8 SCC 781

[**Ed.**: The legal issues referred to a larger Bench have been disposed of by a three-Judge Bench decision reported at (2008) 3 SCC 574.]

[7192] — S. 482 — Quashing of complaint — Guarantee against injustice — *High Court is invested with tremendous powers thereunder to pass any order in interests of justice — It must look into allegations with openness and then to decide whether to pass any order in interests of justice* (Paras 7, 11 and 12). *Manoj Mahavir Prasad Khaitan* v. *Ram Gopal Poddar*, (2010) 10 SCC 673.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 8-10-2010]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

[7193] — Ss. 482 and 320 — Quashing of non-compoundable offences in view of compromise arrived at between parties — Guidelines for — *Constitution of India — Art. 226*

Per Markandey Katju, J.

There can be no doubt that a case under Section 302 IPC or other serious offences like those under Sections 395, 307 or 304-B cannot be compounded and hence proceedings in those provisions cannot be quashed by the High Court in exercise of its power under Section 482 CrPC or in writ jurisdiction on the basis of compromise. However, in some other cases (like those akin to a civil nature), the proceedings can be quashed by the High Court if the parties have come to an amicable settlement even though the provisions are not compoundable. Where a line is to be drawn will have to be decided in some later decisions of this Court, preferably by a larger Bench (so as to make it more authoritative). Some guidelines will have to be evolved in this connection and the matter cannot be left at the sole unguided discretion of Judges, otherwise there may be conflicting decisions and judicial anarchy. A judicial discretion has to be exercised on some objective guiding principles and criteria, and not on the whims and fancies of individual Judges. (Para 27). *Manoj Sharma* v. *State*, (2008) 16 SCC 1: (2008) 4 KLT 417: (2009) 73 AIC 187 (SC).

Bench Strength **2**. Coram: **Altamas Kabir** and *Markandey Katju*, JJ. [Date of decision: 16-10-2008]

[7194] — S. 482 — Quashment — Exercise of power — Scope — To prevent abuse of process of court — *High Court is required to exercise its inherent powers under S. 482 CrPC sparingly, carefully and cautiously — Allegations in FIR or complaint taken at their face value and accepted in their entirety not constituting offence alleged — Held, High Court would be justified in invoking its powers* (Para 16). *Asoke Basak* v. *State of Maharashtra*, (2010) 10 SCC 660.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 8-10-2010]

G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059, followed

[7195] — S. 482 — Inherent powers of High Court under — Exercise of — Scope — Held, power under S. 482 has to be exercised sparingly and in the rarest of rare cases — *Present case did not warrant such exercise by High Court* (Para 23). *Pratibha* v. *Rameshwari Devi*, (2007) 12 SCC 369: (2008) 1 SCC (Cri) 399: (2007) 59 AIC 159 (SC): 2008 Cri LJ 329.

Bench Strength **2**. Coram: *A.K. Mathur* and **Tarun Chatterjee**, JJ. [Date of decision: 17-9-2007]

[7196] — S. 482 — Quashing of criminal proceedings — Exercise of inherent power — Approach — *Reiterated, power under S. 482 is very wide in amplitude, yet not unlimited — No absolute rule, but powers under to be exercised sparingly and with caution*

(11)(i) Power of quashment under — Nature and scope *(contd.)*

Though the inherent powers of the High Court under Section 482 of the Code are very wide in amplitude, yet they are not unlimited. However, it is neither feasible nor desirable to lay down an absolute rule which would govern the exercise of inherent jurisdiction of the Court. Nevertheless, powers under the said provision have to be exercised sparingly and with caution to secure the ends of justice and to prevent the abuse of the process of the court. Where the allegations in the first information report or the complaint taken at its face value and accepted in their entirety do not constitute the offence alleged, the High Court would be justified in invoking its powers under Section 482 of the Code to quash the criminal proceedings. (Para 18). *Maharashtra State Electricity Distribution Co. Ltd.* v. *Datar Switchgear Ltd.*, (2010) 10 SCC 479: (2010) 159 Comp Cas 545.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 8-10-2010]

Som Mittal v. Govt. of Karnataka, (2008) 3 SCC 574: (2008) 2 SCC (Cri) 1: (2008) 1 SCC (L&S) 910; R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059, relied on

Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259; K.L.E. Society v. Siddalingesh, (2008) 4 SCC 541: (2008) 2 SCC (Cri) 455: (2008) 1 SCC (L&S) 1071; Baijnath Jha v. Sita Ram, (2008) 8 SCC 77: (2008) 3 SCC (Cri) 428; Suneet Gupta v. Anil Triloknath Sharma, (2008) 11 SCC 670: (2008) 3 SCC (Cri) 920; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Sunita Jain v. Pawan Kumar Jain, (2008) 2 SCC 705: (2008) 1 SCC (Cri) 537, referred to

[7197] — S. 482 — Nature, scope, purpose and exercise of power under — Explained — Held, inherent power is to be exercised sparingly and that too in the rarest of rare cases — *It is to be exercised ex debito justitiae, to do real and substantial justice and not to stifle legitimate prosecution*

The exercise of power under Section 482 CrPC is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of CrPC. The inherent powers have been conferred, apart from express provisions of law, which are necessary for proper discharge of functions and duties imposed upon it by law. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under CrPC, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. (Para 8)

While exercising the powers under the Section 482 CrPC, the High Court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. (Para 8). *State of Orissa* v. *Saroj Kumar Sahoo*, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272: (2006) 1 KLT 366.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Tarun Chatterjee*, JJ. [Date of decision: 7-12-2005]

[7198] — S. 482 — Exercise of power *ex debito justitiae* — *Power to be exercised sparingly and only when prosecution is launched maliciously or with ulterior motive — Inherent power ought not be exercised to stifle legitimate prosecution — Criminal complaint filed against respondent Company on the ground that appellant Company was dishonestly induced to make investment in a subsidiary company floated by respondent Company thereby respondent Company committed offence of cheating — Complaint filed by appellant Company prima facie disclosing offence of cheating when allegations made in complaint taken on their face value — Both the parties had much to say in support of their respective cases — The case was of considerable importance not only to parties but also world of trade and commerce — There was nothing on record that complaint was filed with any mala fide motive — High Court quashing criminal proceedings at stage when trial court ordered issue of process — Held, High Court exceeded its jurisdiction in quashing the proceedings — Prosecution proceedings therefore allowed to continue*

Both the appellants and the respondents have much to say in support of their respective viewpoints. Which of the views is ultimately to be accepted, could only be decided when the parties have had the opportunities to place the entire materials before the trial court. The Supreme Court has repeatedly held that power to quash proceedings at the initial stage has to be exercised sparingly with circumspection and in the rarest of rare cases. The power is to be exercised *ex debito justitiae*. Such power can be exercised where a criminal proceeding is manifestly attended with mala fides and have been instituted maliciously with ulterior motive.

This inherent power ought not to be exercised to stifle a legitimate prosecution. (Para 76)

The parties are yet to place on the record the entire material in support of their claims. The issues involved are of considerable importance to the parties in particular, and the world of trade and commerce in general. In such circumstances the High Court ought to have refrained from indulging in detailed analysis of very complicated commercial documents and reaching any definite conclusions. (Para 77)

The High Court clearly exceeded its jurisdiction in quashing the criminal proceeding in the peculiar facts and circumstances of this case. The High Court noticed that while exercising jurisdiction under Section 482 CrPC the complaint in its entirety will have to be examined on the basis of the allegations made therein. But the High Court has no authority or jurisdiction to go into the matter or examine its correctness. The allegations in the complaint will have to be accepted on the face of it and the truth or falsity cannot be entered into by the Court at this stage. Having said so, the High Court proceeded to do exactly the opposite. (Para 78). *Iridium India Telecom Ltd.* v. *Motorola Inc.*, (2011) 1 SCC 74.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 20-10-2010]

Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568: 2005 SCC (Cri) 415; M.N. Ojha v. Alok Kumar Srivastav, (2009) 9 SCC 682: (2010) 1 SCC (Cri) 101; Kurukshetra University v. State of Haryana, (1977) 4 SCC 451: 1977 SCC (Cri) 613; Raj Kapoor v. State, (1980) 1 SCC 43: 1980 SCC (Cri) 72; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Divine Retreat Centre v. State of Kerala, (2008) 3 SCC 542: (2008) 2 SCC (Cri) 9, considered and relied on

Dhanalakshmi v. R. Prasanna Kumar, 1990 Supp SCC 686: 1991 SCC (Cri) 142; Central Railway Co. of Venezuela v. Kisch, 1867 LR 2 HL 99; New Brunswick and Canada Railway Co. v. Muggeridge, (1860) 1 Dr & Sm 363 at pp. 381-82: 62 ER 418; Redgrave v. Hurd, (1881) 20 Ch D 1 at p. 13: (1881-85) All ER Rep 77 (CA); Aaron's Reefs v. Twiss, 1896 AC 273 (HL); Commr. (Assessment) v. Velliappa Textiles Ltd., (2003) 11 SCC 405: 2004 SCC (Cri) 1214; Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 SCC 530: 2005 SCC (Cri) 961; Kalpnath Rai v. State, (1997) 8 SCC 732: 1998 SCC (Cri) 134; Raghubir Saran (Dr.) v. State of Bihar, AIR 1964 SC 1: (1964) 1 Cri LJ 1; M.V. Javali v. Mahajan Borewell & Co., (1997) 8 SCC 72: 1997 SCC (Cri) 1239; A.K. Khosla v. T.S. Venkatesan, 1992 Cri LJ 1448 (Cal), cited

(ii) Anticipatory quashment — Power if any

[7199] — S. 482 — Power of High Court under — Anticipatory quashment — *Held, power of quashment does not extend to quashing a prosecution, which though apprehended by the petitioner, has not yet been instituted. State of W.B.* v. *Rashmoy Das*, (2000) 1 SCC 76: 2000 SCC (Cri) 103: AIR 2000 SC 228.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 1-12-1999]

(iii) Maintainability

See also S. 482, '(3) Maintainability', above

[7200] — S. 482 — Quashing of criminal complaint — Territorial jurisdiction of High Court — Cause of action — Meaning — *Whether it arose within the jurisdiction of the High Court before which writ petition filed — Complaint petition filed by appellant before CJM, Birbhum, West Bengal alleging dishonour of cheques issued to him by respondent Company towards payment for supply of material for construction work undertaken by respondent in W.B. — Cognizance of the offence under S. 138 of Negotiable Instruments Act taken by the CJM under S. 190 CrPC and summons issued on the respondents — Writ petition filed by respondents before Kerala High Court seeking declaration that they were not liable to be proceeded against on the basis of the complaint and quashing of the complaint — Held, Kerala High Court had no jurisdiction to entertain the said writ petition — None of the facts constituting cause of action, which were required to be proved by complainant for the purpose of attracting ingredients of S. 138 of Negotiable Instruments Act, arose within the jurisdiction of Kerala High Court — Facts that registered Head Office of the respondent Company was at Ernakulam in Kerala, that the amount due under the cheques in question was meant to be payable at Ernakulam and that payment in respect of one of the dishonoured cheques was later sent from Ernakulam not relevant for holding that a part of the cause of action arose within the territorial jurisdiction of Kerala High Court — CPC, 1908, S. 20 — Negotiable Instruments Act, 1881, Ss. 142(b) and 138 — Constitution of India — Arts. 226 and 227*

The appellant entered into a contract with Respondent 1 Company, for supply of stone chips in connection with the work of construction of major bridges between Dhankuni and Kharagpur in the State of West Bengal undertaken by the respondent as a part of ongoing project of the National Highway Authority of India. For the purpose of executing the said work the Company entered into an engineering contract with the NHA. The Company

(11)(iii) Maintainability *(contd.)*

used to hand over post-dated cheques to the appellant for securing payment for supply of stone chips. The Company issued six cheques, which were deposited by the appellant with the bank in Birbhum, Suri branch. On dishonour of the said cheques, a demand notice was sent to the respondent by the appellant demanding payment of the said cheques. Payment in respect of one of the cheques was however later sent by the respondent Company from Ernakulam in State of Kerala where it had its registered Head Office. The appellant filed a complaint petition in the Court of CJM, Birbhum at Suri alleging that the cheques issued by the respondents having been dishonoured, they committed offence under Section 138 of the Negotiable Instruments Act. The CJM upon examining the appellant on oath took cognizance of the offence and directed issuance of summons on the respondents. Despite receipt of the summons, instead of appearing before the CJM, Birbhum at Suri, the respondents filed a writ petition in the High Court of Kerala at Ernakulam praying inter alia for a declaration that they were not liable to be proceeded against on the basis of the complaint and for issuance of appropriate writ, order or direction quashing the complaint. Interim relief by way of stay of all further proceedings pursuant to the said complaint petition was also prayed for which the Single Judge of the High Court granted. In the writ petition it was stated that there was no question of the Company running away from its responsibility of paying the amount due, but it needed some time to augment its resources in the context of its financial entanglement. The jurisdiction of the High Court was invoked by stating in the writ petition that part of the cause of action arose within the territorial jurisdiction of the Kerala High Court. It was stated that the registered head office of the Company was at Ernakulam, that the amount due under the cheques was meant to be payable at Ernakulam and that out of the six dishonoured cheques, payment in respect of one cheque was sent from Ernakulam. A Single Judge of the High Court passed an order granting the interim stay prayed for. Before the Supreme Court the primary question was as to whether the Kerala High Court had jurisdiction in the matter.

Allowing the appeal with costs,

Held :

The averments made in the writ petition filed by the respondent herein even if given face value and taken to be correct in their entirety would not confer any jurisdiction upon the Kerala High Court. The agreement was entered into within the jurisdiction of the Calcutta High Court. The project for which the supply of stone chips and transportation was being carried out was also within the State of West Bengal. Payments were obviously required to be made within the jurisdiction of the said Court where either the contract had been entered into or where payment was to be made. A bare perusal of the complaint petition would clearly go to show that according to the complainant the entire cause of action arose within the jurisdiction of the District Court of Birbhum and in that view of the matter it is that court which will have jurisdiction to take cognizance of the offence. In fact the jurisdiction of the Court of CJM, Birbhum, Suri, is not in question.

It is not contended that the complainant had suppressed material fact and which if not disclosed would have demonstrated that the offence was committed outside the jurisdiction of the said court. Even if Section 178 CrPC is attracted, the Court of the Chief Judicial Magistrate, Birbhum will alone have jurisdiction in the matter. (Paras 33 and 31)

For the purpose of proving the ingredients of the offence under Section 138 of the NI Act, the complainant appellant was required to prove the facts constituting the cause of action therefor none of which arose within the jurisdiction of the Kerala High Court. Cause of action within the meaning of Section 142(*b*) of the Act can arise only once. Cause of action within the meaning of clause (2) of Article 226 shall have the same meaning as is ordinarily understood. The expression "cause of action" has a definite connotation. It means a bundle of facts which would be required to be proved. Sending of cheques from Ernakulam or the respondents having an office at that place did not form an integral part of "cause of action" for which the complaint petition was filed by the appellant and cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 was taken by the Chief Judicial Magistrate, Suri in West Bengal. (Paras 36, 19 and 32)

The object of the provision of Section 138 of the NI Act is that for proper and smooth functioning of business transaction in particular, use of cheques as negotiable instruments would primarily depend upon the integrity and honesty of the parties. It was noticed that cheques used to be issued as a device *inter alia* for defrauding the creditors and stalling the payments. Dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. Remedy available in a civil court is a long-drawn process and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee. (Para 34)

In a criminal matter also the High Court may exercise its extraordinary writ jurisdiction but interference with an order of the Magistrate taking cognizance under Section 190 CrPC will stand somewhat on a different footing as an order taking cognizance can be the subject-matter of a revisional jurisdiction as well as of an application invoking the inherent jurisdiction of the High Court. A writ of certiorari ordinarily would not be issued by a writ court under Article 226 of the Constitution against a judicial officer. The High Court under Article 226 should not ordinarily interfere with an order taking cognizance passed by a competent court of law except in a proper case. Furthermore only such High Court within whose jurisdiction the order of the subordinate court has been passed, would have the jurisdiction to entertain an application under Article 227 of the Constitution unless it is established that the earlier cause of action arose within the jurisdiction thereof. The High Courts, however, must remind themselves about the doctrine of *forum non conveniens* also. (Paras 25, 28 and 29). *Mosaraf Hossain Khan* v. *Bhagheeratha Engg. Ltd.*, (2006) 3 SCC 658: (2006) 2 SCC (Cri) 98: AIR 2006 SC 1288: 2006 Cri LJ 1683: (2006) 2 KLT 525.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.K. Balasubramanyan*, JJ. [Date of decision: 24-2-2006]

Prem Chand Vijay Kumar v. Yashpal Singh, (2005) 4 SCC 417: 2005 SCC (Cri) 1153; State of Rajasthan v. Swaika Properties, (1985) 3 SCC 217; Aligarh Muslim University v. Vinay Engg. Enterprises (P) Ltd., (1994) 4 SCC 710; ONGC v. Utpal Kumar Basu, (1994) 4 SCC 711; Union of India v. Adani Exports Ltd., (2002) 1 SCC 567; Om Hemrajani v. State of U.P., (2005) 1 SCC 617: 2005 SCC (Cri) 443; Goa Plast (P) Ltd. v. Chico Ursula D'Souza, (2004) 2 SCC 235: 2004 SCC (Cri) 499; Monaben Ketanbhai Shah v. State of Gujarat, (2004) 7 SCC 15: 2004 SCC (Cri) 1857; Naresh Shridhar Mirajkar v. State of Maharashtra, (1966) 3 SCR 744: AIR 1967 SC 1; Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675; Rupa Ashok Hurra v. Ashok Hurra, (2002) 4 SCC 388; Ranjeet Singh v. Ravi Prakash, (2004) 3 SCC 682; State of U.P. v. Surendra Kumar, (2005) 9 SCC 161; Kusum Ingots & Alloys Ltd. v. Union of India, (2004) 6 SCC 254; Mayar (H.K.) Ltd. v. Owners & Parties, Vessel M.V. Fortune Express, (2006) 3 SCC 100, relied on

Nakul Deo Singh v. Dy. Commandant, (1999) 3 KLT 629 (FB), approved

[7201] — Ss. 482, 190, 203, 211, 227, 239 and 245 — Quashing of criminal proceedings — Merely because the accused has right to plead at the time of framing of charges that there is no material for framing of charges he is not debarred from invoking the inherent jurisdiction of the court at the earliest point of time when the Magistrate has taken cognizance — *On facts, even if the allegations made in complaint and the statement of the complainant and his witnesses are taken on their face value no offence is made out — Complaint quashed not only against the appellants but also against those two accused who did not prefer any appeal — Penal Code, 1860, Ss. 406, 420, 467, 468 and 120-B*

Merely because an accused has a right to plead at the time of framing of charges that there is no sufficient material for such framing of charges as provided in Section 245 of the Code, he is not debarred from approaching the court even at an earlier point of time when the Magistrate takes cognizance of the offence and summons the accused to appear to contend that the very issuance of the order of taking cognizance is invalid on the ground that no offence can be said to have been made out on the allegations made in the complaint petition. Power under Section 482 has to be exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition do not make out any offence would be tantamount to an abuse of the process of court, and therefore, there cannot be any dispute that in such case power under Section 482 of the Code can be exercised. *Ashok Chaturvedi* v. *Shitul H. Chanchani*, (1998) 7 SCC 698: AIR 1998 SC 2796.

Bench Strength **2**. Coram: *Sujata V. Manohar* and **G.B. Pattanaik**, JJ. [Date of decision: 13-8-1998]

[7202] — Ss. 482, 203, 227 and 245 — Quashing of criminal proceedings — Exercise of power under, after dismissal of SLP against framing of charges — Propriety — *On facts, proceedings initiated against respondents in accordance with law with the satisfaction of trial court about prima facie case being made out — Accordingly, charges framed against respondents and said action upheld by High Court and the Supreme Court — Respondents again moved High Court under S. 482 for quashing of criminal proceedings — Held, once order was passed by the Supreme Court dismissing SLP, upholding framing of charges against respondents, High Court could not have exercised power under S. 482 quashing criminal proceedings initiated by appellant — Observation of High Court that even after dismissal of SLP by the Supreme Court, it was open for it to consider prayer of accused to quash the proceedings in exercise of inherent powers because "the extraordinary jurisdiction under S. 482 of the Code may be exercised at any stage", not proper — In substance and reality, High Court exercised power of review not conferred by CrPC on a criminal court — Therefore, High Court was clearly in error in exercising power under S. 482 — Hence, without entering into the merits, order set aside with the matter to be decided in accordance with law by an appropriate court — Penal Code, 1860, Ss. 498-A, 342, 506 and 406 r/w S. 34 — Dowry Prohibition Act, 1961, Ss. 3 and 4*

(11)(iii) Maintainability *(contd.)*

Challan was filed against the respondents for offences punishable under Sections 498-A, 506, 406 read with Section 34 IPC and also under Sections 3 and 4, Dowry Prohibition Act, 1961. Charges were framed against Respondents 1 to 3 (husband, father-in-law and mother-in-law) and also against brother and sister of Respondent 1. All the accused challenged the action of framing of charge against them in the High Court by filing a revision petition. High Court partly allowed the revision and quashed charges against brother and sister of Respondent 1. It, however, held, that so far as the other respondents were concerned, charges could not be quashed and dismissed the petition.

Being aggrieved by the said order, the respondents approached the Supreme Court by filing special leave petition, but it was dismissed. The respondents then once again filed a petition in the High Court by invoking Section 482 CrPC. The High Court vide the impugned order, allowed the petition holding that there was abuse of process of law by the appellant in initiating criminal proceedings. The proceedings were, therefore, quashed. The said order was challenged in the present appeal.

Disposing of the appeal,

Held :

From the facts it is clear that a complaint was lodged by the petitioner against Respondents 1 to 3 as also against the other accused for offences punishable under Sections 498-A, 342 and 406 IPC and Sections 3 and 4 of the Dowry Prohibition Act. (Para 19)

The trial court was satisfied that *prima facie* case was made out and accordingly charges were framed against Respondents 1 to 3 as well as against the other accused. In a petition challenging that action, the High Court partly allowed the petition and quashed charges against brother-in-law and sister-in-law of the appellant herein but upheld the order of framing of charge against the remaining respondents i.e. Respondents 1 to 3 who, then, challenged the order of the High Court in the Supreme Court by filing SLP which was dismissed. It is thus clear that all the courts including the Supreme Court were of the view that there was *prima facie* case for framing of charge against the respondents herein. (Paras 20, 21 and 22)

After the order passed by the Supreme Court, Respondents 1 to 3 again moved the High Court under Section 482 CrPC for quashing of criminal proceedings. The High Court in the impugned order noted that earlier the respondents had approached it against framing of charge and the said action was not interfered with even by the Supreme Court. But observing that "a court of law cannot be expected to remain a silent spectator and cannot be made a tool of gratifying personal vengeance of any party", it held that the case in hand was a fit one to exercise inherent power under Section 482 CrPC and accordingly the proceedings were ordered to be quashed. But after the order had been passed by the Supreme Court dismissing the special leave petition, upholding framing of charge against Respondents 1 to 3, the High Court could not have exercised power under Section 482 CrPC quashing criminal proceedings initiated by the appellant. The High Court observed that even after dismissal of SLP by the Supreme Court, it was open for it to consider the prayer of the accused to quash the proceedings in exercise of inherent powers because "the extraordinary jurisdiction under Section 482 of the Code may be exercised at any stage". Thereby High Court exercised power of review not conferred by CrPC on a criminal court. (Paras 24, 29 and 30)

On the facts and in the circumstances of the case, the High Court was clearly in error in exercising power under Section 482 CrPC in quashing criminal proceedings against the respondents. The said order, hence, deserves to be set aside. The matter will be decided in accordance with law by an appropriate court. (Para 42)

Moreover, it is well settled that inherent power under Section 482 CrPC must be exercised in rarest of rare cases. (Para 39)

It is clarified that merits of the matter or allegations and counter-allegations by the parties has not been entered into. All observations made have been made only for the limited purpose of deciding the issue. As and when the matter will come before the court, it will be considered on its own merits without being inhibited or influenced by the observations made by the High Court or the Supreme Court in the present order. (Para 43). *Sunita Jain* v. *Pawan Kumar Jain*, (2008) 2 SCC 705: (2008) 1 SCC (Cri) 537: (2008) 64 AIC 212 (SC): (2008) 2 KLJ 304. Bench Strength 2. Coram: **C.K. Thakker** and *D.K. Jain*, JJ. [Date of decision: 25-1-2008]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: (1960) 3 SCR 388; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

[7203] — Ss. 482, 190(1) & 204 — Admissibility of evidence — Stage of quashment if appropriate stage to consider — *Quashing of complaint sought by accused on the ground that there was no material against him except the inadmissible* *retracted statement allegedly made by the co-accused — Held, the question about corroborative nature of evidence has to be considered at the appropriate stage — Hence, High Court rightly declined the prayer to quash the complaint at the initial stage when only cognizance had been taken and the accused was still to be interrogated* (Para 6). *Mohd. Malek Mondal* v. *Pranjal Bardalai*, (2005) 10 SCC 608: 2005 SCC (Cri) 1640: AIR 2005 SC 2406: 2005 Cri LJ 2613.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *Tarun Chatterjee*, JJ. [Date of decision: 6-5-2005]

[7204] — Ss. 482 and 154 — Quashing of FIR — Relevant considerations — Results of/material collected during preliminary investigations — Offences in relation to civil dispute — *Though FIR disclosing only a pure civil case, preliminary investigations revealing offences under Ss. 406 and 120-B IPC and under RBI Act, 1934 — Effect — But High Court going by contents of FIR alone holding that S. 420 IPC not attracted and that it was a simple breach of contract and pure civil dispute and therefore quashing FIR — Sustainability — Held, materials collected during preliminary investigations are relevant — Hence quashment of FIR not sustainable — Fair and impartial investigation directed — Penal Code, 1860, Ss. 420, 406 and 120-B*

Respondent 1, accused was the Director of a Company, which floated a car buying and rental scheme, whereby, it promised to give its investors (investing a sum of Rs 97,907), a monthly rent of Rs 4000 and also give an option to the investor to take back his car at the end of sixty months. Respondent 2 complainant invested in the scheme, got his monthly rent of Rs 4000 as agreed upon but when after the expiry of sixty months, he demanded back his car, it was not given. Instead the Company gave Respondent 2 post-dated cheques amounting to Rs 25,000, Rs 20,000 and Rs 10,000. Respondent 2, therefore, filed an FIR, which however, was quashed under Section 482 CrPC by the impugned judgment of the High Court.

Grounds taken in the memorandum of SLP revealed that during investigations statements of various witnesses had been recorded. Public at large, especially middle class and lower class people had invested their hard-earned money in the scheme. It was also complained of by an investor that no vehicle had been purchased in his name. Statements of witnesses during preliminary investigations also revealed that the Company had resorted to false registrations of vehicles in the name of investors which were actually owned and registered by non-investors who had no link with the Company. For instance, as per the statement of a non-investor his Maruti Esteem car was shown in the Company data as being registered in the name of an investor.

Allowing the appeal,

Held :

There cannot be any doubt or dispute whatsoever that a simple breach of contract or a case involving a pure civil dispute would not attract any offence either under Section 406 or Section 420 IPC. Had the dispute between the parties rested on the aforementioned premise, interference with the judgment of the High Court probably would not have been warranted. The petition of the complainant did not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC. It was purely civil in nature. But then, certain evidences surfaced during investigation which are disclosed in the grounds stated in the memo of this appeal. (Paras 13 and 19)

The allegation made in the FIR and the materials collected during investigation, should be allowed to be taken to its logical end. A large number of illegalities were committed by the said Company including the violation of the provisions of the Reserve Bank of India Act. The High Court in its judgment only considered the case from the point of view of Section 420 IPC and not Sections 406 and 120-B thereof. The legal position in regard to exercise of jurisdiction by the High Court for quashing of an FIR is now well settled. The State contended that having regard to the well-settled principle of law, the High Court should not quash an FIR save and except sparingly and in the rarest of rare cases. In the peculiar facts and circumstances of this case and particularly in view of the materials which have surfaced during investigation, the impugned judgment cannot be sustained. It is set aside accordingly. (Paras 6, 10, 14 and 20)

The investigating officer shall conduct the investigation fairly and impartially and shall allow the Company to carry on its business without any hindrance whatsoever. If any books of account or other documents are required, the investigating officer subject to just exceptions may take the xerox copies thereof duly certified by the accused as also an undertaking that, as and when called upon, they would produce the said books of account in a court of law. Subject to the aforementioned directions, the investigating officer shall carry out the investigation in accordance with law. (Para 19). *State of Maharashtra* v. *Sayed Mohammed Masood*, (2009) 8 SCC 787: (2009) 3 SCC (Cri) 945.

Bench Strength **2**. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 4-8-2009]

(11)(iii) Maintainability *(contd.)*

R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; Mahesh Chaudhary v. State of Rajasthan, (2009) 4 SCC 439: (2009) 2 SCC (Cri) 332, relied on

Alpic Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513: 2001 SCC (Cri) 565; Radha Ballav Pal v. Emperor, AIR 1939 Cal 327; Velji Raghavji Patel v. State of Maharashtra, AIR 1965 SC 1433; Vir Prakash Sharma v. Anil Kumar Agarwal, (2007) 7 SCC 373: (2007) 3 SCC (Cri) 370; All Cargo Movers (India) (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776: (2009) 1 SCC (Cri) 947; New India Assurance Co. Ltd. v. Sadanand Mukhi, (2009) 2 SCC 417: (2009) 1 SCC (Cri) 815; Uma Shankar Gopalika v. State of Bihar, (2005) 10 SCC 336: (2006) 2 SCC (Cri) 49, distinguished

[7205] — Ss. 482, 204, 200 and 202 — Challenge to complaint even before issue of process — Maintainability of — *Held, petitioner cannot be precluded from filing such a petition under S. 482 or Art. 226 of the Constitution. Suresh Kumar Tekriwal* v. *State of Jharkhand*, (2005) 12 SCC 278.

Bench Strength **2**. Coram: *N. Santosh Hegde* and *S.B. Sinha*, JJ. [Date of decision: 3-2-2005]

State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568: 2005 SCC (Cri) 415, followed

[7206] — S. 482 — Quashing of criminal proceedings — Not justified where disputed questions of fact involved — *Complaint filed by appellant against Directors of a company alleging commission of offence under S. 138 of Negotiable Instruments Act — High Court quashed the proceedings against Respondent 1 on ground that he had resigned from directorship before the cheques were issued, though Form 32, which was required to be filed with Registrar of Companies, was filed after the cheques were issued — High Court also quashed proceedings against other Directors in charge of day-to-day management work of the company on ground that there were no specific allegations and some general allegations were made that all Directors were responsible — Held, factual disputes were involved which were required to be established in trial and High Court was not justified in quashing the proceedings while dealing with applications under S. 482 — Negotiable Instruments Act, 1881, Ss. 138 and 142*

In these cases, factual disputes are involved. What was the effect of delayed presentation before the Registrar of Companies is essentially a matter of trial. Whether Respondent 1 had intimated the Company and whether there was any resolution accepting his resignation are matters in respect of which evidence has to be led. Therefore, the High Court was not justified in its view. (Para 7). *Malwa Cotton & Spg. Mills Ltd.* v. *Virsa Singh Sidhu*, (2008) 17 SCC 147: AIR 2008 SC 3273: 2008 Cri LJ 4316: (2008) 145 Comp Cas 61: (2008) 3 APLJ 142 (SC): (2008) 69 AIC 14 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 13-8-2008]

[7207] — Ss. 482, 468, 469(b) & (c), 154 and 473 — Quashing of FIR after filing of charge-sheet not permissible — *High Court erred in quashing the FIR on ground of delay in filing it without applying its mind to the limitation provisions contained in Ss. 468, 469(b), (c) and 473 of the Code. State of Punjab* v. *Dharam Vir Singh Jethi*, 1994 SCC (Cri) 500.

Bench Strength **2**. Coram: *A.M. Ahmadi* and *Yogeshwar Dayal*, JJ. [Date of decision: 12-4-1993]

***Distinguished** in Suneet Gupta v. Anil Triloknath Sharma, (2008) 11 SCC 670*

[7208] — Ss. 482 and 204 — Recourse to S. 482 — Estoppel to taking recourse to, based on conduct — Challenge to process issued under S. 204 — *Held, party aggrieved cannot be estopped from having recourse to S. 482 (it being the only course open to it to challenge process issued under S. 204, as affirmed in this case) because of his conduct in successfully having kept trial in abeyance by filing one proceeding after another — Complaint filed against company and four of its Directors under S. 138, Negotiable Instruments Act, 1881 — Company challenging validity of statutory notice issued under and issuance of process based thereon all the way to Supreme Court under Art. 136 — However, SLP dismissed as withdrawn — Thereafter appellant, a Director of said company, challenging validity of said statutory notice and issuance of process based thereon all the way up to the present appeal — Supreme Court and High Court in earlier proceedings had directed question of validity of said statutory notice issued under S. 138, Negotiable Instruments Act, 1881 to be considered at trial stage — Even in light of the same, and conduct of appellant in initiating one proceeding after another, even up to the Supreme Court, thereby successfully managing to keep trial in abeyance in proceedings initiated in 1996, held, an accused person (the appellant) cannot be prevented from taking recourse to a remedy which is available in law — Hence, while permission sought by the appellant from Supreme Court to file a petition under S. 482 is not being granted, the statutory right available to him in law cannot be denied — The court concerned entertaining the application under S. 482, would undoubtedly take the said conduct of appellant into account — Evidence Act, 1872, S. 115* (Para 19). *Subramanium Sethuraman* v. *State of Maharashtra*, (2004) 13 SCC 324: 2005 SCC (Cri) 242: AIR 2004 SC 4711: 2004 Cri LJ 4609: (2005) 1 Mah LJ 626.

Bench Strength **3**. Coram: **N. Santosh Hegde**, *S.B. Sinha* and *Tarun Chatterjee*, JJ. [Date of decision: 17-9-2004]

[**Ed.**: *See also* Art. 136, '(g)(3) Exercise of power under by Supreme Court — Relief — Conduct of parties', pp. 783 et seq.,

'(b)(2) Plenary jurisdiction under Art. 136', pp. 247 et seq., and

'(c)(4) Equity jurisdiction — Conduct of parties', pp. 291 et seq. in *Complete Digest of Supreme Court Cases*, **Vol. 8**.]

[7209] — Ss. 482 and 227, 239 & 245 — Jurisdiction of High Court under, for quashing criminal proceedings — Held, can be exercised even when application for discharge of the accused pending with the trial Judge — *Such power should be exercised cautiously to prevent abuse of process of court — FIR lodged by GM of a Finance Company roping in the appellants and their family members in order to coerce them to refund the amount borrowed by them from the Company — Consequent proceedings initiated for alleged offence under Ss. 406/420 IPC — Complaint under S. 138 of Negotiable Instruments Act already pending against the appellants and others — Held on facts, FIR and the criminal prosecution for the alleged offence under Ss. 406/420 IPC amounted to abuse of process of law and hence the proceedings liable to be quashed — Constitution of India, Art. 227 — Penal Code, 1860, Ss. 406/420*

Respondent 2, GM of a Finance Company, lodged a first information report against seven persons including the two appellants alleging that they as Directors of an Automobile Company had taken a short-term loan of Rs 50 lakhs from the Finance Company but the cheques drawn by them by way of repayment of the loan with interest on presentation were dishonoured by the bank for insufficient funds. Police submitted a charge-sheet for offence under Sections 406/420 IPC against the two appellants and their family members describing all of them as Directors of the said Automobile Company. But during investigation the appellants were found to be not Directors of the said Company. In counter-affidavit filed on behalf of the complainant, apart from making an omnibus statement that the first appellant with dishonest intention and misrepresentation got the loan, nothing had been said as to what those misrepresentations were, how the Finance Company was duped, what were the roles played by the appellants and others in the alleged offence and why the charge-sheet was filed only against the appellants and their family members leaving out the other Directors of the Automobile Company. Though criminal complaint under Section 138 of the Negotiable Instruments Act was already pending at the time of filing the FIR but the charge-sheet relating to the alleged offence under Sections 406/420 IPC did not show if the investigating agency looked into the complaint filed under Section 138 of the said Act. The appellants filed an application under Section 482 CrPC seeking quashing of the criminal proceedings pending against them under Sections 406/424 IPC in the Court of CJM. The High Court dismissed the application. Allowing the appeal,

Held :

In the present case the whole attempt of the complainant is evidently to rope in all the members of the family particularly the appellants who are the parents of the Managing Director of the Automobile Company without regard to their role or participation in the alleged offences with the sole purpose of getting the loan due to the Finance Company by browbeating and tyrannising the appellants with criminal prosecution. A criminal complaint under Section 138 of the Negotiable Instruments Act is already pending against the appellants and other accused. They would suffer the consequences if offence under Section 138 is proved against them. In any case there is no occasion for the complainant to prosecute the appellants under Sections 406/420 IPC and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed. Accordingly, the judgment of the High Court is set aside and prosecution of the appellants under Sections 406/420 IPC is quashed. (Paras 14 and 15)

Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. The Supreme Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. Merely because the accused persons had already filed an application in the Court of Additional Judicial Magistrate for their discharge, it cannot be urged that the High Court cannot exercise its jurisdiction under Section 482 of the Code. Though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the

(11)(iii) Maintainability *(contd.)*

charge to be groundless but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial. (Paras 8 and 7). *G. Sagar Suri* v. *State of U.P.*, (2000) 2 SCC 636: 2000 SCC (Cri) 513: AIR 2000 SC 754: 2000 Cri LJ 824: 2000 All LJ 496.

Bench Strength **2**. Coram: *S. Saghir Ahmad* and **D.P. Wadhwa**, JJ. [Date of decision: 28-1-2000]

State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; Kurukshetra University v. State of Haryana, (1977) 4 SCC 451: 1977 SCC (Cri) 613; Chandrapal Singh v. Maharaj Singh, (1982) 1 SCC 466: 1982 SCC (Cri) 249; Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; Ashok Chaturvedi v. Shitul H. Chanchani, (1998) 7 SCC 698: 1998 SCC (Cri) 1704, relied on

***Followed in** All Cargo Movers India (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776*

[7210] — Ss. 482 and 227, 239 & 245 — Quashing of criminal proceedings — Availability of remedy of discharge, held, does not bar petition under S. 482 — Effect of delay — *Further held, well-deserved case for quashing of criminal proceedings should not have been thrown out even if there was some delay on petitioner's part — High Court ought to have adjusted equities*

Availability of remedy of filing of application for discharge does not mean that petition under Section 482 should be rejected in a case where no offence is made out even if allegations in the complaint are presumed to be true. There might have been some delay on appellant's part in approaching the High Court but while adjusting equity, High Court was required to take into consideration the fact that in a case of this nature, the appellants would face harassment although allegations contained in complaint-petition, even if assumed to be true, were trivial in nature. (Paras 19 and 20). *Keki Hormusji Gharda* v. *Mehervan Rustom Irani*, (2009) 6 SCC 475.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 13-5-2009]

[7211] — Ss. 482, 173 and 240 — Quashment of proceedings — Whether justified — Proper stage for exercise of power — *Associate unit of a body corporate violating order under S. 3 of Essential Commodities Act, 1955 — At the stage of filing charge-sheet, final report to supplementary challan specifically mentioning officers of unit as liable under S. 10 of 1955 Act — Trial court summoning officers — High Court however quashing trial court's order holding unit was not covered by S. 10 of 1955 Act — Propriety — Held, the stand taken by accused officers before High Court was a defence to be taken at the stage of trial — Hence, High Court's order set aside* (Para 14). *State (Govt. of NCT of Delhi)* v. *D.A.M. Prabhu*, (2009) 3 SCC 264.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 11-2-2009]

Dulichand Laxminarayan v. CIT, AIR 1956 SC 354; Sheoratan Agarwal v. State of M.P., (1984) 4 SCC 352: 1984 SCC (Cri) 620; State of Punjab v. Kasturi Lal, (2004) 12 SCC 195: 2004 SCC (Cri) Supp 168, applied

[7212] — Ss. 482, 204 and 205 — Inherent jurisdiction — Interim orders — High Court's interference in the issue of process — When can be made — *Interim orders under S. 482 in criminal trials can be made (1) when no case is made out from the FIR, and (2) when allegations of mala fide are made against the State — Matter, therefore, remanded for consideration afresh to High Court*

The jurisdiction of the High Court under Section 482 is limited. It can interfere with an order of summoning an accused by the Magistrate inter alia in the event if a finding is arrived at that the accused were being prosecuted mala fide and/or even if the allegations contained in the FIR are given face value and taken to be correct in their entirety, no case has been made out for taking cognizance of the offence. It is furthermore made clear that the parties hereto may approach the High Court in Criminal Miscellaneous Application No. 518 of 2008. Allegations of mala fide made against the State may also be gone into. The High Court can pass any such interim order as it may think fit and proper. (Paras 32, 34 and 41). *Manoj Narain Agrawal* v. *Shashi Agrawal*, (2009) 6 SCC 385.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 15-4-2009]

Arun Shankar Shukla v. State of U.P., (1999) 6 SCC 146: 1999 SCC (Cri) 1076; Hamida v. Rashid, (2008) 1 SCC 474: (2008) 1 SCC (Cri) 234; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Ruchi Agarwal v. Amit Kumar Agrawal, (2005) 3 SCC 299: 2005 SCC (Cri) 719, relied on

[7213] — Ss. 482/397 — Scope of High Court's jurisdiction under — *Accused applying to magistrate to call for report of an ex parte confidential enquiry before recording statements under S. 251 — Magistrate seeking to record the Statements without the report being produced — Accused filing application under S. 482/397 — Report produced before High Court but privileges claimed — High Court perusing the report and relying upon it quashing the entire proceeding before the magistrate on the ground that the act of the accused fell* *under Ninth Exception to S. 499, Penal Code, 1860 — High Court's interference even before recording of statement under S. 251 by the magistrate, held, perverse and liable to be set aside*

Per A.P. Sen. J. (Chinnappa, J. concurring)

The order recorded by the High Court quashing the prosecution under S. 482 of the Code is wholly perverse and has resulted in manifest miscarriage of justice. The High Court has prejudged the whole issue without a trial of the accused persons. The matter was at the stage of recording plea of the accused persons under S. 251. The requirements of S. 251 are still to be complied with. The magistrate had to ascertain whether the respondent pleaded guilty to the charge or demanded to be tried. The circumstances clearly show that the respondent was prima facie guilty of defamation unless he pleads one of the Exceptions to S. 499, IPC.

Per Baharul Islam, J. (dissenting)

Sending back the case to the magistrate to record the respondents' plea after the perusal of the inquiry report will be an exercise in futility and abuse of the process of the criminal court. An order to prevent abuse of the process of the court or vexatious proceedings would be warranted under S. 482, CrPC if the merits of the case before the High Court justified it. Therefore, such an order made by the High Court for quashing the proceeding before the magistrate was justified. The appellant may seek his remedy, if any, in the civil court. *Sewakram Sobhani* v. *R.K. Karanjia*, (1981) 3 SCC 208: 1981 SCC (Cri) 698: AIR 1981 SC 1514.

Bench Strength **3**. Coram: **O. Chinnappa Reddy**[2], **A.P. Sen**[1] and **Baharul Islam**[3], JJ. [Date of decision: 1-5-1981]

(iv) Admission of quashment petition — Effect

[7214] — Ss. 482, 407 and 386(d) — Admission of petition for quashment of charges — Consequent stay of proceedings before trial court — Need for — *Though High Court admitting petition for quashment of charges against some of appellant-accused, it directing that proceedings before trial court could go on — Propriety — Held, if said proceedings go on and come to final conclusion, petition for quashment of charges would be rendered infructuous — Hence matter remitted to High Court for decision afresh. Arun Kumar Sharma* v. *UT, Chandigarh*, (2005) 11 SCC 480.

Bench Strength **2**. Coram: *Ashok Bhan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 1-4-2005]

(v) Matters at large/Orders/Directions that may be passed

See also '(11)(vii) Non-quashment — Issue of other directions', below

[7215] — S. 482 — Prayer to quash the entire proceedings and start the trial afresh — If could be allowed — *Held, could not be allowed as there is no provision in law which permits this — Constitution of India — Art. 226* (Para 25). *Hindustan Construction Co. Ltd.* v. *Gopal Krishna Sengupta*, (2003) 11 SCC 210: 2004 SCC (Cri) 81: AIR 2003 SC 3536.

Bench Strength **2**. Coram: **S.N. Variava** and *H.K. Sema*, JJ. [Date of decision: 9-4-2003]

[7216] — S. 482 — Quashing of proceedings under — Prosecution proceedings against respondent quashed by High Court, by delinking him from the array of a number of other accused, mainly by applying the decision of Supreme Court in *Raj Deo Sharma case*, (1998) 7 SCC 507 — *Held, instead High Court could have directed the trial court to close the evidence thus far adduced against the respondent and to take further steps in the matter — By virtue of the modified order of Supreme Court in* Raj Deo Sharma (II) case, *(1999) 7 SCC 604 prosecution can claim one more year for completing the prosecution evidence in respect of cases referred to therein — It is open to the trial court to close the evidence of the prosecution, whether the prosecution exhausts the list of witnesses or not, on the expiry of one year from the date of the receipt of the copy of this order — Time taken at the instance of the accused will be excluded from the said period of one year* (Paras 2, 3 and 5). *State of T.N.* v. *A.M. Vedachalam*, (2001) 9 SCC 744: 2001 Cri LJ 3297.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 15-1-2001]

[7217] — S. 482 — Quashing of prosecution — High Court cannot hold a parallel trial in exercise of power under — If offence prima facie falls under the Penal Code, launching of prosecution cannot be thwarted by High Court under S. 482 merely because penal action open under any other statute — *Cognizance of offence taken by Magistrate under S. 409 IPC against managing director and directors (appellants) of a public limited company on the basis of charge-sheet submitted by CBI and other material prima facie disclosing dishonest misappropriation of share and debenture moneys collected from public — Application filed by appellants under S. 482 seeking their discharge on ground of availability of penal provisions for such offence under Companies Act —*

(11)(v) Matters at large/Orders/Directions that may be passed *(contd.)*

Held, High Court justified in dismissing the application — Penal Code, 1860, Ss. 409, 420 and 405 — Companies Act, 1956, Ss. 69, 63 and 73

Though the Companies Act contains provisions regarding the issuance of prospectus, applications for shares and allotment thereof and provides different checks over the misuse of the fund collected from the public for issuance of shares or debentures, but where persons issue prospectus and collect moneys from public assuring them that they intend to do business with the public money for their benefit and the benefit of such public, but the real intention is to do no business other than collecting the moneys from the public for their personal gain, such persons cannot be said to be immune from the provisions of the Penal Code. The persons managing the affairs of such company cannot use the juristic entity and corporate personality of the company as a shield to evade themselves from prosecution for offences under the Penal Code, if it is established that primary object of the incorporation and existence of the Company is to defraud the public.

But, at the same time, while taking cognizance of alleged offences in connection with the registration, issuance of prospectus, collection of moneys from the investors and the misappropriation of the fund collected from the shareholders which constitute one offence or other under the Penal Code, court must be satisfied that prima facie an offence under the Penal Code has been disclosed on the materials produced before the court. For prosecution for offences under the Penal Code the complainant has to make out a prima facie case against the individuals concerned, regarding their acts and omissions which constitute the different ingredients of the offences under the Penal Code. There is a basic difference between the offences under the Penal Code and acts and omissions which have been made punishable under different Acts and statutes which are in nature of social welfare legislations. For framing charges in respect of those acts and omissions, in many cases, mens rea is not an essential ingredient; the concerned statute imposes a duty on those who are in charge of the management, to follow the statutory provisions and once there is a breach or contravention, such persons become liable to be punished.

In the facts of the present case itself, the prosecution has to prove that the appellant as promotors or directors, had dishonest intention since the very beginning while collecting the moneys from the applicants for the shares and debentures or that having collected such moneys they dishonestly misappropriated the same. The ingredients of the different offences under the Penal Code need not be proved only by direct evidence: they can be shown from the circumstances of a particular case that the intention of the promotors or the directors was dishonest since the very inception or that they developed such intention at some stage, for their wrongful gain and causing wrongful loss to the investors. All the circumstances and the materials to prove such a charge have to be collected during the investigation and inquiry and ultimately have to be produced before the court at the stage of trial for a verdict as to whether the ingredients of offence in question have been established on behalf of the prosecution.

In the present case the quashing of the prosecution pending against the appellants only on the ground that it was open to the applicants for shares to take recourse to the provisions of the Companies Act, cannot be accepted. It is a futile attempt on the part of the appellants, to close the chapter before it has unfolded itself. It will be for the trial court to examine the matter on the materials produced on behalf of the prosecution. That exercise cannot be performed either by the High Court or by the Supreme Court. The trial court should proceed with the case in accordance with law.

The High Court should not, while exercising power under S. 482 of the Code, usurp the jurisdiction of the trial court. The power under S. 482 of the Code has been vested in the High Court to quash a prosecution which amounts to abuse of the process of the court. But that power cannot be exercised by the High Court to hold a parallel trial, only on basis of the statements and documents collected during investigation or inquiry, for purpose of expressing an opinion whether the accused concerned is likely to be punished if the trial is allowed to proceed. *Radhey Shyam Khemka* v. *State of Bihar*, (1993) 3 SCC 54: 1993 SCC (Cri) 591: (1993) 77 Comp Cas 356: 1993 Cri LJ 2888: (1993) 1 Crimes 1132.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **N.P. Singh**, JJ. [Date of decision: 26-3-1993]

[7218] — S. 482 — Splitting up of trial by High Court under, where prosecution case against all the accused persons arising out of the same incident and evidence to be led by the prosecution against them common, held on facts, not justified

The respondent (accused 1) and accused 2, who were the main accused persons were tried for offences under Ss. 302 & 201, IPC. From the evidence it appeared that two policemen had also committed offence under S. 201 read with S. 34, IPC in connection with the same incident. The Public Prosecutor, therefore, filed an application under S. 319(4), CrPC for impleading the two policemen as accused 3 and 4. The Sessions Judge ordered that the accused policemen be impleaded accordingly and de novo trial be held against all the four accused after reframing charges. Before the trial could proceed further the accused policemen made application objecting to their impleading in the case without obtaining sanction under S. 197, CrPC. The Sessions Judge dismissed the application. But the High Court on revision granted stay of the proceedings in the sessions case. Meanwhile the respondent made an application under S. 439(1), CrPC before the Sessions Judge praying for grant of bail in view of unduly protracted trial, apart from absence of prima facie case against him. The Sessions Judge dismissed the application. But a Single Judge of the High Court exercising power under S. 482, CrPC rejected the bail application, vacated the stay insofar as the trial against the respondent and accused 2 were concerned and directed the Sessions Judge to proceed with the trial against them as early as possible.

Held :

The order and directions made by the Single Judge of the High Court were wholly unwarranted. The proper course for him was to have heard and disposed of the revision application on which the High Court had earlier granted stay of the proceedings, rather than to make a direction of this kind which would, in fact, result in splitting up of the trial which is apt to cause miscarriage of justice, besides serious prejudice to the prosecution. The evidence to be led by the prosecution would be more or less common as it relates to the same occurrence. It could not be said that merely because the proceedings before the learned Sessions Judge were held up due to stay granted by the High Court in that revision, the Single Judge could have taken recourse to the inherent powers of the High Court under S. 482, or that it was necessary to do so either to prevent abuse of the process of court or otherwise to secure ends of justice. Any further delay in the trial could be prevented by taking up the revision for hearing. *State of Karnataka* v. *Narsa Reddy*, (1987) 4 SCC 170: 1987 SCC (Cri) 744: AIR 1987 SC 2104: 1987 Cri LJ 1929.

Bench Strength **2**. Coram: **A.P. Sen** and *B.C. Ray*, JJ. [Date of decision: 14-8-1987]

[7219] — S. 482 — Whether in an application under S. 482 High Court can interfere with concurrent findings of courts below — *Questions not decided. Dukhtar Jahan* v. *Mohd. Farooq*, (1987) 1 SCC 624: 1987 SCC (Cri) 237: AIR 1987 SC 1049: 1987 Cri LJ 849: (1987) 1 HLR 362.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 20-1-1987]

[7220] — S. 482 — Without hearing appeal on merits and coming to a clear finding that an offence is made out against the accused, held, High Court has no jurisdiction to issue notice directing the accused to show cause why he should not be sent for trial — *The order passed by the High Court at the initial stage amounts to a serious abuse of the process of the court inasmuch as it compels the accused appellant to rebut a charge never made or an allegation never proved against him. Such a cause of action at this stage results in gross and substantial injustice to the appellant and amounts to a gross misuse of power of the High Court under S. 482 CrPC. R.V. Murthy* v. *State of Maharashtra*, (1981) 4 SCC 157: 1981 SCC (Cri) 810: AIR 1982 SC 677.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *A.P. Sen*, JJ. [Date of decision: 24-7-1981]

[7221] — Ss. 482 & 125 — Interference with concurrent findings of fact without adverting to evidence and without recording reasons not justified — *Trial court under S. 125 refusing to grant maintenance to respondent wife on the finding that there was no justifiable reason for her separation from her appellant husband and that her father was demanding Rs 30,000 for sending her to her matrimonial house — Findings of fact recorded by trial Magistrate confirmed by revisional court — Petition filed under S. 482 — Treating it as second revision, High Court awarding maintenance @ Rs 500 p.m. with effect from a specified date and @ Rs 1000 p.m. thereafter without considering evidence and without recording any reasons — Held, judgment of High Court perverse and liable to be set aside — High Court, even in exercise of its inherent jurisdiction, not empowered to set aside concurrent findings of fact of courts below without adverting to evidence or recording reasons therefor* (Paras 5 and 6). *Ramkaran* v. *Gyarsi*, (2005) 12 SCC 341.

Bench Strength **2**. Coram: *B.P. Singh* and *Arun Kumar*, JJ. [Date of decision: 24-1-2005]

(11)(v) Matters at large/Orders/Directions that may be passed *(contd.)*

[7222] — Ss. 482 and 239, 240 & 245 — Petition for quashing charge framed against accused — If High Court decides to quash the charges it should record reasons therefor — High Court erred in setting aside the charge without recording reasons and directing the Magistrate to consider the material once again and then frame a charge for the same offence — *Constitution of India — Art. 226*

In the present case as the Metropolitan Magistrate has chosen to frame the charge, the High Court, when moved by the accused for quashment of the charge, could have re-examined the records to consider whether the charge framed was sustainable or not. If the High Court decides to quash the charge it is open to the High Court to record the reasons thereof. The present order of the High Court is one of setting aside the charge without stating any reason. But the direction to the Magistrate to consider the materials once again and then to frame a charge for the same offence (if the Magistrate reaches the opinion that there is ground for presuming the commission of offence) is simply to repeat what the Metropolitan Magistrate had done once at the first instance. To ask him to do the same thing over again is adding an unnecessary extra work on the trial court. Be that as it may, the State has not challenged the order of the High Court. Hence the impugned order of the High Court need not be set aside. It is for the Metropolitan Magistrate to exercise his functions under Section 239 or Section 240 of the Code as he deems fit in the light of the observations made above. (Para 13). *Kanti Bhadra Shah* v. *State of W.B.*, (2000) 1 SCC 722: 2000 SCC (Cri) 303: AIR 2000 SC 522: 2000 Cri LJ 746.

Bench Strength **2**. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 5-1-2000]

(vi) Proper mode of disposal/exercise of power under/Matters to be considered

[7223] — S. 482 — High Court's power to quash FIR and criminal proceedings — Scope of — Evaluation of allegation based on evidence — Permissibility — *Held, said power should be exercised sparingly keeping in view the guidelines laid down by the Supreme Court in various decisions — High Court not justified in evaluating the genuineness and reliability of allegations made in the FIR or complaint on the basis of evidence collected during the investigation — Constitution of India — Art. 226. State of T.N.* v. *Thirukkural Perumal*, (1995) 2 SCC 449: 1995 SCC (Cri) 387: (1995) 1 Crimes 566.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *Faizan Uddin*, JJ. [Date of decision: 31-1-1995]

[7224] — S. 482 — Inherent power of High Court to quash charge-sheet — Scope of the power restated — *Held, High Court was not supposed to "embark upon the enquiry whether the allegations in FIR and the charge-sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations" — High Court should have limited its consideration to "... whether allegations made in the FIR and the charge-sheet taken on their face value and accepted in their entirety would prima facie constitute an offence for making out a case against the accused" — Penal Code, 1860, Ss. 120-B and 193*

AM, the respondent's son, at material time, was Commissioner (Land Disposal), in the Delhi Development Authority. CBI conducted a raid at *AM*'s residence and seized Rs 36 lakhs. *AM* claimed that the cash belonged to the respondent who confirmed in writing his son's version. The respondent's explanation was that he received this amount as part-payment of two immovable properties which he had agreed to sell. CBI however found that there were several inconsistencies and irregularities in the stand taken by the respondent and his son with regard to recovery of 36 lakhs. CBI therefore charged the respondent under Sections 120-B (criminal conspiracy) and 193 (falsification of evidence) IPC.

The High Court quashed the charge-sheet under Section 482 CrPC. The approach of the High Court was to examine the evidence in detail and to assess whether a case was made out against the respondent.

Rejecting this approach,

Held :

On the basis of the material available on record and allegations levelled against the respondent in FIR and charge-sheet, it cannot be concluded that no ingredients of offence under Section 120-B read with Section 193 IPC are present in the instant case. At this stage, the High Court in its jurisdiction under Section 482 CrPC was not called upon to embark upon an inquiry whether the allegations in the FIR and the charge-sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations. These are matters which can be examined only by the court concerned after the entire material is produced before it on a thorough investigation and evidence is led. The High Court ought to have critically examine whether the allegations made in the FIR and the charge-sheet taken on their face value and accepted in their entirety would prima facie constitute an offence for making out a case against the respondent. (Paras 30 to 32)

On careful scrutiny and analysis of the allegations incorporated in FIR and charge-sheet (extracts reproduced in para 8 of the judgment), it is abundantly clear that ingredients of Sections 193 and 120-B IPC are clearly made out in the instant case setting out a cognizable offence justifying registration of a case and investigation thereon. This case does not fall under any of the categories of cases formulated in *Bhajan Lal case*, 1992 Supp (1) SCC 335 calling for exercise of extraordinary jurisdiction or inherent powers of the court to quash the FIR. It would not be appropriate to comment or express any opinion on the truthfulness or veracity of the allegations incorporated in the FIR or the charge-sheet because the Supreme Court would not like the trial court to be influenced by any of the findings of the Supreme Court or the High Court in the trial of this case. All that can be said without any hesitation is that on the basis of averments and allegations incorporated in FIR and charge-sheet, the High Court was not justified in quashing the FIR/charge-sheet while exercising its extraordinary jurisdiction under Section 482 CrPC to stifle a legitimate prosecution. (Paras 35 to 38). *CBI* v. *K.M. Sharan*, (2008) 4 SCC 471: (2008) 2 SCC (Cri) 430: (2008) 64 AIC 65 (SC): 2008 Cri LJ 2027.

Bench Strength **2**. Coram: *Ashok Bhan* and **Dalveer Bhandari**, JJ. [Date of decision: 21-2-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, applied

Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259; State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272; State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561: 1982 SCC (Cri) 283; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; State of Bihar v. Murad Ali Khan, (1988) 4 SCC 655: 1989 SCC (Cri) 27; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Roy V.D. v. State of Kerala, (2000) 8 SCC 590: 2001 SCC (Cri) 42; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; CBI v. Ravi Shankar Srivastava, (2006) 7 SCC 188: (2006) 3 SCC (Cri) 233, relied on

[7225] — S. 482 — Quashment — Principles for — *Held, though it is open to the High Court to quash charges framed by the trial court, but the same cannot be done by weighing the correctness or sufficiency of the evidence — The principle to be adopted by the High Court in such cases should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not — It is only at the stage of trial that the truthfulness, sufficiency and acceptability of the evidence can be adjudged*

Even though it is open to a High Court entertaining a petition under Section 482 of the Code to quash charges framed by the trial court, same cannot be done by weighing the correctness or sufficiency of evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial. The High Court was therefore not justified in this case in giving a finding as to the non-existence of material to frame a charge for an offence punishable under Section 304 Part II IPC, which is too premature. At the same time the Sessions Court should also have precluded from expressing a conclusive opinion as to the existence of sufficient material to establish a charge punishable under Section 304 Part II IPC. (Para 12)

Hence findings of the Sessions Court as well as the High Court are set aside and it is left to the court trying the offence to alter or modify any such charge at an appropriate stage based on material produced by way of evidence. (Para 13). *State of Maharashtra* v. *Salman Salim Khan*, (2004) 1 SCC 525: 2004 SCC (Cri) 337: AIR 2004 SC 1189: 2004 Cri LJ 920.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 18-12-2003]

[7226] — Ss. 482, 211, 215 and 216 — Quashment of charges — When permissible — Considerations involved, reiterated — Effect of inclusion of inapplicable charge

A "fundamental defect" should be found in the charges if the court has to quash them. Whether the accused was misled and whether there was reasonable possibility of prejudice being caused to the accused on account of defective charges are relevant considerations in judging the effect of wrong or deficient charges. It will always be material to consider whether the objection to the nature of charge was taken at an early stage. (Para 25)

It is not uncommon that the offence alleged might seemingly fall under more than one provision and sometimes it may not be easy to form a definite opinion as to the section in which the offence appropriately falls. Hence, charges are often framed by way of abundant caution. Assuming that an inapplicable provision has been mentioned, it is no ground to set aside the charges and invalidate the trial. (Para 25)

It has not been demonstrated in the instant case as to how the accused or any of them were misled or any prejudice was caused to them on account of the alleged defects in the framing of charges. No such objection was even taken before the trial court. On the other hand, it is more than clear that the accused

(11)(vi) Proper mode of disposal/exercise of power under/Matters to be considered *(contd.)*

did understand the case they were called upon to meet. The question whether Section 120-B applies to the POTA offences or Section 3(3) alone applies is not a matter on which a definite conclusion should be reached ahead of the trial. (Para 25). *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600: 2005 SCC (Cri) 1715: 2005 Cri LJ 3950: (2005) 122 DLT 194.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *P.P. Naolekar*, JJ. [Date of decision: 4-8-2005]

Willie (William) Slaney v. State of M.P., (1955) 2 SCR 1140: AIR 1956 SC 116: 1956 Cri LJ 291; State of A.P. v. Cheemalapati Ganeswara Rao, (1964) 3 SCR 297: (1963) 2 Cri LJ 671, relied on

[7227] — S. 482 — Quashing of proceedings under — Exercise of inherent power under S. 482, when justified — Duty and approach of High Court while exercising said power — *Held, inherent jurisdiction though wide has to be exercised sparingly, carefully and with great caution — May be exercised (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice — To be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist — While exercising the said power court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused — But, said power should not be exercised to stifle a legitimate prosecution — Court should refrain from giving a prima facie decision in a case where entire facts are incomplete and hazy — More so, when the evidence has not been collected and produced before the court and the issues involved are of such magnitude that they cannot be seen in their true perspective without sufficient material — Yet no hard-and-fast rule can be laid down for exercise of extraordinary jurisdiction under S. 482 CrPC*

The powers possessed by the High Court under Section 482 CrPC are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. (Para 27)

Inherent power under Section 482 CrPC can be exercised: (*i*) to give effect to an order under the Code; (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in the section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. (Paras 23, 24 and 46)

However, the inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. (Para 27). *Inder Mohan Goswami* v. *State of Uttaranchal*, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259: AIR 2008 SC 251: (2007) 144 DLT 257: (2007) 59 AIC 30 (SC): (2008) 1 All LJ 40.

Bench Strength **3**. Coram: *K.G. Balakrishnan*, *C.J.* and *R.V. Raveendran* and **Dalveer Bhandari**, JJ. [Date of decision: 9-10-2007]

Connelly v. DPP, 1964 AC 1254: (1964) 2 WLR 1145 (HL); DPP v. Humphrys, 1977 AC 1: (1976) 2 WLR 857 [HL (E)]; R.P. Kapur v. State of Punjab, AIR 1960 SC 866; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; Chandrapal Singh v. Maharaj Singh, (1982) 1 SCC 466: 1982 SCC (Cri) 249; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Roy V.D. v. State of Kerala, (2000) 8 SCC 590: 2001 SCC (Cri) 42; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, relied on

[7228] — Ss. 482 and 2(c) & (d), 154 — Quashment of FIR — Contents of complaint/FIR — Relevance of — *Held, for the purpose of finding out commission of a cognizable offence, High Court, while exercising power under S. 482, is only required to look into allegations made in* *complaint/FIR for concluding whether a prima facie offence has been made out by complainant in complaint/FIR or not* (Para 22). *Pratibha* v. *Rameshwari Devi*, (2007) 12 SCC 369: (2008) 1 SCC (Cri) 399: (2007) 59 AIC 159 (SC): 2008 Cri LJ 329.

Bench Strength **2**. Coram: *A.K. Mathur* and **Tarun Chatterjee**, JJ. [Date of decision: 17-9-2007]

[7229] — S. 482 — Quashment of proceedings — Evaluation of plausibility/credibility of averments in complaint — Permissibility — Doubt as to the same, held, must be based on some material — *High Court cannot quash complaint if allegations prima facie disclose commission of cognizable offence — Complaint alleging sale of cooperative society land illegally for higher price but showing lesser price in records and conspiracy to cheat society and its members — High Court quashing entire criminal proceedings holding that averments in complaint were "imaginary" — Sustainability — In present case, allegations in complaint disclose conspiracy to put cooperative society and its members to loss in view of report of Registrar and hence prima facie disclose commission of cognizable offence — High Court's conclusion that averments in complaint are imaginary is not based on any material — Hence, judgment of High Court is unsustainable — Penal Code, 1860, Ss. 420, 120-B and 34*

Allowing the appeal,

Held :

It is now a well-settled principle of law that the High Court in exercise of its inherent jurisdiction under Section 482 of the Code may quash a criminal proceeding inter alia in the event the allegations made in the complaint petition even if they are taken at their face value and accepted in their entirety do not disclose commission of a cognizable offence. (Para 14)

The opinion of the High Court that the averments made in the complaint petition are imaginary is not based on any material. Even assuming that the complainant had a score to settle against the accused, the same by itself may not be a ground to quash the entire criminal proceedings particularly in view of the fact that at least a prima facie case has been established in view of the report of the Registrar. (Para 22)

The allegations made in the complaint petition disclose commission of a cognizable offence. A conspiracy is said to have been entered into for putting the Society and consequentially the members to a great loss. A conspiracy is also said to have been hatched for the aforementioned purpose as a result whereof not only an allotment was made in favour of a person who was not entitled thereto but also the allotted plot was assigned in favour of a third party for a huge sum. Whether the allegations made in the complaint petition are correct or not have to be considered during trial. It may be true that the question as to whether the report of the Registrar can be relied upon for the purpose of showing as to how the act of cheating has been committed by the respondents is a matter which must be considered at the time of trial but there cannot be any doubt whatsoever that so long as the report is not set aside, the same could form the basis for forming of an opinion at least for the purpose of proceeding against the respondents that they manipulated the records of the cooperative Society to make unlawful gain for themselves and causing unlawful loss to the Society. (Paras 16, 17 and 19). *K. Ashoka* v. *N.L. Chandrashekar*, (2009) 5 SCC 199.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 15-4-2009]

Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, followed

[7230] — S. 482 — Quashing of proceedings under, by appreciating the evidence — Held, not permissible — *Even if the charge is framed at that stage, High Court cannot appreciate the evidence, but can evaluate material and documents on records to the extent of its prima facie satisfaction about the existence of sufficient ground for proceeding against the accused — Offence under Prevention of Corruption Act, 1988 — Investigation not complete — Quashing of investigation and proceedings by High Court acting upon documents annexed to the petition under S. 482 — Held, not proper — It was impermissible for High Court to look into materials, the acceptability of which was essentially a matter for trial — Impugned judgment of High Court, held, liable to be set aside — Prevention of Corruption Act, 1988, S. 13(1)(e)*

The respondents (accused public servant and his relatives) filed a petition under Section 482 CrPC before the High Court for quashing the investigation and proceedings initiated under the Prevention of Corruption Act, 1988. The said prayer was made on the ground that while investigating into the alleged acquisition of disproportionate assets by Respondent 1 (accused), the income of the other respondents was not taken note of. The High Court held that the documents annexed to the petition, more particularly, the income tax returns indicated (*i*) that all the properties shown in the returns were fully explained to have been acquired from the known sources of income of the accused and his relatives, and nothing had been found to have been acquired

(11)(vi) Proper mode of disposal/exercise of power under/Matters to be considered *(contd.)*

disproportionately to the income of the accused, (*ii*) that the properties acquired by his relatives could not have been taken for constituting the offence so far as the accused was concerned, and (*iii*) that since no opportunity of explanation, as stipulated in Section 13(1)(*e*) of the Prevention of Corruption Act, 1988, was given to the accused, he could not be said to have failed to satisfactorily account for the pecuniary resources and properties disproportionate to his known sources of income. Accordingly, it was held that though considerable time had elapsed to collect evidence, nothing substantial had been collected to suggest that if prosecuted, the public servant would be liable to be convicted. With these observations, the investigation and further proceedings in the case registered were quashed.

Allowing the appeal and setting aside the impugned judgment of the High Court,

Held :

Exercise of power under Section 482 of the Code in a case of this nature is an exception and not the rule. (Para 8)

It was not proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It was erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. (Para 11)

In the present case, the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 of the Code, it is not permissible for the Court to act as if it was a trial Judge. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. (Para 13). *State of M.P.* v. *Awadh Kishore Gupta*, (2004) 1 SCC 691: 2004 SCC (Cri) 353: AIR 2004 SC 517: 2004 Cri LJ 598.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 18-11-2003]

Chand Dhawan v. Jawahar Lal, (1992) 3 SCC 317: 1992 SCC (Cri) 636, relied on

[7231] — S. 482 — Petition under for quashing complaint — *Court's prima facie satisfaction must be based only on the allegations made in the complaint taking them to be correct — If clear allegations constituting the offence alleged are made, the court should be reluctant to interfere*

Per majority

In case no offence is committed on the allegation and the ingredients of Ss. 405 and 406, IPC are not made out, the High Court in exercise of power under S. 482, CrPC would be justified in quashing the proceedings. But the High Court should very sparingly exercise its discretion under S. 482, CrPC. For the purpose of exercising its power under S. 482, CrPC to quash an FIR or a complaint the High Court should proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se. It has no jurisdiction to examine the correctness or otherwise of the allegations. In the present case the allegations made in the complaint were clear, specific and unambiguous and prima facie constitute an offence under S. 406, IPC. Therefore, the appellant cannot be denied the right to prove her case at the trial by pre-empting it at the very behest by the order passed by the High Court. It is, of course, open to the accused at the trial to take whatever defences that were open to him but that stage had not yet come and therefore, the High Court erred in speculating on the merits of the case at that stage and quashing the proceedings.

Per Varadarajan, J. (dissenting)

In a petition under S. 482, CrPC for quashing a criminal complaint, the allegations made in the complaint have to be taken to be correct in order to find out whether they constitute the various ingredients of the offence alleged. For the purposes of the petition under S. 482, CrPC the articles mentioned in the list attached to the complaint in this case must be prima facie considered to be dowry or stridhan of the appellant-wife. *Pratibha Rani* v. *Suraj Kumar*, (1985) 2 SCC 370: 1985 SCC (Cri) 180: AIR 1985 SC 628: 1985 Cri LJ 817.

Bench Strength **3**. Coram: **S. Murtaza Fazal Ali**[1], **A. Varadarajan**[2] and *Sabyasachi Mukharji*, JJ. [Date of decision: 12-3-1985]

[7232] — S. 482 — Quashing of charge — At the stage of framing of charge High Court not justified in going into meticulous consideration of evidence and appreciate documents and statements filed by police — *On facts, High Court's conclusion about inadequacy of evidence, besides being a premature assessment of evidence, is also attributable to wrong premises on which its reason-*

ing is based — Order quashing charge set aside — Penal Code, 1860 — S. 302 r/w S. 120-B. Radhey Shyam v. *Kunj Behari*, 1989 Supp (2) SCC 572: 1990 SCC (Cri) 194: AIR 1990 SC 121.

Bench Strength 3. Coram: *E.S. Venkataramiah, C.J.* and *K.N. Singh* and **S. Natarajan**, JJ. [Date of decision: 17-10-1989]

[7233] — Ss. 482 and 154 — Quashing of FIR — Relevant considerations — Results of/material collected during preliminary investigations — Offences in relation to civil dispute — *Though FIR disclosing only a pure civil case, preliminary investigations revealing offences under Ss. 406 and 120-B IPC and under RBI Act, 1934 — Effect — But High Court going by contents of FIR alone holding that S. 420 IPC not attracted and that it was a simple breach of contract and pure civil dispute and therefore quashing FIR — Sustainability — Held, materials collected during preliminary investigations are relevant — Hence quashment of FIR not sustainable — Fair and impartial investigation directed — Penal Code, 1860, Ss. 420, 406 and 120-B*

Respondent 1, accused was the Director of a Company, which floated a car buying and rental scheme, whereby, it promised to give its investors (investing a sum of Rs 97,907), a monthly rent of Rs 4000 and also give an option to the investor to take back his car at the end of sixty months. Respondent 2 complainant invested in the scheme, got his monthly rent of Rs 4000 as agreed upon but when after the expiry of sixty months, he demanded back his car, it was not given. Instead the Company gave Respondent 2 post-dated cheques amounting to Rs 25,000, Rs 20,000 and Rs 10,000. Respondent 2, therefore, filed an FIR, which however, was quashed under Section 482 CrPC by the impugned judgment of the High Court.

Grounds taken in the memorandum of SLP revealed that during investigations statements of various witnesses had been recorded. Public at large, especially middle class and lower class people had invested their hard-earned money in the scheme. It was also complained of by an investor that no vehicle had been purchased in his name. Statements of witnesses during preliminary investigations also revealed that the Company had resorted to false registrations of vehicles in the name of investors which were actually owned and registered by non-investors who had no link with the Company. For instance, as per the statement of a non-investor his Maruti Esteem car was shown in the Company data as being registered in the name of an investor.

Allowing the appeal,

Held :

There cannot be any doubt or dispute whatsoever that a simple breach of contract or a case involving a pure civil dispute would not attract any offence either under Section 406 or Section 420 IPC. Had the dispute between the parties rested on the aforementioned premise, interference with the judgment of the High Court probably would not have been warranted. The petition of the complainant did not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC. It was purely civil in nature. But then, certain evidences surfaced during investigation which are disclosed in the grounds stated in the memo of this appeal. (Paras 13 and 19)

The allegation made in the FIR and the materials collected during investigation, should be allowed to be taken to its logical end. A large number of illegalities were committed by the said Company including the violation of the provisions of the Reserve Bank of India Act. The High Court in its judgment only considered the case from the point of view of Section 420 IPC and not Sections 406 and 120-B thereof. The legal position in regard to exercise of jurisdiction by the High Court for quashing of an FIR is now well settled. The State contended that having regard to the well-settled principle of law, the High Court should not quash an FIR save and except sparingly and in the rarest of rare cases. In the peculiar facts and circumstances of this case and particularly in view of the materials which have surfaced during investigation, the impugned judgment cannot be sustained. It is set aside accordingly. (Paras 6, 10, 14 and 20)

The investigating officer shall conduct the investigation fairly and impartially and shall allow the Company to carry on its business without any hindrance whatsoever. If any books of account or other documents are required, the investigating officer subject to just exceptions may take the xerox copies thereof duly certified by the accused as also an undertaking that, as and when called upon, they would produce the said books of account in a court of law. Subject to the aforementioned directions, the investigating officer shall carry out the investigation in accordance with law. (Para 19). *State of Maharashtra* v. *Sayed Mohammed Masood*, (2009) 8 SCC 787: (2009) 3 SCC (Cri) 945.

Bench Strength 2. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 4-8-2009]

R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; Mahesh Chaudhary v. State of Rajasthan, (2009) 4 SCC 439: (2009) 2 SCC (Cri) 332, relied on

(11)(vi) Proper mode of disposal/exercise of power under/Matters to be considered *(contd.)*

Alpic Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513: 2001 SCC (Cri) 565; Radha Ballav Pal v. Emperor, AIR 1939 Cal 327; Velji Raghavji Patel v. State of Maharashtra, AIR 1965 SC 1433; Vir Prakash Sharma v. Anil Kumar Agarwal, (2007) 7 SCC 373: (2007) 3 SCC (Cri) 370; All Cargo Movers (India) (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776: (2009) 1 SCC (Cri) 947; New India Assurance Co. Ltd. v. Sadanand Mukhi, (2009) 2 SCC 417: (2009) 1 SCC (Cri) 815; Uma Shankar Gopalika v. State of Bihar, (2005) 10 SCC 336: (2006) 2 SCC (Cri) 49, distinguished

[7234] — S. 482 — Quashing of complaint at initial stage — Matters to be considered — Findings to be arrived at — *High Court rejecting the petition for quashing the complaint without examining the question whether the complaint ex facie make out any offence and whether the ingredients of the offence alleged against the accused are satisfied — Question of limitation and sanction for prosecution raised by the complainant also not considered — Held, order of the High Court not sustainable — Case remitted to the High Court for fresh disposal. M.M. Rajendran* v. *K. Ramakrishnan*, (1997) 6 SCC 85: 1997 SCC (Cri) 849.

Bench Strength 2. Coram: *Dr. A.S. Anand* and *S. Saghir Ahmad*, JJ. [Date of decision: 4-4-1997]

[7235] — S. 482 — Quashing of complaint at initial stage — Considerations involved — Credentials of complainant — Relevance of — Held, at such stage complaint must be read as it is — (Constructive trust imposed under) mutual wills — Evidence that may be adduced — Who may give evidence — *In present case, one PDB was the survivor under mutual wills executed by PDB and her husband MPB — Under said mutual wills MPB and PDB settled all their assets and properties (worth about Rs 2400 crores) in favour of five trusts — PDB some time after death of her husband, nominated three public charitable institutions as beneficiaries of the five trusts — However, some time thereafter, she revoked all five trusts and executed a fresh will by which she bequeathed all the said properties to A-1, and after him, his son — R-2, complainant alleging that appellant-accused, who were all trustees in either the three public charitable institutions or the five revoked trusts, had made PDB erroneously believe, thereby committing criminal breach of trust, that she, PDB was the beneficial owner free from any trust under the said mutual wills/secret trust, and that therefore she had been free to revoke the said five trusts and bequeath the assets settled thereunder to A-1 and his son — R-2 claiming that he was present and consulted when PDB and MPB opted for the mutual wills and when the trusts were executed — R-2 basing the complaint on oral agreement to which he was witness, between husband and wife regarding disposal of properties on their demise, to leave their estate to charity — Hence, complainant alleging that the accused, by causing PDB to revoke the trusts and bequeathing the trust property to their own names, were liable for criminal breach of trust — Whether said allegation raised triable issues, requiring the leading of evidence — Held, in a matter of this type oral evidence is admissible to prove the fraud or breach of trust — Issues raised in this case are matters of evidence, and hence it must go to trial — Questions as to whether there existed valid trusts or that PDB was entitled to dissolve the trusts even during her lifetime, are defences which can be taken by the accused at the appropriate time — Furthermore, the charge of mala fides against R-2 made by the accused has to be decided on leading of evidence — Credentials of complainant at this initial stage is not relevant — Hence at this initial stage, reading the complaint as it is, the complaint cannot be dismissed — Succession Act, 1925, Ss. 80 to 82, 75, 68 — Trusts Act, 1882, Ss. 88 and 89 — Evidence Act, 1872, S. 92 provisos*

Madhav Prasad Birla (MPB) and Smt Priyamvada Devi Birla (PDB) were one of the richest and the wealthiest couples who had no issue during their lifetime. MPB was one of the famous industrialists from the Birla family. The couple executed mutual wills in 1981. In 1982, the couple executed mutual wills revoking the earlier mutual wills. In 1988, during their lifetime, Smt Birla formed four trusts and MPB formed the fifth trust. These trusts, 5 in number, covered corporate assets. On 30-7-1990 MPB died. On 10-9-1990, Smt Birla made nominations of beneficiaries in respect of the five trusts in favour of the three named public charitable institutions. In terms of the said nominations made after the demise of MPB, the assets of the five trusts estimated at Rs 2400 crores stood settled for the benefit of the three public charitable institutions. However, on 15-4-1999 PDB purported to revoke all the five trusts (stood dissolved). On 18-4-1999 Smt Birla executed a will by which she bequeathed all her properties (including the estate of MPB) to Accused 1 R.S. Lodha and after him his son, the value of which is around Rs 2400 crores. Smt Birla died on 3-7-2004. R.S. Lodha was a trustee of the three public charitable institutions prior to the dissolution of the five trusts w.e.f. 15-4-1999. The appellant herein, Shiva Nath Prasad, Accused 2 was also a trustee in the five trusts. Accused 3, Dr. V. Gauri Shanker was a trustee in the three public charitable institutions. He was also a trustee in three out of five mutual trusts referred to above.

Respondent 2 herein (the complainant), a former employee working in M.P. Birla Group, claiming to be a close associate of the late MPB and his wife, petitioned a complaint in the Court of Chief Judicial Magistrate alleging offences under Section 120-B read with Sections 406, 420, 467, 417 and 204 IPC, *inter alia*, on the ground that he was a witness to the intention and the wishes of the couple during their lifetime to leave their estate to charity, which decision was made known to everyone close to the couple including the other members of the Birla family.

Vide order dated 5-10-2004, the CJM held that a prima facie case for offences under Sections 120-B/406/417/420 IPC was made out against the accused. Accordingly, cognizance was taken. Accordingly, the accused were summoned on 29-11-2004. Aggrieved by the said order dated 5-10-2004 of the CJM, Accused 2 Shiva Nath Prasad moved the High Court under Section 482 CrPC for quashing the proceedings. By the impugned judgment, the High Court refused to intervene and set aside/quash the criminal proceedings. Hence, the accused were in appeal before the Supreme Court.

Dismissing the appeals,

Held :

A will on its own terms is inherently revocable during the lifetime of the testator. However, "mutual wills" and "secret trusts" are doctrines evolved in equity to overcome the problems of revocability of wills and to prevent frauds. Mutual wills and secret trusts belong to the same category of cases. The doctrine of mutual wills is to the effect that where two individuals agree as to the disposal of their assets and execute mutual wills in pursuance of the agreement, on the death of the first testator (T-1), the property of the survivor testator (T-2), the subject-matter of the agreement, is held on an implied trust for the beneficiary named in the wills. T-2 may alter his/her will because a will is inherently revocable, but if he/she does so, his/her representative will take the assets subject to the trust. The rationale for imposing a "constructive trust" in such circumstances is that equity will not allow T-2 to commit a fraud by going back on her agreement with T-1. Since the assets received by T-2, on the death of T-1, were bequeathed to T-2 on the basis of the agreement not to revoke the will of T-1, it would be a fraud for T-2 to take the benefit, while failing to observe the agreement, and equity intervenes to prevent this fraud. In such cases, the instrument itself is the evidence of the agreement and he, that dies first, does by his act carry the agreement on his part into execution. If T-2 then refuses, he/she is guilty of fraud, and can never unbind himself/herself and becomes a trustee, of course. For no man shall deceive another to his prejudice. (Para 47)

The mutuality and reciprocity of mutual wills depend on several factors. Mutual wills and trusts are evidenced by the deeds themselves (the recitals, terms and conditions mentioned therein) as also by the surrounding circumstances, namely, the simultaneity and the similarity of the terms of the wills/trusts, the pattern of successive wills, the reciprocity of one to the other, the age of the settlors, the value of the estates, dying of the settlors without any issues, making of the last will without reference to the revocation of previous wills. (Para 47)

Lastly, in law there exists the concept of accessory liability for having assisted in a breach of trust. In such a case the accused is not charged for having received trust income or assets for his own benefit but for having acted as an accessory to a breach of trust. (Para 47)

At the stage when it is being considered whether to quash a complaint, the complaint must be read as it is. (Para 48)

The couple had executed mutual wills in 1981 and 1982; followed by reciprocal trusts in 1988 which are in almost identical words. Clauses 7(*b*) and 8 of the trust deed reflect charitable intention coupled with nominations of 1990. The scheme of the mutual deeds read together is almost identical. It is not disputed that a mere declaration can create a trust obligation, particularly when the settlor is the sole trustee under the trust. (Paras 48 and 49)

What is complained of in the complaint filed by Respondent 2 herein is regarding the acts of management including dissolution of the trusts and making of the will by which trust properties have been allegedly converted dishonestly into personal properties of R.S. Lodha, constituting an offence of criminal misappropriation under Sections 405 and 406 and cheating under Section 420 IPC. The question as to whether Smt Birla had the authority to revoke the mutual trusts in question is different from the allegation that the acts of setting up personal title to the trust property constituted criminal breach of trust and that, the act was performed with the intent of converting trust property into private property pursuant to a conspiracy by the accused. "Secret trust" is a doctrine evolved to prevent fraud; that, fraud is not an ingredient for the application of the said doctrine. The substance of the complaint here is that the secret trust has become the reason for fraud because the legatee under the secret trust

(11)(vi) Proper mode of disposal/exercise of power under/Matters to be considered *(contd.)*

was made to believe by the accused that she was the beneficial owner, free from any trust. In a matter of this type, oral evidence is admissible to prove what is called "fraud". (Paras 48 and 49)

In the complaint, Respondent 2 herein has averred that he was present and consulted when the couple opted for mutual wills in 1981, 1982 and even in 1988 when mutual and reciprocal trusts were executed. The complaint is based on the alleged oral agreement and understanding between the husband and wife regarding disposal of properties on their demise [to charity]. Suffice it to say that these facts in issue are matters of evidence. The question as to whether there existed a valid trust or that Smt Birla was entitled to dissolve the trust even during her lifetime are defences which can be taken at the appropriate time. (Para 48)

It has been averred by the appellants that Respondent 2 (the complainant) is a disgruntled employee of the M.P. Birla Group of Companies and that he has been put up by the other Birlas, hence, the complaint is based on mala fides and should, therefore, be dismissed. The question of mala fides has to be decided on the facts of each case. The credentials of the complainant at this stage is not relevant. What is alleged by the complainant, *inter alia*, is that he was a privy to the discussions and consultations and the thinking which went into making of the mutual wills and the mutual trusts; that, he was a formal witness to some of these deeds and that he was aware that the couple had mutually agreed to the disposal of the property to charity after their demise. In the facts and circumstances of this case, at this stage the argument that the complaint should be dismissed at the initial stage on the ground of alleged mala fides of the complainant cannot be accepted. (Para 52). *Shiva Nath Prasad* v. *State of W.B.*, (2006) 2 SCC 757: AIR 2006 SC 1181: (2006) 127 DLT 198.

Bench Strength **2**. Coram: *B.P. Singh* and **S.H. Kapadia**, JJ. [Date of decision: 3-2-2006]

Dale Re, (1993) 4 All ER 129: 1994 Ch 31: (1993) 3 WLR 652; Cleaver, Re, (1981) 2 All ER 1018: (1981) 1 WLR 939; Ottaway v. Norman, (1971) 3 All ER 1325: 1972 Ch 698: (1972) 2 WLR 50, approved

[7236] — S. 482 — Quashing of complaint or charge-sheet — Scope of High Court's jurisdiction — Complaint has to be examined as a whole without going into merits of the allegations made therein — *If a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, Court should not quash the complaint — But if the allegations do not constitute any offence as alleged and appear to be patently absurd and improbable, Court should not hesitate to quash the complaint — Court's approach should, however, be very circumspect, cautious and careful*

Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgement of first information report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge-sheet on the face of it do not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law. To exercise powers under Section 482 of the Code, the complaint in its entirety will have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear ex facie on the complaint. The truth or falsity of the allegations would not be gone into by the Court at this earliest stage. Whether or not the allegations in the complaint were true is to be decided on the basis of the evidence led at the trial. So the question is: Can it be said that the allegations in the complaint do not make out any case against the accused nor do they disclose the ingredients of an offence alleged against the accused or the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion that there is sufficient ground for proceeding against the accused? (Paras 2, 14 and 15). *Medchl Chemicals & Pharma (P) Ltd.* v. *Biological E. Ltd.*, (2000) 3 SCC 269: 2000 SCC (Cri) 615: AIR 2000 SC 1869: 2000 Cri LJ 1487.

Bench Strength **2**. Coram: *G.B. Pattanaik* and **U.C. Banerjee**, JJ. [Date of decision: 25-2-2000]

Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370: 1985 SCC (Cri) 180; L.V. Jadhav v. Shankarrao Abasaheb Pawar, (1983) 4 SCC 231: 1983 SCC (Cri) 813; Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri)

47; Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; Nagpur Steel & Alloys (P) Ltd. v. P. Radhakrishna, 1997 SCC (Cri) 1073; Ram Jas v. State of U.P., (1970) 2 SCC 740: 1970 SCC (Cri) 516, relied on

Dr. Sharma's Nursing Home v. Delhi Admn., (1998) 8 SCC 745: 1999 SCC (Cri) 91, distinguished

[7237] — S. 482 — Quashing of criminal complaint — Proper manner and mode of dispossal — *High Court in its order not setting out full facts of the case and the circumstances in which the complaint was filed, nor discussing the parameters as indicated by Supreme Court in* Bhajan Lal case, *1992 Supp (1) SCC 335 to quash the proceedings before it — Hence, case remitted to High Court for fresh consideration in accordance with law. A.P. Foam (P) Ltd.* v. *Subhash Chandra*, (2002) 10 SCC 504.

Bench Strength 2. Coram: *S. Rajendra Babu* and *B.N. Agrawal*, JJ. [Date of decision: 1-12-2000]

[7238] — S. 482 — Quashing of criminal proceedings — Exercise of power — Reiterated, inherent power under S. 482 CrPC should not be used to stifle a legitimate prosecution (Para 36). *Monica Kumar (Dr.)* v. *State of U.P.*, (2008) 8 SCC 781: (2008) 3 SCC (Cri) 649: AIR 2008 SC 2781: (2008) 67 AIC 106 (SC).

Bench Strength 2. Coram: *S.B. Sinha* and **L.S. Panta**, JJ. [Date of decision: 27-5-2008]

[7239] — S. 482 — Quashing of criminal proceedings — High Court's approach in exercise of its power under, should be cautious, careful and circumspect — Factors which should be kept in mind — *High Court should not go into merits of the allegations or possible harassment which may be caused to petitioner due to investigation or complaint — In the peculiar facts of the case, held, proceedings required to be quashed*

The High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that FIR does not disclose commission of any offence or that the allegations contained in FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to prevent abuse of the process of the Court. In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished. Therefore, while deciding a petition filed for quashing FIR or complaint or restraining the competent authority from investigating the allegations contained in FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. (Para 31)

If the allegations contained in FIR or complaint disclose commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges *malus animus* against the author of FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. (Para 31)

However, if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under Section 482 CrPC. (Para 31). *Sanapareddy Maheedhar Seshagiri* v. *State of A.P.*, (2007) 13 SCC 165: AIR 2008 SC 787: (2008) 61 AIC 102 (SC): 2008 Cri LJ 1375.

Bench Strength 2. Coram: *S.B. Sinha* and **G.S. Singhvi**, JJ. [Date of decision: 13-12-2007]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Ramesh Chandra Sinha v. State of Bihar, (2003) 7 SCC 254: 2003 SCC (Cri) 1613, relied on

[7240] — S. 482 — Quashing of criminal proceedings — Inherent power of High Court — Caution — Requirement, type and manner of, explained — *Though no hard-and-fast rule can be laid down, where facts are hazy and evidence has not been collected, held, High Court in a S. 482 petition should normally refrain from giving a prima facie decision*

The inherent power under Section 482 CrPC should not be exercised to stifle a legitimate prosecution. The powers possessed by the High Court under Section 482 CrPC are very wide and the very plenitude of the power requires great caution in its exercise. Inherent jurisdiction under Section 482

(11)(vi) Proper mode of disposal/exercise of power under/Matters to be considered *(contd.)*

CrPC has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. The High Court being the highest court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its jurisdiction of quashing the proceeding at any stage. When the complaint is sought to be quashed it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto. Indisputably, there is no quarrel with the well-settled principles of law that while exercising powers under Section 482 CrPC, the High Court does not function as a court of appeal or revision. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which courts exist. (Paras 36 and 33). *Monica Kumar (Dr.)* v. *State of U.P.*, (2008) 8 SCC 781: (2008) 3 SCC (Cri) 649: AIR 2008 SC 2781: (2008) 67 AIC 106 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and **L.S. Panta**, JJ. [Date of decision: 27-5-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Som Mittal v. Govt. of Karnataka, (2008) 3 SCC 753: (2008) 2 SCC (Cri) 73: (2008) 1 SCC (L&S) 895; State of H.P. v. Pirthi Chand, (1996) 2 SCC 37: 1996 SCC (Cri) 210; State of Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Raghubir Saran (Dr.) v. State of Bihar, AIR 1964 SC 1: (1964) 2 SCR 336; Kurukshetra University v. State of Haryana, (1977) 4 SCC 451: 1977 SCC (Cri) 613; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283; R.P. Kapur v. State of Punjab, AIR 1960 SC 866: (1960) 3 SCR 388, relied on

[7241] — S. 482 — Quashing of criminal proceedings — Inherent power of High Court — Assessment of evidence — Permissibility — *When allegations are assumed to be true, High Court under S. 482 CrPC, held, has power to assess the nature of allegations and the prosecution case* (Paras 36 and 33). *Monica Kumar (Dr.)* v. *State of U.P.*, (2008) 8 SCC 781: (2008) 3 SCC (Cri) 649: AIR 2008 SC 2781: (2008) 67 AIC 106 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and **L.S. Panta**, JJ. [Date of decision: 27-5-2008]

[7242] — S. 482 — Quashing of criminal proceedings — Inherent power of High Court — Circumstances in which the extraordinary power can be exercised, reiterated — Case law discussed. *K.L.E. Society* v. *Siddalingesh*, (2008) 4 SCC 541: (2008) 1 SCC (L&S) 1071: (2008) 2 SCC (Cri) 455: AIR 2008 SC 1702: (2008) 64 AIC 124 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Aftab Alam*, JJ. [Date of decision: 3-3-2008]

State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89; R.P. Kapur v. State of Punjab, AIR 1960 SC 866, relied on

[7243] — S. 482 — Quashing of criminal proceedings — Inherent power of High Court — Nature and scope of — Circumstances in which power can be exercised — *Power should be exercised ex debito justitiae to prevent abuse of process of court — But it should not be exercised to stifle legitimate prosecution — High Court should not assume the role of a trial court and embark upon an enquiry as to reliability of the evidence and sustainability of the accusation on a reasonable appreciation of such evidence — Power should be exercised sparingly, with caution and circumspection — On facts held, High Court erred in quashing the criminal proceedings — Penal Code, 1860, Ss. 465, 468, 471 and 420 r/w S. 120-B*

On receipt of a complaint, a charge-sheet was submitted by the police against the respondents alleging commission of offences punishable under Sections 465, 468, 471 and 420 r/w Section 120-B IPC. It was alleged that a sub-lease to act as Excise Contractor of Koratagere was obtained by Respondent 1 by submitting fake bank guarantees, confirmation and extension letters and by impersonation with fraudulent intention. The accused-Respondents 1 and 2 filed application before the High Court under Section 482 CrPC. They inter alia contended that the allegations made have not been borne out by the materials/evidence collected during investigation and continuance of proceedings against them would be against the ends of justice. A Single Judge of the High Court, on analysis of the background facts held that involvement of the excise officials could not be ruled out and when they had been indicated to be witnesses, likelihood of prejudice could not be ruled out. It was also noted that there was no "definite evidence" to show that Accused 1 and 2 were directly involved. Finally, it was observed that there was no material to hold that the accused persons had committed theft of "letter heads" from the bank and/or they had committed forgery for the purpose of cheating or have used genuine forged documents or had cheated the Government. Finally, it was observed that there was no evidence to infer common intention to commit such offences. Hence he quashed the criminal proceedings. Allowing the appeal by the State,

Held :

The order of the Single Judge of the High Court cannot be maintained and therefore, the same is set aside. (Para 10)

Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely: (*i*) to give effect to an order under the Code, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). (Para 6)

While exercising powers under the Section 482 CrPC the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice the court has power to prevent abuse. (Para 6)

It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto. (Para 6)

It is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The inherent power should not be exercised to stifle a legitimate prosecution. (Para 8)

The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court should exercise its extraordinary jurisdiction of quashing the proceeding at any stage. Court must be careful to see that its decision in exercise of this power is based on sound principles. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such a premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. (Para 9)

(11)(vi) Proper mode of disposal/exercise of power under/Matters to be considered *(contd.)*

In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 CrPC. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. (Para 9)

When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegation of mala fides against the informant is of no consequence and cannot by itself be the basis for quashing the proceedings. (Paras 8 and 9). *State of Karnataka* v. *M. Devendrappa*, (2002) 3 SCC 89: 2002 SCC (Cri) 539: AIR 2002 SC 671: 2002 Cri LJ 998: (2002) 2 CHN (Supp) 21.

Bench Strength **3**. Coram: *M.B. Shah, B.N. Agrawal* and **Arijit Pasayat**, JJ. [Date of decision: 16-1-2002]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Raghubir Saran (Dr.) v. State of Bihar, AIR 1964 SC 1: (1964) 1 Cri LJ 1; Dhanalakshmi v. R. Prasanna Kumar, 1990 Supp SCC 686: 1991 SCC (Cri) 142; State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; State of Kerala v. O.C. Kuttan, (1999) 2 SCC 651: 1999 SCC (Cri) 304; State of U.P. v. O.P. Sharma, (1996) 7 SCC 705: 1996 SCC (Cri) 497; Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397: 1997 SCC (Cri) 415; Satvinder Kaur v. State (Govt. of NCT of Delhi), (1999) 8 SCC 728: 1999 SCC (Cri) 1503; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401, relied on

[7244] — S. 482 — Quashing of criminal proceedings — Inherent power of High Court — Nature of — Exercise of said power, when justified — *Held, inherent jurisdiction though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in S. 482 — Power to be exercised* ***ex debito justitiae*** *to prevent abuse of process of court — But, should not be exercised to stifle legitimate prosecution*

Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under the Code, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. (Para 8)

While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. (Para 8)

It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. (Para 8)

When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The inherent power should not be exercised to stifle a legitimate prosecution. (Paras 10 and 11)

The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. Court must be careful to see that its decision in exercise of this power is based on sound principles. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. (Para 11)

In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 CrPC. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. (Para 11). *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque*, (2005) 1 SCC 122: 2005 SCC (Cri) 283: AIR 2005 SC 9: 2005 Cri LJ 92.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 1-11-2004]

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Raghubir Saran (Dr.) v. State of Bihar, AIR 1964 SC 1: (1964) 2 SCR 336: (1964) 1 Cri LJ 1; R.P. Kapur v. State of Punjab, AIR 1960 SC 866: (1960) 3 SCR 388: 1960 Cri LJ 1239; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Dhanalakshmi v. R. Prasanna Kumar, 1990 Supp SCC 686: 1991 SCC (Cri) 142; State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; State of Kerala v. O.C. Kuttan, (1999) 2 SCC 651: 1999 SCC (Cri) 304; State of U.P. v. O.P. Sharma, (1996) 7 SCC 705: 1996 SCC (Cri) 497; Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397: 1997 SCC (Cri) 415; Satvinder Kaur v. State (Govt. of NCT of Delhi), (1999) 8 SCC 728: 1999 SCC (Cri) 1503; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401; State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539, relied on

[7245] — S. 482 — Quashing of criminal proceedings — Inherent power of High Court — Nature of — Exercise of said power, when justified — *Held, inherent jurisdiction though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in S. 482 — Power to be exercised ex debito justitiae to prevent abuse of process of court — But, should not be exercised to stifle legitimate prosecution — High Court should not assume the role of a trial court and embark upon an enquiry as to reliability of evidence and sustainability of accusation on a reasonable appreciation of such evidence — If on consideration of the allegations in the light of the statement made on oath of the complainant or made in FIR it appears that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is mala fide, frivolous or vexatious, held, the proceedings cannot be quashed — But where it appears to the contrary, interference by High Court would be justified — Yet no hard-and-fast rule can be laid down for exercise of this extraordinary jurisdiction — Andhra Pradesh Excise Act, 1968 (17 of 1968) — Andhra Pradesh Prohibition Act, 1995 (17 of 1995)*

By the impugned judgments the High Court quashed the FIR filed by Prohibition and Excise Officers alleging commission of offences under the Andhra Pradesh Excise Act, 1968 and the Andhra Pradesh Prohibition Act, 1995. In all the cases the allegation was that the accused concerned was either transporting or storing black jaggery/molasses for the purpose of manufacturing illicit distilled liquor or was an abettor so far as the offence of manufacturing illicit liquor was concerned. The High Court passed its decision on the basis that there was no material to show that the seized articles were intended to be used for manufacturing of illicit distilled liquor.

Held :

Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of

(11)(vi) Proper mode of disposal/exercise of power under/Matters to be considered *(contd.)*

the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely: (*i*) to give effect to an order under the Code, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. (Para 5)

While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. (Para 5)

It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. (Para 5)

When exercising jurisdiction under Section 482 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The inherent power should not be exercised to stifle a legitimate prosecution. (Paras 7 and 8)

The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. Court must be careful to see that its decision in exercise of this power is based on sound principles. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. (Para 8)

In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognisance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 CrPC. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/FIR has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the FIR that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. (Para 8)

So far as Criminal Appeals Nos. 1180-81, 1184-89, 1191-92 of 2003 and criminal appeals arising out of SLPs (Crl.) Nos. 4702-04, 513 and 2636 of 2003 are concerned, these are not the cases where it can be said that the FIR did not disclose commission of an offence. Therefore, the High Court was not justified in quashing the FIR in these cases. On the other hand, in Criminal Appeals Nos. 1183, 1193-96 of 2003 and criminal appeals arising out of SLPs (Crl.) Nos. 2191, 2632-33 and 3463 of 2003, the FIR did not disclose commission of an offence without anything being added or subtracted from the recitals therein. Therefore, in these cases the High Court's interference does not suffer from any legal infirmity, though the reasonings indicated by the High Court are not approved. So far as criminal appeal arising out of SLP (Crl.) No. 2190 is concerned, it is allowed in respect of A-1, but dismissed so far as it relates to A-2 in the absence of any allegation against him. (Paras 9 and 11 to 13). *State of A.P.* v. *Golconda Linga Swamy*, (2004) 6 SCC 522: 2004 SCC (Cri) 1805: AIR 2004 SC 3967.

Bench Strength **2**. Coram: *S.N. Variava* and **Arijit Pasayat**, JJ. [Date of decision: 27-7-2004]

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Raghubir Saran (Dr.) v. State of Bihar, AIR 1964 SC 1: (1964) 1 Cri LJ 1; R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Dhanalakshmi v. R. Prasanna Kumar, 1990 Supp SCC 686: 1991 SCC (Cri) 142; State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; State of Kerala v. O.C. Kuttan, (1999) 2 SCC 651: 1999 SCC (Cri) 304; State of U.P. v. O.P. Sharma, (1996) 7 SCC 705: 1996 SCC (Cri) 497; Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397: 1997 SCC (Cri) 415; Satvinder Kaur v. State (Govt. of NCT of Delhi), (1999) 8 SCC 728: 1999 SCC (Cri) 1503; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401; State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539, relied on

***Applied in** State of A.P. v. Bajjoori Kanthaiah, (2009) 1 SCC 114*

[7246] — S. 482 — Quashing of criminal proceedings — Inherent power of High Court — Nature of — Reiterated, while exercising powers under S. 482 CrPC, High Court does not function as a court of appeal or revision (Para 33). *Monica Kumar (Dr.)* v. *State of U.P.*, (2008) 8 SCC 781: (2008) 3 SCC (Cri) 649: AIR 2008 SC 2781: (2008) 67 AIC 106 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and **L.S. Panta**, JJ. [Date of decision: 27-5-2008]

[7247] — S. 482 — Quashing of criminal proceedings — Inherent power of High Court — Exercise of, when justified — *Held, inherent jurisdiction though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in S. 482 — Power to be exercised ex debito justitiae to prevent abuse of process of court — But, should not be exercised to stifle a legitimate prosecution — High Court should refrain from giving a prima facie decision where entire facts are incomplete and hazy, more so when evidence not collected and produced before the Court and the issues involved, whether factual or legal, cannot be seen in their true perspective without sufficient material — Yet no hard-and-fast rule can be laid down for exercise of this extraordinary jurisdiction*

Section 482 of the Criminal Procedure Code does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under the Code, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. (Para 19)

While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. (Para 19)

It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. (Para 19)

The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (Para 20). *Minu Kumari* v. *State of Bihar*, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310: AIR 2006 SC 1937: 2006 Cri LJ 2468: (2006) 2 KLT 588: (2006) 3 Guj LR 2013.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-4-2006]

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Raghubir Saran (Dr.) v. State of Bihar, (1964) 2 SCR 336: AIR 1964 SC 1: (1964) 1 Cri LJ 1, relied on

(11)(vi) Proper mode of disposal/exercise of power under/Matters to be considered *(contd.)*

[7248] — S. 482 — Quashing of criminal proceedings — Material collected by investigating agency not gone through by High Court — Offences under Ss. 420, 201 r/w S. 120-B IPC as well as under Ss. 13(1) and 13(2), Prevention of Corruption Act — *Proceedings quashed by High Court on the ground that accused persons have been exonerated of the charges in departmental proceedings conducted for the same cause of action — Held, before quashing the proceedings, High Court ought to have considered the aforesaid material so as to find out if the charges could be framed against the accused on the basis of it — Order passed by High Court set aside — Penal Code, 1860, Ss. 420, 201 r/w S. 120-B — Prevention of Corruption Act, 1988, Ss. 13(1) and 13(2). State of Bihar* v. *Purushottam Singh*, (2002) 10 SCC 333.

Bench Strength **2**. Coram: *M.B. Shah* and *S.N. Variava*, JJ. [Date of decision: 17-11-2000]

[7249] — S. 482 — Quashing of criminal proceedings at initial stage — High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under S. 482 or under Arts. 226 and 227 of the Constitution — *FIR containing all the ingredients of the offence — High Court committed grave error of law in quashing the FIR. State of U.P.* v. *O.P. Sharma*, (1996) 7 SCC 705: 1996 SCC (Cri) 497: AIR 1996 SC 2983.

Bench Strength **3**. Coram: *K. Ramaswamy, B.L. Hansaria* and *G.B. Pattanaik*, JJ. [Date of decision: 6-2-1996]

State of H.P. v. Pirthi Chand, (1996) 2 SCC 37; State of Bihar v. Rajendra Agrawalla, Cr. A. No. 66 of 1996, decided on 18-1-1996; Mushtaq Ahmed v. Mohd. Habibur Rehman Faizi, JT (1996) 1 SC 656, followed

[7250] — S. 482 — Quashing of criminal proceedings at initial stage — Power should be very sparingly and cautiously exercised — *At that High Court should not sift or appreciate the evidence and come to the conclusion that no prima facie case is made out — On facts, High Court not justified in quashing the proceedings — Penal Code, 1860, S. 414*

The inherent power of the court under Section 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the first information report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage it is not open for the court either to sift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out.

In the present case the High Court exceeded its jurisdiction by trying to appreciate the evidence and coming to a conclusion that no offence is made out. The High Court was wholly unjustified in invoking its inherent power under Section 482 of the Code of Criminal Procedure to quash the cognizance taken inasmuch as the allegation in the FIR and material referred to in the charge-sheet do make out an offence under Section 414 of the Indian Penal Code, so far as the respondent is concerned. *State of Bihar* v. *Rajendra Agrawalla*, (1996) 8 SCC 164.

Bench Strength **2**. Coram: *K. Ramaswamy* and **G.B. Pattanaik**, JJ. [Date of decision: 18-1-1996]

Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059, followed

[7251] — S. 482 — Quashing of criminal proceedings at initial stage — Principles for — High Court not justified in rejecting the dying declaration before its veracity could be tested at the trial — *At the stage of investigation High Court cannot take into consideration statement of persons whose evidence is yet to be recorded at the trial — On facts, there exists a prima facie case against the respondent — Hence order of the High Court quashing the prosecution not sustainable*

The veracity, reliability and truthfulness of the alleged dying declaration would be tested only after the evidence is recorded in the court and if on proper evaluation of such evidence, the court comes to the conclusion that the dying declaration is truthful version of the deceased relating to the circumstances of his death, then there is no question of any further corroboration as the conviction can be founded only on such dying declaration. But in case the court finds that the dying declaration suffers from any inherent infirmities it is bound to be rejected. In the present case the High Court rejected the dying declaration before its veracity could be tested at the trial.

In the instant case the High Court took into account the statement of certain persons to the effect that the deceased was a person of unsound mind at the investigation stage itself whose evidence was yet to be recorded at the trial and made observations that the deceased was a person of unsound mind and, therefore, the dying declaration could not be relied on. Such an approach to the case cannot be appreciated. However, after taking into consideration all the facts and circumstances of the case and on perusal of the alleged dying declaration as well as the statement of the witness it must be held that it was not a case where the taking of cognizance of the offence against the respondent deserved quashing by the High Court. On the contrary it is a fit case where the cognizance should be taken against the respondent for the alleged offence and the Magistrate was justified in doing so.

The power of quashing an FIR or criminal proceedings has to be sparingly exercised by the courts with due regard to the guidelines laid down in this behalf. In *Bhajan Lal case*, 1992 Supp (1) SCC 335, certain categories of cases have been laid down by way of illustration wherein the extraordinary power can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. The present case does not fall in any of the categories mentioned in the said decision and on the contrary it goes to show that there exists a prima facie case against the respondent and hence the impugned order of the High Court could not be sustained. *State of Orissa* v. *Bansidhar Singh*, (1996) 2 SCC 194: 1996 SCC (Cri) 259: AIR 1996 SC 938.

Bench Strength **2**. Coram: *N.P. Singh* and **Faizan Uddin**, JJ. [Date of decision: 5-12-1995]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

[7252] — S. 482 — Quashing of FIR — Matters to be considered — *In the instant case, High Court went beyond allegations made in the FIR and thus acted in excess of its jurisdiction by relying on extraneous considerations*

From a plain reading of the findings arrived at by the High Court while quashing the FIR, it is apparent that the High Court while exercising its inherent powers under Section 482 CrPC has gone beyond the allegations made in the FIR and has acted in excess of its jurisdiction and, therefore, the High Court was not justified in quashing the FIR by going beyond the allegations made in the FIR or by relying on extraneous considerations. (Paras 14 and 16). *Pratibha* v. *Rameshwari Devi*, (2007) 12 SCC 369: (2008) 1 SCC (Cri) 399: (2007) 59 AIC 159 (SC): 2008 Cri LJ 329.

Bench Strength **2**. Coram: *A.K. Mathur* and **Tarun Chatterjee**, JJ. [Date of decision: 17-9-2007]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561: 1982 SCC (Cri) 283; Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370: 1985 SCC (Cri) 180; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; State of Bihar v. Murad Ali Khan, (1988) 4 SCC 655: 1989 SCC (Cri) 27, relied on

[7253] — S. 482 — Quashing of FIR/charge-sheet/complaint — Principles for — High Court should exercise its inherent power to quash FIR/charge-sheet/complaint only in rarest of rare cases — Economic offences — *It should not weigh the pros and cons of the prosecution case or consider effect of non-compliance of mandatory provision of law — In cases of economic offences or offences involving moral turpitude or crimes of grave nature greater circumspection and care and caution must be borne in mind by the High Court*

The exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into a cognizable offence. After the investigation is concluded and the charge-sheet is laid, the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out, no further act could be done except to quash the charge-sheet. But only in exceptional cases, i.e., in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance the criminal process is availed of in laying a complaint or FIR which itself does not disclose at all any cognizable offence — the court may embark upon the consideration thereof and exercise the power.

When the High Court exercises its inherent power under Section 482, the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the court. When investigating officer spends considerable time to collect the evidence and places the charge-sheet before the court, further action should not be short-circuited by resorting to exercise inherent power to quash the charge-sheet. The social stability and order requires to be regulated by proceeding against the offender

(11)(vi) Proper mode of disposal/exercise of power under/Matters to be considered *(contd.)*

as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising inherent power. The accused involved in an economic offence destabilises the economy and causes grave incursion on the economic planning of the State. When the legislature entrusts the power to the police officer to prevent organised commission of the offence or offences involving moral turpitude or crimes of grave nature and are entrusted with power to investigate into the crime in intractable terrains and secretive manner in concert, greater circumspection and care and caution should be borne in mind by the High Court when it exercises its inherent power. Otherwise, the social order and security would be put in jeopardy and to grave risk. The accused will have field day in destabilising the economy of the State regulated under the relevant provisions. *State of H.P.* v. *Pirthi Chand*, (1996) 2 SCC 37: 1996 SCC (Cri) 210: AIR 1996 SC 977.

Bench Strength **2**. Coram: *K. Ramaswamy* and *S.B. Majmudar*, JJ. [Date of decision: 30-11-1995]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059, followed

[**Ed.**: In this case order of discharge passed by the Sessions Judge was confirmed by the High Court in its revisional jurisdiction. Scope of High Court's inherent jurisdiction to quash criminal proceeding was not in issue.]

[7254] — S. 482 — Quashing of proceedings by High Court (i) where investigation was not completed; and (ii) where charge-sheet had been filed; by appreciating the evidence —- Permissibility — *Held, impermissible — Where investigation was incomplete, it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial — Further held, even at the stage where charge is framed, the Court has to only prima facie be satisfied about the existence of sufficient ground for proceeding against the accused and for that limited purpose it can evaluate material and documents on record but it cannot appreciate the evidence — On facts further held, High Court in exercise of its powers under S. 482 erred in directing renewal of licence — Moreover, conclusions of High Court, after referring to submissions made by a person who was not even a party to the proceedings are utterly fallacious, were based on surmises and conjectures, unsupported by evidence — Hence, impugned orders set aside*

FIR No. 61 of 2000 was registered for alleged commission of offences under Sections 120-B, 420, 468 and 471 of Penal Code, 1860 read with Sections 13(2) and 13(1)(*a*) of the Prevention of Corruption Act, 1988, against respondent *S*. Criminal Appeal No. 920 of 2003 and the appeal relatable to SLP (Crl.) No. 3199 of 2004 relates to this FIR where investigation was in progress.

Vigilance PS Case No. 25 of 2000 was registered against respondent *B* (father of respondent *N*) on the allegation that he had acquired assets disproportionate to his known source of income. During investigation business premises of *N* were searched and incriminating materials/documents were seized for which FIR No. 43 of 2000 was lodged against *N* and *S*. Appeal relatable to SLP (Crl.) No. 3190 of 2004 relates to FIR No. 43 of 2000 where charge-sheet had been filed.

The High Court in each case while exercising power under Section 482 of the Criminal Procedure Code, 1973, quashed the proceedings. While doing so, it even directed grant of renewal of licence to a company where *N* was a Director and in one of the cases referred to submissions purportedly made on behalf of *B* who was not even a party to the proceedings. Hence the present appeal by the appellant State.

Setting aside High Court's orders and directing completion of investigation within six months in proceedings related to FIR No. 61 of 2000,

Held :

The exercise of power under Section 482 CrPC is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of CrPC. The inherent powers have been conferred, apart from express provisions of law, which are necessary for proper discharge of functions and duties imposed upon it by law. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under CrPC, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. (Para 8)

While exercising the powers under the Section 482 CrPC, the High Court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. In exercise of the powers the court would be justified in quashing any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. (Para 8)

However, the inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. But no hard-and-fast rule as regards cases in which such power can be exercised can be laid down. (Para 11)

Some categories of cases in which inherent power can and should be exercised to quash the proceedings are:

(*i*) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(*ii*) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(*iii*) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

However, in dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The inherent power should be exercised sparingly and that too in the rarest of rare cases. (Paras 9 and 10)

When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (Para 11)

In the instant case the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 CrPC, it is not permissible for the Court to act as if it was a trial court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about the existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate the evidence. (Para 14)

The learned Single Judges did not keep in view the correct position in law while allowing the petitions filed by the respondents. It is baffling as to how a learned Single Judge while exercising powers under Section 482 CrPC could even direct grant of renewal of licence. It is also baffling how the learned Single Judge referred to submissions purportedly made by the learned counsel for *B* who was not even a party. The conclusions are based on surmises and conjectures without any material to support them and are utterly fallacious. Besides, grant of relief to *B* who was not a party is equally indefensible. (Para 15)

When the factual position of the case at hand is considered in the light of principles of law highlighted, the inevitable conclusion is that the High Court was not justified in quashing the investigation and proceedings in the connected case and the charge-sheet filed. Therefore the High Court's impugned orders are indefensible and are accordingly quashed. (Paras 16 and 17). *State of Orissa* v. *Saroj Kumar Sahoo*, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272: (2006) 1 KLT 366.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Tarun Chatterjee*, JJ. [Date of decision: 7-12-2005]

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Raghubir Saran (Dr.) v. State of Bihar, (1964) 2 SCR 336: AIR 1964 SC 1: (1964) 1 Cri LJ 1; R.P. Kapur v. State of Punjab, (1960) 3 SCR 388: AIR 1960 SC 866: 1960 Cri LJ 1239; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539; State of M.P. v. Awadh Kishore Gupta, (2004) 1 SCC 691: 2004 SCC (Cri) 353;

(11)(vi) Proper mode of disposal/exercise of power under/Matters to be considered *(contd.)*

Jehan Singh v. Delhi Admn., (1974) 4 SCC 522: 1974 SCC (Cri) 558; Dhanalakshmi v. R. Prasanna Kumar, 1990 Supp SCC 686: 1991 SCC (Cri) 142; State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; State of Kerala v. O.C. Kuttan, (1999) 2 SCC 651: 1999 SCC (Cri) 304; State of U.P. v. O.P. Sharma, (1996) 7 SCC 705: 1996 SCC (Cri) 497; Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397: 1997 SCC (Cri) 415; Satvinder Kaur v. State (Govt. of NCT of Delhi), (1999) 8 SCC 728: 1999 SCC (Cri) 1503; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401, relied on

Chand Dhawan v. Jawahar Lal, (1992) 3 SCC 317: 1992 SCC (Cri) 636, considered

[7255] — S. 482 — Quashing of proceedings — Scope of/Permissible enquiry — Enquiry into reliability of evidence — *Held, High Court should not ordinarily embark upon an enquiry as to reliability of evidence to sustain the allegations, which is the function of the trial Judge*

Some categories of cases in which inherent power can and should be exercised to quash the proceedings are inter alia where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. However, in dealing with this category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The inherent power should be exercised sparingly and that too in the rarest of rare cases. (Paras 9 and 10). *State of Orissa* v. *Saroj Kumar Sahoo*, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272: (2006) 1 KLT 366.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Tarun Chatterjee*, JJ. [Date of decision: 7-12-2005]

R.P. Kapur v. State of Punjab, (1960) 3 SCR 388: AIR 1960 SC 866: 1960 Cri LJ 1239; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539; State of M.P. v. Awadh Kishore Gupta, (2004) 1 SCC 691: 2004 SCC (Cri) 353; Jehan Singh v. Delhi Admn., (1974) 4 SCC 522: 1974 SCC (Cri) 558, relied on

[7256] — S. 482 — Quashing of FIR/Charge-sheet/Complaint — Consideration of merits of the case and complicated questions of fact and law — Held, improper — *Complaint/proceedings restored* (Paras 33 and 35). *Rajiv Modi* v. *Sanjay Jain*, (2009) 13 SCC 241: (2009) 80 AIC 65 (SC).

Bench Strength **2**. Coram: *Tarun Chatterjee* and **H.L. Dattu**, JJ. [Date of decision: 14-7-2009]

State of H.P. v. Pirthi Chand, (1996) 2 SCC 37: 1996 SCC (Cri) 210, relied on

[7257] — S. 482 — Quashment — Matters to be considered — Enquiry to be made — Need for reasoned order — *Quashing of complaint as also the summons issued against accused-Respondents 2 and 3 by a cryptic order opining that it was abuse of process of court — Propriety — Held, while arriving at said conclusion High Court had not even taken pains to look into the complaint and other materials produced by the complainant — It was alleged that accused persons in criminal conspiracy with each other had cheated the complainant and his sons by getting their (complainant's sons) invention of petrol from polythene published in their (i.e. accused's) names and affixing their own photographs for taking direct or indirect benefits by committing forgery — It was further alleged that accused abused complainant and his sons by using words like "chamar" and also threatened to kill them — Held, the question is not whether there was any truth in allegations made, but whether on basis of allegations a cognizable offence had been alleged — Judicial Magistrate had taken cognizance under SCST Act, 1989 and IPC — Hence, held, High Court erred in exercising its extraordinary power and inherent jurisdiction in quashing the proceedings — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — S. 3(2)(v) — Penal Code, 1860, Ss. 420, 467, 471, 323, 506-B and 120-B* (Paras 3 to 7 and 13 to 16). *Ram Babu* v. *State of M.P.*, (2009) 7 SCC 194: (2009) 3 SCC (Cri) 343: (2009) 80 AIC 39 (SC).

Bench Strength **2**. Coram: *Tarun Chatterjee* and **H.L. Dattu**, JJ. [Date of decision: 8-5-2009]

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; State of Maharashtra v. Ishwar Piraji Kalpatri, (1996) 1 SCC 542: 1996 SCC (Cri) 150, considered and followed

Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059, relied on

[7258] — S. 482 — Scope of High Court's jurisdiction under — *Petition under, for setting aside cognizance of offence taken by Magistrate on the basis of complaint — High Court has only to see whether complaint prima facie disclosed the* *alleged offence — It cannot go into the question whether the offence could be established by evidence or not — Wild Life Protection Act, 1972, Ss. 55, 51 and 9(1)*

Jurisdiction under S. 482 CrPC has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him. Though no inflexible rules could be laid down to regulate the High Court's jurisdiction, when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and whether resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the court or not.

In the present case the allegations in the complaint, taken at their face value, constituted the offence under S. 9(1) r/w S. 51 of the Wild Life (Protection) Act, 1972. The High Court was, therefore, not justified in quashing the proceedings of the Magistrate under S. 482 CrPC. *State of Bihar* v. *Murad Ali Khan*, (1988) 4 SCC 655: 1989 SCC (Cri) 27: AIR 1989 SC 1.

Bench Strength 2. Coram: *Ranganath Misra* and **M.N. Venkatachaliah**, JJ. [Date of decision: 10-10-1988]

[7259] — S. 482 — Scope of High Court's power under — Quashment — Insufficiency of evidence — *High Court can, under its inherent power, quash proceedings pending before the Sessions Judge on ground of insufficiency of evidence — CrPC, 1898, S. 561-A*

The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature.

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.

Considerations justifying the exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as wholesome as the one conferred by S. 482 ought not to be encased within the strait-jacket of a rigid formula.

Also it is wrong to say that at the stage of framing charges the court cannot apply its judicial mind to the consideration whether or not there is any ground for presuming the commission of the offence by the accused. The order framing a charge affects a person's liberty substantially and therefore it is the duty of the court to consider judicially whether the material warrants the framing of the charge. It cannot blindly accept the decision of the prosecution that the accused be asked to face a trial.

So that for the purpose of determining whether there is sufficient ground for proceeding against an accused the court possesses a comparatively wider discretion in the exercise of which it can determine the question whether the material on the record, if unrebutted, is such on the basis of which a conviction can be said reasonably to be possible.

In the present case there is no material on the record on the basis of which any tribunal could reasonably come to the conclusion that the respondents are in any manner connected with the incident leading to the prosecution. *State of Karnataka* v. *L. Muniswamy*, (1977) 2 SCC 699: 1977 SCC (Cri) 404: AIR 1977 SC 1489: (1977) 3 SCR 113: 1977 Cri LJ 1125.

Bench Strength 3. Coram: **Y.V. Chandrachud**, *P.K. Goswami* and *P.N. Shinghal*, JJ. [Date of decision: 3-3-1977]

Distinguished in Divine Retreat Centre v. State of Kerala, (2008) 3 SCC 542

[7260] — S. 482 — Scope of power of High Court under — Quashment — Extent of enquiry permissible — *Distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations — High Court should not assume the role of a trial court and embark upon an enquiry as to reliability of evidence and sustainability of accusation on a reasonable appreciation of such evidence — If on consideration of the allegations in the light of the statement made on oath of the complainant it appears that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, held, the proceedings cannot*

(11)(vi) Proper mode of disposal/exercise of power under/Matters to be considered *(contd.)*

be quashed — But where it appears to the contrary, interference by High Court would be justified — Yet no hard-and-fast rule can be laid down for exercise of this extraordinary jurisdiction — On facts, High Court erred in not quashing the proceedings

Respondent 1 filed a complaint on 9-8-2002. The date of occurrence was indicated to be between 12-7-1995 to 8-5-2002. The basic allegations in the complaint were that an advertisement was issued by Appellant 1 seeking applications for appointment to the post of Area Manager. The complainant, who was then working in another concern, applied for the said post. After an interview on 14-7-1995, he was asked to report at the Bombay office of Appellant 1 Company on 1-8-1995 for training. On receipt of the appointment letter the complainant asked the officials concerned i.e. the other accused persons as to how he was being appointed as Field Officer when he had appeared at the interview for the post of Area Manager. He was assured that the letter for the post of Area Manager will be issued in the first week of April 1996. But no such letter came to be issued and he was not appointed as Area Manager. Grievance was, therefore, made that the accused persons had initially deceived him by appointing him as Field Officer and not as Area Manager, though he was assured that the appointment letter in that regard will be issued.

By order dated 8-10-2002 the learned Judicial Magistrate held that sufficient material existed to proceed under Section 418 IPC against the appellants and, therefore, he issued summons against them. The appellants challenged the said order by filing an application under Section 482 CrPC before the High Court. It was submitted (*a*) that the complaint was misconceived; (*b*) that the complainant had not come to court with clean hands and had suppressed material facts; (*c*) that the complainant had filed a civil suit challenging the validity of his transfer order and had also filed a case in the Labour Court claiming certain payments and compensation, but no grievance regarding cheating was made in those cases; (*d*) that there was no material to show commission of any offence even if complaint petition was considered in its entirety; and (*e*) that the complaint was stale, and in any event, beyond the prescribed period of limitation as provided in Section 468 CrPC. On the other hand, the complainant took the stand that his claim was finally rejected on 5-12-2001 and subsequently his services were terminated on 29-4-2002. That being so, the plea of the complainant having been filed beyond the period of limitation, could not be maintained. The High Court rejected the petition filed under Section 482 CrPC. Hence the present appeal.

Before the Supreme Court, the appellants reiterated the submissions made before the High Court. It was further contended that in the complaint petition there was no reference to the letter dated 5-12-2001 which forms foundation for the High Court's conclusion to hold that the application was not belated. That apart, in view of the endorsement of the complainant on his appointment letter, the statement made in the complaint that the complainant had never accepted appointment as Field Officer, was not correct.

Allowing the appeal and setting aside the judgment of the High Court declining to exercise power under Section 482 CrPC,

Held :

In the present case, the facts indicate that the complainant had not come to court with clean hands. There was no explanation whatsoever for the inaction between 1995 and 2001. The High Court seems to have been swayed by the fact that the appellants have rejected claim of the complainant on 5-12-2001. It failed to notice that the communication dated 5-12-2001 was in response to the letter of the complainant dated 24-11-2001. The complaint was nothing but a sheer abuse of the process of law and this is a case where the power under Section 482 should have been exercised. (Paras 13 and 15). *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque*, (2005) 1 SCC 122: 2005 SCC (Cri) 283: AIR 2005 SC 9: 2005 Cri LJ 92.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 1-11-2004]

[7261] — Ss. 482, 309, 228 and 240 — High Court's power to quash the charge — Manner of exercise of — Held, should not be exercised except for strong reasons to hold that in the interest of justice and in order to avoid the abuse of the process of the court the charge needed to be quashed — Moreover, the exercise of the said power should be confined to exceptional cases and rare occasions — *Where the Sessions Court framed charge under Ss. 304/34 IPC and the prosecution had by then not closed its evidence, held, High Court could not, in exercise of its jurisdiction under S. 482, sift the available medical evidence and quash the charge on the ground that in view of the said evidence the charge in question could not have been framed — Supreme Court directing the trial court to proceed with the hearing of the case — Penal Code, 1860 — Ss. 304/34*

On receipt of a report regarding the murder of a lady *S*, who was the daughter-in-law of Respondent 1 and wife of Respondent 2, the police made an investigation and laid a challan against the three respondents. Pursuant thereto, the Sessions Judge besides framing certain charges against all the respondents, framed charge under Sections 304/34 IPC against Respondents 1 and 2. The accused persons filed a revision petition before the High Court against the said order. However, the High Court, on a suggestion made by the revisionists and the State's counsel, directed the Sessions Judge to first record the medical evidence and till then to exempt Respondents 1 and 2 from personal appearance in the court. Accordingly, the Sessions Judge recorded the evidence of the doctors concerned. Thereafter, the prosecution closed medical evidence from its side. Thereupon, the accused persons filed an application before the Sessions Judge, seeking their discharge, which was later rejected. Thereafter, the accused persons filed an application under Section 482 CrPC seeking quashment of the charge. The said application was allowed by the High Court after sifting the evidence of the doctors in the light of the autopsy report and coming to the conclusion that the charge under Sections 304/34 could not have been framed. Allowing the State's appeal,

Held :

It is well settled that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At this stage of charge the court is to examine the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 CrPC seeking for the quashing of charge framed against them the court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the court the charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. Moreover, once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases. (Para 7)

The High Court has erred in its approach to the case as if it was evaluating the medical evidence for the purpose of determining the question whether the charge under Sections 304/34 IPC framed against the accused-Respondents 1 and 2 was likely to succeed or not. This question was to be considered by the trial Judge after recording the entire evidence in the case. It was not for the High Court to pre-judge the case at the stage when only a few witnesses (doctors) had been examined by the prosecution and that too under the direction of the High Court in the revision petition filed by the accused. The High Court has not observed that the prosecution had closed the evidence from its side. There is also no discussion or observation in the impugned order that the facts and circumstances of the case had made it an exceptional case in which immediate interference of the High Court by invoking its inherent jurisdiction under Section 482 CrPC was warranted in the interest of justice. Therefore, the impugned order of the High Court is set aside and the trial court is directed to proceed with the hearing of the case. (Paras 10 and 11). *State of Delhi* v. *Gyan Devi*, (2000) 8 SCC 239: 2000 SCC (Cri) 1486: AIR 2001 SC 40.

Bench Strength 2. Coram: **D.P. Mohapatra** and *Ruma Pal*, JJ. [Date of decision: 18-10-2000]

Radhey Shyam v. Kunj Behari, 1989 Supp (2) SCC 572: 1990 SCC (Cri) 194; Minakshi Bala v. Sudhir Kumar, (1994) 4 SCC 142: 1994 SCC (Cri) 1181; State of M.P. v. S.B. Johari, (2000) 2 SCC 57: 2000 SCC (Cri) 311, relied on

[7262] — Ss. 482, 245, 397 and 399 — Petition under S. 482 against trial court's refusal to discharge — Mode of disposal of such petition — Speaking order, if necessary — *Where the trial court's order was upheld by Sessions Court and the High Court did not think it proper to interfere therewith in exercise its inherent powers in the light of the controversy raised, the question involved and the stage at which the petitioner had approached High Court, held, High Court could rightly reject the petition without passing a detailed speaking order or recording reasons*

The petition under Section 482 CrPC was not a substantive appeal. An application for discharge of the accused was rejected by the trial court. Revision petition was also dismissed by the Sessions Court and the said order was challenged before the High Court under Section 482 CrPC (inherent power of High Court). If the High Court did not think it fit to exercise inherent powers in the light of the controversy raised, question involved and the stage at which the applicants had approached the Court, it

(11)(vi) Proper mode of disposal/exercise of power under/Matters to be considered *(contd.)*

cannot be said that the Court should have passed detailed speaking order or recorded reasons in support of such order. (Para 22). *Madhumilan Syntex Ltd.* v. *Union of India*, (2007) 11 SCC 297: (2008) 1 SCC (Cri) 143: AIR 2007 SC 1481: (2007) 210 ELT 484: (2007) 290 ITR 199.

Bench Strength **2**. Coram: **C.K. Thakker** and *P.K. Balasubramanyan*, JJ. [Date of decision: 23-3-2007]

[7263] — Ss. 482, 154 and 155 — Abuse of process of law — Particular instances — Exercise of power — Relief — Doing substantial justice — Impugned judgment although not sustainable, in view of facts of case and with a view to do substantial justice, interference refused — *Parallel sale agreements with respondents and appellants in respect of same property — Consequent to decree in specific performance suit, passed seven long years later, sale deed executed in favour of respondents — Appellants' suit for annulment of said decree dismissed with a finding that sale agreement in favour of respondents was not forged or fabricated — Still six long years after decree in former suit, appellants lodging FIR under Ss. 420/323/467/468/471/120-B IPC against respondents reiterating allegation of forgery as made by them in their civil suit for annulment — High Court quashing FIR on the ground of the finding recorded by court in civil suit — Said judgment of High Court, held, legally not sustainable — However, FIR, in view of unexplained inordinate delay in its filing and that too after losing civil suit, held, not bona fide and amounted to abuse of process of law — Hence, for doing substantial justice, said judgment left undisturbed — Penal Code, 1860, Ss. 420, 423, 467, 468, 471 and 120-B — Constitution of India — Arts. 142 and 136*

One *K* executed an agreement dated 4-1-1988 to sell the land specified, in favour of the respondents. The land was already mortgaged with the respondents. The sale deed was to be executed and registered by 10-6-1989. According to the appellants herein, on 22-10-1988, *K* entered into an agreement with their father to sell the same land, and received a certain amount as earnest money. The sale was to be executed and registered by 15-6-1989.

The respondents filed a suit for specific performance of the sale deed against *K* in 1989 which was decreed in 1996 and in pursuance thereof, the sale was executed by *K* in favour of the respondents. The father of the appellants filed a suit seeking cancellation/setting aside of the said decree but the same stood dismissed. An appeal filed thereagainst continued to be pending.

In 2002, the father of the appellants filed an FIR under Sections 420/423/467/468/120-B IPC alleging that *K*'s signatures on the agreement to sell dated 4-1-1988 were forged. At the instance of the respondents, the High Court quashed the FIR on the ground that the civil court had recorded a finding that the document in question was not forged or fabricated. The first informants then filed the present appeal by special leave.

Finding the order of the High Court to be not sustainable legally but in the facts and circumstances of the case refusing interference,

Held :

The findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration. (Para 18)

No explanation has been furnished as to why after expiry of the date of execution of the sale deed in favour of the appellants' father i.e. 15-6-1989, the appellants' father did not file the suit for specific performance which was subsequently filed on 6-2-1996. Even if it is presumed that he was not aware of the suit filed by the respondents, no explanation could be furnished that in case the appellants' father filed another suit for setting aside the decree passed in the respondents' suit, why did he wait till the decision of that suit for lodging FIR, as the civil and criminal proceedings could have proceeded simultaneously. The FIR was filed only after filing of appeal thereagainst before High Court on 15-7-2002. (Para 20)

Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. (Paras 21 and 24)

In cases where there is a delay in lodging an FIR, the court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (Para 22)

The appellants' father lodged FIR under Sections 420/423/467/468/471/120-B IPC, against the respondents. The allegations made in the FIR were substantially similar to the allegations made by the appellants in the civil suit which had been decided against them. It is evident that the aforesaid FIR was filed with inordinate delay and there has been no plausible explanation for the same. The appellants lodged the aforesaid FIR only after meeting their Waterloo in the civil court. Thus, it is evident that the FIR was lodged with the sole intention of harassing the respondents and enmeshing them in long and arduous criminal proceedings. Such an action on the part of the appellants' father would not be bona fide, and the criminal proceedings initiated by him against the respondents amount to an abuse of the process of law. (Para 25)

In view of the said facts, and to do substantial justice, it would not be appropriate to interfere with the order passed by the High Court quashing the criminal proceedings against the respondents in spite of the fact that the impugned judgment is not sustainable in the eye of the law. (Para 26). *Kishan Singh* v. *Gurpal Singh*, (2010) 8 SCC 775.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, **JJ.** [Date of decision: 12-8-2010]

M.S. Sheriff v. State of Madras, AIR 1954 SC 397: 1954 Cri LJ 1019; K.G. Premshanker v. Inspector of Police, (2002) 8 SCC 87: 2003 SCC (Cri) 223; P. Swaroopa Rani v. M. Hari Narayana, (2008) 5 SCC 765: (2008) 3 SCC (Cri) 79; Syed Askari Hadi Ali Augustine Imam v. State (Delhi Admn.), (2009) 5 SCC 528; Vishnu Dutt Sharma v. Daya Sapra, (2009) 13 SCC 729: (2010) 1 SCC (Cri) 1229; Sahib Singh v. State of Haryana, (1997) 7 SCC 231: 1997 SCC (Cri) 1049; Chandrapal Singh v. Maharaj Singh, (1982) 1 SCC 466: 1982 SCC (Cri) 249; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Gorige Pentaiah v. State of A.P., (2008) 12 SCC 531: (2009) 1 SCC (Cri) 446, relied on

King Emperor v. Khwaja Nazir Ahmad, (1943-44) 71 IA 203: AIR 1945 PC 18; Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370: 2005 SCC (Cri) 1101, considered

Karam Chand Ganga Prasad v. Union of India, (1970) 3 SCC 694; V.M. Shah v. State of Maharashtra, (1995) 5 SCC 767: 1995 SCC (Cri) 1077, held, overruled

[7264] — Ss. 482 and 154 & 157 — High Court's power to quash criminal proceedings — Scope *— Should be exercised sparingly in rarest of rare cases — Reliability of allegations made in FIR or complaint not to be examined*

The power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. The court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426: AIR 1992 SC 604: 1992 Cri LJ 527.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, **JJ.** [Date of decision: 21-11-1990]

Applied in Anjani Kumar v. State of Bihar, (2008) 5 SCC 248

Followed in Reshma Bano v. State of U.P., (2008) 5 SCC 791

[7265] — S. 482 — Quashing of FIR — Reasoned order/Speaking order necessity *— High Court allowing respondents' application for quashing FIR registered against them for alleged commission of theft by a practically unreasoned order — Impugned order set aside — Penal Code, 1860, S. 379* (Paras 1 and 5 to 7). *Lakhwant Singh* v. *Jasbir Singh*, (2008) 14 SCC 661.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *G.S. Singhvi*, **JJ.** [Date of decision: 16-9-2008]

Jehan Singh v. Delhi Admn., (1974) 4 SCC 522: 1974 SCC (Cri) 558, considered and relied on

State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539; State of Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272, relied on

[7266] — S. 482 — Application under, rejected by High Court without application of mind and without passing reasoned/speaking order — Sustainability *— Held, impugned order set aside and matter remitted back to High Court for disposal afresh, after hearing the parties, by passing reasoned and speaking order in accordance with law* (Paras 2 and 3). *Ashok Kumar Thakur* v. *State of Bihar*, (2008) 17 SCC 486: (2009) 74 AIC 123 (SC).

Bench Strength **2**. Coram: *Tarun Chatterjee* and *V.S. Sirpurkar*, **JJ.** [Date of decision: 1-12-2008]

(11)(vi) Proper mode of disposal/exercise of power under/Matters to be considered *(contd.)*

[7267] — S. 482 — Improper manner of disposal of application under — *Complaint case was filed against respondent after one week of occurrence — Previously, a police case was registered by him in relation to occurrence — High Court had came to conclusion that since complaint case was filed after filing of police case by Respondent 2, it was filed with ulterior and oblique motive and allowed application under S. 482 by practically a non-reasoned order — Held, that certainly is not the way to deal with an application under S. 482 — Impugned order of High Court set aside and matter remitted for fresh consideration in accordance with law keeping in view parameters of S. 482* (Paras 5 and 7). *Sanjeet Kumar* v. *State of Bihar*, (2009) 12 SCC 136: (2009) 81 AIC 263 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 27-4-2009]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Reshma Bano v. State of U.P., (2008) 5 SCC 791: (2008) 3 SCC (Cri) 86, followed

[7268] — Ss. 482 and 227 — Quashing of criminal proceedings at preliminary stage — *High Court must look into the relevant law and allegations made in the charge-sheet and then consider whether any offence has been made out*

The charge-sheet constitutes prima facie evidence constituting the offence for proceeding further in the matter. Necessarily, therefore, the Court has to look into the relevant law and the allegations made in the charge-sheet and then consider whether any offence has been committed to frame charges for trial before discharging the accused. In the instant case since the High Court had not done that the matter is remitted to the High Court for reconsidering the matter and disposing of it in accordance with law. *State of J&K* v. *Romesh Chander*, (1997) 1 SCC 90: 1997 SCC (Cri) 44: AIR 1997 SC 2401: 1997 Cri LJ 2976.

Bench Strength **2**. Coram: *K. Ramaswamy* and *G.T. Nanavati*, JJ. [Date of decision: 27-11-1996]

[7269] — Ss. 482 and 228 — Quashing of charges — Power of High Court — Held, High Court could not delve into merits and quash the charges by a cryptic order — *As per the prosecution, the conspirator of the plan to murder and rob the deceased was the respondent — High Court dropping all charges (including murder, robbery etc.) against the respondent and directing trial court to prosecute him under S. 411 IPC on the ground that since accused* **P** *had been charged for offence under S. 411 and the case against the respondent being similar, the respondent should be charged only for offence under S. 411 — Held, High Court's order not sustainable — Contention that there was no evidence on record to prove the charges framed against the respondent was of no relevance at this stage — In case there was no evidence, on appreciation thereof, the trial court would decide the case accordingly* (Paras 3 to 5). *State of M.P.* v. *Rakesh*, (2004) 13 SCC 523.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 20-9-2004]

[7270] — Ss. 482 and 239, 240, 245 — Petition for quashing charge framed against accused — If High Court decides to quash the charges it should record reasons therefor — High Court erred in setting aside the charge without recording reasons and directing the Magistrate to consider the material once again and then frame a charge for the same offence — *Constitution of India — Art. 226*

In the present case as the Metropolitan Magistrate has chosen to frame the charge, the High Court, when moved by the accused for quashment of the charge, could have re-examined the records to consider whether the charge framed was sustainable or not. If the High Court decides to quash the charge it is open to the High Court to record the reasons thereof. The present order of the High Court is one of setting aside the charge without stating any reason. But the direction to the Magistrate to consider the materials once again and then to frame a charge for the same offence (if the Magistrate reaches the opinion that there is ground for presuming the commission of offence) is simply to repeat what the Metropolitan Magistrate had done once at the first instance. To ask him to do the same thing over again is adding an unnecessary extra work on the trial court. Be that as it may, the State has not challenged the order of the High Court. Hence the impugned order of the High Court need not be set aside. It is for the Metropolitan Magistrate to exercise his functions under Section 239 or Section 240 of the Code as he deems fit in the light of the observations made above. (Para 13). *Kanti Bhadra Shah* v. *State of W.B.*, (2000) 1 SCC 722: 2000 SCC (Cri) 303: AIR 2000 SC 522: 2000 Cri LJ 746.

Bench Strength **2**. Coram: **K.T. Thomas** and *D.P. Mohapatra*, JJ. [Date of decision: 5-1-2000]

[7271] — S. 482 — Quashing of criminal complaint — Exercise of inherent power — Approach — Cautious approach, but no fixed rule — Questions of fact when may be gone into — *Questions of fact can be gone into when no offence is disclosed, but meticulous analysis at the stage is not necessary — It should be exercised to do* *real and substantial justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse*

When no offence is disclosed by the complaint, the High Court may examine the question of fact. When complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant had alleged and whether any offence is made out even if the allegations are accepted in toto. When exercising jurisdiction under Section 482 CrPC, the High Court could not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it the accusation would not be sustained. To put it clear, it is the function of the trial Judge to do so. The Court must be careful to see that its decision in exercise of its power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. If the allegations set out in the complaint do not constitute offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 CrPC. However, it is not necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. (Paras 40 and 41)

It is true that it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. While exercising inherent powers either on civil or criminal jurisdiction, the Court does not function as a court of appeal or revision. The inherent jurisdiction though wide has to be exercised sparingly, carefully and with caution. It should be exercised to do real and substantial justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. (Para 40). *U.P. Pollution Control Board* v. *Dr. Bhupendra Kumar Modi*, (2009) 2 SCC 147.

Bench Strength **2**. Coram: *K.G. Balakrishnan, C.J.* and **P. Sathasivam**, J. [Date of decision: 12-12-2008]

State of Karnataka v. Pratap Chand, (1981) 2 SCC 335: 1981 SCC (Cri) 453; State of Haryana v. Brij Lal Mittal, (1998) 5 SCC 343: 1998 SCC (Cri) 1315; Nalin Thakor v. State of Gujarat, (2003) 12 SCC 461: 2004 SCC (Cri) Supp 471, distinguished

[7272] — Ss. 482, 200, 202, 203 and 204 — Inherent powers of High Court — Object and manner of exercise of, restated — *Where in the complaint under Ss. 406, 420 and 120-B IPC, no offence was made out against the accused, held, the Magistrate committed a manifest error in issuing process and the High Court erred in not invoking its inherent powers to correct that error — Penal Code, 1860, Ss. 406, 420 and 120-B*

In the present case, except against Appellant 7, no offence was made out against the remaining appellants. The High Court failed to exercise jurisdiction under Section 482 CrPC to correct the manifest error committed by the Magistrate in issuing process against Appellants 1-6 and 8 when the alleged acts against them did not constitute offences for want of satisfying the ingredients of the offences. The approach and considerations while exercising power and jurisdiction by a Magistrate at the time of issuing process are to be in terms of Sections 200 to 203 CrPC, having due regard to the position of law explained in various decisions of Supreme Court, and whereas while exercising power under Section 482 CrPC the High Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order under CrPC, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. Therefore, the exercise of power under Section 482 CrPC should be consistent with the scope and ambit of the same in the light of the decisions of the Supreme Court. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of court may not be allowed to be utilized for any oblique motive. When a person approaches the High Court under Section 482 CrPC to quash the very issue of process, the High Court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred. (Paras 23, 24 and 27). *S.W. Palanitkar* v. *State of Bihar*, (2002) 1 SCC 241: 2002 SCC (Cri) 129: AIR 2001 SC 2960: 2002 Cri LJ 548.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **Shivaraj V. Patil**, JJ. [Date of decision: 18-10-2001]

Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507, relied on

Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., (2000) 3 SCC 269: 2000 SCC (Cri) 615, explained

[7273] — S. 482 — Quashing of prosecution at preliminary stage by High Court improper — *Where accused had an alias, then fact of his description by different names in the police papers ought to have been permitted to be certified by affording opportunity to the prosecution to present its case — Prejudging of the case by High Court*

(11)(vi) Proper mode of disposal/exercise of power under/Matters to be considered *(contd.)*

without affording reasonable opportunity to the prosecution to substantiate the allegations not justified — Criminal case restored for trial by trial court. State of Bihar v. *Raj Narain Singh*, 1991 Supp (2) SCC 393: 1991 SCC (Cri) 1045: AIR 1991 SC 1308: (1991) 2 PLJR 51: 1991 Cri LJ 1416.

Bench Strength **3**. Coram: *Ranganath Misra, C.J.* and *M.H. Kania* and *Kuldip Singh*, JJ. [Date of decision: 13-2-1991]

Eastern Spinning Mills v. Rajiv Poddar, 1989 Supp (2) SCC 385, followed

[7274] — Ss. 482, 397, 401, 239, 240 and 173 — Jurisdiction of High Court to quash criminal proceedings — Held, once charges are framed High Court, in its revisional jurisdiction, not justified in quashing the same relying upon documents other than those referred to in Ss. 239 and 240 — *Nor would the High Court be justified in invoking its inherent jurisdiction to quash the proceedings except where forensic exigencies and formidable compulsions justify such a course — Even in such exceptional cases High Court can look into only those documents which are relevant and unimpeachable — Quashing of criminal proceedings on the basis of affidavits filed by the parties not proper*

If charges are framed in accordance with S. 240 CrPC on a finding that a prima facie case has been made out the person arraigned may, if he feels aggrieved invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted under S. 173 CrPC and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. To put it differently, once charges are framed under S. 240 CrPC the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Ss. 239 and 240 CrPC; nor would it be justified in invoking its inherent jurisdiction under S. 482 CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. Even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.

In the present case instead of adverting to and confining its attention to the documents referred to in Ss. 239 and 240 CrPC the High Court has dealt with the rival contentions of the parties raised through their respective affidavits at length and on a threadbare discussion thereof passed the impugned order. The course so adopted cannot be supported; firstly, because finding regarding commission of an offence cannot be recorded on the basis of affidavit evidence and secondly, because at the stage of framing of charge the Court cannot usurp the functions of a trial court to delve into and decide upon the respective merits of the case. *Minakshi Bala* v. *Sudhir Kumar*, (1994) 4 SCC 142: 1994 SCC (Cri) 1181.

Bench Strength **2**. Coram: *S.C. Agrawal* and **M.K. Mukherjee**, JJ. [Date of decision: 10-5-1994]

[7275] — S. 482 — Quashment of complaint on assumption of certain facts even before the evidence was led by the parties — Impermissibility — *Trial court's order summoning the accused — Interference with, by High Court on assumption of certain facts — Impermissibility — Dishonour of cheque issued by firm — Complaint against partners including S — Summonses issued but evidence was yet to be led — Order passed under S. 482 by High Court just at this stage annulling the summons issued to S on the assumption that S was not in charge of, or responsible for, the conduct of the business of the firm, held, improper — Negotiable Instruments Act, 1881, Ss. 138 and 141*

At the stage of summoning when evidence was yet to be led by the parties, the High Court could not on an assumption of facts come to a finding of fact that the respondent was not responsible for the conduct of the business. (Para 4). *Raj Lakshmi Mills* v. *Shakti Bhakoo*, (2002) 8 SCC 236.

Bench Strength **3**. Coram: *B.N. Kirpal, C.J.* and *K.G. Balakrishnan* and *Arijit Pasayat*, JJ. [Date of decision: 8-7-2002]

[7276] — Ss. 482, 228 and 240 — Quashing of proceeding — Application for — Rejection of, by High Court — Propriety — *High Court not interfering with the matter as the same was pending at the stage of charge — Accused challenging High Court's order by contending that taking into consideration the allegations as made in the complaint, no offence under S. 499 IPC was made out — Matter requiring detailed consideration — It was desirable that High Court should hear the parties and pronounce a reasoned order — Hence, matter remitted to High Court for disposal afresh — Penal Code, 1860, S. 499* (Para 4). *Terumo Penpol Ltd.* v. *NCT of Delhi*, (2005) 10 SCC 273: 2005 SCC (Cri) 1513.

Bench Strength **2**. Coram: *B.P. Singh* and *S.B. Sinha*, JJ. [Date of decision: 6-4-2005]

[7277] — Ss. 482 and 320 — Quashing of prosecution — High Court cannot advert to case diary, or rely upon letter addressed by parties to officer-in-charge of police station and quash the prosecution on ground that parties had settled their dispute — *Offences under Ss. 467, 468 and 471 IPC are not compoundable — Respondent ready to transfer the amount in question to bank — Hence, it would not be expedient to allow the prosecution to continue — Direction made to the bank not to disburse the said amount except under orders of court of competent jurisdiction — Penal Code, 1860, Ss. 467, 468 and 471. Karpoori Thakur* v. *Baikunth Nath Dey*, 1990 Supp SCC 136: 1990 SCC (Cri) 642.

Bench Strength **2**. Coram: *A.P. Sen* and *E.S. Venkataramiah*, JJ. [Date of decision: 12-1-1988]

[7278] — Ss. 482, 397, 227 & 228 — Quashing of criminal proceedings — Court has a limited jurisdiction to make only a prima facie appraisal of the charge-sheet and supporting material to decide whether the allegations constituted the offence — Bhopal Gas Tragedy — *Leakage of highly toxic Methyl Isocyanate gas from the storage tank of Bhopal Plant of Union Carbide India Ltd. resulting in enormous loss of human lives, permanent/temporary injuries or total/partial disablement as also loss of cattle lives — Charges framed against personnel of the company who were actually handling the Plant viz. Asstt. Works Manager, Production Manager, Plant Supdt. and Production Asstt. (accused 5 to 9) substantively under Ss. 304 Part II, 326, 324 and 429 IPC and against Chairman, MD, Vice-President in charge of the Plant (accused 2 to 4) under Ss. 304 Part II, 326, 324 and 429 r/w S. 35 IPC — Escape of the gas due to equipment failure, operating problems or maintenance problem — According to expert report needless storage of large quantities of the material in very large-size containers for inordinately long periods as well as insufficient caution in design, in choice of materials of construction and in provision of measuring and alarm instruments, together with the inadequate controls in systems of storage and on quality of stored materials as well as lack of necessary facilities for quick effective disposal of material exhibiting instability, led to the accident — Held on facts, material available on record prima facie does not connect the accused with the offences with which they were charged — Hence those charges quashed and set aside — However, prima facie charge under S. 304-A IPC made out — Since originally case was registered under S. 304-A, charges could be framed thereunder — Trial court may also consider on the material led by the prosecution whether charges could also be framed under Ss. 336, 337 and 338 IPC — Penal Code, 1860, Ss. 304 Part II, 326, 324 & 429 and 304-A, 336, 337 & 338*

It is clear from Sections 227 and 228 of CrPC that while exercising jurisdiction under Section 482 CrPC when the High Court is called upon to quash the charge pursuant to which proceedings at the stage of trial are pending, and even when the High Court is called upon to quash proceedings pursuant to complaint, only a prima facie appraisal of the allegations made in the complaint and the material in support thereof has to be done and the court has no jurisdiction to go into the merits of the allegations, as that stage would come when the trial proceeds. It is, therefore, necessary to keep in view the limited jurisdiction available to the court regarding the permissible scrutiny of the prosecution case as revealed from the charge-sheet and the material supporting the same for framing charges against the present accused.

On the material pressed in service by the prosecution for framing charges against the accused no charge could have been framed against the accused concerned either under Section 304 Part II or under Section 324, 326 or 429 IPC with or without the aid of Section 35 IPC. On these findings all these charges will have to be quashed.

On the material led by the prosecution appropriate charges which are required to be framed against the accused concerned are under Section 304-A IPC so far as Accused 5, 6, 7, 8 and 9 are concerned while so far as Accused 2, 3, 4 and 12 are concerned charges under Section 304-A read with Section 35 IPC will have to be framed. As these offences are triable by the Court of Judicial Magistrate, 1st Class, Bhopal the sessions case shall be transferred to the Court of the Chief Judicial Magistrate, 1st Class, Bhopal who will proceed with the trial in accordance with law and frame appropriate charges under Section 304-A with or without the aid of Section 35, as the case may be, against the accused concerned. *Keshub Mahindra* v. *State of M.P.*, (1996) 6 SCC 129: 1996 SCC (Cri) 1124.

Bench Strength **2**. Coram: *A.M. Ahmadi, C.J.* and **S.B. Majmudar**, J. [Date of decision: 13-9-1996]

Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76: 1991 SCC (Cri) 47; State of U.P. v. O.P. Sharma, (1996) 7 SCC 705: 1996 SCC (Cri) 497, relied on

State of Gujarat v. Haidarali Kalubhai, (1976) 1 SCC 889: 1976 SCC (Cri) 211; Ambalal D. Bhatt v. State of Gujarat, (1972) 3 SCC 525: 1972 SCC (Cri) 618; Suleman Rehiman Mulani v. State of Maharashtra, (1968) 2 SCR 515: AIR 1968 SC 829; Kurban Hussein Mohammedali Rangwalla v. State of Maharashtra, (1965) 2 SCR 622: AIR 1965 SC 1616, distinguished

(11)(vi) Proper mode of disposal/exercise of power under/Matters to be considered *(contd.)*

[7279] — Ss. 482 and 2(d), 154, 155 and 190, 200 — Quashing of complaint — *If averments in complaint prima facie make out a case for investigation the High Court cannot quash the complaint merely because one or two ingredients of the offence have not been stated in detail — Quashing of complaint on ground that the complaint disclosed a commercial or money transaction not justified — Many a cheating is committed in the course of commercial or money transaction — Constitution of India — Art. 226 — Penal Code, 1860, Ss. 420 & 417, 415*

It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence.

It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions.

The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that the respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that the respondent after receiving the goods had sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

In the present case the High Court seems to have adopted a strictly hypertechnical approach and sieved the complaint through a cullendar of finest gauzes for testing the ingredients under Section 415 IPC. Such an endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a commercial transaction simpliciter wherein no semblance of criminal offence is involved. *Rajesh Bajaj* v. *State NCT of Delhi*, (1999) 3 SCC 259: 1999 SCC (Cri) 401: AIR 1999 SC 1216: 1999 Cri LJ 1833.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.S.M. Quadri*, JJ. [Date of decision: 12-3-1999]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

(1998) 3 Chand Cri Cases 238 (P&H), reversed

Distinguished in Anil Ritolla v. State of Bihar, (2007) 10 SCC 110

(vii) Non-quashment — Issue of other directions

See also '(11)(v) Matters at large/Orders/Directions that may be passed', above

[7280] — S. 482 — Non-quashment — Issue of other directions — Permissibility — *While refusing to quash prosecution under Ss. 498-A, 323, 504 and 506 IPC, High Court directing that accused would not be arrested during pendency of trial provided they paid compensation of Rs 4000 p.m. to the victim — Held, procedure adopted was novel but improper — Exercising suo motu powers, held, notices be issued to accused and State to show cause as to why the direction not to arrest be not set aside — Constitution of India — Art. 136* (Paras 3 and 4). *Gir Prasad* v. *State of U.P.*, (2005) 13 SCC 372: (2006) 2 SCC (Cri) 250.

Bench Strength **2**. Coram: *B.N. Agrawal* and *A.K. Mathur*, JJ. [Date of decision: 21-7-2005]

[7281] — S. 482 —Non quashment — Issuance of other direction — Permissibility — *While dismissing the petition, High Court directing the State Govt. to place one of the accused (the present petitioner), a govt. servant (Assistant Engineer in PWD), under suspension on the mere ground that a case had been filed against him by his erstwhile wife for offence under Ss. 406 and 498-A IPC — Held, High Court ought not to have made such a direction as it amounts to practically taking over function of the employer in deciding as to desirability of keeping public servant under suspension or not. Gautam Sinha* v. *State of Bihar*, (2002) 10 SCC 148.

Bench Strength **2**. Coram: *K.T. Thomas* and *M.B. Shah*, JJ. [Date of decision: 15-12-1999]

[7282] — S. 482 — Quashing of criminal proceedings — Stay when the better option — *FIR lodged by respondent against appellants, husband and sister-in-law, alleging adultery — Appellants thereupon filing complaint cases — High Court quashing the proceedings initiated in the complaint cases and directing that the complainants would be at liberty to approach the court in case finding in the case arising out of FIR goes in their favour — Held, proper course to follow would be to stay the proceedings in the complaint cases, to be taken up after decision in the case arising out of FIR* (Paras 2 and 3). *Kamal Chandra Das* v. *Anjana Das*, (2005) 11 SCC 588.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and *P.P. Naolekar*, JJ. [Date of decision: 15-4-2005]

[7283] — S. 482 — Orders other than for quashment — Impermissibility — *While refusing to quash FIR, High Court directing that till the objections of the accused were decided, coercive process issued against him would remain stayed — Held, such direction in favour of the accused could not have been made under any provision of CrPC — Hence, set aside — Accused to surrender and apply for bail* (Para 3). *Sheela Rani* v. *State of U.P.*, (2005) 13 SCC 409: (2006) 2 SCC (Cri) 256.

Bench Strength **2**. Coram: *D.M. Dharmadhikari* and *Arun Kumar*, JJ. [Date of decision: 18-7-2005]

[7284] — Ss. 482, 386 and 378 — Remand for retrial — Appeal before High Court against acquittal by trial court — *Held, even if High Court disagreed with the conclusion of the trial court, it was not justified in remanding the case for retrial after a lapse of six years, particularly in view of the offences alleged being of trivial nature (under S.341, Indian Penal Code and S. 36-AD of Banking Regulation Act, 1949) committed pursuant to a call of strike — Penal Code, 1860, Ss. 341/149/34*

The High Court should have directed the dropping of the proceedings in exercise of its inherent powers under S. 482, CrPC even if it disagreed with the view taken by the trial court with regard to the gist of the offence punishable under S. 341, IPC, having regard to the inordinate delay of nearly six years that had ensued after the judgment of acquittal, the nature and magnitude of the offences alleged to have been committed by the appellants and the difficulties that may have to be encountered in securing the presence of witnesses in a case of this nature nearly 7 years after the incident. A fresh trial nearly seven years after the alleged incident is bound to result in harassment and abuse of judicial process. The termination of the criminal proceedings in that way would secure the ends of justice as it would bring about reconciliation between the management and the employees and also put an end to a stale criminal proceeding in which the public had no longer sufficient interest. *S. Guin* v. *Grindlays Bank Ltd.*, (1986) 1 SCC 654: 1986 SCC (Cri) 64: AIR 1986 SC 289: 1986 Cri LJ 255: (1986) 1 LLN 471.

Bench Strength **2**. Coram: **E.S. Venkataramiah** and *R.B. Misra*, JJ. [Date of decision: 11-12-1985]

S. Veerabadran Chettiar v. E.V. Ramaswami Naicker, 1959 SCR 1211: AIR 1958 SC 1032: 1958 Cri LJ 1565, followed

[7285] — Ss. 482, 407 and 220 — Transfer of complaint case *S* for joint trial with another complaint case *F* which was filed earlier — Direction by High Court in respect of — Propriety — Absence of prayer for joint trial — *Further, delay in filing of complaint* **S** *despite the knowledge of alleged offence — Proceedings in case* **F** *at final stage — On such facts, held, there was no ground for directing the said transfer and joint trial — High Court's said direction set aside — Negotiable Instruments Act, 1881, S. 138*

A cheque was issued by Company *KT* in favour of the respondent, who, in turn, endorsed it in favour of the first appellant. On 26-12-2001, *KT* made a complaint that the first appellant and the respondent and their companies had forged the cheque in question by altering the date from 21-5-2001 to 21-8-2001 and the amount from Rs 2 lakhs to Rs 42 lakhs. The said complaint was registered on 25-3-2002. (This complaint was stayed and is not relevant for the present controversy.)

The cheque in issue was deposited by the first appellant with the bank and on its dishonour, a complaint CC No. 67 of 2002 was filed under Section 138 of the Negotiable Instruments Act by the first appellant against the respondent on 23-1-2002. That apart, on 12-3-2003, a complaint CC No. 181 of 2003 was filed under Section 200 CrPC by the respondent against the first appellant, his wife and another, inter alia, alleging intimidation by the accused and forgery of the cheque in question by the first appellant. The appellants moved the High Court under Section 482 CrPC for quashing of this complaint. While dismissing the petition for quashing, the High Court transferred CC No. 181 of 2003 to the Court where CC No. 67 of 2002 was pending (in fact had reached its final stage and evidence of complainant had been recorded) and directed joint trial.

(11)(vii) Non-quashment — Issue of other directions *(contd.)*

Allowing the appeal,

Held :

Apart from the fact that there was no prayer in the petition filed under Section 482 CrPC seeking joint trial nor was any independent petition filed by the respondent seeking joint trial, even otherwise, having regard to the facts and circumstances, there was no ground to direct transfer of the complaint and joint trial of the two complaint cases. The allegations about forgery were made as far back as in December 2001 and the complaint under Section 138 was filed as far back as on 23-1-2002 but the respondent filed his complaint nearly two years later on 12-3-2003. Further, the fact that the proceedings in complaint 67 of 2002 filed under Section 138 were at final stage, was another important aspect which ought to have been borne in mind. These aspects were not taken into consideration by the High Court while passing the impugned order. In the aforesaid circumstances, the direction in the impugned order for transfer of CC No. 181 of 2003 to be tried with CC No. 67 of 2002 is set aside. (Paras 5 and 6). *T.V. Mylsamy* v. *R. Meenakshi Sundaram*, (2004) 13 SCC 514.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 22-11-2004]

[7286] — Ss. 482, 439, 438 and 407 — Grant of bail while considering application under S. 482 — Direction that may be given — Transfer of case to another trial court — Permissibility — *High Court feeling unhappy with certain acts of lower court, and therefore while considering application of Respondents 1 to 9 under S. 482, transferring the case to another trial court, and also granting bail to the respondents — Held, such course of action not permissible as it foreclosed consideration of any bail application in proper perspective — High Court ought to have taken note that it was not even a case of anticipatory bail under S. 438 — Direction regarding grant of bail therefore set aside, reserving liberty to the respondents to move proper bail application if so advised*

Appellant lodged an FIR alleging death of her husband and his uncle by ten persons, including Respondents 1 to 9. After completion of investigation, a charge-sheet was filed wherein eleven persons including Respondents 1 to 9 were shown as absconders. Non-bailable warrants were issued against respondents and when they could not be arrested, they were declared as proclaimed offenders. At one stage of the criminal proceedings, the respondents moved an application under Section 482 CrPC. The High Court while considering this application, was displeased with certain acts of SDJM and took exception to those acts. The High Court transferred the case to the Chief Judicial Magistrate of another jurisdiction and also granted bail to respondents.

The question before the Supreme Court was whether it was permissible to the High Court to grant bail while considering an application under Section 482 CrPC.

Allowing the appeal,

Held :

The High Court has completely overlooked the fact that Respondents 1 to 9 filed petition under Section 482 of the Code. Even if the High Court found that there was some lapse on the part of SDJM in dealing with the matter, that could not have been the ground for directing release of respondents on bail, that too in a petition under Section 482 of the Code. It was not even a case under Section 438. Even if it was so, the impugned directions could not have been given for releasing Respondents 1 to 9 in the manner it has been done. The jurisdiction under Section 482 of the Code cannot be extended to grant of bail in the manner it has been done. There was not even consideration of merits of the case. The High Court was clearly in error by holding that there was no material to show that Respondents 1 to 9 were absconders. By so observing, the High Court completely lost sight of the fact that in the charge-sheet, Respondents 1 to 9 were shown as absconders. Similarly, in the orders dated 1-6-2004 and 4-6-2004, the Chief Judicial Magistrate and SDJM had clearly mentioned that 11 accused persons were absconders. This was obviously with reference to the charge-sheet filed. (Para 9)

It has been submitted on behalf of Respondents 1 to 9 that trial is in progress and there is no allegation of any misuse of liberty. That question need not be considered in the present proceedings because impugned directions of High Court are unsustainable. The impugned order, insofar it directs release of Respondents 1 to 9 on bail, is therefore set aside. The High Court had completely foreclosed consideration of the application for bail. The High Court also did not examine the question as to the desirability of Respondents 1 to 9 being released on bail. Merely because according to the High Court the SDJM had not followed the directions in its proper perspective, that could not have been a ground for directing release of Respondents 1 to 9 on bail. The direction contained in the impugned order regarding grant of bail to Respondents 1 to 9, is set aside.

Let the respondents appear before the court concerned where the trial is in progress. If any application for bail is made, the same may be considered in its proper perspective by the court concerned. No opinion is expressed on the merits of the case. (Para 10). *Panful Nessa* v. *Mohd. Miraj Ali*, (2008) 7 SCC 759: (2008) 3 SCC (Cri) 233: (2008) 68 AIC 102 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 9-7-2008]

[7287] — Ss. 482 and 190 — Quashing of cognizance of offence — Remand for fresh consideration — Justifiable grounds — Complainant not noticed or heard — *Appellant lodging complaint that his son dying of gunshot injury — Charge-sheet filed and on the basis thereof Magistrate taking cognizance for offences under Ss. 302/34/120-B IPC r/w Ss. 25/27 of the Arms Act — Complainant after 27 months filing application for further investigation — Magistrate allowing application — Police further investigating and submitting charge-sheet against Respondent 1 and Sessions Court taking cognizance without noticing complainant — High Court, therefore, directing fresh consideration of cognizance in compliance with procedure and application of mind to issues involved — Justifiability — High Court whether prejudicial to complainant — In the absence of any other explanation by appellant complainant, impugned order for fresh consideration, held, is not prejudicial — Penal Code, 1860, Ss. 302/34/120-B — Arms Act, 1959, Ss. 25 and 27*

Dismissing the appeal,

Held :

It is not explained as to how the order of the High Court is prejudicial to the appellant. The High Court has directed all procedural safeguards to be followed. The High Court observed that the order of taking cognizance deserved to be set aside. The Magistrate was directed to consider the relevant materials as well as the earlier charge-sheet. It was directed that while taking note of the matter for fresh consideration a notice was required to be sent to the de facto complainant and giving the de facto complainant an opportunity of hearing which was to be done before the order was passed. The High Court also referred to applicability of Section 319 CrPC in appropriate cases. There is no infirmity in the High Court's order. (Paras 12 and 7 to 9). *Chittaranjan Mirdha* v. *Dulal Ghosh*, (2009) 6 SCC 661.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *H.S. Bedi*, JJ. [Date of decision: 8-5-2009]

Gangadhar Janardan Mhatre v. State of Maharashtra, (2004) 7 SCC 768: 2005 SCC (Cri) 404, relied on

[7288] — Ss. 482 and 227 — Directions other than quashment — Quashment not considered advisable due to stage proceedings had reached — However, directions issued to protect interests of appellant-accused — *Allegations pertaining to criminal breach of trust in relation to diamond encrusted heavy gold pendant, chain and earring set against appellant who was foster sister of complainant's husband, and a married lady coming from wealthy background — Held, undoubtedly allegations made are extremely wild and disgusting but how far they can be used to meet requirements of S. 406 IPC is a moot question — However, since FIR relating thereto has been lodged and cognizance also taken, only interests of appellant can be protected — Directed that appellant would not be required to attend the proceedings unless specifically directed by court to do so and that too in case of extreme necessity; that no coercive step shall be taken against her and that she shall be granted bail by court trying the case if it decides to try the offence by framing charge and court to be careful while considering framing of charge — FIR pertaining to S. 406 IPC not quashed — Penal Code, 1860, S. 406 — Constitution of India, Arts. 136 and 226* (Paras 14 to 16). *Vijeta Gajra* v. *State (NCT of Delhi)*, (2010) 11 SCC 618: AIR 2010 SC 2712: 2010 Cri LJ 3841: (2010) 92 AIC 76 (SC).

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 8-7-2010]

(viii) Effect of rejection of quashment application

[7289] — Ss. 482, 190, 203, 211, 227, 239 and 245 — Quashing of proceedings — Rejection of application for — Effect — *Held, such rejection did not take away the right of accused to place materials at the time when the question of framing charge is taken up to show that the materials do not justify framing of charge. Laxminarayana* v. *North East Securities Ltd.*, (2004) 13 SCC 447.

Bench Strength 2. Coram: *Arijit Pasayat* and *C.K. Thakker*, JJ. [Date of decision: 14-9-2004]

(ix) General grounds for quashment

[7290] — Ss. 482 and 154 & 157 — Criminal proceeding — When can be quashed by High Court in exercise of powers under S. 482 or Art. 226 — *Bhajan Lal case* — Circumstances stated by way of illustration — *On facts held, High Court not justified in quashing the FIR*

Respondent 1 (Shri Bhajan Lal) on the one hand and DL (Shri Devi Lal) respondent 2 on the other belong to two rival political parties. In the general election for MLA while DL was elected and became the Chief Minister of the State, respondent 2 lost the

(11)(ix) General grounds for quashment *(contd.)*

election against the wife of respondent 1. At that time respondent 1 was a Minister in the Central Cabinet. On account of political rivalry and institution of a number of criminal cases and counter cases, there was bad blood between respondent 1 and DL. On November 12, 1987, respondent 2 presented a complaint before DL against respondent 1 alleging possession of pecuniary resources or property disproportionate to his known sources of income. The Officer on Special Duty in the Chief Minister's Secretariat made an endorsement 'Chief Minister has seen. For appropriate action' on the complaint and marked the same to the Director General of Police on the same day. The Director General of Police in turn made an endorsement on the complaint 'Please look into this; take necessary action and report' and marked it to SP also on the same day. The complaint along with the endorsements was then put up before the SP on November 21, 1987 on which date itself the SP made his endorsement reading 'Please register a case and investigate'. The SHO (appellant 3) registered a case on the basis of the allegations in the complaint under Ss. 161 and 165 of the Indian Penal Code and S. 5(2) of the Prevention of Corruption Act on November 21, 1987 itself at 6.15 p.m. and took up the investigation. The SHO after forwarding a copy of the first information report to the Magistrate and other officers concerned, himself took up the investigation, and proceeded to the spot accompanied by three constables of whom two constables were handed over one rifle each and 50 cartridges. Respondent 1 thereupon filed a writ petition under Arts. 226 and 227 seeking issuance of a writ of certiorari quashing the first information report and also of a writ of prohibition restraining the authorities from further proceeding with the investigation. The High Court concluded that the allegations do not constitute a cognisable offence for commencing the lawful investigation and granted the relief as prayed for and mulcted respondent 2 with the costs of the writ petition. In the penultimate paragraph of its judgment. The High Court observed thus: "... every politician in Haryana may be the Chief Minister or otherwise, should not while holding office act on the maxim, 'Everything is fair in love and war' but should be sanguine and careful to mete out to his predecessor, a treatment in the words of Porus, uttered while in chains, on being brought before Alexander the Great, 'a treatment which a king should mete out to another king' because it is often said 'as you sow, so shall you reap'." The appellants preferred appeal before Supreme Court by special leave against the High Court's judgment quashing the entire criminal proceedings inclusive of the registration of the first information report and the direction to respondent 2 for payment of the costs to respondent 1. Setting aside the judgment of the High Court by which it quashed the FIR but also quashing the commencement as well as the entire investigation, if any, so far done and also setting aside the High Court's order awarding costs and disposing of the appeal

Held :

The order of the High Court quashing the first information report, viewed from any angle, cannot be sustained both on the question of law and facts. Consequently, that part of the judgment of the High Court quashing the first information report is set aside.

The following categories of cases can be stated by way of illustration wherein the extraordinary power under Art. 226 or the inherent powers under S. 482 CrPC can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised: (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under S. 156(1) of the Code except under an order of a Magistrate within the purview of S. 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S. 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever

reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In the present case the allegations made in the complaint do clearly constitute a cognizable offence justifying the registration of a case and an investigation thereon and this case does not fall under any one of the categories of cases formulated above calling for the exercise of extraordinary or inherent powers of the High Court to quash the FIR itself. *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426: AIR 1992 SC 604: 1992 Cri LJ 527.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 21-11-1990]

***Followed** in Sunita Jain v. Pawan Kumar Jain, (2008) 2 SCC 705; Pratibha v. Rameshwari Devi, (2007) 12 SCC 369; Goondla Venkateswarlu v. State of A.P., (2008) 9 SCC 613; State of Kerala v. Orison J. Francis, (2009) 2 SCC 160*

***Applied** in Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259; Baijnath Jha v. Sita Ram, (2008) 8 SCC 77*

[7291] — S. 482 — High Court's power to quash complaint and consequent criminal proceedings — Scope — *Should not be exercised where allegations prima facie constituting the offence alleged in the complaint — Should be exercised only to save abuse of process of court or to secure ends of justice*

The High Court can exercise its inherent jurisdiction of quashing a criminal proceeding only when the allegations made in the complaint do not constitute an offence or that the exercise of the power is necessary either to prevent the abuse of the process of the court or otherwise to secure the ends of justice. No inflexible guidelines or rigid formula can be set out and it depends upon the facts and circumstances of each case wherein such power should be exercised. When the allegations in the complaint prima facie constitute the offence against any or all of the respondents in the absence of materials on record to show that the continuance of the proceedings would be an abuse of the process of the court or would defeat the ends of justice, the High Court would not be justified in quashing the complaint. *Chand Dhawan* v. *Jawahar Lal*, (1992) 3 SCC 317: 1992 SCC (Cri) 636: AIR 1992 SC 1379: 1992 Cri LJ 1956.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **M. Fathima Beevi**, JJ. [Date of decision: 28-4-1992]

[7292] — S. 482 — Quashment principles reiterated — *Proceeding instituted on a complaint can be quashed in exercise of inherent power only where complaint does not disclose any offence or is frivolous, vexatious or oppressive — Power should not be exercised to stifle a legitimate prosecution — Power should be exercised with circumspection, ex debito justitiae to do real and substantial justice and to prevent abuse of process of court*

In exercise of the powers the Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto. It is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. (Paras 7 and 9)

The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (Para 10)

(11)(ix) General grounds for quashment *(contd.)*

It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (Para 10). *CBI* v. *Ravi Shankar Srivastava*, (2006) 7 SCC 188: (2006) 3 SCC (Cri) 233: AIR 2006 SC 2872.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 10-8-2006]

CBI v. State of Rajasthan, (1996) 9 SCC 735: 1996 SCC (Cri) 1090; Major E.G. Barsay v. State of Bombay, (1962) 2 SCR 195: AIR 1961 SC 1762: (1961) 2 Cri LJ 828; R.P. Kapur v. State of Punjab, (1960) 3 SCR 388: AIR 1960 SC 866: 1960 Cri LJ 1239; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Janata Dal v. H. S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Raghubir Saran (Dr.) v. State of Bihar, (1964) 2 SCR 336: AIR 1964 SC 1: (1964) 1 Cri LJ 1; Dhanalakshmi v. R. Prasanna Kumar, 1990 Supp SCC 686: 1991 SCC (Cri) 142; State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; State of Kerala v. O.C. Kuttan, (1999) 2 SCC 651: 1999 SCC (Cri) 304; State of U.P. v. O.P. Sharma, (1996) 7 SCC 705: 1996 SCC (Cri) 497; Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397: 1997 SCC (Cri) 415; Satvinder Kaur v. State (Govt. of NCT of Delhi), (1999) 8 SCC 728: 1999 SCC (Cri) 1503; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401; State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539, relied on

Distinguished in Divine Retreat Centre v. State of Kerala, (2008) 3 SCC 542

[7293] — Ss. 482, 398 and 274 — Existence of prima facie case upon inquiry — *Magistrate initially not entertaining private complaint but later entertaining it because: (1) Sessions Court in revision finding prima facie case and directing further inquiry and High Court in revision clarifying that the inquiry should be under S. 398, and (2) Magistrate on holding such further inquiry by recording depositions of three witnesses finding that allegations were supported by evidence — High Court not interfering under S. 482 by holding that there was concurrent finding that complaint revealed a prima face case — Held, High Court committed no error in declining to interfere under S. 482 — Penal Code, 1860, Ss. 341, 323 and 506 — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Ss. 3(1)(x) and (2)(vii)*

The High Court by the impugned order held that since the two courts below had concurrently held that a prima facie case under Sections 341, 323 and 506 IPC and Sections 3(*1*)(*x*) and 2(*vii*) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 had been made out against the petitioner (the appellant herein) it was not a fit case in which the proceedings before the Magistrate could be quashed.

Dismissing the appeal,

Held :

The High Court committed no error in declining to interfere under Section 482 CrPC. So long as the Magistrate was satisfied that a prima facie case had been made out, he was competent to issue summons to the accused. A plain reading of the complaint filed by the complainant in the instant case makes out a case against the accused. Not only that, the depositions of the three witnesses examined by the complainant in support of his complaint also support the allegations made in the complaint. The Magistrate was, therefore, justified in taking cognizance against the appellant and the co-accused. (Paras 7 and 1)

Inasmuch as the Magistrate in the instant case summoned the witnesses and examined them afresh, he may have gone beyond what was legally necessary to do but that is no reason to hold that the recording of evidence by the Magistrate as a part of the further enquiry directed by the High Court would vitiate the proceedings before him or the conclusion drawn on the basis of any such enquiry. The High Court clarified that the direction issued by

Sessions Judge was a direction for a further enquiry to be conducted by the CJM under Section 398 CrPC. (Paras 9 and 4)

The complaint which was first dismissed by CJM was returned by Sessions Court for further inquiry on ground that it revealed a prima facie case. That direction did not necessarily oblige the Magistrate to record any further evidence in the case. The nature of the inquiry was in the discretion of the Magistrate which may or may not have included recording of further evidence on behalf of the complainant. The Magistrate could without recording any further evidence in the matter reappraise the averments made in the complaint and the material already on record to determine whether a prima facie case was made out against the accused persons. (Para 9). *Subrata Das* v. *State of Jharkhand*, (2010) 10 SCC 798.

Bench Strength **2**. Coram: *Markandey Katju* and **T.S. Thakur**, JJ. [Date of decision: 22-10-2010]

Gurdial Singh v. Kartar Singh, 1980 Cri LJ 955 (P&H), referred to

[7294] — Ss. 482 and 190 — Cognizance of offence — Quashing of — At least some material indicating guilt of accused necessary, reiterated *— Accused wife having illicit relations alleged to have poisoned husband — Medical report not showing poisoning as the cause — Only that in-laws did not participate in cremation of deceased — Cognizance based on suspicion, not sustainable — Penal Code, 1860 — Ss. 302, 201, 328 and 120-B*

It is well settled by a series of decisions of the Supreme Court that cognizance cannot be taken unless there is at least some material indicating the guilt of the accused. In the present case, there is not even an iota of material indicating the guilt of the accused persons. It is true that at the stage of taking cognizance, adequacy of evidence will not be seen by the court, but there has to be at least some material implicating the accused, and cognizance cannot be taken merely on the basis of suspicion, as it appears to have been done in the present case. To take a contrary view would only lead to harassment of people. (Paras 12 and 13)

Since there is no material on the basis of which cognizance was taken, the order taking cognizance of the offence is quashed. Resultantly, the impugned judgment of the High Court is set aside. (Para 15). *Harishchandra Prasad Mani* v. *State of Jharkhand*, (2007) 15 SCC 494.

Bench Strength **2**. Coram: *S.B. Sinha* and **Markandey Katju**, JJ. [Date of decision: 31-1-2007]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: (1960) 3 SCR 388: 1960 Cri LJ 1239; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Raghubir Saran (Dr.) v. State of Bihar, AIR 1964 SC 1: (1964) 2 SCR 336: (1964) 1 Cri LJ 1; State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283, relied on

[7295] — S. 482 — Quashment suo motu — When warranted — Principles stated *— Held, inherent power under it should not be exercised to stifle a legitimate prosecution — It should be exercised cautiously ex debito justitiae — On facts, the suo motu quashing of the FIR and the investigation was improper and uncalled for*

The power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a premature decision in a case wherein the entire facts are extremely incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved whether factual or legal are of great magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to the cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

The initiation of suo motu proceedings by the Single Judge of the High Court was to quash the FIR and the proceedings connected therewith. It shocks judicial conscience that the Single Judge, before whom the FIR had been challenged, had taken suo motu action and recorded a categorical assertion that '*no offence' thereby meaning much less a cognizable offence* is made out in the FIR, when none of the named accused came before him raising this question of lack of allegations and particulars in the FIR so as to constitute any offence, much less a cognizable offence. Once an investigation by the police is ordered by a Magistrate under S. 156(3) of the Code, the Magistrate cannot place any limitations or direct the officer conducting it as to how to conduct the investigation. This being the legal position, the Single Judge has overstepped his jurisdiction and made the statement which is unwarranted and uncalled for. *Janata Dal* v. *H.S. Chowdhary*, (1992) 4 SCC 305: 1993 SCC (Cri) 36: AIR 1993 SC 892.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 28-8-1992]

***Followed** in Priya Vrat Singh v. Shyam Ji Sahai, (2008) 8 SCC 232*

(11)(ix) General grounds for quashment *(contd.)*

[7296] — S. 482 — Scope of interference with an order framing charges — Nature of jurisdiction exercised thereagainst — Three circumstances given when said power to be exercised — Considerations involved — *Categories of cases in which said inherent power should be exercised as given in* R.P. Kapur case, *AIR 1960 SC 866, p. 869, para 6 and* Bhajan Lal case, *1992 Supp (1) SCC 335, pp. 378-79, para 102, re-enumerated* (Para 10). *State of Punjab* v. *Kasturi Lal*, (2004) 12 SCC 195: AIR 2004 SC 4087: 2004 Cri LJ 3866.

Bench Strength **2**. Coram: *S.N. Variava* and **Arijit Pasayat**, JJ. [Date of decision: 28-7-2004]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Raj Lakshmi Mills v. Shakti Bhakoo, (2002) 8 SCC 236, relied on

[7297] — S. 482 — Quashment — When warranted — *Held, though no hard-and-fast rule can be laid down as regards cases where such power can be exercised, but the High Court being the highest court of a State should normally refrain from giving decision in a case where the entire facts are incomplete and hazy — More so, when the evidence has not been collected and produced before the Court and the issues involved are of magnitude and cannot be seen in their true perspective without sufficient material*

In exercise of the powers the court would be justified in quashing any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. (Para 8)

However, the inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. But no hard-and-fast rule as regards cases in which such power can be exercised can be laid down. (Para 11)

Some categories of cases in which inherent power can and should be exercised to quash the proceedings are:

(*i*) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(*ii*) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(*iii*) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

However, in dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The inherent power should be exercised sparingly and that too in the rarest of rare cases. (Paras 9 and 10)

When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (Para 11). *State of Orissa* v. *Saroj Kumar Sahoo*, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272: (2006) 1 KLT 366.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Tarun Chatterjee*, JJ. [Date of decision: 7-12-2005]

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Raghubir Saran (Dr.) v. State of Bihar, (1964) 2 SCR 336: AIR 1964 SC 1: (1964) 1 Cri LJ 1; R.P. Kapur v. State of Punjab, (1960) 3 SCR 388: AIR 1960 SC 866: 1960 Cri LJ 1239; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539; State of M.P. v. Awadh Kishore Gupta, (2004) 1 SCC 691: 2004 SCC (Cri) 353; Jehan Singh v. Delhi Admn., (1974) 4 SCC 522: 1974 SCC (Cri) 558; Dhanalakshmi v. R. Prasanna Kumar, 1990 Supp SCC 686: 1991 SCC (Cri) 142; State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; State of Kerala v. O.C. Kuttan, (1999) 2 SCC 651: 1999 SCC (Cri) 304; State of U.P. v. O.P. Sharma, (1996) 7 SCC 705: 1996 SCC (Cri) 497; Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397: 1997 SCC (Cri) 415; Satvinder Kaur v. State (Govt. of NCT of Delhi), (1999) 8 SCC 728: 1999 SCC (Cri) 1503; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401, relied on

Chand Dhawan v. Jawahar Lal, (1992) 3 SCC 317: 1992 SCC (Cri) 636, considered

[7298] — Ss. 482 and 204 — Quashment of criminal proceedings at threshold — When warranted — Duty of court before issuing process — Principles reiterated

While exercising jurisdiction under Section 482 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that the Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, otherwise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and bring about its closure without full-fledged enquiry. (Para 18)

Though the High Court may exercise its power relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of CrPC or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in. (Para 19)

Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. However, if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482. (Para 20). *State of A.P.* v. *Gourishetty Mahesh*, (2010) 11 SCC 226: 2010 Cri LJ 3844: (2010) 92 AIC 98.

Bench Strength **2**. Coram: **P. Sathasivam** and *Anil R. Dave*, JJ. [Date of decision: 15-7-2010]

State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522: 2004 SCC (Cri) 1805; R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; State of A.P. v. Bajjoori Kanthaiah, (2009) 1 SCC 114: (2009) 1 SCC (Cri) 481; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

[7299] — S. 482 — Nature of power conferred on High Court — Grounds on which quashment of proceedings permitted — Trial at advanced stage — Effect on trial of co-accused — Relevance — *Reiterated, High Court is supposed to exercise power to do real and substantial justice (**ex debito justitiae**) and to prevent abuse of process of court — It is an extraordinary power which has to be exercised sparingly and with great caution — Exceptional circumstances warranting exercise of power under S. 482 are, where allegations made in FIR or complaint, even if taken on their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against accused — Each case has to be considered on its own merits — On facts held, criminal proceedings based on allegations like forgery, cheating, corruption, etc. against customers of a nationalised bank could not be quashed when prima facie case was made out in the charge-sheet — Penal Code, 1860, Ss. 120-B and 420 — Prevention of Corruption Act, 1988, Ss. 13(1)(d) and 13(2)*

The respondents were customers of a nationalised bank. They and some officials of the Bank were charged under Section 120-B read with Section 420 IPC and Section 13(2) read with Section 13(1)(*d*) of the Prevention of Corruption Act, 1988. The allegations against respondents were that they had committed forgery, fabrication of documents and used those documents as genuine, and that they had entered into a criminal conspiracy with the Chairman and Managing Director and other officials of the Bank with the object of cheating the Bank in the matter of recommending, sanctioning, disbursing huge credit facilities running over hundreds of crores.

The respondents filed a petition in the High Court under Section 482, seeking quashing of the charge-sheets against them. The High Court allowed the petition.

The Supreme Court while allowing the appeals, inter alia took note of the fact that trial in the four cases was at advanced stage inasmuch as 92 witnesses had already been examined.

Held :

Inherent powers of High Court under Section 482 CrPC are meant to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of court. These inherent powers can be

(11)(ix) General grounds for quashment *(contd.)*

exercised in the following category of cases: (*i*) to give effect to an order under the Code; (*ii*) to prevent abuse of the process of court; and (*iii*) to otherwise secure the ends of justice. Extraordinary power under Section 482 CrPC should be exercised sparingly and with great care and caution. The High Court would be justified in exercising the power to prevent injustice and secure ends of justice. India has largely inherited provisions of inherent powers from English jurisprudence, and therefore principles decided by the English courts are of relevance. Crown Court has inherent power to protect its process from abuse. The English courts have also used inherent power to achieve the same objective. (Paras 17 to 20)

Exercise of inherent powers would entirely depend on the facts and circumstances of each case. The object of incorporating inherent powers in CrPC is to prevent abuse of process of court or to secure ends of justice. Both English and the Indian courts have consistently taken the view that inherent powers can be exercised in those exceptional cases where the allegations made in FIR or the complaint, even if are taken on their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused. (Paras 39 and 40)

When the settled legal position is applied to the facts of this case, it is not possible to conclude that complaint and charge-sheet prima facie do not constitute any offence against the respondents. The charge-sheet on the other hand reveals substantial material on record making a clear case under Section 120-B read with Section 420 IPC against respondents and their connivance with the bank officials. It is also not possible to conclude that material on record taken on face value make out no case under Section 120-B read with Section 420 IPC against respondents. Prima facie, this is one case where adequate material is available on record to proceed against the respondents. (Paras 16, 37 and 40 to 41)

Moreover, respondents and the other bank officials share the charges under Section 120-B read with Section 420 IPC. Quashing the charges against respondents would also have very serious repercussions on the pending cases against the bank officials. (Para 43). *CBI* v. *A. Ravishankar Prasad*, (2009) 6 SCC 351.

Bench Strength 2. Coram: **Dalveer Bhandari** and *H.S. Bedi*, JJ. [Date of decision: 15-5-2009]

Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1, clarified and applied

Connelly v. Director of Public Prosecutions, 1964 AC 1254: (1964) 2 WLR 1145: (1964) 2 All ER 401 (HL); Director of Public Prosecutions v. Humphrys, 1977 AC 1: (1976) 2 WLR 857: (1976) 2 All ER 497 (HL); R.P. Kapur v. State of Punjab, AIR 1960 SC 866: (1960) 3 SCR 388; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Union of India v. B.R. Bajaj, (1994) 2 SCC 277: 1994 SCC (Cri) 477; B.S. Joshi v. State of Haryana, (2003) 4 SCC 675: 2003 SCC (Cri) 848; Rumi Dhar v. State of W.B., (2009) 6 SCC 364, relied on

Nikhil Merchant v. CBI, (2008) 9 SCC 677: (2008) 3 SCC (Cri) 858; Jagdish Chanana v. State of Haryana, (2008) 15 SCC 704; Madan Mohan Abbot v. State of Punjab, (2008) 4 SCC 582: (2008) 2 SCC (Cri) 464, considered

CBI v. Duncans Agro Industries Ltd., (1996) 5 SCC 591: 1996 SCC (Cri) 1045, explained

[7300] — S. 482 — Quashing of charge-sheet — Inherent jurisdiction of High Court — Scope and limitations — Allegations of fraud and forgery — *Held, power under is to be exercised to prevent abuse of process of court or to secure ends of justice — Court can quash charge-sheet if allegations in FIR or complaint petition do not disclose commission of offence even if on face value they are taken to be correct in their entirety — While doing so, High Court is not to embark upon appreciation of evidence but to consider only material on record as a whole though the High Court is required to consider as to whether the allegations made in the FIR or the complaint petition fulfil the ingredients of the offences alleged against the accused — Further held, dispute being primarily of civil nature is not by itself a ground to quash criminal proceedings because in cases of forgery and fraud there would always be some element of civil nature — Penal Code, 1860, Ss. 420, 467 and 468*

The appellant, a partner of a firm entered into a contract with complainant's firm to get knowledge and know-how for carpet production and in turn to pay 10% commission on the invoice value of each and every invoice. Alleging that the appellant has committed the offences of criminal breach of trust and/or of cheating and forgery, on the premise that he had made sale of about Rs 9 crores through a sister concern wherefor no commission was paid although the technical know-how was made available by the complainant's firm, a complaint petition was filed and an FIR was lodged. On completion of the investigation, a detailed charge-sheet was submitted. In the said charge-sheet, it was stated that the amount of commission in the invoices was falsely and wrongly shown by showing less sale turnover for paying less commission than the actual due commission amounting to commission of offences under Sections 420, 467, 468 IPC. The

Magistrate took cognizance of the offences against the appellant. The appellant filed an application for quashing of the order before the High Court which was dismissed by reason of the impugned judgment.

Dismissing the appeal, the Supreme Court, held as above.

Held :

The principles providing for exercise of the power by a High Court under Section 482 to quash a criminal proceeding are well known. The Court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the complaint petition even if on face value are taken to be correct in their entirety do not disclose commission of an offence. (Para 11)

The High Court's power under Section 482 is primarily either to prevent abuse of the process of any court or to secure the ends of justice. The Court at that stage would not embark upon appreciation of evidence. The Court shall moreover consider the materials on record as a whole. (Para 14)

Except in very exceptional circumstances, the Court would not look to any document relied upon by the accused in support of his defence. Although allegations contained in the complaint petition may disclose a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. The High Court should be slow in interfering with the proceedings at the initial stage. Merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud there would always be some element of civil nature. For the purpose of exercising its jurisdiction, the superior courts are also required to consider as to whether the allegations made in the FIR or the complaint petition fulfil the ingredients of the offences alleged against the accused. (Paras 12 and 14)

In the instant case, the charge-sheet prima facie discloses commission of offences. A fair investigation was carried out by the investigating officer. The charge-sheet is a detailed one. If an order of cognizance has been passed relying on or on the basis thereof by the learned Magistrate, no exception thereto can be taken. Therefore, there is no legal infirmity in the impugned orders. (Paras 17 and 18). *Mahesh Chaudhary* v. *State of Rajasthan*, (2009) 4 SCC 439.

Bench Strength **2**. Coram: **S.B. Sinha** and *A.K. Ganguly*, JJ. [Date of decision: 3-3-2009]

Kamaladevi Agarwal v. State of W.B., (2002) 1 SCC 555: 2002 SCC (Cri) 200; B. Suresh Yadav v. Sharifa Bee, (2007) 13 SCC 107: (2009) 1 SCC (Cri) 282; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567, applied

[7301] — S. 482 — General grounds for quashment, restated

The power vested in the High Court under Section 482 CrPC can only be invoked for quashing an ongoing investigation, complaint or other proceedings only in cases where either there is legal power to the continuance of the proceedings such as the absence of a sanction wherever required or where averments made in the complaint or first information report even if accepted on their face value do not constitute an offence or where there is no legal evidence to support the charge made against the accused. (Para 6). *Subrata Das* v. *State of Jharkhand*, (2010) 10 SCC 798.

Bench Strength **2**. Coram: *Markandey Katju* and **T.S. Thakur**, JJ. [Date of decision: 22-10-2010]

Arun Shankar Shukla v. State of U.P., (1999) 6 SCC 146: 1999 SCC (Cri) 1076; State of Punjab v. Kasturi Lal, (2004) 12 SCC 195: 2004 SCC (Cri) Supp 168; State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539; CBI v. K.M. Sharan, (2008) 4 SCC 471: (2008) 2 SCC (Cri) 430 State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239: (1960) 3 SCR 388, relied on

[7302] — S. 482 — Quashing of complaint — Grounds — Vague allegations — Matters to be alleged — Held, for lodging a proper complaint mere mentioning of relevant sections and language of those sections not sufficient — *Particulars of offence committed by each accused and role played by them in committing that offence need to be stated — In instant case, allegations related to dowry demand and misbehaviour against husband and parents-in-law (appellants) of complainant — However, said complaint was vague as it did not show which accused had committed what offence and exact role played by appellants in commission of offence(s) — Allegations against husband were somewhat precise, but he had already expired — Held, in such circumstance allowing prosecution to continue against aged appellants would be abuse of process of law — Besides, despite service of notice complainant neither appearing nor engaging counsel to represent her — Hence, said complaint liable to be quashed — Penal Code, 1860, Ss. 406, 498-A & 114* (Paras 9 to 12). *Neelu Chopra* v. *Bharti*, (2009) 10 SCC 184.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Deepak Verma*, JJ. [Date of decision: 7-10-2009]

[7303] — S. 482 — Quashing of complaint — Grounds — Absence of ingredients of offence — Cheating — Conspiracy — Ingredients of — Intention — Liability of principal for criminal acts of agent — *P executed sale deed in Respondent 2's favour on appellant's behalf — Land in dispute was earlier sold to different persons by S —*

(11)(ix) General grounds for quashment *(contd.)*

S brother of P — P was attesting witness also in sale deeds executed by S — Respondent 2 filed complaint case against appellant alleging deep-rooted conspiracy — Magistrate took cognizance and issued process against appellant — High Court dismissed appellant's petition under S. 482 CrPC holding that P, appellant's vendor, and his brother S, had in conspiracy with each other, sold away entire lands and appellant was also a party to such conspiracy — Held, no link established between sale deeds executed by S in respect of mutated property and appellant — Appellant was not an attesting witness to any of the sale deeds — If Respondent 2 prejudiced by fact that appellant had executed sale deed in his favour in respect of disputed land, he could question such transfer and claim damages in respect thereof from P by way of appropriate damages — No action in criminal court would lie in absence of any intention to cheat — Further held, filing of such a criminal complaint was only to pressurise appellant into making a settlement — Contract Act, 1872, S. 188 — Penal Code, 1860, Ss. 406, 420, 465, 468 and 120-B (Paras 14 to 18). *Rama Devi* v. *State of Bihar*, (2010) 12 SCC 273.

Bench Strength **2**. Coram: **Altamas Kabir** and *A.K. Patnaik*, JJ. [Date of decision: 14-9-2010]

[7304] — Ss. 482, 228 and 240 — Quashment of criminal proceedings — Cautious exercise of power — *Reiterated, exercise of such power would depend on facts and circumstances of each case — High Court in exercise of its jurisdiction under S. 482 CrPC, and Supreme Court in terms of Art. 142, would not direct quashing of a case involving crime against society, particularly when both trial court as also High Court have found that a prima facie case has been made out against the accused (appellant herein) for framing charge* (Para 24). *Rumi Dhar* v. *State of W.B.*, (2009) 6 SCC 364.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sinha*, JJ. [Date of decision: 8-4-2009]

[7305] — S. 482 — Allegations set out in complaint or charge-sheet not constituting any offence — *Held, High Court in exercise of its inherent power may quash the Magistrate's order taking cognizance of the offence. Sharda Prasad Sinha (Dr.)* v. *State of Bihar*, (1977) 1 SCC 505: 1977 SCC (Cri) 132: AIR 1977 SC 1754: 1977 Cri LJ 1146: (1977) 2 SCR 357.

Bench Strength **3**. Coram: **P.N. Bhagwati**, *A.C. Gupta* and *P.N. Shinghal*, JJ. [Date of decision: 8-12-1976]

[7306] — S. 482 — Plea for, on ground that arbitral award which was allegedly result of offences in question herein, had been set aside — Tenability of — *Held, offences under Ss. 192 and 199 IPC, if made out, exist independent of final arbitral award* (Para 33). *Maharashtra State Electricity Distribution Co. Ltd.* v. *Datar Switchgear Ltd.*, (2010) 10 SCC 479: (2010) 159 Comp Cas 545.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 8-10-2010]

Suo Motu Proceedings against R. Karuppan, Advocate, In re, (2001) 5 SCC 289: 2001 SCC (Cri) 876; Sushil Kumar v. Rakesh Kumar, (2003) 8 SCC 673; Murray & Co. v. Ashok Kr. Newatia, (2000) 2 SCC 367: 2000 SCC (Cri) 473, referred to

[7307] — S. 482 — Criminal proceedings when should not be quashed — Test — *Whether allegations prima facie established the offence and whether prosecution could be allowed to continue in the interest of justice — On facts held, test satisfied, hence High Court erred in allowing the petition for quashing the proceedings — Penal Code, 1860, Ss. 499 & 500*

According to the appellant the respondents made false and malicious allegations with intention or knowingly or having reasons to believe that such imputations would harm his reputation; due to these imputations made by them, the reputation of the appellant has been lowered in the eyes of his partners, the staff and the workers of the factory. Hence he prayed for punishing the respondents for the offence under Section 500 IPC. The Magistrate, on the complaint, after taking cognizance of the offence, recorded the sworn statement of the complainant (appellant herein) and held that "there were sufficient grounds to proceed the case against the accused persons for the offence punishable under Section 500 IPC". Hence he issued summons to Respondents 1 to 3. Allowing the appeal,

Held :

For deciding whether the criminal proceedings should be allowed to continue or the same should be quashed, two aspects are to be satisfied: (*1*) whether the uncontroverted allegations, as made in the complaint, prima facie establish the offence, and (2) whether it is expedient and in the interest of justice to permit a prosecution to continue. On a plain reading of the order of the Magistrate issuing summons to the respondents, keeping in view the allegations made in the complaint and sworn statement of the appellant, it appears that a prima facie case is made out at that stage. There are no special features in the case to say that it is not expedient and not in the interest of justice to permit the prosecution to continue. The Single Judge of the High Court failed to apply this test. The High Court could not say at that stage that there was no reasonable prospect of conviction resulting in the case after a trial. Assuming that the imputations made could be covered by Exception 9 of Section 499 IPC, several questions still remain to be examined — whether such imputations were made in good faith, in what circumstances, with what intention, etc. All these can be examined on the basis of evidence in the trial. Having regard to the facts of the case it must therefore, be held that the High Court committed a manifest error in quashing the criminal proceedings exercising jurisdiction under Section 482 CrPC. (Paras 8 and 11) . *M.N. Damani* v. *S.K. Sinha*, (2001) 5 SCC 156: 2001 SCC (Cri) 823: AIR 2001 SC 2037: 2001 Cri LJ 2571.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **Shivaraj V. Patil**, JJ. [Date of decision: 2-5-2001]

Sewakram Sobhani v. R.K. Karanjia, Chief Editor, Weekly Blitz, (1981) 3 SCC 208: 1981 SCC (Cri) 698; Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi, (1996) 6 SCC 263: 1996 SCC (Cri) 1310, relied on

Manjaya v. Sesha Shetti, ILR (1888) 11 Mad 477; Sayed Ally v. King Emperor, AIR 1925 Rang 360; Anthoni Udayar v. Velusami Thevar, AIR 1948 Mad 469: 49 Cri LJ 724: (1948) 1 MLJ 420; Baboo Gunnesh Dutt Singh v. Mugneeram Chowdry, (1872) 11 WR 283 SC; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234: AIR 1988 SC 709, distinguished

[7308] — S. 482 — High Court's power under, to quash FIR or complaint — Scope — Guidelines laid down by Supreme Court in *Bhajan Lal case* applied — *Bhajan Lal (1)* — Prima facie offence under Ss. 354 and 509 IPC made out — *Held, High Court not justified in quashing the FIR and complaint*

At the stage of quashing an FIR or complaint the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein. Of course, as has been pointed out in *Bhajan Lal case*, 1992 Supp (1) SCC 335, an FIR or a complaint may be quashed if the allegations made therein are so absurd and inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused but the High Court has not recorded such a finding, obviously because on the allegations in the FIR it was not possible to do so. Therefore, it must be held that the High Court has committed a gross error of law in quashing the FIR and the complaint. Accordingly, the impugned judgment is set aside and the petition filed by the respondent in the High Court under Section 482 CrPC is dismissed. (Para 23). *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill*, (1995) 6 SCC 194: 1995 SCC (Cri) 1059: AIR 1996 SC 309.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 12-10-1995]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335, applied

[7309] — Ss. 482 and 154 — Quashment of FIR — Impugned conduct of accused not amounting to any of the offences named in FIR — *Held, criminal proceedings were liable to be quashed* (Para 29). *V.V.S. Rama Sharma* v. *State of U.P.*, (2009) 7 SCC 234: (2009) 3 SCC (Cri) 356: (2009) 77 AIC 24 (SC): (2009) 4 All LJ 309.

Bench Strength **2**. Coram: *S.B. Sinha* and **Dr. M.K. Sharma**, JJ. [Date of decision: 15-4-2009]

R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567, followed

Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, relied on

[7310] — S. 482 — Power of High Court to quash criminal proceedings at initial stage — *Should be exercised sparingly and cautiously to prevent miscarriage of justice or when it would tantamount to abuse of process of court — Constitution of India, Art. 226*

The High Court should sparingly and cautiously exercise the power under Section 482 of the Code to prevent miscarriage of justice. The High Court would be loath and circumspect to exercise its extraordinary power under Section 482 of the Code or under Article 226 of the Constitution. The Court would consider whether the exercise of the power would advance the cause of justice or it would tantamount to abuse of the process of the court. Social stability and order require to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon the exercise of the inherent power vested in the court. *Rashmi Kumar* v. *Mahesh Kumar Bhada*, (1997) 2 SCC 397: 1997 SCC (Cri) 415.

Bench Strength **3**. Coram: **K. Ramaswamy**, *S.B. Majmudar* and *G.T. Nanavati*, JJ. [Date of decision: 18-12-1996]

State of H.P. v. Pirthi Chand, (1996) 2 SCC 37: 1996 SCC (Cri) 210; State of U.P. v. O.P. Sharma, (1996) 7 SCC 705: 1996 SCC (Cri) 497; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; G.L. Didwania v. ITO, 1995 Supp (2) SCC 724, followed

[7311] — S. 482 — Power of High Court to quash proceedings — Should not be arbitrarily exercised to cut short normal process of a criminal trial except in exceptional cases — *It is not permissible to quash proceedings or appreciate evidence at the stage when the trial had not even commenced. State of Bihar* v. *K.J.D. Singh*, 1994 SCC (Cri) 63.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *N.P. Singh*, JJ. [Date of decision: 17-2-1993]

(11)(ix) General grounds for quashment *(contd.)*

[7312] — S. 482 — Quashing of proceedings — Exercise of inherent powers under S. 482, when justified — *Held, inherent jurisdiction though wide has to be exercised sparingly, carefully and with caution — May be exercised (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice — To be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist — Thus, without going into the question of conviction or acquittal, where on consideration of allegations in the light of the statement made on oath of the complainant it appears that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, held, the proceedings cannot be quashed — But, where it appears to the contrary, held, interference by High Court would be justified — High Court to refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy — More so, when the evidence has not been collected and produced before the Court and the issues involved are of magnitude and cannot be seen in their true perspective without sufficient material — Yet no hard-and-fast rule can be laid down for exercise of this extraordinary jurisdiction*

The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. (Para 11)

Section 482 CrPC envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under the Code, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. Thus, the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on the oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. (Paras 8 and 11). *State of M.P.* v. *Awadh Kishore Gupta*, (2004) 1 SCC 691: 2004 SCC (Cri) 353: AIR 2004 SC 517: 2004 Cri LJ 598.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 18-11-2003]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Raghubir Saran (Dr.) v. State of Bihar, AIR 1964 SC 1: (1964) 1 Cri LJ 1; Dhanalakshmi v. R. Prasanna Kumar, 1990 Supp SCC 686: 1991 SCC (Cri) 142; State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; State of Kerala v. O.C. Kuttan, (1999) 2 SCC 651: 1999 SCC (Cri) 304; State of U.P. v. O.P. Sharma, (1996) 7 SCC 705: 1996 SCC (Cri) 497; Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397: 1997 SCC (Cri) 415; Satvinder Kaur v. State (Govt. of NCT of Delhi), (1999) 8 SCC 728: 1999 SCC (Cri) 1503; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401; State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539, relied on

[7313] — S. 482 — Quashing of complaint or criminal proceedings under, when proper — *Held, quashing of complaint or criminal proceedings under S. 482 depends on the facts and circumstances of each case — Scope and ambit of power under S. 482 has been explained by the Supreme Court in a series of decisions* (Para 8). *Som Mittal* v. *Govt. of Karnataka*, (2008) 3 SCC 574: (2008) 1 SCC (L&S) 910: (2008) 2 SCC (Cri) 1: AIR 2008 SC 1528: 2008 Cri LJ 1927: (2008) 63 AIC 42 (SC).

Bench Strength **3**. Coram: **K.G. Balakrishnan, C.J.** and *R.V. Raveendran* and *J.M. Panchal*, JJ. [Date of decision: 21-2-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; R.P. Kapur v. State of Punjab, AIR 1960 SC 866; State of U.P. v. R.K. Srivastava, (1989) 4 SCC 59: 1989 SCC (Cri) 713; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Sonapareddy Maheedhar Seshagiri v. State of A.P., (2007) 13 SCC 165, relied on

[7314] — S. 482 — Quashing of complaint or FIR — *Where complaint or FIR prima facie does not disclose commission of any cognizable offence against the accused, the same would be liable to be quashed*

The High Court was not justified in taking the view that the petitions filed by the appellants for quashing the complaint and the FIRs registered against them are premature. The allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute any offence as against the appellants. Therefore, the complaint filed by the respondent and the FIRs registered in pursuance thereof are liable to be quashed. (Paras 19 and 20). *Ajay Mitra* v. *State of M.P.*, (2003) 3 SCC 11: 2003 SCC (Cri) 703: AIR 2003 SC 1069: (2003) 3 MPLJ 49: 2003 Cri LJ 1249.

Bench Strength **3**. Coram: *S. Rajendra Babu, Brijesh Kumar* and **G.P. Mathur**, JJ. [Date of decision: 28-1-2003]

State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561: 1982 SCC (Cri) 283; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47, distinguished

[7315] — S. 482 — Quashing of criminal proceeding/FIR — When justified — *Held, High Court is entitled to exercise its inherent jurisdiction for quashing a criminal proceeding/FIR when allegations made in the same do not disclose commission of an offence — Also, it depends upon facts and circumstances of each particular case* (Para 12). *Pratibha* v. *Rameshwari Devi*, (2007) 12 SCC 369: (2008) 1 SCC (Cri) 399: (2007) 59 AIC 159 (SC): 2008 Cri LJ 329.

Bench Strength **2**. Coram: *A.K. Mathur* and **Tarun Chatterjee**, JJ. [Date of decision: 17-9-2007]

[7316] — S. 482 — Quashment — Principles restated

The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings which are relevant for the present purpose are:

(*i*) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing of a complaint.

(*ii*) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with *mala fides*/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(*iii*) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(*iv*) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence. *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753: (2006) 44 AIC 37 (SC).

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

[7317] — S. 482 — Quashment — When justified — *Held, would be justified only if High Court comes to the conclusion that statements made in the complaint, even taken at face value, do not make out any offence — On facts held, High Court erred in*

(11)(ix) General grounds for quashment *(contd.)*

quashing proceedings against respondent-accused — Negotiable Instruments Act, 1881, S. 138 (Para 5). *S.A. Nanjundeswara* v. *M.S. Varlak Agrotech (P) Ltd.*, (2002) 10 SCC 249: 2004 SCC (Cri) 527: AIR 2002 SC 477.

Bench Strength 2. Coram: *G.B. Pattanaik* and *B.N. Agrawal*, JJ. [Date of decision: 23-2-2001]

[7318] — S. 482 r/w Arts. 226/227 of the Constitution — Categories of cases in which such power can be exercised — *As stated in* Bhajan Lal *case, the categories cannot be stated exhaustively — Categories stated therein were only by way of illustration* (Paras 5 and 6). *B.S. Joshi* v. *State of Haryana*, (2003) 4 SCC 675: 2003 SCC (Cri) 848: AIR 2003 SC 1386: (2003) 2 KLT 1062: 2003 Cri LJ 2028.

Bench Strength 2. Coram: **Y.K. Sabharwal** and *H.K. Sema*, JJ. [Date of decision: 13-3-2003]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, explained

(x) Delay/Limitation as a ground for quashment

[7319] — Ss. 482 and 197, 173, 309, 437(6) and 468 — Quashment of criminal proceedings for delay — When warranted — Abuse of process — Scope of right to speedy trial — Provisions for, in general law — Quashment of criminal proceedings due to delay even in serious cases — When warranted — *Speedy investigation and trial, both are enshrined in CrPC — Deprivation of life and liberty "except according to procedure established by law" occurring in Art. 21, reiterated, means that procedure should be "reasonable, fair and just" — Hence, where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice — In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable, including fixation of time-frame for conclusion of trial — Bribe case — Currency notes recovered from the appellant in the year 1981 who was caught red-handed — Charge-sheet filed in 2007 during the pendency of petition filed in 1998 under S. 482 CrPC by appellant alleging undue harassment for eighteen years — Quashment refused by High Court — Sustainability — Held, it is a clear case of violation of fundamental rights of an accused — Despite serious nature of offence, held, criminal case liable to be quashed — High Court's order, set aside — Prevention of Corruption Act, 1947, S. 5(2) — Penal Code, 1860, Ss. 161, 109 and 120-B — Constitution of India — Art. 21*

Allowing the appeal,

Held :

Time and again the Supreme Court has emphasised the need for speedy investigations and trial as both are mandated by the letter and spirit of the provisions of CrPC [in particular, Sections 197, 173, 309, 437(6) and 468, etc.] and the constitutional protection enshrined in Article 21 of the Constitution. Inspired by the broad sweep and content of Article 21 the Supreme Court has observed that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except according to procedure established by law; that such procedure is not some semblance of a procedure but the procedure should be "reasonable, fair and just"; and therefrom flows, without doubt, the right to speedy trial. Inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of the accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case. (Paras 18 to 20 and 30)

It is well settled that the right to speedy trial in all criminal prosecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances and determine in each case whether the right to speedy trial has been denied in a given case. (Para 24)

Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time-frame for conclusion of trial. (Para 25)

The power possessed by the High Court under Section 482 is undoubtedly very wide but it has to be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. It is trite to state that the said powers have to be exercised sparingly and with circumspection only where the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed. (Para 15)

Tested on the touchstone of the broad principles enumerated by the Supreme Court, in the present case the appellant's constitutional right recognised under Article 21 of the Constitution stands violated. There is no hesitation in holding that at least for the period from 7-12-1990 till 28-2-2007 there is no explanation whatsoever for the delay in investigation. Even the direction issued by the High Court seems to have had no effect on the prosecution and they slept over the matter for almost seventeen years. Nothing could be pointed out by the State, far from being established to show that the delay in investigation or trial was in any way attributable to the appellant. The prosecution has failed to show any exceptional circumstance which could possibly be taken into consideration for condoning a callous and inordinate delay of more than two decades in investigations and the trial. It is also pertinent to note that even till date, the State is not sure whether a sanction for prosecuting the appellant is required and if so, whether it has been granted or not. (Paras 28 to 30). *Vakil Prasad Singh* v. *State of Bihar*, (2009) 3 SCC 355.

Bench Strength **2**. Coram: **D.K. Jain** and *R.M. Lodha*, JJ. [Date of decision: 23-1-2009]

Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93; P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578: 2002 SCC (Cri) 830, followed

Maneka Gandhi v. Union of India, (1978) 1 SCC 248; Hussainara Khatoon (1) v. State of Bihar, (1980) 1 SCC 81: 1980 SCC (Cri) 23; Som Mittal v. Govt. of Karnataka, (2008) 3 SCC 574; Kurukshetra University v. State of Haryana, (1977) 4 SCC 451: 1977 SCC (Cri) 613; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Som Mittal v. Govt. of Karnataka, (2008) 3 SCC 574, relied on

[7320] — S. 482 — Quashment of complaint — If warranted — Good faith/public good defence — *Question whether "Word of Caution" published by appellants (alleged by complainant-educational society to have defamed it) was done in "good faith" and for "public good", is a question of fact which required evidence — Stage for recording evidence had not been reached, and thus, in absence of evidence, findings on issues raised cannot be given — Considering complaint as a whole, High Court rightly held that there was no case for quashing complaint under S. 482 CrPC — Penal Code, 1860*, Ss. 499 and 500 (Paras 39 to 41)

The ICFAI, Respondent 2 entered into an agreement with Appellant 1, President and CEO of the CFA Institute, which was incorporated under the laws of the State of Virginia, US, to conduct its CFA programme in India. However, realising that Respondent 2 was not adhering to required standards and quality of the programme, a notice for terminating the licence was issued to Respondent 2.

A civil suit for permanent injunction restraining Respondent 2 from using trade marks, services, service marks or trade name or any other name or mark which may be identical or deceptively similar to marks of CFA was filed by the appellant in the High Court. An interim relief vide order dt. 4-8-2006 was granted which was to be operative *after the end of the current academic session of CFA programme run by the defendants.*

On 30-1-2007, Respondent 2, through its sponsored University in Tripura-the Institute of Chartered Financial Analysts of India University, Tripura, issued an advertisement inviting applications for fresh enrolments for award of "CFA" certification. The advertisement being for subsequent programme and in breach of interim injunction the CFA Institute issued a public notice under the caption "A Word of Caution to the Indian Investment Community".

Alleging that the said public notice was defamatory within the meaning of Section 499 IPC, Respondent 2 filed a private complaint against the appellants. The trial court took cognizance of the complaint and issued summons to the appellants. Feeling aggrieved by the summoning order, the appellants preferred a petition before the High Court under Section 482 CrPC which was dismissed by the impugned judgment. Hence, the present appeal by the accused.

The appellants contended that the said "Word of Caution" published by them was a public duty and thus, a legitimate expression which was also absolutely necessary and in public interest and was singularly covered by the Tenth Exception to Section 499 IPC. It was further contended that the contents of the "Word of Caution" did not in any way lower or cast a reflection on the moral or intellectual character of Respondent 2 and, therefore, Explanation 4 to Section 499 IPC, which imposes restrictions in the law of defamation, is clearly attracted in favour of the appellants. It was thus,

(11)(x) Delay/Limitation as a ground for quashment *(contd.)*

pleaded that in the light of Explanation 4 as well as the Tenth Exception to Section 499 IPC, the allegations in the complaint did not constitute an offence of defamation punishable under Section 500 IPC and, therefore, the High Court ought to have quashed the complaint.

Dismissing the appeal, the Supreme Court held as above. *Jeffrey J. Diermeier* v. *State of W.B.*, (2010) 6 SCC 243.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 14-5-2010]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866 : 1960 Cri LJ 1239; Dinesh Dutt Joshi v. State of Rajasthan, (2001) 8 SCC 570 : 2002 SCC (Cri) 24; Som Mittal (2) v. Govt. of Karnataka, (2008) 3 SCC 574 : (2008) 1 SCC (L&S) 910 : (2008) 2 SCC (Cri) 1, relied on

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426; Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi, (1996) 6 SCC 263 : 1996 SCC (Cri) 1310; Rajendra Kumar Sitaram Pande v. Uttam, (1999) 3 SCC 134 : 1999 SCC (Cri) 393; Sewakram Sobhani v. R.K. Karanjia, (1981) 3 SCC 208 : 1981 SCC (Cri) 698; M.N. Damani v. S.K. Sinha, (2001) 5 SCC 156 : 2001 SCC (Cri) 823; Shriram Refrigeration Industries v. Addl. Industrial Tribunal-cum-Addl. Labour Court, (2002) 9 SCC 708 : 2002 SCC (L&S) 1132; Chand Dhawan v. Jawahar Lal, (1992) 3 SCC 317 : 1992 SCC (Cri) 636; Som Mittal (1) v. Govt. of Karnataka, (2008) 3 SCC 753 : (2008) 1 SCC (L&S) 895 : (2008) 2 SCC (Cri) 73; Jagir Kaur v. Jaswant Singh, AIR 1963 SC 1521 : (1963) 2 Cri LJ 413 : (1964) 2 SCR 73; State of Bihar v. Shyam Yadav, (1997) 2 SCC 507 : 1997 SCC (L&S) 530; D.S. Parvathamma v. A. Srinivasan, (2003) 4 SCC 705, referred to

[7321] — S. 482 — Right to speedy trial — If on facts infringed by delay in conclusion of trial — Consideration of, in exercise of High Court's jurisdiction under S. 482 CrPC — *At this stage the question of applicability of a particular provision prescribing the maximum sentence, held, should normally be left to be decided by the trial court and should not be decided by High Court unless the factual aspects and the law applicable are clear — Complex nature of the offence should be a deterrent to consideration of the applicability of a provision — Official Secrets Act, 1923, S. 5(3) — Constitution of India — Art. 21*

The respondent was charged with offences under Sections 3 and 5 of the Official Secrets Act and Section 120-B of the Penal Code. The High Court quashed the proceedings on the ground that there was unnecessary delay in the conclusion of the trial. The High Court further observed that the maximum punishment for the alleged offence was three years while the respondent had suffered custody for about 2 years and faced the agony of trial for 12 years.

Remitting the matter to the High Court for a fresh decision,

Held :

While considering the question of delay the court has a duty to see whether the prolongation was on account of any delaying tactics adopted by the accused and other relevant aspects which contributed to the delay. Number of witnesses examined, volume of documents likely to be exhibited, nature and complexity of the offence which is under investigation or adjudication are some of the relevant factors. There can be no empirical formula of universal application in such matters. Each case has to be judged in its own background and special features, if any. (Para 9)

These aspects have not been considered by the High Court while quashing the proceedings. On that score the judgment under challenge is vitiated. Additionally while dealing with the question as to the proper provision applicable to the case, the Court has come to a definite finding about maximum sentence. Normally, these aspects are to be left to be decided by the trial court. For coming to a conclusion about the applicability of a provision [Section 5(3), Official Secrets Act in this case], the factual position must be clear and no doubt should exist about the applicability of a particular provision to the factual scenario. The complex nature of the offence should be a deterrent to the courts while going into the question of applicability of a provision. (Para 10). *State* v. *Narayan Waman Nerukar (Dr.)*, (2002) 7 SCC 6: 2002 SCC (Cri) 1542: AIR 2002 SC 2977: (2002) 99 DLT 464.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 26-8-2002]

[7322] — S. 482 — High Court quashing the criminal proceedings solely on ground of lapse of time — Propriety — *Held, proceedings ought not to be quashed unless the same are illegal, perverse or mala fide — Further held, writ jurisdiction is not available for quashing criminal investigation unless there is error apparent on the face of record or the proceedings can be termed to be mala fide in nature — Mere lapse of time ought not to be permitted to be meant for intervention of writ court to quash a criminal proceeding — Hence, High Court's judgment set aside and criminal proceedings restored* (Paras 2, 3, 6 and 7). *State of Maharashtra* v. *Narain Singh Yadav*, (2009) 16 SCC 392.

Bench Strength **2**. Coram: *U.C. Banerjee* and *Dr. Arijit Pasayat*, JJ. [Date of decision: 12-9-2009

P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578: 2002 SCC (Cri) 830; State v. Dr. Narayan Waman Nerukar, (2002) 7 SCC 6: 2002 SCC (Cri) 1542, relied on

'Common Cause' A Registered Society v. Union of India, (1996) 4 SCC 33: 1996 SCC (Cri) 589; 'Common Cause' A Registered Society v. Union of India, (1996) 6 SCC 775: 1997 SCC (Cri) 42; Raj Deo Sharma v. State of Bihar, (1998) 7 SCC 507: 1998 SCC (Cri) 1692; Raj Deo Sharma (II) v. State of Bihar, (1999) 7 SCC 604: 1999 SCC (Cri) 1324, held overruled

[7323] — S. 482 — Speedy trial — Trial of serious criminal cases pending for a long time — *Delay not explained by the prosecution — Accused not responsible for the delay — Held, in the circumstances, right of accused to speedy trial violated — Proceedings rightly quashed by the High Court — Constitution of India — Art. 21. Santosh De* v. *Archna Guha*, 1994 Supp (3) SCC 735: AIR 1994 SC 1229: 1994 Cri LJ 1975: (1994) 2 BLJR 1271.
Bench Strength **2**. Coram: *B.P. Jeevan Reddy* and *S.P. Bharucha*, JJ. [Date of decision: 26-8-1993]

Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93, followed

[7324] — S. 482 — Stale prosecution (almost 14 years) quashed — *Constitution of India — Arts. 136 & 228*

In this case the prosecution against the accused-appellant was pending for almost fourteen years. Apart from mental agony it must have adversely affected him in his service career. In the facts of this case it is difficult rather impossible to arrange a fair trial to the appellant after such a long time lapse. It is doubtful whether an offence under S. 409, IPC even prima facie, is made out. In any case it is not necessary to go into the facts of complaint or the question of applicability of S. 197, CrPC. In facts and circumstances of this case, it would not be in the interest of justice to permit to prosecution against the appellant to continue. It would be sheer waste of public time and money apart from causing harassment to the appellant. It is no doubt correct that this appeal has been pending in the Supreme Court for almost eleven years but that is not ground to permit this stale-prosecution to go on. It is not the state-action but its effect on the citizen which is relevant. Therefore, the complaint and the prosecution against the appellant are quashed. *S.G. Nain* v. *Union of India*, 1995 Supp (4) SCC 552: 1995 SCC (Cri) 889: AIR 1992 SC 603.
Bench Strength **2**. Coram: *Kuldip Singh* and *M.M. Punchhi*, JJ. [Date of decision: 2-8-1991]

[7325] — S. 482 — Quashing of belated and stale proceedings — *FIR registered against appellant public servant under Prevention of Corruption Act and Penal Code in 1984 — Sanction sought to prosecute appellant declined by Governor in 1990 and review sought thereagainst rejected in 1992 on ground that no prima facie case made out against appellant — Appellant retired from service in 1997 — Charge-sheet submitted dehors sanction in 2001, whereafter Special Judge took cognizance of the matter — Challenge to order of Special Judge rejected by High Court — In view of peculiar facts that cognizance had been taken about 17½ years after filing of FIR and about 4 years after retirement of appellant and State Government had declined sanction for prosecution twice, held, initiation of proceedings not justified and liable to be quashed — But this does not mean that sanction would be required in a case where an employee has in the meanwhile superannuated* (Para 8). *Louis Peter Surin* v. *State of Jharkhand*, (2010) 12 SCC 497.
Bench Strength **2**. Coram: *H.S. Bedi* and *C.K. Prasad*, JJ. [Date of decision: 27-7-2010]

Mahendra Lal Das v. State of Bihar, (2002) 1 SCC 149: 2002 SCC (Cri) 110; Ramanand Chaudhary v. State of Bihar, (2002) 1 SCC 153: 2002 SCC (Cri) 114, relied on

[7326] — S. 482 — Delay as a ground for quashing the prosecution — *Case registered for cheating on December 30, 1958 and charge-sheet filed in court on November 20, 1959 — But for separate offences single charge framed by Magistrate — High Court accepting revision on July 27, 1977 and remanding for separate charges — Appeal by State to Supreme Court — Held, in view of the inordinate delay in commencing the trial it would be a travesty of justice to permit the prosecution to continue — Hence prosecution quashed — Penal Code, 1860, S. 420 — CrPC, 1898, S. 561-A. State of U.P.* v. *Parshottam*, 1991 Supp (2) SCC 124: 1991 SCC (Cri) 1016: AIR 1991 SC 1015: 1991 Cri LJ 741.
Bench Strength **2**. Coram: *Kuldip Singh* and *K. Ramaswamy*, JJ. [Date of decision: 21-11-1990]

[7327] — S. 482 — Quashing of criminal proceedings FIR — Dispute of civil nature — FIR lodged after two years — *Held on facts, criminal proceedings initiated by complainant amounted to abuse of process of law — Hence, FIR rightly quashed by High Court*

The appellant entered into a registered partnership firm *K* with one *S*. The Firm was stockist and distributor of a company *J*. In 2001, differences arose between the appellant and *S*, the two partners of the firm *K*. *S* joined another firm *M* with certain other persons as partners. According to the appellant, *S* with a view to cheat and defraud the appellant, misrepresented before *J* that the name of firm *K* was changed to *M*. On the basis of such representation *S* informed *J* that payment which was required to be made by *J* to *K* should now be made to *M*. Accordingly, *J* made payments to *M* in 2001. The appellant in 2003 issued legal notice to the respondents, stating that *J* was required to make payments to *K* but instead of making such payments

(11)(x) Delay/Limitation as a ground for quashment *(contd.)*

the same had been misappropriated and that the officials of *J* colluded with the partners of *M* and all of them played fraud on the appellant. The appellant also filed a complaint in 2003 before the Director General of Police seeking inquiry into the matter. Pursuant thereto inquiry was made and the respondents submitted their replies but nothing further was done in the matter. The appellant thereupon lodged an FIR against the respondents alleging offences punishable under Sections 468, 406 read with Section 120-B IPC. The police arrested all the accused.

The respondents filed application before the High Court under Section 482 CrPC for quashing of FIR registered against them. The High Court found that the dispute related to settlement of accounts between the principal *J* and its agent *K* (earlier) and *M* (later). It further found that it was *K* which informed *J* that *K* had closed its business which was thereafter continued by *M* and all drafts be issued in favour of *M* and that accordingly, *J* substituted in the company record the name of *M* in place of *K*, as a result of which whatever sums were due to *K* were considered due to *M*. The High Court also took note of the fact that even the complainant had informed *J* that there was dispute between the partners of *K* and hence no payment could be made to *M* till the dispute was finally resolved between the parties. The High Court, in the circumstances, observed that the case was of one partner trying to drag the principal company into a criminal litigation to recover dues which the principal had paid to the other partner. The appellant had a dispute with *S* but instead of tackling him, he lodged an FIR to pressurise the respondents to settle the matter. It was not a direct case in which any contractual relationship between the complainant (appellant) with *J* had been breached. The appellant had no direct relationship with the company *J* as it was *K*, of which he was a partner, had developed contractual relationship and later *M* got substituted in place of *K*. The appellant ignored this development and issued the legal notice after a long lapse of time which was to drag the company into the inter se dispute between the two partners. The complaint and the steps taken by police had thus converted a tripartite civil dispute into a criminal one. The High Court, therefore, concluded that the steps taken by the complainant were in clear abuse of process of law and accordingly allowed the petition under Section 482 and quashed the first information report.

Dismissing the appeals,

Held :

The High Court rightly considered the facts in their proper perspective. The High Court was right in coming to the conclusion that a civil dispute — pure and simple — between the parties was sought to be converted into a criminal offence only by resorting to pressure tactics and by taking police help which was indeed abuse of process of law and has been rightly prevented by the High Court. It is clear from the case put forward by the appellant himself that the proceedings were virtually "civil" in nature. Thus the order for quashing the criminal proceedings passed by the High Court is in consonance with law and requires no interference. (Paras 18, 25, 15 and 26). *Suneet Gupta* v. *Anil Triloknath Sharma*, (2008) 11 SCC 670: (2008) 3 SCC (Cri) 920: (2008) 67 AIC 203 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *Aftab Alam*, JJ. [Date of decision: 28-4-2008]

State of Punjab v. Dharam Vir Singh Jethi, 1994 SCC (Cri) 500, distinguished

[7328] — S. 482 — Quashment of prosecution — Long lapse of time — *Offences on failure to supply power to consumer mill resulting in its monetary loss — Complaint regarding, filed by son of a partner of the mill against State Electricity Board and some of its officers more than 10 years back — No positive acts of omission or commission alleged, nor nature of duty cast upon any particular person stated — Held on facts, prima facie offences not made out — In view of long lapse of time also prosecution liable to be quashed — Electricity Act, 1910, Ss. 42(b) and 50. Bihar State Electricity Board* v. *Nand Kishore Tamakhuwala*, (1986) 2 SCC 414: 1986 SCC (Cri) 179: AIR 1986 SC 1653: 1986 Cri LJ 1246.

Bench Strength **2**. Coram: *V. Balakrishna Eradi* and **G.L. Oza**, JJ. [Date of decision: 17-3-1986]

[7329] — S. 482 — Case pending for over 10 years — Offence also not distinctly made out — *Liable to be quashed — Electricity Act, 1910, Ss. 42(b) & 50. Bihar State Electricity Board* v. *Nand Kishore Tamakhuwala*, (1986) 2 SCC 414: 1986 SCC (Cri) 179: AIR 1986 SC 1653: 1986 Cri LJ 1246.

Bench Strength **2**. Coram: *V. Balakrishna Eradi* and **G.L. Oza**, JJ. [Date of decision: 17-3-1986]

[7330] — S. 482 — Delay as ground for quashing FIR/proceedings — FIR lodged under Ss. 13(1)(e) & (2) PC Act — Followed by search 3/4 days later when incriminating evidence found — *S. 482 CrPC petition filed merely a month after lodging of FIR — Interference by High Court on* *ground of delayed investigations, held on facts, was improper — It is not a case where charge-sheet had not been filed or that there was no explanation for the delay — Prevention of Corruption Act, 1988, Ss. 13(1)(e) & (2)*

On the authorisation of Superintendent of Police, an FIR was registered against the respondent on 12-6-2000 in respect of offences punishable under Section 13(1)(*e*) read with Section 13(2) of the PC Act. Search was conducted in the house of the respondent on 15-6-2000/16-6-2000 and certain records and documents relating to the respondent, his son-in-law, his daughter and son were seized. By the impugned order the High Court accepted the Section 482 CrPC petition dated 11-7-2000 filed by the respondent and quashed the proceedings.

Allowing the appeal,

Held :

Interference by the High Court on the ground of delayed investigations cannot be maintained because petition under Section 482 CrPC was filed only after about a month of lodging of FIR and the order of the Superintendent of Police relating to investigation. It is not a case where charge-sheet had not been filed or that there was no explanation for the delay. FIR was lodged on 12-6-2000, house of the respondent was searched on 15-6-2000/ 16-6-2000 and few days thereafter Section 482 CrPC petition was filed on 11-7-2000. Application seeking permission to substitute additional grounds was filed in the year 2005. It is interesting to note that while the High Court quashed the proceedings because of alleged delayed investigation, it permitted the authorities to take decision to continue the proceedings. (Paras 12 and 9). *Supdt. of Police, Karnataka Lokayukta* v. *B. Srinivas*, (2008) 8 SCC 580: (2008) 3 SCC (Cri) 587: (2008) 69 AIC 49 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 18-8-2008]

[7331] — S. 482 — Quashing of complaint — Bribery case — Long delay — *No action taken by the prosecution for six years after the raid — Public Prosecutor consistently opining that no case was made out against the appellant — Commissioner on independent consideration refusing to grant sanction but later on according sanction at the asking of the DIG (Vigilance) — Prosecution pending for over a period of thirteen years — In the facts and circumstances of the case prosecution quashed — No law point laid down. Ramanand Chaudhary* v. *State of Bihar*, (2002) 1 SCC 153: AIR 1994 SC 948: 1994 Cri LJ 1221.

Bench Strength 2. Coram: *Kuldip Singh* and *N.M. Kasliwal*, JJ. [Date of decision: 7-8-1992]

[7332] — S. 482 — Quashing of criminal proceedings — Delay (19 years in this case) as a ground for — Factors to be considered — *Held, reason for delay and seriousness of crime should be taken into account — Accused-appellant approaching the High Court thrice to challenge the order passed by the Magistrate taking cognizance of offence against him — Thus, it was due to appellant that the criminal proceedings before the Magistrate did not cross the stage of taking cognizance — Further, the offence in question (relating to untouchability) was a serious one — Held, no case made out to quash the proceedings on the ground of delay — Protection of Civil Rights Act, 1955, S. 7*

In considering the question whether criminal proceedings deserve to be quashed on the ground of delay, the first question to be looked into is the reason for delay as also the seriousness of the offence. (Para 13)

It is to be borne in mind that the appellant has been successively approaching the High Court every time when an order taking cognizance was passed by the Magistrate. It is because of the appellant that the criminal proceedings before the Magistrate did not cross the stage of taking cognizance. In fact, from 1986 till date the criminal case has not proceeded further because of the appellant. It would be an abuse of the process of the court if the appellant is now allowed to urge delay as a ground for quashing the criminal proceedings. (Para 13)

Regarding the seriousness of the offence, it may be noticed that the ill of untouchability was abolished under the Constitution and the Act under which the complaint in question has been filed was enacted nearly half a century ago. (Para 13)

Thus, no case has been made out to quash the criminal proceedings on the ground of delay. (Para 13). *Jagdish Ram* v. *State of Rajasthan*, (2004) 4 SCC 432: 2004 SCC (Cri) 1294: AIR 2004 SC 1734.

Bench Strength 2. Coram: **Y.K. Sabharwal** and *Arijit Pasayat*, JJ. [Date of decision: 9-3-2004]

S.G. Nain v. Union of India, 1995 Supp (4) SCC 552: 1995 SCC (Cri) 889; Bihar SEB v. Nand Kishore Tamakhuwala, (1986) 2 SCC 414: 1986 SCC (Cri) 179; Ramanand Chaudhary v. State of Bihar, (2002) 1 SCC 153: 2002 SCC (Cri) 114 (cited order), distinguished on facts

[7333] — S. 482 — Quashing of criminal proceedings — Delay in filing charge-sheet — Offence of abetting public servant to commit offence under S. 13(2) of Prevention of Corruption Act alleged against two old ladies aged 80 and 81 years — *On facts, criminal prosecution against them quashed — Constitution of India — Art. 136*

(11)(x) Delay/Limitation as a ground for quashment *(contd.)*

The only offence alleged against the two appellant senescent ladies is that they abetted the public servant to commit the offence under Section 13(2) of the PC Act. Firstly, the materials are too insufficient to prove that those two old ladies intentionally abetted the public servant in acquiring assets which are disproportionate to his known sources of income. As such they should not be compelled to embark upon a trial which, in all probabilities, cannot end in conviction against them, even assuming that the octogenarian ladies would be able to survive till the end of the trial. Secondly, the trial is not likely to end within one or two years. Even if the Special Court would strictly adhere to the directions issued by the Supreme Court in *Raj Deo Sharma case*, it is reasonably foreseen that the prosecution would be able to complete the evidence only within the farthest time permitted in *Raj Deo Sharma* in view of the volume of documents and of the evidence to be adduced by the prosecution. It would be unfair and unreasonable to compel the two ladies, who by the advancement of old age would possibly have already crossed into the geriatric stage, to stand the long trial having no reasonable prospect of ultimate conviction against them. Therefore, they are delinked from the array of accused and the criminal prosecution against them is quashed. (Para 22). *Seeta Hemchandra Shashittal* v. *State of Maharashtra*, (2001) 4 SCC 525: 2001 SCC (Cri) 787: AIR 2001 SC 1246: 2001 Cri LJ 1242.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 13-2-2001]

Abdul Rehman Antulay v. R. S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93; Hussainara Khatoon (I) v. Home Secy., State of Bihar, (1980) 1 SCC 81: 1980 SCC (Cri) 23; State of A.P. v. P.V. Pavithran, (1990) 2 SCC 340: 1991 SCC (Cri) 7, relied on

[7334] — S. 482 — Quashing of criminal proceedings — Sought on the grounds of (i) bar of limitation, and (ii) lack of authority of Drugs Inspector, Vijayawada, A.P. to lodge the complaint as he could not have assumed jurisdiction under the notification issued by Govt. of A.P. which was confined to Telangana area of A.P. only — *Complaint filed within the period of limitation (i.e. one year), but cognizance taken by court beyond the limitation period — Held, complaint not barred by limitation — Further held, the notification was applicable to the entire State of A.P. and not restricted to Telangana area only — Thus, High Court was justified in dismissing the petition under S. 482 CrPC* (Paras 10, 11, 8 and 13). *Bharat Damodar Kale* v. *State of A.P.*, (2003) 8 SCC 559: 2004 SCC (Cri) 39: AIR 2003 SC 4560.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 8-10-2003]

[7335] — S. 482 — Quashing of FIR — Delay in trial — Sanction for prosecution in corruption case not granted by the Govt. despite expiry of over 12 years after the registration of FIR — *Emphasising the need of speedy trial, particularly in corruption cases, and stating the manner of considering the alleged delay, held, in view of the peculiar circumstances of the instant case, where the State opined that no case for sanction was made out against the accused-appellant and failed to grant sanction for his prosecution, further prosecution of him would be a mere formality and unnecessary burden on the courts — On facts, proceedings pending against the accused quashed — Constitution of India — Art. 136 — Prevention of Corruption Act, 1947, Ss. 6 and 5(2) r/w 5(1)(e) — Prevention of Corruption Act, 1988, Ss. 19 and 13(2) r/w S. 13(1)(e)*

It is in the interest of all concerned that guilt or innocence of the accused is determined as quickly as possible in the circumstances. However, every delay may not be taken as causing prejudice to the accused. The alleged delay has to be considered in the totality of the circumstances and the general conspectus of the case. Inordinate long delay can be taken as a presentive proof of prejudice. (Para 5)

The prosecution has miserably failed to explain the delay of more than 13 years by now, in granting the sanction for prosecution of the appellant-accused. The authorities of the respondent State also appear to be not satisfied about the merits of the case and were convinced that despite granting of sanction the trial would be a mere formality and an exercise in futility. (Para 6)

Irrespective of the amount involved in the corruption cases, such cases are required to be dealt with swiftly, promptly and without delay. The delay can be attributed either to the connivance of the authorities with the accused or used as a lever to pressurise and harass the accused as is alleged to have been done to the appellant in this case. The appropriate authorities concerned are under an obligation to find out and deal with the persons responsible for such delay. (Para 7)

Thus, in view of the peculiar facts and circumstances of the case, further prosecution of the accused would be a travesty of justice and a mere formality causing unnecessary burden on the courts. (Para 9). *Mahendra Lal Das* v. *State of Bihar*, (2002) 1 SCC 149: 2002 SCC (Cri) 110: AIR 2001 SC 2989.

Bench Strength **2**. Coram: *M.B. Shah* and **R.P. Sethi**, JJ. [Date of decision: 12-10-2001]

Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93, relied on

Ramanand Chaudhary v. State of Bihar, AIR 1994 SC 948: 1994 Cri LJ 1221, followed

[7336] — S. 482 — Quashing of proceedings — Delay in trial — Sanction for prosecution granted about 11 years after the offence giving reconsideration to the case of accused — *Held, where the Commissioner on independent consideration refused to grant sanction in absence of any case being made out against the accused-appellant, the grant of sanction after the reconsideration of appellant's case on direction of DIG (Vigilance), held in view of the facts and circumstances of the case, not proper — Proceedings against the accused quashed — Prevention of Corruption Act, 1947, Ss. 6 and 5(2) r/w S. 5(1)(e). Ramanand Chaudhary* v. *State of Bihar,* (2002) 1 SCC 153: AIR 1994 SC 948: 1994 Cri LJ 1221.

Bench Strength **2**. Coram: *Kuldip Singh* and *N.M. Kasliwal*, JJ. [Date of decision: 7-8-1992]

[7337] — Ss. 482, 190, 468(2) and 473 — Quashing of criminal proceedings — Cognizance taken long after a period of three years — *Occurrence on 24-9-1994 — Cognizance taken by CJM on 4-2-2000 — Proceedings, held on facts, clearly barred by S. 468(2) — High Court erred in not quashing the same under S. 482 — Penal Code, 1860, Ss. 341, 323, 504/34 and 120-B — Constitution of India — Art. 136*

There is no dispute that cognizance was taken of the offences by the learned Magistrate long after a period of three years. The Magistrate condoned the delay on the ground that the proceedings were stayed by the High Court till 5-10-1999. On 11-11-1994, further proceedings had been specifically stayed but by the order dated 6-2-1995, the order dated 11-11-1994 was modified in effect to vacating the earlier order staying further proceedings. This position is abundantly clear by a bare perusal of the orders dated 11-11-1994 and 6-2-1995. When the order of 11-11-1994 was specifically modified, there was no reason to understand the orders otherwise. It was not correct for the learned Magistrate to say that there was stay of further proceedings till 5-10-1999 in the face of order dated 6-2-1995 read with the order dated 11-11-1994. (Para 12)

No other reason or ground is given in the order of the Magistrate to condone the delay under Section 473 of the Code. If the discretion is exercised on relevant considerations, possibly no fault could be found with such discretion. The High Court although noticed in the impugned order as to the effect of the order dated 6-2-1995 and found that there was an error committed by the Magistrate but took the view that it was not a serious one. Added to this, the proceedings are of the year 1994. Having regard to the facts and circumstances of the case, the CJM as well as the High Court committed serious error in upholding taking cognizance when it is clearly barred by Section 468(2) of the Code. (Para 12)

Thus, the impugned order is set aside and the criminal proceedings are quashed. (Para 13). *Ramesh Chandra Sinha* v. *State of Bihar,* (2003) 7 SCC 254: 2003 SCC (Cri) 1613: AIR 2003 SC 3635.

Bench Strength **2**. Coram: **Shivaraj V. Patil** and *Brijesh Kumar*, JJ. [Date of decision: 18-8-2003]

[7338] — Ss. 482 and 154 — Quashment of delayed FIR — When warranted — Matters to be considered — Mala fide proceedings launched to wreak vengeance

The appellants' father lodged FIR under Sections 420/423/467/468/471/120-B IPC, against the respondents. The allegations made in the FIR were substantially similar to the allegations made by the appellants in the civil suit which had been decided against them. It is evident that the aforesaid FIR was filed with inordinate delay and there has been no plausible explanation for the same. The appellants lodged the aforesaid FIR only after meeting their Waterloo in the civil court. Thus, it is evident that the FIR was lodged with the sole intention of harassing the respondents and enmeshing them in long and arduous criminal proceedings. Such an action on the part of the appellants' father would not be bona fide, and the criminal proceedings initiated by him against the respondents amount to an abuse of the process of law. (Para 25)

In view of the said facts, and to do substantial justice, it would not be appropriate to interfere with the order passed by the High Court quashing the criminal proceedings against the respondents in spite of the fact that the impugned judgment is not sustainable in the eye of the law. (Para 26). *Kishan Singh* v. *Gurpal Singh*, (2010) 8 SCC 775.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 12-8-2010]

[7339] — S. 482 — Quashing of proceedings — On the ground of bar of limitation — Validity — Complaint under S. 138, Negotiable Instruments Act, 1881 — *Contention by accused that notice for payment was issued beyond 15 days of communication by bank regarding dishonour of cheque and, therefore, the complaint was clearly barred by limitation — As per the complainant, communication of dishonour of cheque was received after three days and, therefore, notice sent to accused was within 15 days thereafter — This being a matter of evidence, held, High Court was*

(11)(x) Delay/Limitation as a ground for quashment *(contd.)*

not justified in quashing the proceedings by holding that the complaint was barred by time — Negotiable Instruments Act, 1881, S. 138 (Paras 3 and 4). *T.N. Newsprint & Papers Ltd.* v. *Lakshmi*, (2004) 13 SCC 366.

Bench Strength 2. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 3-9-2004]

[7340] — Ss. 482, 309, 311 and 258 — Right to speedy trial — Trial in a particular case whether vitiated on account of delay — Determination of — *All relevant aspects contributing to the delay such as delaying tactics, if any, of the accused, number of witnesses examined, volume of documents likely to be exhibited and nature and complexity of the offence, held, must be considered by the court — Further held, there can be no empirical formula of universal application for this purpose — Hence, quashment of criminal proceedings under Ss. 3 and 5, Official Secrets Act and S. 120-B, Penal Code by High Court relying upon Common Cause cases, (1996) 4 SCC 33 and (1996) 6 SCC 775, without considering the said aspects, held, improper — Extent to which use of the periods of time prescribed in the said cases can be made by courts, specified — Supreme Court noticing that exercise of powers by criminal courts such as those under Ss. 309, 311 and 258 CrPC also affect the right to speedy trial — Official Secrets Act, 1923, Ss. 3 and 5 — Penal Code, 1860, S. 120-B — Constitution of India — Art. 21* (Para 10). *State* v. *Narayan Waman Nerukar (Dr.)*, (2002) 7 SCC 6: 2002 SCC (Cri) 1542: AIR 2002 SC 2977: (2002) 99 DLT 464.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 26-8-2002]

P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578: 2002 SCC (Cri) 830, followed

"Common Cause" A Registered Society v. Union of India, (1996) 4 SCC 33: 1996 SCC (Cri) 589; "Common Cause" A Registered Society v. Union of India, (1996) 6 SCC 775: 1997 SCC (Cri) 42; Raj Deo Sharma v. State of Bihar, (1998) 7 SCC 507: 1998 SCC (Cri) 1692; Raj Deo Sharma (II) v. State of Bihar, (1999) 7 SCC 604: 1999 SCC (Cri) 1324, held partly overruled

[7341] — Ss. 482, 397 and 399 — Delay in trial — Interference by superior courts at initial or interlocutory stages of criminal cases causing delay in trial unwarranted — *Complaint cannot be quashed on ground of delay of about 12 years in trial when complainant not responsible for the delay — More so when no such plea raised before the High Court*

It is common knowledge that currently the criminal courts excel in slow motion. The slow motion becomes much slower motion when politically powerful or rich and influential persons figure as accused. FIRs are quashed. Charges are quashed. Interlocutory orders are interfered with. At every step, there will be revisions and applications for quashing and writ petitions. In short, no progress is ever allowed to be made. And if ever the case reaches the stage of trial after all these interruptions, the time would have taken its own toll: the witnesses are won over; evidence disappears; the prosecution loses interest — the result is an all too familiar one. Repeated admonition of the Supreme Court have not deterred superior courts from interfering at initial or interlocutory stages of criminal cases. Such interference should be only in exceptional cases where the interests of justice demand it; it cannot be a matter of course. The contention that after a period of twelve years, the matter should not be allowed to be proceeded with is not acceptable as in this case the complainant was not responsible for the delay. (Para 18). *Ganesh Narayan Hegde* v. *S. Bangarappa*, (1995) 4 SCC 41: 1995 SCC (Cri) 634: 1995 Cri LJ 2935.

Bench Strength 2. Coram: **B.P. Jeevan Reddy** and *S.B. Majmudar*, JJ. [Date of decision: 20-4-1995]

S. Bangarappa v. Ganesh N. Hegde, 1992 Cri LJ 3788 (Kant), reversed

[7342] — Ss. 482, 397 and 401 — Quashing of criminal complaint — Grounds — Delay in prosecution — *Quashing of complaint by High Court held by the Supreme Court to be improper — Contention that complaint was filed as early as in 1983 and serious prejudice would be caused to accused at this stage in case further proceedings are taken — Rejection of — Accused directed to raise all objections, including the delay in prosecution, while defending the case — Constitution of India — Art. 136* (Para 8). *Rajmata Vijaya Raje Scindia* v. *State of M.P.*, (2003) 12 SCC 429.

Bench Strength 2. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 28-10-2003]

[7343] — Ss. 482 and 244 & 245 — Quashing of criminal proceedings — Ground of delay or procrastination in trial — Seriousness of the offence involved should not be ignored — *Complaint relating to offence under S. 3 of Railway Property (Unlawful Possession) Act, 1966 which is a serious offence — Accused persons themselves were responsible for procrastinating the proceedings by challenging various orders of court or by not being present in court — No charge framed for 7 years — Held, High Court erred in quashing the proceedings merely on ground of delay in proceeding of the case — High Court erred in not considering the case from the angle of S. 245*

An FIR was registered in 1991 for the offence under Section 3 of the Railway Property (Unlawful Possession) Act, 1966. An inquiry was conducted under Section 8 of the Act and on completion of inquiry, a complaint was filed in the Court of Judicial Magistrate, First Class on 13-1-1992. The Magistrate took cognizance of the offence and issued process against four persons including the respondents arrayed in the complaint. The first respondent thereafter moved the Sessions Court in revision by challenging the order by which cognizance of the offence was taken. The Sessions Court quashed the proceedings even though the burden lay on the accused who were found to be in possession of the railway property. The State challenged the order of the Sessions Court before the High Court. The High Court set aside the order of the Sessions Court on 1-4-1994. But the case could not commence in the trial court soon after receipt of the records from the High Court on account of absence of one or the other accused. It was only on 14-10-1996 that all the accused made their appearance before the Magistrate. Thereupon adopting the procedure prescribed in Chapter XIX CrPC for trial of warrant cases instituted otherwise than on police report, the trial Magistrate collected the preliminary evidence envisaged in Section 244 and then the case was posted for framing charge. On 5-1-1998 the accused filed a petition for discharging them. That petition was dismissed by the Magistrate by order dated 10-2-1998. That order was challenged before the High Court. A Single Judge of the High Court taking note of the fact that no charge had been framed although about 7 years elapsed, observed:

> "There is nothing on the record to show that the delay in proceeding with the case has been caused due to laches on the part of the petitioners. In such circumstances, in my opinion, for the ends of justice, the instant proceeding against the petitioners should not continue any further."

Allowing the appeal,

Held :

The ideal situation is to have criminal proceedings completed swiftly. But the ideal is far from practical attainment due to a variety of reasons. In considering the question whether delay alone is sufficient to quash pending criminal proceedings the seriousness of the offence involved is not to be overlooked. The offence now pitted against the respondents is serious in nature. The Magistrate had no reason to discharge the accused at that stage; as he felt that there was evidence to frame the charge he could not but dismiss the plea for a discharge. The High Court did not consider the case from the angle provided in Section 245 of the Code. The High Court was persuaded to discharge the accused only on the ground that "the case was pending for the last seven years". Cause of the delay is mostly due to the accused either because they challenged the various orders passed or because they were not present in the court and hence proceedings could not be continued on many occasions. Causes attributable to the prosecution or even to the court are comparably much less as to permit the accused to take advantage of the delay in registering progress of the proceedings. (Paras 8, 9, 7 and 11)

Therefore, the impugned order is set aside and the trial court is directed to proceed with the case and complete the prosecution evidence within six months from the date on which the accused would appear before the trial court if the accused is instrumental in causing the delay, then so much of the period would be debited from the time-frame. (Para 12). *State of Bihar* v. *Baidnath Prasad*, (2002) 1 SCC 465: 2002 SCC (Cri) 148: AIR 2002 SC 64: 2002 Cri LJ 208.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.N. Variava*, JJ. [Date of decision: 19-10-2001]

Seeta Hemchandra Shashittal v. State of Maharashtra, (2001) 4 SCC 525: 2001 SCC (Cri) 787; Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93; Rajiv Gupta v. State of H.P., (2000) 10 SCC 68: 2000 SCC (Cri) 696; Common Cause v. Union of India, (1996) 6 SCC 775: 1997 SCC (Cri) 42, relied on

[7344] — Ss. 482 and 311 — Quashing of criminal proceedings — Grounds — Inordinate delay in conclusion of trial — *Initiation of prosecution in 1975 — Revision filed before High Court for quashing the proceedings disposed of in 1990 with a direction to conclude the trial within six months — Since trial could not be concluded within the said period, accused again moving High Court for quashing the proceedings — This time High Court directing to conclude the trial within three months — When the case was pending judgment, accused filing application for examination of certain persons as defence witnesses which prayer was granted by the trial court — Accused instead of examining the defence witnesses, adopting dilatory tactics by moving the High Court for quashing the proceedings on the ground of inordinate delay in trial — High Court quashing the prosecution — Held, High Court was not justified in doing so — High Court granted premium to the accused who was the wrongdoer as trial could not be concluded on account of his repeated approach to the High Court for quashing the proceedings and getting the same stayed every time — High Court's order set aside — Prevention of Corruption Act, 1947, Ss. 5(2) and 5(1)(c) — Prevention of Corruption Act, 1988, Ss. 13(2) and 13(1)(c)* (Para 2). *State of W.B.* v. *Amiya Kumar Biswas*, (2004) 13 SCC 671.

Bench Strength **2**. Coram: *B.N. Agrawal* and *B.N. Srikrishna*, JJ. [Date of decision: 30-7-2003]

(11)(x) Delay/Limitation as a ground for quashment *(contd.)*

[7345] — Ss. 482 and 386 — Protracted trial — *Trial pending for over 25 years against appellant accused of offences under Ss. 408 and 409, IPC — Petition for quashing of proceedings — Having regard to the nature of allegations and availability of prosecution evidence, held, termination of the proceedings by invoking inherent power at this stage on account of lapse of time alone not expedient — Trial court directed to dispose of the cases expeditiously within one year. Mangilal Vyas* v. *State of Rajasthan*, 1990 Supp SCC 21: 1991 SCC (Cri) 231: (1990) 1 Crimes 377.

Bench Strength **2**. Coram: *A.M. Ahmadi* and **M. Fathima Beevi**, JJ. [Date of decision: 23-1-1990]

[7346] — Ss. 482 and 468 — Offences under Ss. 420, 467, 471 and 474 IPC — Quashing of complaint by High Court on the ground that it was filed belatedly — Legality — Bar of limitation under S. 468 — Applicability of — *Most of the offences in question punishable with imprisonment for a term exceeding three years — Hence held, bar of limitation not attracted — Further, if the effect of delay, if any, in instituting the complaint was necessary to be determined for considering the merits of the charge, that could only be done at the stage of trial on the basis of the evidence on record — Accordingly, High Court's order set aside* (Para 6). *Harnam Singh* v. *Everest Construction Co.*, (2004) 6 SCC 754: 2004 SCC (Cri) 1828.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *B.P. Singh*, JJ. [Date of decision: 17-8-2004]

[7347] — Ss. 482 and 468 — Quashing of criminal proceedings — On ground of bar of limitation — Offence under Essential Commodities Act, 1955 — *Plea before High Court that maximum punishment for the alleged offence under S. 7(1)(a)(ii), EC Act was one year and, therefore, the charge-sheet filed about two years after the date of offence was clearly barred by limitation — Quashing of proceedings by accepting the said plea — Validity — Held, maximum punishment for an offence relatable to S. 7(1)(a)(ii) is not one year but seven years — Hence, High Court's order liable to be set aside — Essential Commodities Act, 1955, S. 7(1)(a)(ii)* (Paras 7 and 9). *State of A.P.* v. *Farmers Service Coop. Society*, (2004) 6 SCC 683: 2004 SCC (Cri) 1826.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 16-8-2004]

(xi) Lack of jurisdiction of court/ forum below

See also '(11)(xiv) Errors of procedure by courts/authorities below', below

[7348] — S. 482 — Proceedings under Prevention of Corruption Act, 1988 — Quashing of — *Sought on the ground that Special Judge trying the case was appointed by State Govt. notification to try the offences under the old Act of 1947 and thus a fresh notification under S. 3 of the 1988 Act was required to enable the appointment of Special Judges for proceeding with the new cases under the 1988 Act — Having regard to the deeming fiction contained in S. 26 of the 1988 Act, held, Special Judge appointed for the purposes of 1947 Act has jurisdiction and is competent to try the offences under the 1988 Act — No fresh notification under the 1988 Act appointing the Special Judges required — Thus, proceedings in question, held, could not be quashed on the said ground* (Paras 6, 10 and 11). *Vasant Arjunrao Bhandak* v. *State of Karnataka*, (2003) 1 SCC 448: AIR 2003 SC 161: 2003 Cri LJ 394.

Bench Strength **2**. Coram: **U.C. Banerjee** and *B.N. Agrawal*, JJ. [Date of decision: 12-11-2002]

Nar Bahadur Bhandari v. State of Sikkim, (1998) 5 SCC 39: 1998 SCC (Cri) 1252; Bishambhar Nath Kohli v. State of U.P., AIR 1966 SC 573: (1966) 2 SCR 158, relied on

[7349] — S. 482 — Quashing of proceedings on the ground of lack of jurisdiction of the Special Court — Proceedings under Ss. 420, 467, 468, 471, 120-B IPC and S. 5, Imports and Exports (Control) Act — *Quashed mainly on the ground that the Special Court (Economic Offences) had no jurisdiction to try the offences under IPC as the said court was created by a notification for trial of offences relating to only certain specific Acts including the Imports and Exports (Control) Act — Considering the relevant provisions of CrPC and the language of the notification, held, the said Special Court had jurisdiction to try the offences under IPC — None of the grounds stated by the High Court for quashing the proceedings held to be proper — However, since the Imports and Exports (Control) Act had been repealed and in the departmental proceedings taken under the aforesaid Act, the Central Government had passed orders in favour of the accused-respondents, held, no useful purpose would be served by the trial of the respondents at this stage — Hence, the proceedings against the respondents quashed*

Sub-section (1) of Section 4 CrPC lays down that all offences under IPC shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the said Code.

Sub-section (2) of the same section lays down that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. The Imports and Exports (Control) Act, 1947 does not make any provision for regulating the manner of trying of offences under the said Act and, therefore, they have to be inquired into, tried and otherwise dealt with according to the provisions of CrPC. (Para 5)

Further, in view of specific provision contained in clause (*a*) of sub-section (4) of Section 3 CrPC, it is only a Judicial Magistrate who can try an offence under the Imports and Exports (Control) Act, 1947 and under Section 26 CrPC such a Magistrate has also the jurisdiction to try those offences under IPC, which the respondents are alleged to have committed. (Para 5)

That apart, the source of power for the State Government to issue a notification for creation of a Special Court is proviso to sub-section (1) of Section 11 CrPC and this provision nowhere says that upon issuance of such a notification the Judicial Magistrate concerned would be divested of the power and jurisdiction which he otherwise had under CrPC. The Judicial Magistrate, First Class, who by virtue of the notification became a Special Court (Economic Offences) was not divested of the jurisdiction which he otherwise possessed under Section 26 CrPC. Further, the language of the notification also does not show that powers or jurisdiction of a Judicial Magistrate, who is to perform the functions of a Special Court (Economic Offences) to try the offences under the Acts mentioned in the schedule are being affected or curtailed in any manner. (Para 6)

The High Court has referred to Section 5 of the Prevention of Corruption Act, Section 12-AA of the Essential Commodities Act and Section 9 of the Terrorist and Disruptive Activities (Prevention) Act, and on the basis of these provisions, it has held that in the absence of any specific provision conferring power upon the Special Court (Economic Offences) to try the offences under IPC the said Special Court would not have the jurisdiction to try the offences under IPC. The aforesaid reasoning of the High Court is wholly fallacious. The enactments referred to above by the High Court are special statutes which themselves created the offences, made specific provision for appointment of a Special Judge or a Designated Court for trial of offences, laid down their powers and also made specific provisions regarding procedure which was to be followed by such courts. Such is not the position here. The State Government has merely exercised power under proviso to sub-section (1) of Section 11 CrPC for creation of a Special Court. The Acts mentioned in the schedule to the notification issued by the State Government do not themselves provide for creation of any Special Court nor do they lay down the procedure for trial of the offences therein. The only effect of the notification was that instead of the trials being held in the courts of various Judicial Magistrates posted in Bangalore Metropolitan Area and in the district of Bangalore, they were all to be tried by one court. (Para 7)

Thus, the view taken by the High Court is wholly unsustainable in law and must be set aside. (Para 12)

But as the Imports and Exports (Control) Act, 1947 has since been repealed and in the departmental proceedings taken under the aforesaid Act the Central Government has passed orders in favour of the respondents, no useful purpose would be served by the trial of the accused-respondents in the criminal court at this stage. The criminal proceedings instituted against the accused-respondents on the basis of the complaints filed by the Deputy Chief Controller of Imports and Exports are, therefore, quashed. (Para 13). *Dy. Chief Controller of Imports & Exports* v. *Roshanlal Agarwal*, (2003) 4 SCC 139: 2003 SCC (Cri) 788: AIR 2003 SC 1900: 2003 Cri LJ 1698: (2003) 155 ELT 216.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 5-3-2003]

[7350] — Ss. 482, 177 and 178 — Quashing of proceedings — Ground — Lack of jurisdiction of the Magistrate concerned to deal with the matter — *Complaint filed under Ss. 498-A and 406 IPC and S. 4, Dowry Prohibition Act, 1961 against husband and his relations by the wife at place* **C** *where she came to stay after leaving her husband's house at place* **N** *— All the offences alleged to have taken place at* **N** *— Said offences not continuing ones — No part of cause of action arose at place* **C** *— Hence, considering Ss. 177 and 178 CrPC, held, the Magistrate at* **C** *had no jurisdiction to deal with the matter — Proceedings quashed — Complainant given liberty to file complaint in appropriate court — Penal Code, 1860, Ss. 498-A and 406 — Dowry Prohibition Act, 1961, S. 4 — Constitution of India — Art. 136*

Respondent 2 (wife of one of the appellants) filed a complaint in the Court of the Magistrate alleging commission of offences punishable under Sections 498-A and 406 IPC and Section 4 of the

(11)(xi) Lack of jurisdiction of court/forum below *(contd.)*

Dowry Prohibition Act, 1961. The Magistrate directed the police to investigate the case. After investigation, the police filed the charge-sheet. When the matter stood thus, the appellants filed an application under Section 482 CrPC before the High Court alleging that the Magistrate concerned had no jurisdiction even to entertain the complaint even if the allegations contained therein were accepted in toto as no part of the cause of action arose within the jurisdiction of the court concerned. The complaint itself disclosed that after 15-4-1997, the respondent left the place *N* (where she was residing with her appellant husband) and came to the city *C*. Since all the alleged acts as per the complainant took place at *N*, the courts at *C* did not have the jurisdiction to deal with the matter. On the other hand, Respondent 2 submitted that the offences were continuing in terms of Section 178(*c*) CrPC and, therefore, the court at *C* had jurisdiction to deal with the matter.

Allowing the appeal,

Held :

In the present case, the inevitable conclusion is that no part of cause of action arose in the city *C* and, therefore, the Magistrate concerned had no jurisdiction to deal with the matter. (Para 19). *Y. Abraham Ajith* v. *Inspector of Police*, (2004) 8 SCC 100: 2004 SCC (Cri) 2134: AIR 2004 SC 4286.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 17-8-2004]

(xii) Mala fides or animus of complainant

[7351] — S. 482 — Quashing of criminal proceedings at the initial stage by High Court — Grounds — Mala fides or animus of complainant or prosecution not relevant — *If on the basis of allegations in the complaint a prima facie case is made out the High Court has no jurisdiction to quash the proceedings — High Court not justified in judging the probability, reliability or genuineness of the allegations made — Power to quash proceedings should be exercised only in extraordinary circumstances*

If the complaint which is made is correct and an offence had been committed which will have to be established in a court of law, it is of no consequence that the complainant was a person who was inimical or that he was guilty of mala fides. If the ingredients which establish the commission of the offence or misconduct exist then, the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. Allegations of mala fides may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that the complainant is guilty of mala fides, would be no ground for quashing the prosecution. In the instant case, specific averments of facts have been made whereby it was alleged that the respondent had disproportionately large assets. Mala fide intention of the appellant in launching prosecution against the respondent with a view to punish him cannot be a reason for preventing the court of competent jurisdiction from examining the evidence which may be led before it, for coming to the conclusion whether an offence had been committed or not.

The court should not, except in extraordinary circumstances, exercise its jurisdiction under Section 482 CrPC so as to quash the prosecution proceedings after they have been launched.

At the stage of quashing a first information report or complaint, the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein. This is precisely what has been done by the learned Judge in the present case. The first information report having been lodged, the Government of Maharashtra having accorded sanction and thereafter, the charge having been filed, there was absolutely no justification for the High Court to have stopped the normal procedure of the trial being allowed to continue. It cannot be presumed that there was no application of mind when the first information report was prepared and the sanction of the Government obtained. The allegations as made in the first information report and the order granting sanction, if true, would clearly establish that the respondent was rightly prosecuted and was guilty of criminal misconduct. The truthfulness of the allegations and the establishment of the guilt can only take place when the trial proceeds without any interruption. There was no justification for the High Court to have exercised its jurisdiction under Article 227 of the Constitution and Section 482 of the CrPC in quashing the prosecution. *State of Maharashtra* v. *Ishwar Piraji Kalpatri*, (1996) 1 SCC 542: 1996 SCC (Cri) 150: AIR 1996 SC 722.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **B.N. Kirpal**, JJ. [Date of decision: 30-11-1995]

Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059, followed

[7352] — S. 482 — Exercise of power under — When justified — *Bhajan Lal (7)* — Complaint filed against government official as a counterblast to action taken by him in his official capacity — *Facts also showed that complaint was an afterthought to rope in appellant on account of* *action taken by him against Respondent 2 — Held, this case was of the nature mentioned at Category (7) in* Bhajan Lal case, *1992 Supp (1) SCC 335 — Continuance of proceeding against appellant would amount to abuse of process of law — Criminal proceedings therefore quashed* (Paras 12 and 14). *Anjani Kumar* v. *State of Bihar,* (2008) 5 SCC 248: (2008) 2 SCC (Cri) 582: AIR 2008 SC 1992: (2008) 66 AIC 72 (SC): 2008 Cri LJ 2558.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam,* JJ. [Date of decision: 24-4-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, applied

R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104; Rakesh Kumar Mishra v. State of Bihar, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432, relied on

[7353] — S. 482 — Applicability — Scope of exercise of power under S. 482, restated — *Held, factual scenario clearly showed that impugned proceedings were initiated as a counterblast to the proceedings initiated by appellants under Ss. 138/142/141 of NI Act, 1881 — Hence, continuance of such proceedings would be an abuse of the process of law — Case falls under Category (7) of* Bhajan Lal case, *1992 Supp (1) SCC 335 — Therefore, proceedings accordingly quashed — Penal Code, 1860, Ss. 420, 468 and 471 — Negotiable Instruments Act, 1881, Ss. 138, 141 and 142* (Paras 2, 6, 9, 10, 13 and 14). *Eicher Tractor Ltd.* v. *Harihar Singh,* (2008) 16 SCC 763: (2009) 1 ECrN 422 (SC): (2009) 73 AIC 198 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *C.K. Thakker,* JJ. [Date of decision: 7-11-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, applied

State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539, relied on

[7354] — S. 482 — Circumstances warranting quashing of prosecution — Malicious prosecution — Alleged facts disclosing no offence — *Appellant, an old lady, prosecuted for tampering with certified copy of revenue records wherein dates "6-5-2002" and "7-5-2002" were alleged to have been changed to "16-5-2002", "17-5-2002" and "27-5-2002" and tampered copy was made use of in civil suits — On appreciation of facts found that appellant was not to gain anything in the civil suits by tampering — Facts also did not disclose commission of offences under Ss. 420, 467, 468 and 471 IPC — It was also doubtful whether appellant had filed civil suits or they were filed by someone else in her name — Prosecution, held, was abuse of process of law and therefore quashed — Penal Code, 1860, Ss. 420, 467, 468 and 471*

The appellant was an old lady against whom Respondent 2 filed an FIR that she had tampered certified copy of revenue records and made of use this tampered document in civil suits filed by her so as to save the cases from bar of limitation. It was alleged that dates relating to application for certified copy and receipt of certified copy had been changed from "6-5-2002" and "7-5-2002" to "16-5-2002" and "17-5-2002" and "27-5-2002". It was alleged that appellant applied for certified copy of revenue records on 6-5-2002 and she got it on 7-5-2002 but she made interpolations in the document. The appellant denied that civil suits were filed by her though civil suits appeared to have been filed through her counsel on 27-5-2002.

The appellant approached the High Court under Section 482 CrPC for quashing of prosecution but High Court took view that FIR as well as material collected by prosecution were good enough at least to proceed, and it could not be said that no offence was disclosed from the same.

Allowing the appeal,

Held :

It is clear from the manner in which litigation is being fought that it is nothing but to wreak vengeance against appellant. There is absence of bona fides on the part of Respondent 2 to file FIR. The appellant has committed no offence. This is a classic example where investigating officer has subverted investigation system and started prosecution of an old lady. The Court is also surprised that appellant who is an old lady was arrested and had to stay behind the bars for more than a week. It is also not understood as to how trial court mechanically took cognizance of a non-existent offence. Even if it is presumed that somebody interpolated records by adding figure "1" and even if it is presumed that the appellant did so, still it does not become a forged document. The Court is also surprised at the manner in which investigation was done and the manner in which cognizance was taken by the courts below. In its written submissions also the State has merely justified that figure of "1" was added in order to show that there were no laches or negligence for filing civil suits. It is not understood as to how ten days could have amounted to laches or negligence because ultimately suits seem to have been filed after ten days. Attitude of State is surprising that it is insisting on trial despite the fact that prosecution is mala fide, malicious and vengeful only to settle scores by Respondent 2 against the appellant. (Paras 25, 28, 35 and 36)

(11)(xii) Mala fides or animus of complainant *(contd.)*

Respondent 2 has not been able to show as to how the appellant could be benefitted in any manner by changing the dates. Since there was no question of the appellant gaining anything, she would not have made changes in the document. It is not for the Court to explain how the document was changed. Whosoever may have changed those documents, the said change did not result in any illegal gains to the appellant or illegal loss to anybody. Such changes were innocuous and did not give rise to any offence. This is a case of malicious and vengeful prosecution which has no base. Exercise of power under Section 482 CrPC is justified in this case. The Court is convinced of whole lack of bona fides on the part of investigating officer. Affidavit filed by him in the Supreme Court does not give any explanation or justification for arrest and subsequent investigation of non-existing crimes. The prosecution in this case is nothing but an abuse of process of law and is therefore quashed. (Paras 40 to 43). *Parminder Kaur* v. *State of U.P.*, (2010) 1 SCC 322.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **V.S. Sirpurkar**, JJ. [Date of decision: 26-10-2009]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

Parminder Kaur v. State of U.P., (2007) 6 All LJ (NOC) 954, reversed

[7355] — S. 482 — Quashing of complaint — Considerations — Mala fides — Absurdity — *Allegation of theft of bangles by appellant (brother of daughter-in-law of Respondent 1) during raid by police at Respondent 1's house — Respondent 1 arrested on complaint of his daughter-in-law — Held, it is absurd to think that appellant, who was present with police party, would venture to pocket the bangles in their presence — Accompanying police officers have not been made accused in complaint — Complaint wholly lacks bona fides — Complaint has to be quashed if allegations are found absurd and without any basis — When complaint is seen in backdrop of prosecution of Respondent 1 for offences under Ss. 498-A, 406 IPC, absurdity becomes more prominent — Criminal complaint was in retaliation to criminal prosecution which was being faced by Respondent 1 — Complaint quashed — Penal Code, 1860, Ss. 498-A and 406* (Paras 2 to 6 and 9 to 13). *Manoj Mahavir Prasad Khaitan* v. *Ram Gopal Poddar*, (2010) 10 SCC 673.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 8-10-2010]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

[7356] — **S. 482 — Quashment — Matters to be considered — Motivated proceedings** — *Complaint filed against appellants (bank officials) as counterblast to action taken by them in their official capacity for realising loan amount due — Intention behind initiating criminal proceedings to prevent public servants from discharging their duties — Effect — Held, complaint clearly abuse of judicial process to harass appellants — Averments and allegations in complaint not disclosing commission of any offence by appellants — Instant case a classic illustration of non-application of mind by trial court where Magistrate not scrutinising even contents of complaint, leave aside material documents available on record — Magistrate remaining a silent spectator at the time of recording of preliminary evidence before summoning appellants — High Court committing manifest error in disposing of S. 482 petition without even adverting to basic facts which were placed before it for its consideration — Hence, criminal proceedings quashed — Penal Code, 1860, Ss. 409, 422, 426 and 120-B — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Ss. 17 and 19*

In the instant case, Bank *P* sanctioned a loan amount to a proprietary concern owned by one *J* (borrower). *J* furnished security of five guarantors, including respondent complainant, who in turn deposited FDRs, each duly signed, authorising the Bank to appropriate proceeds of FDRs along with interest if timely payments were not made by the borrower.

After passing of about one year, the Bank realised that the loan account had become totally irregular since the borrower was not paying any amount whatsoever as undertaken in terms of the agreement. First appellant (Senior Manager of the Bank), on realising that recovery of bank loan had become impossible, adjusted some amounts from FDRs furnished by guarantors as security towards dues of borrower.

The Bank vide its notice informed borrower and guarantors that the loan account should be regularised to which there was no response. This was followed by the Bank lodging an FIR against borrower and guarantors including the respondent for cheating and for misappropriation of hypothecated goods. The respondent complainant being aggrieved by the action of the Bank in appropriating FDRs, filed complaint case under Ss. 409, 422, 426 and 120-B IPC against appellants (Bank officials). The trial court took cognizance of the case and directed non-bailable warrant of arrest against appellants. The appellants being aggrieved by trial court's order, filed a petition under S. 482 CrPC before High Court for quashing the criminal proceedings, which was dismissed. Hence the present appeal.

Allowing the appeal,

Held :

The averments and allegations made in the complaint do not disclose the commission of any offence by the appellants or any one of them. They were merely discharging their duties to realise and recover the amounts due to the Bank from the borrower as well as the guarantors. The complaint obviously was filed as a counterblast to the proceedings already initiated by the Bank including the FIR lodged by the first appellant (Senior Manager of the Bank) against the complainant and the borrower for the offences of cheating and misappropriation. (Para 33)

Sequence of events undoubtedly suggests that the criminal proceedings have been maliciously instituted with an ulterior motive of wreaking vengeance on the appellants and with a view to spite them due to personal grudge. It was clearly intended to prevent the public servants from discharging their duties. (Para 34)

The case on hand is a classic illustration of non-application of mind by the Magistrate. The Magistrate did not scrutinise even the contents of the complaint, leave aside the material documents available on record. The Magistrate truly was a silent spectator at the time of recording of preliminary evidence before summoning the appellants. The criminal law was set in motion by the Magistrate by mere asking to do so by the complainant. (Paras 27 and 34)

The High Court committed a manifest error in disposing of the petition filed by the appellants under Section 482 CrPC without even adverting to the basic facts which were placed before it for its consideration. It almost abdicated its duty in refusing to exercise its jurisdiction under Section 482 CrPC, though the case on hand required its interference in order to prevent abuse of the process by a court subordinate to it. (Paras 28 and 35)

A clear case is made out requiring interference to secure the ends of justice. Hence, impugned order of the High Court is set aside and the criminal proceedings arising out of complaint case are quashed. (Paras 35 and 36). *M.N. Ojha* v. *Alok Kumar Srivastav*, (2009) 9 SCC 682: (2009) 82 AIC 134 (SC).

Bench Strength **2**. Coram: *R.V. Raveendran* and **B. Sudershan Reddy**, **JJ**. [Date of decision: 21-8-2009]

Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; Kurukshetra University v. State of Haryana, (1977) 4 SCC 451: 1977 SCC (Cri) 613, relied on

[7357] — S. 482 — Quashing of criminal proceedings — Inherent power of High Court — Mala fides of complainant — Effect of — *Held, mere fact that complainant is guilty of mala fides is no ground for quashing the proceedings — There may be exceptions to this rule*

In fact, the question of mala fides in a case like the present is not at all relevant. If the complaint which is made is correct and offence has been committed which will have to be established in a court of law, it is of no significance that the complainant is a person who is inimical or that he is guilty of mala fides. If the ingredients which establish the commission of the offence or misconduct exist, then the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. Allegations of mala fides may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that the complainant is guilty of mala fides, would be no ground for quashing the proceedings. There may be some exceptions to this rule. (Paras 37 and 38). *Monica Kumar (Dr.)* v. *State of U.P.*, (2008) 8 SCC 781: (2008) 3 SCC (Cri) 649: AIR 2008 SC 2781: (2008) 67 AIC 106 (SC).

Bench Strength **2**. Coram: *S.B. Sinha* and **L.S. Panta**, **JJ**. [Date of decision: 27-5-2008]

Som Mittal v. Govt. of Karnataka, (2008) 3 SCC 753: (2008) 2 SCC (Cri) 73: (2008) 1 SCC (L&S) 895, followed

Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283; State of Maharashtra v. Ishwar Piraji Kalpatri, (1996) 1 SCC 542: 1996 SCC (Cri) 150; State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272; State of Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272, relied on

[7358] — S. 482 — Quashing of criminal proceedings — Inherent power of High Court — Mala fides of complainant — Effect of

The allegation of mala fides against the informant is of no consequence and cannot by itself be the basis for quashing the proceedings. (Paras 8 and 9). *State of Karnataka* v. *M. Devendrappa*, (2002) 3 SCC 89: 2002 SCC (Cri) 539: AIR 2002 SC 671: 2002 Cri LJ 998: (2002) 2 CHN (Supp) 21.

Bench Strength **3**. Coram: *M.B. Shah*, *B.N. Agrawal* and **Arijit Pasayat**, **JJ**. [Date of decision: 16-1-2002]

[7359] — S. 482 — Quashing of FIR — Grounds — Complaint made on account of personal vendetta — *Held, that by itself will not be a ground to discard the complaint which has to be tested and weighed after the evidence is collected* (Para 9). *M. Narayandas* v. *State of Karnataka*, (2003) 11 SCC 251: 2004 SCC (Cri) 118.

Bench Strength **2**. Coram: **S.N. Variava** and *H.K. Sema*, **JJ**. [Date of decision: 19-9-2003]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

(11)(xii) Mala fides or animus of complainant *(contd.)*

[7360] — S. 482 — Quashing of proceedings — Allegations of mala fides against informant, held, cannot by themselves be a ground for

When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding. (Para 8). *State of A.P.* v. *Golconda Linga Swamy*, (2004) 6 SCC 522: 2004 SCC (Cri) 1805: AIR 2004 SC 3967.

Bench Strength **2**. Coram: *S.N. Variava* and **Arijit Pasayat**, JJ. [Date of decision: 27-7-2004]

State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192, relied on

[7361] — S. 482 — Quashing of proceedings — Allegations of mala fides against informant, held, cannot by themselves be a ground for

When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (Para 10). *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque*, (2005) 1 SCC 122: 2005 SCC (Cri) 283: AIR 2005 SC 9: 2005 Cri LJ 92.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 1-11-2004]

State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192, relied on

[7362] — S. 482 — Quashing of proceedings — Allegations of mala fides against informant — Effect — *Held, allegations of mala fides against the informant are inconsequential and cannot by themselves be the basis for quashing the proceedings*

When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (Para 11). *State of Orissa* v. *Saroj Kumar Sahoo*, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272: (2006) 1 KLT 366.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Tarun Chatterjee*, JJ. [Date of decision: 7-12-2005]

Dhanalakshmi v. R. Prasanna Kumar, 1990 Supp SCC 686: 1991 SCC (Cri) 142; State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; State of Kerala v. O.C. Kuttan, (1999) 2 SCC 651: 1999 SCC (Cri) 304; State of U.P. v. O.P. Sharma, (1996) 7 SCC 705: 1996 SCC (Cri) 497; Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397: 1997 SCC (Cri) 415; Satvinder Kaur v. State (Govt. of NCT of Delhi), (1999) 8 SCC 728: 1999 SCC (Cri) 1503; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401, relied on

[7363] — S. 482 — Quashing of proceedings — Allegations of mala fides against informant, held, cannot by itself be a ground for

When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decide the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings. (Para 11). *State of M.P.* v. *Awadh Kishore Gupta*, (2004) 1 SCC 691: 2004 SCC (Cri) 353: AIR 2004 SC 517: 2004 Cri LJ 598.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 18-11-2003]

State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192, relied on

[7364] — S. 482 — Quashing of proceedings by High Court — Allegation of mala fides against informant — Effect of — Allegations of cruelty, dowry demand by appellant wife — *On facts, held, allegation of mala fides against informant are of no consequence and cannot by themselves be the basis for quashing the proceedings — Dowry Prohibition Act, 1961, Ss. 3 and 4 — Penal Code, 1860, S. 498-A* (Paras 10, 9 and 6)

The appellant wife, married Respondent 3, *R* on 1-7-1998, alleging mental and physical torture for dowry demands made a complaint alleging commission of offences punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (the Act). The police registered an FIR. In the suit for divorce filed by the husband, Family Court directed maintenance at the rate of Rs 2000 p.m. and the cost of litigation to be paid to the appellant. The appellant's father-in-law filed Miscellaneous Case No. 12 of 2001 questioning correctness of the maintenance order on the ground that the appellant's husband has no share in the ancestral property and maintenance cannot be paid out of it. Charge-sheet was filed on 12-8-2000. An application for discharge in terms of Section 239 CrPC was filed on 28-8-2001. The prayer was rejected on 7-9-2001 by SDJM. The Sessions Judge dismissed the revision application of the respondents. However, by the impugned order, the High Court quashed the proceedings initiated against Respondents 1 to 7, in purported exercise of power under Section 482 CrPC.

Allowing the appeal, the Supreme Court held as above. *Renu Kumari* v. *Sanjay Kumar*, (2008) 12 SCC 346.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 3-3-2008]

State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539; State of M.P. v. Awadh Kishore Gupta, (2004) 1 SCC 691: 2004 SCC (Cri) 353; State of Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272, relied on

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, distinguished

[7365] — Ss. 482, 154 and 157 — Quashing of criminal proceedings — Grounds for — Mala fide criminal proceedings on vague assertions due to private and personal grudge of Respondent 1 (complainant) against appellant-accused *— Respondent 1 arrested on account of the FIR lodged by appellants for theft of electricity — Respondent 1 instituting complaint case for bribery to wreak vengeance on the raiding party members (appellants) of the Bihar State Electricity Board — Complaint case lodged in February after Respondent 1 (complainant) was released on bail — Respondent 1 (complainant) not specifying date when the bribery was demanded by the appellants — Respondent 1 (complainant) not showing reason as to why he did not choose to proceed against one of the four co-accused (appellants) initially named — Institution of complaint case on account of private and personal grudge, held, is a fit case under Category (7) of* Bhajan Lal case, *1992 Supp (1) SCC 335 for quashing a complaint case in exercise of powers under S. 482 CrPC to prevent the abuse of process of court and secure the ends of justice — Penal Code, 1860, Ss. 347, 161, 167, 385 and 511 — Constitution of India — Art. 226*

On the basis of an FIR lodged by the raiding party of Bihar State Electricity Board, Respondent 1 was arrested for committing theft of electricity. After being released on bail on 7-1-1994, Respondent 1 filed a complaint case before the Magistrate on 11-2-1994 against the appellants and *R* (all members of the raiding party) alleging that they had demanded illegal gratification. Interestingly, no date of such demand was indicated in the complaint. When the Judicial Magistrate took the cognizance of the offences punishable under Sections 347, 161, 167, 385 and 511 IPC, the appellants and *R* filed petitions before the High Court questioning correctness of the order. The High Court dismissed the application filed by *R* while the application filed by appellants was pending. *R* moved the Supreme Court in SLP (Crl.) No. 3045 of 1996.

Supreme Court granted stay on 23-9-1996 and, therefore, proceedings before the trial court remained stayed. The special leave petition was disposed of on 17-7-1997. Since a statement was made before the Supreme Court by the complainant that he did not want to proceed against the petitioner in the special leave petition but he would like to continue the proceedings so far as the others are concerned, the proceedings were accordingly quashed qua the petitioner in the SLP. So far as the present appellants are concerned the High Court by the impugned order held that the Supreme Court had interfered because of the concession made and, therefore, no case for interference was made out.

Allowing the appeal,

Held :

Where a criminal proceeding (relating to cognizable offences) is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge it would come within Category (7) of rarest of rare cases as laid down in *Bhajan Lal case*, 1992 Supp (1) SCC 335 where the High Court may exercise its power under Section 482 CrPC to prevent abuse of process of any court or otherwise to secure the ends of justice. The backgrounds clearly show that the proceedings instituted were mala fide, based on vague assertions and were initiated with mala fide intents and constitute sheer abuse of process of law. No reason was shown before the High Court as to why the complainant chose not to proceed against one of the four persons initially named. The High Court did not attach importance to the fact that the complaint was lodged in February 1994 and there was no date indicated as to when the alleged demand was made. The cases at hand fit in with Category (7) of *Bhajan Lal case*, 1992 Supp (1) SCC 335. (Paras 7, 8 and 5). *Baijnath Jha* v. *Sita Ram*, (2008) 8 SCC 77: (2008) 3 SCC (Cri) 428: AIR 2008 SC 2778.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P.P. Naolekar*, JJ. [Date of decision: 12-6-2008]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: (1960) 3 SCR 388; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, applied

State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89, relied on

(11)(xii) Mala fides or animus of complainant *(contd.)*

[7366] — S. 482 and Ch. XV — Quashing of private complaint — Maliciously instituted proceedings to wreak vengeance on the accused [as per Category 7 in *Bhajan Lal case*, 1992 Supp (1) SCC 335] — Applicability — *Complaint case instituted by the father of the appellant-accused's earlier wife (frustrated with marriage, living separately and divorced) against appellant, his family members, subsequent wife and subsequent in-laws under Ss. 494, 120-B and 109 IPC r/w Ss. 3/4 of Dowry Act — Case instituted in 1994, allegations of dowry torture in 1992 and dowry demand by husband in 1993 — Appellant-accused's subsequent marriage on 2-3-1993 was after the time-limit for filing appeal against ex parte decree of divorce had expired — No specific allegation against other accused (except appellant-accused) though they were impleaded in the private complaint — In spite of service of notice none appeared on behalf of Respondent 1 (complainant) — Category 7 of* Bhajan Lal case *for quashing of complaint, on facts, held, applicable — Penal Code, 1860, Ss. 494, 120-B and 109 — Dowry Prohibition Act, 1961, Ss. 3 and 4 — Hindu Marriage Act, 1955, S. 15*

M, left her husband *P* and started living in her parental house. On 1-1-1993, an ex parte decreed for dissolution of marriage was passed against *M* on the ground of cruelty and harassment. After the time for filing appeal against the ex parte decree dated 1-1-1993 under Section 28(4) of the Hindu Marriage Act, 1955 (the Marriage Act) expired on 31-1-1993, and no appeal was preferred, *P* married *S* on 2-3-1993. The respondent (*M*'s father), thereafter, on 6-12-1994 filed a private complaint wherein all the appellants (*P*, his family members and in-laws) were arrayed as accused persons for offences punishable under Sections 494, 120-B and 109 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (the Dowry Act). By the impugned order, the High Court rejected the Section 482 CrPC petition of the appellants on the ground that the trial court can be directed to conclude the trial expeditiously and at the time of framing charges, the appellants can raise such points as have been raised in the present dispute.

Allowing the appeal,

Held :

The present case appears to be one where Category 7 of the illustrations given in *Bhajan Lal case*, 1992 Supp (1) SCC 335 is clearly applicable. The parameters for exercise of power under Section 482 CrPC have been laid down by the Supreme Court in several cases. In the complaint filed, the allegation is that the dowry torture was made sometime in 1992. It has not been explained as to why for more than two years no action was taken. Apart from *P* (husband of *M*), his mother, mother's sister, *S* (subsequently married wife), brother-in-law and *S*'s father were impleaded as parties. No role has been specifically ascribed to anybody except the husband and that too of a dowry demand in February 1993 when the complaint was filed on 6-12-1994 i.e. nearly after 22 months. It is to be noted that in spite of service of notice, none appeared on behalf of Respondent 1. The proceedings pending before the CJM, are, therefore, quashed. (Paras 8 to 13). *Priya Vrat Singh* v. *Shyam Ji Sahai*, (2008) 8 SCC 232: (2008) 3 SCC (Cri) 463: (2008) 5 All LJ 673: 2008 Cri LJ 4367.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 5-8-2008]

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36, followed

Raghubir Saran (Dr.) v. State of Bihar, AIR 1964 SC 1; Minu Kumari v. State of Bihar, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

[7367] — S. 482 — Quashing of retaliatory FIR after filing of charge-sheet during trial — Permissibility — *Accused on factual basis alleging FIR to be retaliatory — Such factual examination, held, is a matter of trial*

It is also difficult to arrive at a positive decision that the FIR lodged by *MA* was only retaliatory in nature as he had not suffered any bullet injury. It is a matter of trial. Counsel for *ME* and *S* pleaded on the basis of statements made by *MA* in his examination under Section 313 CrPC wherein he raised a plea that he was not present at the place of occurrence. (Paras 37 and 22)

Contention of *ME*'s and *S*'s counsel that while filing a charge-sheet, the IO did not follow the Supreme Court's directions whereby and whereunder the investigating agency was directed to consider some report submitted by some person, is again not a matter to take which requires serious consideration at this stage. It does not appear that any such contention was raised before the High Court, the effect thereof must be considered by the courts at an appropriate stage. (Para 37). *Manoj Narain Agrawal* v. *Shashi Agrawal*, (2009) 6 SCC 385.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 15-4-2009]

[7368] — S. 482 — Quashment of proceedings — Inference that complainant only out to settle score with accused — Prima facie case established otherwise — Effect

Allowing the appeal,

Held:

It is now a well-settled principle of law that the High Court in exercise of its inherent jurisdiction under Section 482 of the Code may quash a criminal proceeding inter alia in the event the allegations made in the complaint petition even if they are taken at their face value and accepted in their entirety do not disclose commission of a cognizable offence. (Para 14)

The opinion of the High Court that the averments made in the complaint petition are imaginary is not based on any material. Even assuming that the complainant had a score to settle against the accused, the same by itself may not be a ground to quash the entire criminal proceedings particularly in view of the fact that at least a prima facie case has been established in view of the report of the Registrar. (Para 22)

The allegations made in the complaint petition disclose commission of a cognizable offence. A conspiracy is said to have been entered into for putting the Society and consequentially the members to a great loss. A conspiracy is also said to have been hatched for the aforementioned purpose as a result whereof not only an allotment was made in favour of a person who was not entitled thereto but also the allotted plot was assigned in favour of a third party for a huge sum. Whether the allegations made in the complaint petition are correct or not have to be considered during trial. It may be true that the question as to whether the report of the Registrar can be relied upon for the purpose of showing as to how the act of cheating has been committed by the respondents is a matter which must be considered at the time of trial but there cannot be any doubt whatsoever that so long as the report is not set aside, the same could form the basis for forming of an opinion at least for the purpose of proceeding against the respondents that they manipulated the records of the cooperative Society to make unlawful gain for themselves and causing unlawful loss to the Society. (Paras 16, 17 and 19). *K. Ashoka* v. *N.L. Chandrashekar*, (2009) 5 SCC 199.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 15-4-2009]

Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, followed

[7369] — Ss. 482, 190 and 200 — Criminal proceedings initiated with ulterior motive — Continuance of such proceedings — Impermissibility of — Ingredients for exercising power under Art. 226 and S. 482, to prevent abuse of process of any court or to secure ends of justice, restated — *On facts, trial court taking cognizance of offence punishable under Ss. 406 and 420 IPC against appellants in a complaint filed by respondent — High Court declining to interfere under S. 482 CrPC with the order passed — Sustainability — Complaint nothing but abuse of process of law, being a counterblast to the proceedings initiated by appellants under S. 138, NI Act, 1881 against respondent — Held, perusal of complaint showed ulterior motive — Proceedings initiated by respondent clearly amounted to abuse of process of law — Hence, relying on* Bhajan Lal case, *1992 Supp (1) SCC 335, reiterating that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, held, proceedings initiated before trial court, by the respondent, stand quashed — Penal Code, 1860, Ss. 406 and 420 — Negotiable Instruments Act, 1881, S. 138 — Constitution of India — Art. 226* (Paras 2, 4, 18 to 20). *Mahindra & Mahindra Financial Services Ltd.* v. *Rajiv Dubey*, (2009) 1 SCC 706.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 4-12-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

(xiii) Quashment re private complaints

[7370] — S. 482 — Quashing of criminal proceedings — Proceedings initiated pursuant to complaints made by private parties — *Police authorities performing their statutory duties, and proceedings pending before courts of competent jurisdiction — High Court on examination of the matter, held, rightly came to the conclusion that those proceedings do not deserve to be quashed under S. 482 CrPC or under Art. 226 of the Constitution. Ahmed Noormohmed Bhatti* v. *State of Gujarat*, (2005) 3 SCC 647: 2005 SCC (Cri) 794: AIR 2005 SC 2115: (2005) 2 KLT 769: 2005 Cri LJ 2157: (2005) 2 Guj LR 1402.

Bench Strength **2**. Coram: *N. Santosh Hegde*, **B.P. Singh** and *S.B. Sinha*, JJ. [Date of decision: 16-3-2005]

[7371] — S. 482 — Existence of prima facie case upon inquiry — *Magistrate initially not entertaining private complaint but later entertaining it because: (1) Sessions Court in revision finding prima facie case and directing further inquiry and High Court in revision clarifying that the inquiry should be under S. 398, and (2) Magistrate on holding such further inquiry by recording depositions of three witnesses finding that allegations were supported by evidence — High Court not interfering*

(11)(xiii) Quashment re private complaints *(contd.)*

under S. 482 by holding that there was concurrent finding that complaint revealed a prima face case — Held, High Court committed no error in declining to interfere under S. 482 — Penal Code, 1860, Ss. 341, 323 and 506 — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Ss. 3(1)(x) and (2)(vii) — Inherent powers of High Court — Quashment of proceedings — General grounds for quashment, Ss. 482, 398 and 274. Subrata Das v. *State of Jharkhand*, (2010) 10 SCC 798.

Bench Strength **2**. Coram: *Markandey Katju* and **T.S. Thakur**, JJ. [Date of decision: 22-10-2010]

Gurdial Singh v. Kartar Singh, 1980 Cri LJ 955 (P&H), referred to

[7372] — S. 482 — Quashing of private complaint — Parameters and considerations — Case law cited. *Priya Vrat Singh* v. *Shyam Ji Sahai*, (2008) 8 SCC 232: (2008) 3 SCC (Cri) 463: (2008) 5 All LJ 673: 2008 Cri LJ 4367.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 5-8-2008]

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36, followed

Raghubir Saran (Dr.) v. State of Bihar, AIR 1964 SC 1; Minu Kumari v. State of Bihar, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

[7373] — Ss. 482, 227 and 190 — Magistrate issuing process against more persons on the basis of private complaint — *Power of High Court to interfere with such exercise of power — Propriety of High Court going into merits at such stage — Right of such accused to pray for discharge upon committal under S. 227. Hareram Satpathy* v. *Tikaram Agarwala*, (1978) 4 SCC 58: 1978 SCC (Cri) 496: AIR 1978 SC 1568: 1978 Cri LJ 1687.

Bench Strength **2**. Coram: **Jaswant Singh** and *P.S. Kailasam*, JJ. [Date of decision: 24-8-1978]

[7374] — Ss. 482 and 200 first proviso, 190(1)(a) & 204 — Private complaint in writing before Magistrate — Quashing of — Complaint must disclose all necessary facts constituting the offence alleged before taking cognizance of the offence — *Complaint alleging that appellant in an interview published in a magazine made statements outraging religious feeling of Marwari community and alleging that the members of that community were not a class belonging to India, having no faith and love towards India and being traitors and enemies of India — Magistrate taking cognizance and issuing notice to appellant for appearance — Writ petition preferred by appellant before High Court — High Court quashing the complaint as not constituting offence under S. 295-A IPC and no appeal filed against the same — However, High Court also observing that prima facie the allegations constituted an offence under S. 500 IPC — Held, allegations do not disclose offence under S. 500 and hence Magistrate not justified in issuing process against the appellant — Penal Code, 1860, Ss. 295-A and 500. Shatrughna Prasad Sinha* v. *Rajbhau Surajmal Rathi*, (1996) 6 SCC 263: 1996 SCC (Cri) 1310.

Bench Strength **3**. Coram: *K. Ramaswamy*, *Faizan Uddin* and *G.B. Pattanaik*, JJ. [Date of decision: 10-9-1996]

[7375] — S. 482 — Prayer for quashing complaint/FIR by complainant himself who alleged that he was pressurised to file said complaint — *Complainant in police custody/police protection from 7-11-2005 to 9-11-2005 where alleged that he was forced to write the complaint against Arun Gulab Gawali gang on 8-11-2005 — His wife making an application before Magistrate for his release from police custody or his production before court on 9-11-2005 whereafter he was released — Again on 11-11-2005 she approaching State Human Rights Commission stating that her husband had been confined in police custody, tortured and was forcibly made to sign some papers — In such a fact situation, possibility that allegations made by complainant and his wife against police in their complaints/applications/writ petitions may be true, cannot be ruled out — Thus, it was a fit case, where in order to meet the ends of justice and to prevent miscarriage of criminal justice, the inherent powers of Court to quash FIR/complaint could have been exercised — Hence complaint quashed — Penal Code, 1860, Ss. 384, 386, 506 Pt. II, 120 and 34* (Paras 30 to 35). *State of Maharashtra* v. *Arun Gulab Gawali*, (2010) 9 SCC 701.

Bench Strength **2**. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 27-8-2010]

State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561: 1982 SCC (Cri) 283; Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Ajay Mitra v. State of M.P., (2003) 3 SCC 11: 2003 SCC (Cri) 703; R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; Dhanalakshmi v. R. Prasanna Kumar, 1990 Supp SCC 686: 1991 SCC (Cri) 142; Ganesh Narayan Hegde v. S. Bangarappa, (1995) 4 SCC 41: 1995 SCC (Cri) 634; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283; State of Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272; B.S. Joshi v. State of Haryana, (2003) 4 SCC 675: 2003 SCC (Cri) 848; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192; Alpic Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513: 2001 SCC (Cri) 565; M.N. Damani v. S.K. Sinha, (2001) 5 SCC 156: 2001 SCC (Cri) 823, relied on

[7376] — Ss. 482, 227 and 320 — Quashing of complaint at behest of complainant himself on ground that since complainant himself was not supporting prosecution case, there was no chance of securing conviction of accused, and thus, trial would be a futile exercise — Propriety — Nature of offence — Relevance — Proper forum to be approached in such a case — *Held, quashing of FIR/complaint on such a ground cannot be held to be justified in law since offence committed is a crime against society and not against victim alone — Reliance on affidavits by High Court would be a weak, hazy and unreliable source for adjudication on the fate of a trial — Presumption that an accused would never be convicted on material available is too risky a proposition to be accepted readily, particularly in heinous offences like extortion — More so, it was not a case of civil nature where there could be a possibility of compromise or involving an offence which may be compoundable under S. 320 CrPC — Impugned judgment set aside on this ground — Complaint however quashed on other grounds*

The High Court proceeded on the perception that as the complainant himself was not supporting the complaint, he would not support the case of the prosecution and there would be no chance of conviction, thus the trial itself would be a futile exercise. Quashing of FIR/complaint on such a ground cannot be held to be justified in law. Ordinarily, the Court of Session is empowered to discharge an accused under Section 227 CrPC even before initiating the trial. The accused can, therefore, move the trial court itself for such a relief and the trial court would be in a better position to analyse and pass an order as it is possessed of all the powers and the material to do so. It is, therefore, not necessary to invoke the jurisdiction under Section 482 CrPC for the quashing of a prosecution in such a case. The reliance on affidavits by the High Court would be a weak, hazy and unreliable source for adjudication on the fate of a trial. The presumption that an accused would never be convicted on the material available is too risky a proposition to be accepted readily, particularly in heinous offences like extortion. (Para 27)

A claim founded on a denial by the complainant even before the trial commences coupled with an allegation that the police had compelled the lodging of a false FIR, is a matter which requires further investigation as the charge is levelled against the police. If the prosecution is quashed, then neither the trial court nor the investigating agency has any opportunity to go into this question, which may require consideration. An offence committed is a crime against society and not against the victim alone. The victim under undue pressure or influence of the accused or under any threat or compulsion may resile back but that would not absolve the State from bringing the accused to book. (Para 28)

Thus, while exercising powers under Section 482 the Court has to act cautiously before proceeding to quash a prosecution in respect of an offence which hits and affects the society at large. Quashment is warranted where no other view is possible nor any investigation or inquiry is further required. There cannot be a general proposition of law, so as to fit in as a straitjacket formula for the exercise of such power. Each case will have to be judged on its own merit and the facts warranting exercise of such power. More so, it was not a case of civil nature where there could be a possibility of compromise or involving an offence which may be compoundable under Section 320 CrPC. (Para 29). *State of Maharashtra* v. *Arun Gulab Gawali*, (2010) 9 SCC 701.

Bench Strength 2. Coram: *P. Sathasivam* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 27-8-2010]

Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234, referred to

(xiv) Errors of procedure by courts/ authorities below

See also '(11)(xi) Lack of jurisdiction of court/forum below', above

[7377] — S. 482 — Where criminal proceedings are initiated on the basis of illicit material collected on search and arrest which are per se illegal and vitiate the trial itself, power under S. 482 can be exercised to quash the proceedings as continuance of such proceedings would amount to abuse of process of the court

The power under Section 482 CrPC has to be exercised by the High Court, inter alia, to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. So, exercise of power under Section 482 CrPC to quash proceedings in a case like the one on hand, would indeed secure the ends of justice. (Para 18). *Roy V.D.* v. *State of Kerala*, (2000) 8 SCC 590: 2001 SCC (Cri) 42: AIR 2001 SC 137.

Bench Strength 2. Coram: **S.S.M. Quadri** and *S.N. Phukan*, JJ. [Date of decision: 10-11-2000]

(11)(xiv) Errors of procedure by courts/authorities below *(contd.)*

[7378] — S. 482 — Quashing of criminal proceedings by High Court when not justified — Complaint case against three persons in respect of same offence for which police challan filed only against one person — *Allegation in complaint that first informant gave names of three persons but police issued charge-sheet only against one person — Held, High Court erred in quashing complaint case without appreciating grievance of the complainant. Manikandan* v. *Pandian*, 1989 Supp (2) SCC 648: 1990 SCC (Cri) 203.

Bench Strength 2. Coram: **K. Jagannatha Shetty** and *L.M. Sharma*, JJ. [Date of decision: 23-8-1989]

[7379] — Ss. 482, 190 & 204 — Quashing of criminal complaint — Ground — Magistrate issuing process without following the procedure and applying his mind — *Held, in such a case the High Court should not have quashed the complaint itself — It should have quashed the order issuing process and directed the Magistrate to reconsider the matter and proceed in accordance with law* (Paras 3 and 4). *Narmada Prasad Sonkar* v. *Sardar Avtar Singh Chabara*, (2006) 9 SCC 601: (2006) 3 SCC (Cri) 350.

Bench Strength 2. Coram: *B.P. Singh* and *Altamas Kabir*, JJ. [Date of decision: 27-3-2006]

[7380] — Ss. 482, 190(1)(b), 204, 173, 169 and 362 — Refusal to exercise power under S. 482 — Propriety — Magistrate by mistake taking cognizance and issuing summons against appellants where police did not find their involvement in the case — *Thereafter, on petition of appellants, Magistrate directing to strike off their names from the array of the accused persons — Sessions Judge setting aside the said order holding that the Magistrate did not have any power to recall its earlier order — Challenge to, before High Court — High Court declining to exercise power under S. 482 and confirming the order of Sessions Judge — Considering the facts, held, High Court was not justified in doing so*

In the present case, the police submitted charge-sheet against accused *H* and *S*. In that charge-sheet three of the accused ladies were found to be not involved in the case. When the charge-sheet was placed before the Magistrate, he took cognizance of the offence and directed issuance of processes against *H* and *S* and ladies *M* and *R* on the ground that there was a prima facie case against them for the offences punishable under Sections 341, 323 and 435 read with Section 34 IPC. The appellants *M* and *R* filed a petition before the Magistrate concerned praying therein that due to clerical error the names of the appellants had also been mentioned in the said order and cognizance was taken and summons were issued against them. The Magistrate heard the matter and ordered to strike off their names. This order was challenged before the Sessions Judge who set aside the order holding that the Magistrate did not have any power, muchless inherent power to recall or review his earlier order. The petition filed under Section 482 CrPC against the order of the Sessions Judge came to be dismissed on the ground that the subordinate court could not have recalled its own order under Section 362 CrPC on the pretext that there was correction of clerical and arithmetical errors.

Allowing the appeal,

Held :

The High Court was not justified in rejecting the application in terms of Section 482 of the Code. This is a case when the cognizance was taken, summons were issued by mistake and the names of the appellants were also mentioned in the order. Since the police have not found any material against the appellants, the CJM without following the procedure as indicated herein could not have directed issuance of summons so far as they are concerned. There was no indication that the CJM disagreed with the opinion of the investigating agency and therefore ordered issuance of summons. On the contrary, as noted by the CJM later that it was a mistake and, therefore, he had ordered to strike off the names of the appellants. The High Court's order is set aside. The names of the appellants shall be struck off from the array of accused persons. (Para 21). *Minu Kumari* v. *State of Bihar*, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310: AIR 2006 SC 1937: 2006 Cri LJ 2468: (2006) 2 KLT 588: (2006) 3 Guj LR 2013.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 12-4-2006]

[7381] — Ss. 482 and 156(3) — Quashing of proceedings by High Court — Exercise of discretionary power — Principles — Allegations in the complaint petition to be examined with regard to correct statutory provision vis-à-vis conduct of parties — *Magistrate ordering police investigation under S. 156(3) CrPC without applying mind on these principles — Magistrate not considering the bona fide mistake of respondent Directors in publishing the prospectus of the company — Therefore, quashing of the proceedings by High Court upheld — Penal Code, 1860, Ss. 120-B, 177, 181, 191, 192, 425 and 500*

Dismissing the appeal,

Held :

The jurisdiction of the High Court to quash an FIR in exercise of its jurisdiction under Section 482 CrPC is well known. The Court may not enter into determination of a disputed question of fact at that stage. It may, however, take note of the allegations made in the complaint petition vis-à-vis the conduct of the parties. Allegations contained in the complaint petition, as noticed by the Magistrate, may give rise to tortious liability on the part of the Bank. Principal allegations were made against the Bank. Who had acted on behalf of the Bank was not disclosed. The acts of omission and commission on the part of the Bank, if any, by withholding export bills of the Bank may give rise to a statutory violation on its part but the respondents were not personally liable therefor. (Paras 6 and 11)

IPC does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. (Para 13)

In the prospectus, a bona fide mistake had been committed. The fact that such a mistake had been committed stood accepted. The statement that the matter was pending before DRT instead and place of the City Civil Court, Ahmedabad, per se, could not be said to be defamatory as the fact that a suit was pending for recovery of the huge amount was neither denied nor disputed. (Para 14)

The Chief Judicial Magistrate noticed that the Bank deceived the Company by filing false suit before DRT by making false submissions and producing false affidavit. Hence the complaint necessitated investigation by the police. Whether such a suit is maintainable and/or is ultimately to be decreed or disposed of is a question which has to be gone into in the suit itself. A criminal court cannot even take that factor into consideration. (Paras 10 and 14)

Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. (Paras 13 and 15). *Maksud Saiyed* v. *State of Gujarat*, (2008) 5 SCC 668: (2008) 2 SCC (Cri) 692: (2007) 140 Comp Cas 590: (2007) 59 AIC 139 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 18-9-2007]

Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400, relied on

[7382] — Ss. 482 & 204 — Quashing of criminal proceedings — Offence by company — Non-application of mind in issuing summons — *On the basis of a complaint, cognizance of offence under Ss. 24 and 25, punishable under Ss. 43 and 44 r/w S. 47 of Water (Prevention and Control of Pollution) Act, 1974 taken and issue of process ordered by Judicial Magistrate against appellant-directors of a company — No allegation made in the complaint or in the statement recorded by the Magistrate before issue of summons that the offence was committed by the company with the consent or connivance, of or was attributable to any negligence on the part of the appellants as required under S. 47(2) of the Act — Further, sample of water was taken immediately after the Factory Manager of the company had informed the Board that FRP lining provided in the oil and grease trap of the effluent treatment plant having got damaged at some places, the tank had to be shut down temporarily and would be restarted soon after repair/replacement — Held, summons was issued without application of mind and Judicial Magistrate committed error in issuing the same hence liable to be set aside — In view of the special facts and circumstances of the case, question regarding conflict, if any, between decisions of Supreme Court in* Municipal Corpn. of Delhi *v.* Ram Kishan Rohtagi *and* State of Haryana *v.* Brij Lal Mittal *on the one hand and in* U.P. Pollution Control Board *v.* Modi Distillery *on the other hand need not be considered — Water (Prevention and Control of Pollution) Act, 1974, Ss. 43, 44 r/w 47 and 24 & 25. Nalin Thakor* v. *State of Gujarat*, (2003) 12 SCC 461.

Bench Strength **3**. Coram: *V.N. Khare, C.J.* and *S.B. Sinha* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 4-11-2003]

Distinguished in U.P. Pollution Control Board v. Dr. Bhupendra Kumar Modi, (2009) 2 SCC 147

(11)(xv) Quashment of proceedings

(xv) Other specific grounds for quashment

[7383] — S. 482 — **Technical offence — Sample of Pan Masala and Mouth Freshner found to contain saccharin to the extent of 2000 and 2450 p.p.m. which was in violation of R. 47, PFA Rules as then existing** — *Rule valid and operative at the relevant time — Hence initiation of criminal cases against accused cannot be held to be without jurisdiction — Prima facie case made out — Petition for quashing the complaint rightly dismissed by the High Court — However, in view of the revised standard the addition of saccharin in Pan Masala and Mouth Freshner to the extent of 2000 and 2450 cannot be said to be injurious to health — Hence appellants have committed only technical offence — In special facts of the case criminal cases against the appellants are quashed on payment of costs at Rs 7500 in each of the appeals — Prevention of Food Adulteration Act, 1954, Ss. 7/16 — Technical breach — Constitution of India, Art. 142 — Prevention of Food Adulteration Rules, 1955, R. 47 (as it stood prior to 1993 amendment)*

In this case it was contended that even if addition of saccharin to the extent as stated to have been found by the analyst is accepted to have been correctly determined, such addition, as a matter of fact, was neither injurious to health nor it degenerated the articles sold so that they could be branded as adulterated food. The ban on the use of saccharin in pan masala and mouth freshner was imposed on a misconception and erroneous view of its injurious effect on human system. But later on, it has been accepted by the rule-making authority that use of saccharin to the extent of 8000 p.p.m. in pan masala will not be harmful for human consumption and Rule 47 of the Rules has been amended. As use of saccharin to the extent of 2000 and 2450 p.p.m. was not injurious to health at any point of time, it must be held that even before amendment of Rule 47 such use of saccharin to the above extent did not constitute an offence for adulterating food with substances injurious to health.

Held :

At the relevant time, saccharin content in pan masala and mouth freshner to the extent of 2000 and 2450 p.p.m. as found by the analyst was not permissible under the Prevention of Food Adulteration Rules. Rule 47 was valid and operative at the relevant time. Hence, there had been violation of the Food Adulteration Act and the Rules framed thereunder in selling pan masala and mouth freshner with saccharin content to the extent of 2000 and 2450 p.p.m. Hence, the complaints made by the Health Department of Delhi Administration and initiation of criminal cases against the accused cannot be held to be without justification. It cannot also be contended that on the face of the complaint, no offence was prima facie committed. Hence, the impugned decision of the High Court in dismissing the applications under Section 482 CrPC cannot be held to be unjustified.

Even if the complaint is accepted to be correct, the only offence committed by the appellants amounts to technical violation of the mandate of Rule 47 for adding saccharin to the extent of 2000 and 2450 p.p.m. in the Chutki Pan Masala and Mouth Freshner. Such addition of saccharin cannot be held to be injurious to health because, considering later findings on research and analysis on the effect of saccharin on human system, addition of saccharin to the extent of 8000 p.p.m. in pan masala has been allowed by amending Rule 47. The articles sold are not alleged to be injurious to health and such allegations, even if made, cannot be accepted. There is no allegation that any other injurious substance was added to the articles sold making them potentially health hazards. It is also not the case that pan masala and mouth freshner were of inferior quality and substandard. In a case like this, the offence committed is on account of technical violation of Rule 47. It should be emphasised that strict adherence to Prevention of Food Adulteration Act and Rules framed thereunder should be insisted and enforced for safeguarding the interest of consumers of articles of food.

The trial of the accused persons directed to be quashed on payment of costs at Rs 7500 in each of the appeals as on conviction of the appellants in the criminal cases initiated against them, such fine would have met the ends of justice. *Krishan Gopal Sharma* v. *Govt. of N.C.T. of Delhi*, (1996) 4 SCC 513.

Bench Strength **2**. Coram: **G.N. Ray** and *B.L. Hansaria*, JJ. [Date of decision: 7-5-1996]

Pyarali K. Tejani v. Mahadeo Ramchandra Dange, (1974) 1 SCC 167: 1974 SCC (Cri) 87: (1974) 2 SCR 154, followed

[7384] — S. 482 — **Quashing of complaint/FIR — Grounds — Exoneration in departmental proceeding on identical charge** — *Charge of acquisition of assets disproportionate to income — Appellant exonerated in departmental proceeding in the light of report of the Central Vigilance Commission and concurred by the Union Public Service Commission — Basis of criminal charge being valuation of the appellant's house which the CBI fixed at Rs 7,69,300 as against the earlier valuation by the Income Tax Department at Rs 4.67 lakhs —*

Both the reports given by the same engineers — Allegation of overwritings and alteration in subsequent report submitted by the CBI for which the appellant filing complaint under S. 340 CrPC for taking cognizance against officer concerned — Held, appellant's case falls in more than one head of guidelines laid down in Bhajan Lal case *for quashing of a complaint/FIR — Hence prosecution of the appellant under S. 5(2) read with S. 5(1)(e) of the Prevention of Corruption Act, 1947 is liable to be quashed — Conduct of the CBI deprecated — Constitution of India — Prevention of Corruption Act, 1947, S. 5(2) read with S. 5(1)(e)*

The appellant was appointed as Inspector in the Income Tax Service in the year 1961. His wife was also a teacher. She was allotted a plot in the year 1980 for a sum of Rs 20,000 by Steel Authority of India Ltd. (SAIL). As per terms and conditions imposed by SAIL, shops in the ground floor and residence at first floor were constructed by the appellant with his earnings as well as the earnings of his wife. The construction was strictly under the supervision and on the drawings supplied freely by SAIL township authority. Subsequently the building was valued by SAIL township engineer at Rs 4.75 lakhs. The appellant in the meanwhile got promotion and was functioning as Income Tax Officer. The CBI filed a charge-sheet against the appellant on 31-7-1989 and the main basis for this charge-sheet was the valuation of the appellant's house which the CBI fixed at Rs 7,69,300 as against the earlier valuation by the Income Tax Department at Rs 4.67 lakhs. The engineers who prepared the valuation report for income tax purposes also prepared the report for the CBI and there was no indication as to why there was a difference in the value of the property. In the departmental enquiry conducted by the Central Vigilance Commission the Commission submitted a report exonerating the appellant of all the charges. The Department forwarded the report of the Central Vigilance Commission for the opinion of the Union Public Service Commission. By a long report, the Union Public Service Commission concurred with the conclusion of exonerating the appellant of all the charges. Accepting the report of the Union Public Service Commission, the President passed the final orders in favour of the appellant. The appellant moved the High Court under Section 482 CrPC for quashing the cognizance of charge as mentioned above. This time the High Court dismissed the petition holding that the issues raised before it have to be gone into in the final proceedings and those cannot be raised at the preliminary stage. On appeal *Held* :

The standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. In the instant case the charge in the departmental proceedings and in the criminal proceedings is one and the same. If the charge which is identical could not be established in a departmental proceedings and in view of the admitted discrepancies in the reports submitted by the valuers one wonders what is there further to proceed against the appellant in criminal proceedings.

The appellant's case can be brought under more than one head of guidelines laid down in *Bhajan Lal case* for quashing of a complaint/FIR.

The High Court was not right in taking the view that the issues raised had to be gone into in the final proceedings and the Report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. *P.S. Rajya* v. *State of Bihar*, (1996) 9 SCC 1.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **K. Venkataswami**, JJ. [Date of decision: 9-5-1996]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

***Distinguished** in State v. M. Krishna Mohan, (2007) 14 SCC 667*

[7385] — S. 482 — Quashing of criminal proceedings — Material collected by investigating agency not gone through by High Court — Offences under Ss. 420, 201 r/w S. 120-B IPC as well as under Ss. 13(1) and 13(2), Prevention of Corruption Act — *Proceedings quashed by High Court on the ground that accused persons have been exonerated of the charges in departmental proceedings conducted for the same cause of action — Held, before quashing the proceedings, High Court ought to have considered the aforesaid material so as to find out if the charges could be framed against the accused on the basis of it — Order passed by High Court set aside — Penal Code, 1860, Ss. 420, 201 r/w S. 120-B — Prevention of Corruption Act, 1988, Ss. 13(1) and 13(2). State of Bihar* v. *Purushottam Singh*, (2002) 10 SCC 333.

Bench Strength **2**. Coram: *M.B. Shah* and *S.N. Variava*, JJ. [Date of decision: 17-11-2000]

[7386] — S. 482 — Quashing of prosecution — High Court cannot hold a parallel trial in exercise of power under — If offence prima facie falls under the Penal Code, launching of prosecution cannot be thwarted by High Court under S. 482 merely because penal action open under any other statute — *Cognizance of offence taken by*

(11)(xv) Other specific grounds for quashment *(contd.)*

Magistrate under S. 409 IPC against managing director and directors (appellants) of a public limited company on the basis of charge-sheet submitted by CBI and other material prima facie disclosing dishonest misappropriation of share and debenture moneys collected from public — Application filed by appellants under S. 482 seeking their discharge on ground of availability of penal provisions for such offence under Companies Act — Held, High Court justified in dismissing the application — Penal Code, 1860, Ss. 409, 420 and 405 — Companies Act, 1956, Ss. 69, 63 and 73

Though the Companies Act contains provisions regarding the issuance of prospectus, applications for shares and allotment thereof and provides different checks over the misuse of the fund collected from the public for issuance of shares or debentures, but where persons issue prospectus and collect moneys from public assuring them that they intend to do business with the public money for their benefit and the benefit of such public, but the real intention is to do no business other than collecting the moneys from the public for their personal gain, such persons cannot be said to be immune from the provisions of the Penal Code. The persons managing the affairs of such company cannot use the juristic entity and corporate personality of the company as a shield to evade themselves from prosecution for offences under the Penal Code, if it is established that primary object of the incorporation and existence of the Company is to defraud the public.

But, at the same time, while taking cognizance of alleged offences in connection with the registration, issuance of prospectus, collection of moneys from the investors and the misappropriation of the fund collected from the shareholders which constitute one offence or other under the Penal Code, court must be satisfied that prima facie an offence under the Penal Code has been disclosed on the materials produced before the court. For prosecution for offences under the Penal Code the complainant has to make out a prima facie case against the individuals concerned, regarding their acts and omissions which constitute the different ingredients of the offences under the Penal Code. There is a basic difference between the offences under the Penal Code and acts and omissions which have been made punishable under different Acts and statutes which are in nature of social welfare legislations. For framing charges in respect of those acts and omissions, in many cases, mens rea is not an essential ingredient; the concerned statute imposes a duty on those who are in charge of the management, to follow the statutory provisions and once there is a breach or contravention, such persons become liable to be punished.

In the facts of the present case itself, the prosecution has to prove that the appellant as promotors or directors, had dishonest intention since the very beginning while collecting the moneys from the applicants for the shares and debentures or that having collected such moneys they dishonestly misappropriated the same. The ingredients of the different offences under the Penal Code need not be proved only by direct evidence: they can be shown from the circumstances of a particular case that the intention of the promotors or the directors was dishonest since the very inception or that they developed such intention at some stage, for their wrongful gain and causing wrongful loss to the investors. All the circumstances and the materials to prove such a charge have to be collected during the investigation and inquiry and ultimately have to be produced before the court at the stage of trial for a verdict as to whether the ingredients of offence in question have been established on behalf of the prosecution.

In the present case the quashing of the prosecution pending against the appellants only on the ground that it was open to the applicants for shares to take recourse to the provisions of the Companies Act, cannot be accepted. It is a futile attempt on the part of the appellants, to close the chapter before it has unfolded itself. It will be for the trial court to examine the matter on the materials produced on behalf of the prosecution. That exercise cannot be performed either by the High Court or by the Supreme Court. The trial court should proceed with the case in accordance with law.

The High Court should not, while exercising power under S. 482 of the Code, usurp the jurisdiction of the trial court. The power under S. 482 of the Code has been vested in the High Court to quash a prosecution which amounts to abuse of the process of the court. But that power cannot be exercised by the High Court to hold a parallel trial, only on basis of the statements and documents collected during investigation or inquiry, for purpose of expressing an opinion whether the accused concerned is likely to be punished if the trial is allowed to proceed. *Radhey Shyam Khemka* v. *State of Bihar*, (1993) 3 SCC 54: 1993 SCC (Cri) 591: (1993) 77 Comp Cas 356: 1993 Cri LJ 2888: (1993) 1 Crimes 1132.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **N.P. Singh**, JJ. [Date of decision: 26-3-1993]

[7387] — Ss. 482 & 321 — Petition under, for quashing of criminal proceedings — Govt.'s decision to withdraw the prosecution, held, not a relevant ground for quashing the proceedings by High Court — *Application under S. 321, if filed, would be dealt with by the trial court — Further direction given by High Court to police and Magistrate not to prosecute the petitioner, held, was without jurisdiction — When High Court's judgment and order quashing the criminal proceedings found to be unsustainable, question of remanding the matter to it for consideration of the petition under S. 482 on merits does not arise*

The appellant, working as Agricultural Development Officer (Enforcement) in the Deptt. of Agriculture, filed an FIR against the respondents alleging commission of criminal acts punishable under Sections 382, 353, 506, 186 IPC when he along with the staff had gone to check the stock register and quality of goods sold by them. On the same day the two accused concerned sent complaints to the State Government alleging among other things, demand of bribe and consequent harassment meted out by the appellant to them for non-payment of bribe. On that basis, the Government initiated certain inquiries and based on the report received on such inquiries the opinion of the District Attorney was sought who recommended filing of an application under Section 321 CrPC for withdrawal of the prosecution. The State also consulted the Additional Public Prosecutor who was appearing in the trial, who also recommended the withdrawal of the prosecution. During pendency of the investigation the respondents filed petitions under Section 482 CrPC before the High Court. In view of the order of stay granted by the High Court in the quashing proceedings the proposed framing of the charge by the trial court could not be proceeded with. When the High Court was seized of the petitions, a statement was made on behalf of the State that a decision had been taken by the Govt. to withdraw the complaint. When Section 321 application was still pending, the High Court by the impugned orders quashed the criminal proceedings against the respondents and directed the police authorities and the Magistrate not to prosecute the respondent-petitioners.

Allowing the appeal,

Held :

What is pending before the High Court was a quashing petition filed under Section 482 CrPC wherein the scope of interference by the High Court is quite restricted. In such a petition accepting a statement made by the counsel for the State, the High Court could not have quashed the petition solely on that ground. It could only have quashed the petition if it came to the conclusion that the complaint of the appellant did not make out a triable case against the petitioners before it. The decision of the Government to withdraw the prosecution is an irrelevant ground so far as the High Court is concerned to allow a petition for quashing. It is rather surprising why further directions were issued by the High Court to the police and the Magistrate not to prosecute the petitioners once it quashed the complaint. The direction issued in the impugned order by the High Court is wholly without jurisdiction even under Section 482 CrPC. The High Court ought to have noticed the fact that but for the grant of stay order, there was a possibility of the trial court even framing charge against the respondents-accused when the case was listed for the said purpose in which event there could have been room for argument that even a Section 321 petition would not be maintainable. (Para 9)

Since the impugned judgment of the High Court is held to be unsustainable, it is not possible to accept the submission that in the interest of justice the Supreme Court should remand the matter back to the High Court to consider the quashing petition on merits. (Para 10)

It is also not possible to accept the further submission that a direction may be given to the Magistrate to dispose of the application filed by the Additional Assistant Public Prosecutor under Section 321 CrPC for withdrawing the prosecution. On the material on record it is not clear whether such an application has already been filed or not. Assuming that such an application is filed, then such an application will have to be dealt with by the trial court in accordance with law. Any direction from the Court at this stage would only hinder an independent application of mind by the court concerned if and when such application is taken up for consideration. Therefore, without expressing any opinion on the merits of the complaint filed by the appellant or the application for withdrawal filed or to be filed by the Additional Assistant Public Prosecutor under Section 321 CrPC, it is prudent to merely quash the impugned order of the High Court and leave the parties to pursue their remedies available in law. (Para 10). *Balkar Singh* v. *Jagdish Kumar*, (2005) 3 SCC 186: 2005 SCC (Cri) 689: AIR 2005 SC 1567: 2005 Cri LJ 1712.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *P.K. Balasubramanyan*, JJ. [Date of decision: 22-2-2005]

Taherakhatoon v. Salambin Mohd., (1999) 2 SCC 635, distinguished

(11)(xv) Other specific grounds for quashment *(contd.)*

[7388] — Ss. 482 and 320 — Quashing of prosecution — High Court cannot advert to case diary, or rely upon letter addressed by parties to officer-in-charge of police station and quash the prosecution on ground that parties had settled their dispute — *Offences under Ss. 467, 468 and 471 IPC are not compoundable — Respondent ready to transfer the amount in question to bank — Hence, it would not be expedient to allow the prosecution to continue — Direction made to the bank not to disburse the said amount except under orders of court of competent jurisdiction — Penal Code, 1860, Ss. 467, 468 and 471. Karpoori Thakur* v. *Baikunth Nath Dey,* 1990 Supp SCC 136: 1990 SCC (Cri) 642.

Bench Strength 2. Coram: *A.P. Sen* and *E.S. Venkataramiah,* JJ. [Date of decision: 12-1-1988]

[7389] — S. 482 — Inherent power of High Court to quash criminal proceedings — Repayment of loan under settlement — Effect — *Held, the same did not exempt the accused persons (respondents herein) from criminal proceedings on account of forgery, cheating, corruption, etc.* (Para 46). *CBI* v. *A. Ravishankar Prasad,* (2009) 6 SCC 351.

Bench Strength 2. Coram: **Dalveer Bhandari** and *H.S. Bedi,* JJ. [Date of decision: 15-5-2009]

[7390] — S. 482 — Quashing of criminal complaint — Against person not alleged to have committed any offence but incidentally involved — *Respondent's husband, an advocate fraudulently inducing complainant and her deceased husband to sign a power of attorney in his favour — Power of attorney used for executing sale deed in favour of his wife, the respondent — Appellants filing FIR against husband and wife (respondents) under Ss. 409, 420, 423 IPC — Quashing of criminal charges by High Court against both respondents — Sustainability — Held, regarding appeal in which* **V**, *wife of* **R**, *is the respondent, there is no material whatsoever either mentioned in the FIR or produced by the prosecution to show that she was in any way involved in the alleged criminal offence committed by her husband* **R** *— The only allegation against her is that the sale deed was in her favour — This does not prima facie make out any offence — She has been roped in only with the aid of S. 120-B which is also not substantiated — Criminal proceeding against V was rightly quashed by High Court and the criminal appeal in which she is respondent dismissed*

Disposing of the appeal in terms below,

Held :

Per Katju, J.

Judgment of the High Court cannot be sustained so far as it has quashed the complaint and proceedings against accused husband *R*, but it has to be sustained so far as it relates to his wife *V*. (Para 10)

While there were certain rulings of two-Judge Benches of this Court, which had held that the findings in a civil suit are binding in a criminal case on the same facts but not vice versa, this view appears to have been somewhat watered down in the subsequent decisions of the larger Benches of this Court. The law as to when criminal proceedings can be quashed by the High Court in exercise of powers under Section 482 CrPC or Article 226 of the Constitution has been laid down by the Supreme Court. (Paras 12 and 13)

The allegations in the FIR if treated to be correct prima facie make out an offence against the respondent's husband *R*. (Para 14)

An appeal is pending against the judgment in the civil suit. The evidence of *D* is a very detailed one and some contradictory statements appear to have been given by him e.g. that the amount was paid by *R* as a loan, and this contradicts the version that the money was paid as a sale consideration. In the judgment of the civil court it has been held that undue influence cannot be ruled out. In these circumstances it cannot be said that at this stage the proceedings in the criminal case were totally mala fide and with ulterior motive. (Para 17)

The pleas which the respondent *R* took before the High Court could be taken by him at the time of the trial, and it would not be proper to pre-empt the criminal proceeding at this stage. Serious allegations have been made against him in the FIR. The relation of a lawyer and his client is like a fiduciary relationship, and the lawyer has to act in the interest of his client. However, it is alleged in the FIR that *R* deceived the complainant and her husband. These are matters which the trial court in the criminal case should look into, and no opinion is being expressed either way on this question. However, this was not a fit case for quashing of the criminal proceedings against *R* in exercise of the powers under Section 482 CrPC or Article 226 of the Constitution. (Para 18)

In *Debendra Nath Padhi case,* (2005) 1 SCC 568 it has been observed that the width of the powers of the High Court under Section 482 CrPC and Article 226 of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of the Court or otherwise to secure the ends of justice within the parameters laid down in *Bhajan Lal case*, 1992 Supp (1) SCC 335. (Para 20)

It is well settled that a judgment of the Court has not to be treated as Euclid's formula. While it is true that ordinarily defence material cannot be looked into by the court while framing of the charge in view of *Debendra Nath Padhi case*, (2005) 1 SCC 568 there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the court at the time of framing of the charges or taking cognizance. It cannot be said as an absolute proposition that under no circumstances can the court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted. (Paras 21 and 22)

In this case it cannot be said that the evidence in the civil suit which was produced by the defence before the trial court established convincingly that the prosecution case is totally absurd or preposterous. This is a matter which has to be looked into by the trial court. However, the trial court will not be influenced by any observations made in this judgment. (Paras 23 and 25)

As regards the other criminal appeal in which *V*, wife of *R*, is the respondent, there is no material whatsoever either mentioned in the FIR or produced by the prosecution to show that *V* was in any way involved in the alleged criminal offence committed by her husband *R*. The only allegation against her is that the sale deed was in her favour. This does not prima facie make out any offence. Criminal proceeding against *V* was rightly quashed by the High Court. (Para 26)

Per Kabir, J. (concurring)

Section 227 CrPC, which is in Chapter XVIII of the Code of Criminal Procedure, which deals with trials before a Court of Session, relates to the opening stages of a trial at the time of framing of charge against the accused which is done under Section 228. The aforesaid provision has fallen for consideration of this Court in several cases on the question as to whether at the stage of framing of charge, the court in seisin of the matter is required to consider any material, other than that indicated in the section. (Paras 29 and 30)

Till 1996, the consistent view which had been taken by the Supreme Court was that at the time of framing of charge the trial court can consider only such materials as are placed by the investigating agency having regard to the very language of Section 227. At that stage, the defence could only be heard but could not be given an opportunity to produce evidence for the consideration of the court. However, a different view was expressed by a two-Judge Bench of this Court in *Satish Mehra case*, (1996) 9 SCC 766. It was because of this discordant note that in *Debendra Nath Padhi case*, (2005) 1 SCC 568 an order was passed referring the said question to a larger Bench and the same was taken up for consideration in the said case itself by a three-Judge Bench. (Para 31)

It may be noted that no provision in the Code gives the accused the right to file any material or document at the stage of framing of charge. The right is only granted at the stage of the trial. (Para 33)

The larger Bench (in *Debendra Nath Padhi case*) made a conscious distinction between a proceeding under Section 227 CrPC before the trial court and a proceeding under Section 482 CrPC and made a reference to the Court's power to consider material other than those produced by the prosecution in a proceeding under Section 482 CrPC. While holding that the decision rendered in *Satish Mehra case*, (1996) 9 SCC 766 was erroneous, the larger Bench held that if the submission that the accused would be entitled to produce materials and documents in proof of his innocence at the stage of framing of charge, was to be accepted, it would be unsettling a law well settled over a hundred years. Section 227 only means hearing the submissions of the accused on the records of the case filed by the prosecution and documents submitted therewith and nothing more. The larger Bench arrived at a definite conclusion that the expression "hearing the submissions of the accused" cannot mean an opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge, hearing the submissions of the accused has to be confined to the material produced by the police. (Para 36)

The larger Bench (in *Debendra Nath Padhi case*) did not leave any scope for a different interpretation of the provisions of Section 227 as is now being made. However, the larger Bench did indicate that the width of the powers of the High Court under Section 482 CrPC and Article 226 of the Constitution is unlimited whereunder in the interest of justice the High Court could make such order as may be required to secure the ends of justice and to prevent abuse of the process of any court. (Para 37)

(11)(xvi) Defence case when to be considered/Accused heard at stage of quashment

There is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such materials as are indicated in Section 227 CrPC can be taken into consideration by the Magistrate at that stage. However, in a proceeding taken therefrom under Section 482 CrPC the court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This appears to be the intention of the legislature in wording Sections 227 and 228 the way in which they have been worded and as explained in *Debendra Nath Padhi case* by the larger Bench therein to which the very same question had been referred. (Para 38)

The complaint made in this case does make out a prima facie case against the accused *R* and the cognizance taken by the Magistrate cannot be faulted and the appeal as far as he is concerned, must be allowed. However, even prima facie, none of the offences referred to in the charge-sheet can be made out against the accused *V* and she has been roped in only with the aid of Section 120-B which is also not substantiated. The appeal as far as she is concerned, must be dismissed. (Para 39). *Rukmini Narvekar* v. *Vijaya Satardekar*, (2008) 14 SCC 1.

Bench Strength 2. Coram: **Altamas Kabir**[2] and **Markandey Katju**[1], JJ. [Date of decision: 3-10-2008]

State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568: 2005 SCC (Cri) 415, followed

Satish Mehra v. Delhi Admn., (1996) 9 SCC 766: 1996 SCC (Cri) 1104, held, overruled

(xvi) Defence case when to be considered/ Accused heard at stage of quashment

[7391] — S. 482 — Inherent powers of High Court — Quashing of charge — Whether material produced on behalf of or at the instance of the accused can be considered — *Held, for such purpose it has to be kept in mind that after the stage of framing charge evidence has to be led on behalf of the prosecution to prove the charge if an accused pleads not guilty to the charge and/or charges and claims to be tried — It is only in exceptional circumstances enumerated in* Bhajan Lal case, *1992 Supp (1) SCC 335 that a criminal proceeding may be quashed to secure the ends of justice, but such a stage will come only after evidence is led* (Para 18). *Bharat Parikh* v. *CBI*, (2008) 10 SCC 109: (2008) 3 SCC (Cri) 609: (2008) 69 AIC 156 (SC): 2008 Cri LJ 3540.

Bench Strength 2. Coram: **Altamas Kabir** and *Dr. M.K. Sharma*, JJ. [Date of decision: 14-7-2008]

[7392] — Ss. 482, 190 and 200 — Defence raised by appellant-accused, whether can be entertained in a petition under S. 482 — Determination of — *Complaint by respondent firm, a yarn manufacturer, against Appellant 1, a general merchant and commission agent for various food items also dealing in cotton as commission agent, and Appellant 2, his wife and partner, for cheating/fraud in a dispute relating to payment and supply of cotton bales for manufacturing yarn — Held, while entertaining petition under S. 482, materials furnished by defence cannot be looked into and can be entertained only at the time of trial — When there are prima facie materials available (against accused), a petition for quashing criminal proceedings cannot be entertained — Investigating agency should have freedom to go into whole gamut of allegations and to reach a conclusion of its own — Pre-emption of such investigation would be justified only in very extreme cases — Instant case is not one of those extreme cases where criminal prosecution could be quashed by the Court at the very threshold — Appellant-defendants would have ample opportunity to raise all issues urged herein at an appropriate later stage, where such pleas would be and could be properly analysed and scrutinised — Penal Code, 1860, Ss. 120-B, 406, 420 and 384* (Paras 18 to 20). *Ravindra Kumar Madhanlal Goenka* v. *Rugmini Ram Raghav Spinners (P) Ltd.*, (2009) 11 SCC 529: AIR 2009 SC 2383: 2009 Cri LJ 2852.

Bench Strength 2. Coram: *S.B. Sinha* and **Dr. M.K. Sharma**, JJ. [Date of decision: 13-4-2009]

Alpic Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, relied on

Uma Shankar Gopalika v. State of Bihar, (2005) 10 SCC 336: (2006) 2 SCC (Cri) 49, distinguished

[7393] — S. 482 — Quashing of criminal complaint — When not warranted — Reliance on defence material if proper — Quashing of criminal charge/complaint/proceedings — High Court's powers to quash criminal proceedings by relying on defence material — Whether warranted — *Respondent's husband, an advocate fraudulently inducing appellant complainant and her deceased husband to sign a power of attorney in his favour — Power of attorney used for executing sale deed in favour of his wife, the respondent — Appellants filing FIR against husband and wife (respondents) under Ss. 409, 420 & 423 IPC — Cognizance of the offence taken and process issued by Judicial Magistrate — Criminal revision filed by respondents dismissed — In writ petition High Court quashing the criminal case by placing reliance upon evidence in civil suit — Legality — Held, in very rare cases the defence material can* *be looked into by the court at the time of framing of the charges or taking cognizance — It cannot be said that the evidence in the civil suit which was produced by the defence before trial court established convincingly that the prosecution case is totally absurd or preposterous — Allegations in the FIR prima facie make out an offence against the respondent's husband — The pleas which the respondent's husband took before High Court could be taken by him at the time of the trial, and it would not be proper to pre-empt the criminal proceeding at this stage — Serious allegations have been made against him in the FIR — It is alleged in the FIR that he deceived the complainant and her husband — These are matters which trial court in the criminal case should look into — This was not a fit case for quashing of the criminal proceedings against respondent's husband in exercise of powers under S. 482 CrPC or Art. 226 — Constitution of India — Art. 226*

Disposing of the appeal in terms below,

Held :

Per Katju, J.

Judgment of the High Court cannot be sustained so far as it has quashed the complaint and proceedings against accused husband *R*, but it has to be sustained so far as it relates to his wife *V*. (Para 10)

While there were certain rulings of two-Judge Benches of this Court, which had held that the findings in a civil suit are binding in a criminal case on the same facts but not vice versa, this view appears to have been somewhat watered down in the subsequent decisions of the larger Benches of this Court. The law as to when criminal proceedings can be quashed by the High Court in exercise of powers under Section 482 CrPC or Article 226 of the Constitution has been laid down by the Supreme Court. (Paras 12 and 13)

The allegations in the FIR if treated to be correct prima facie make out an offence against the respondent's husband *R*. (Para 14)

An appeal is pending against the judgment in the civil suit. The evidence of *D* is a very detailed one and some contradictory statements appear to have been given by him e.g. that the amount was paid by *R* as a loan, and this contradicts the version that the money was paid as a sale consideration. In the judgment of the civil court it has been held that undue influence cannot be ruled out. In these circumstances it cannot be said that at this stage the proceedings in the criminal case were totally mala fide and with ulterior motive. (Para 17)

The pleas which the respondent *R* took before the High Court could be taken by him at the time of the trial, and it would not be proper to pre-empt the criminal proceeding at this stage. Serious allegations have been made against him in the FIR. The relation of a lawyer and his client is like a fiduciary relationship, and the lawyer has to act in the interest of his client. However, it is alleged in the FIR that *R* deceived the complainant and her husband. These are matters which the trial court in the criminal case should look into, and no opinion is being expressed either way on this question. However, this was not a fit case for quashing of the criminal proceedings against *R* in exercise of the powers under Section 482 CrPC or Article 226 of the Constitution. (Para 18)

In *Debendra Nath Padhi case*, (2005) 1 SCC 568 it has been observed that the width of the powers of the High Court under Section 482 CrPC and Article 226 of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of the Court or otherwise to secure the ends of justice within the parameters laid down in *Bhajan Lal case*, 1992 Supp (1) SCC 335. (Para 20)

It is well settled that a judgment of the Court has not to be treated as Euclid's formula. While it is true that ordinarily defence material cannot be looked into by the court while framing of the charge in view of *Debendra Nath Padhi case*, (2005) 1 SCC 568 there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the court at the time of framing of the charges or taking cognizance. It cannot be said as an absolute proposition that under no circumstances can the court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted. (Paras 21 and 22)

In this case it cannot be said that the evidence in the civil suit which was produced by the defence before the trial court established convincingly that the prosecution case is totally absurd or preposterous. This is a matter which has to be looked into by the trial court. However, the trial court will not be influenced by any observations made in this judgment. (Paras 23 and 25)

(11)(xvi) Defence case when to be considered/Accused heard at stage of quashment *(contd.)*

As regards the other criminal appeal in which *V*, wife of *R*, is the respondent, there is no material whatsoever either mentioned in the FIR or produced by the prosecution to show that *V* was in any way involved in the alleged criminal offence committed by her husband *R*. The only allegation against her is that the sale deed was in her favour. This does not prima facie make out any offence. Criminal proceeding against *V* was rightly quashed by the High Court. (Para 26)

Per Kabir, J. (concurring)

Section 227 CrPC, which is in Chapter XVIII of the Code of Criminal Procedure, which deals with trials before a Court of Session, relates to the opening stages of a trial at the time of framing of charge against the accused which is done under Section 228. The aforesaid provision has fallen for consideration of this Court in several cases on the question as to whether at the stage of framing of charge, the court in seisin of the matter is required to consider any material, other than that indicated in the section. (Paras 29 and 30)

Till 1996, the consistent view which had been taken by the Supreme Court was that at the time of framing of charge the trial court can consider only such materials as are placed by the investigating agency having regard to the very language of Section 227. At that stage, the defence could only be heard but could not be given an opportunity to produce evidence for the consideration of the court. However, a different view was expressed by a two-Judge Bench of this Court in *Satish Mehra case*, (1996) 9 SCC 766. It was because of this discordant note that in *Debendra Nath Padhi case*, (2005) 1 SCC 568 an order was passed referring the said question to a larger Bench and the same was taken up for consideration in the said case itself by a three-Judge Bench. (Para 31)

It may be noted that no provision in the Code gives the accused the right to file any material or document at the stage of framing of charge. The right is only granted at the stage of the trial. (Para 33)

The larger Bench (in *Debendra Nath Padhi case*) made a conscious distinction between a proceeding under Section 227 CrPC before the trial court and a proceeding under Section 482 CrPC and made a reference to the Court's power to consider material other than those produced by the prosecution in a proceeding under Section 482 CrPC. While holding that the decision rendered in *Satish Mehra case*, (1996) 9 SCC 766 was erroneous, the larger Bench held that if the submission that the accused would be entitled to produce materials and documents in proof of his innocence at the stage of framing of charge, was to be accepted, it would be unsettling a law well settled over a hundred years. Section 227 only means hearing the submissions of the accused on the records of the case filed by the prosecution and documents submitted therewith and nothing more. The larger Bench arrived at a definite conclusion that the expression "hearing the submissions of the accused" cannot mean an opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge, hearing the submissions of the accused has to be confined to the material produced by the police. (Para 36)

The larger Bench (in *Debendra Nath Padhi case*) did not leave any scope for a different interpretation of the provisions of Section 227 as is now being made. However, the larger Bench did indicate that the width of the powers of the High Court under Section 482 CrPC and Article 226 of the Constitution is unlimited whereunder in the interest of justice the High Court could make such order as may be required to secure the ends of justice and to prevent abuse of the process of any court. (Para 37)

There is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such materials as are indicated in Section 227 CrPC can be taken into consideration by the Magistrate at that stage. However, in a proceeding taken therefrom under Section 482 CrPC the court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This appears to be the intention of the legislature in wording Sections 227 and 228 the way in which they have been worded and as explained in *Debendra Nath Padhi case* by the larger Bench therein to which the very same question had been referred. (Para 38)

The complaint made in this case does make out a prima facie case against the accused *R* and the cognizance taken by the Magistrate cannot be faulted and the appeal as far as he is concerned, must be allowed. However, even prima facie, none of the offences referred to in the charge-sheet can be made out against the accused *V* and she has been roped in only with the aid of Section 120-B which is also not substantiated. The appeal as far as she is concerned, must be dismissed. (Para 39).*Rukmini Narvekar* v. *Vijaya Satardekar*, (2008) 14 SCC 1. Bench Strength **2**. Coram: **Altamas Kabir**^{2} and **Markandey Katju**^{1}, JJ. [Date of decision: 3-10-2008]

State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568: 2005 SCC (Cri) 415, followed

Satish Mehra v. Delhi Admn., (1996) 9 SCC 766: 1996 SCC (Cri) 1104, held, overruled

[7394] — Ss. 482, 190(1), 204, 233 & 243 — Quashing of order taking cognizance of offence — Prayer as to — Use of material by accused at said stage which would be available to him only as his defence — Impermissibility of

At the stage of quashing of an order taking cognizance, an accused cannot be permitted to use the material which would be available to him only as his defence. In his defence, the court would be left to consider and weigh materials brought on record by the parties for the purpose of marshalling and appreciating the evidence. (Para 24). *B. Jagdish* v. *State of A.P.*, (2009) 1 SCC 681.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 16-12-2008]

State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568: 2005 SCC (Cri) 415, relied on

[**Ed.**: *See also* the recent judgment in *Rukmini Narvekar* v. *Vijaya Satardekar*, (2008) 14 SCC 1.]

[7395] — S. 482 — Quashing of complaint at initial stage — Defence not to be examined in detail at this stage — *Magistrate summoning the accused to stand trial — Held, the only question to be considered at that stage was whether the complainant and its accompaniments disclosed any or all of the offences alleged against the respondent — High Court could not examine the defence in detail and record a finding of not guilty — More so when S. 69 of the Forest Act raises against the person arraigned an adverse presumption which can be rebutted only when evidence is led — M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 (9 of 1969), Ss. 5-C, 12, 12-A, and 16 — Forest Act, 1927, Ss. 26, 42, 41 and 69. State of M.P.* v. *Harsh Gupta*, (1998) 8 SCC 630: 1998 SCC (Cri) 1723.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *K.T. Thomas*, JJ. [Date of decision: 12-12-1997]

[7396] — Ss. 482 and 161 — Plea of alibi — Burden of proof in respect of — Entertainment of said plea by High Court prior to trial — Permissibility — *Held, the burden to prove plea of alibi lay upon the accused — Accused could prove the said plea by leading evidence during trial — High Court was not justified in recording finding on plea of alibi prior to trial for the first time in a petition under S. 482 CrPC by relying upon some affidavits or statements recorded under S. 161 CrPC — Evidence Act, 1872, Ss. 11, 103 & 106*

Per Mathur, J. (for himself and Balasubramanyan, J.)

The plea taken by Respondent 2 in his petition under Section 482 CrPC was that of alibi. No finding on a plea of alibi can be recorded by the High Court for the first time in a petition under Section 482 CrPC. The burden to prove the plea of alibi lay upon the accused. This could be done by leading evidence in the trial and not by filing some affidavits or statements purported to have been recorded under Section 161 CrPC before the High Court. In such a case the prosecution would have got an opportunity to cross-examine the said witnesses and demonstrate that their testimony was not correct. The whole procedure adopted by the High Court is clearly illegal and cannot be sustained. (Paras 8 and 11). *Rajendra Singh* v. *State of U.P.*, (2007) 7 SCC 378: (2007) 3 SCC (Cri) 375: AIR 2007 SC 2786: (2007) 5 All LJ 485: (2007) 3 KLT 892: (2007) 57 AIC 69 (SC).

Bench Strength **2**. Coram: **G.P. Mathur**[1] and **P.K. Balasubramanyan**[2], JJ. [Date of decision: 6-8-2007]

Gurcharan Singh v. State of Punjab, AIR 1956 SC 460: 1956 Cri LJ 827; Chandrika Prasad Singh v. State of Bihar, (1972) 4 SCC 140; State of Haryana v. Sher Singh, (1981) 2 SCC 300: 1981 SCC (Cri) 421, relied on

[7397] — S. 482 — Quashment of charge-sheet — Materials that may be relied on — Document relied on by accused in his defence, held, may not be relied on except in very exceptional circumstances (Para 12). *Mahesh Chaudhary* v. *State of Rajasthan*, (2009) 4 SCC 439.

Bench Strength **2**. Coram: **S.B. Sinha** and *A.K. Ganguly*, JJ. [Date of decision: 3-3-2009]

(xvii) Civil remedies available/Civil proceedings pending

See also '(11)(xviii) Quashment in case of economic offences/commercial transactions, breach of trust, cheating, etc.', and

'(11)(xix) Quashment re offences involving companies', below

[7398] — S. 482 — Powers of High Court under, for quashing criminal proceedings — Pendency of civil suit in respect of same subject-matter — Effect — *Held, jurisdiction under S. 482 CrPC can be exercised in a case where a civil suit is also pending between the parties in respect of the same subject-matter and contrary stand is taken by the complainant in the civil suit — When contrary stands are taken by a party in civil and the criminal courts, it assumes significance — Penal Code, 1860, Ss. 415 and 420*

(11)(xvii) Civil remedies available/Civil proceedings pending *(contd.)*

The parties hereto entered into an agreement for sale in respect of a house, a sale deed was also executed on 30-9-2005 by the appellant herein. Indisputably on or about 29-9-2005, two rooms, allegedly, constructed on the said lands were demolished. A suit was filed in relation thereto. Respondent 1 who was also defendant in the said suit did not allege that she has been cheated by the appellant herein but later on filed a complaint in the court alleging commission of an offence by the appellant purported to be under Section 420 IPC. A petition under Section 482 CrPC for quashing the complaint had been dismissed by the High Court.

The short question which arose for consideration was as to whether a case of cheating within the meaning of Section 415 of the Penal Code had been made out or not.

Answering in negative and allowing the appeal, *Held* :

While executing the sale deed, the appellant did not make any false or misleading representation. There had also not been any dishonest act of inducement on his part to do or omit to do anything which he could not have done or omitted to have done if he were not so deceived. Admittedly, the matter is pending before a competent civil court. A decision of a competent court of law is required to be taken in this behalf. Essentially, the dispute between the parties is a civil dispute. (Para 12)

For the purpose of establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. In a case of this nature, it is permissible in law to consider the stand taken by a party in a pending civil litigation. This does not mean that the liability of a person cannot be both civil and criminal at the same time. But when a stand has been taken in a complaint petition which is contrary to or inconsistent with the stand taken by him in a civil suit, it assumes significance. Had the fact as purported to have been represented before the Supreme Court that the appellant got the said two rooms demolished and concealed the said fact at the time of execution of the deed of sale, the matter might have been different. As the deed of sale was executed on 30-9-2005 and the purported demolition took place on 29-9-2005, it was expected that the complainant/first respondent would come out with her real grievance in the written statement filed by her in the aforementioned suit. She, for reasons best known to her, did not choose to do so. In this view of the matter, in the facts and circumstances obtaining herein, no case has been made out for proceeding with the criminal case. (Paras 13 and 14). *B. Suresh Yadav* v. *Sharifa Bee*, (2007) 13 SCC 107: AIR 2008 SC 210: 2008 Cri LJ 431.

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Anil Mahajan v. Bhor Industries Ltd., (2005) 10 SCC 228: (2006) 1 SCC (Cri) 746; Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257: 2003 SCC (Cri) 1121, relied on

[7399] — S. 482 — Petition under S. 482 CrPC for quashing criminal complaint alleging commission of various offences under Penal Code — Disputes arising from breach of contract — Civil remedy available and availed of — Remedy under criminal law — Availability of — *Held, the same is not barred if the allegations disclose a criminal offence — Allegations contained in the complaint, taken on their face value, if, on facts, constituted offences under Penal Code — Maintainability of the petition under S. 482 — However, current practice of misuse of criminal process to put undue pressure in civil disputes deprecated — Penal Code, 1860, Ss. 378, 403, 405, 415 and 425*

The appellant Indian Oil Corporation (IOC) entered into a contract with the respondent NEPC India Ltd., agreeing to supply aircraft fuel. According to the appellant, in respect of the fuel supplied under the contract, the respondent committed default in making payments. The respondent hypothecated its two aircrafts to the appellant under a deed. It was stipulated in clause (2) of the deed that the hypothecation was by way of charge and as security for payment of the amounts due. Clause (3) read with the schedule set out the instalments' schedule for payment of the amount due. Under clause (6), NEPC India declared that it would not assign, sell, pledge, charge, underlet or otherwise encumber or part with the possession, custody or beneficial interest in respect of the two aircrafts without the previous written consent of IOC. It also undertook not to do any act which may diminish the value of the hypothecated property without clearing the entire outstanding amount. Clause (9) provided that if NEPC India failed to pay any of the instalments with interest within the stipulated time, or if any undertaking or assurance given by NEPC India was found to be false, IOC shall have the "right to take possession of the hypothecated property" and sell the same by public auction or by private contract and appropriate the sale proceeds towards the outstanding dues without recourse to court of law. Clause (12) confirmed that NEPC India had handed over the title deeds relating to the aircraft to IOC, and agreed to receive them back only after paying the amounts due. As the respondent failed to pay the first two instalments as per the schedule, appellant stopped supply of fuel. However, subsequently, under a fresh agreement, a revised payment schedule was agreed upon and the appellant agreed to recommence supply of aircraft fuel on "cash-and-carry" basis. But this agreement also came to an end as the instalments were not paid. Apprehending that the respondent may remove one of the hypothecated aircraft from Coimbatore Airport to a place outside its reach, the appellant filed a suit in the High Court seeking a mandatory injunction to the authorities concerned to detain the aircraft so as to enable it to take possession thereof. The High Court granted an interim injunction. In regard to the other hypothecated aircraft kept at Chennai Airport the appellant filed another suit in City Civil Court for a similar mandatory injunction. The appellant then filed two complaints against NEPC India and its two directors under Section 200 CrPC alleging that NEPC India unauthorisedly and clandestinely removed the engines and certain other parts from the two hypothecated aircrafts so as to defeat IOC's right to take possession of the two aircrafts in view of default in payments made by NEPC India and further that such act was against the terms of the hypothecation deed and would amount to offences punishable under Sections 378 (theft), 403 (dishonest misappropriation of property), 405 (criminal breach of trust), 415 (cheating), 425 (mischief) of the Penal Code, 1860. The respondents thereupon filed petitions under Section 482 CrPC for quashing the said two complaints on the following grounds:

(*i*) The complaints related to purely contractual disputes of a civil nature in respect of which IOC had already sought injunctive reliefs and money decrees.

(*ii*) Even if all the allegations in the complaints were taken as true, they did not constitute any criminal offence as defined under Sections 378, 403, 405, 415 or 425 IPC.

The High Court by a common judgment allowed both the petitions and quashed the two complaints. It accepted the second ground urged by the respondents herein, but rejected the first ground. The said order of the High Court is under challenge in these appeals. On the rival contentions urged, the following points arose for consideration:

(*i*) Whether existence or availment of civil remedy in respect of disputes arising from breach of contract, bars remedy under criminal law?

(*ii*) Whether the allegations in the complaint, if accepted on face value, constitute any offence under Sections 378, 403, 405, 415 or 425 IPC?

Held :

A given set of facts may make out: (*a*) purely a civil wrong; or (*b*) purely a criminal offence; or (*c*) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed of, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not. (Para 12)

In this case, it is no doubt true that IOC has initiated several civil proceedings to safeguard its interests and recover the amounts due. These acts show that civil remedies were and are available in law and IOC has taken recourse to such remedies. But it does not follow therefrom that criminal law remedy is barred or IOC is estopped from seeking such remedy. (Para 15)

The respondents, no doubt, have stated that they had no intention to cheat or dishonestly divert or misappropriate the hypothecated aircraft or any parts thereof. But these are defences that will have to be put forth and considered during the trial. Defences that may be available, or facts/aspects when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At this stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not. (Para 16)

The High Court was, therefore, justified in rejecting the contention of the respondents that the criminal proceedings should be quashed in view of the pendency of several civil proceedings. (Para 17)

However, there is a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. (Para 13)

(11)(xvii) Civil remedies available/Civil proceedings pending *(contd.)*

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. (Para 14). *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753.

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; Central Bureau of Investigation v. Duncans Agro Industries Ltd., (1996) 5 SCC 591: 1996 SCC (Cri) 1045; State of Bihar v. Rajendra Agrawalla, (1996) 8 SCC 164: 1996 SCC (Cri) 628; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., (2000) 3 SCC 269: 2000 SCC (Cri) 615; Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168: 2000 SCC (Cri) 786; M. Krishnan v. Vijay Singh, (2001) 8 SCC 645: 2002 SCC (Cri) 19; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283, relied on

[7400] — S. 482 — Quashing of complaint — When justified — Act constituting both civil and criminal wrong — *Civil suits for recovery of dues compromised on receiving payments from the companies concerned — Even if offence of cheating is prima facie constituted, compromise decree passed in such suits would amount to compounding of offence of cheating — Delay in completing investigation — No action taken against the erring officials despite allegation made against them in the FIRs — Held, in the circumstances of the case, the High Court was justified in quashing the complaint — Penal Code, 1860, Ss. 405, 420, 468 and 471*

For the purpose of quashing the complaint, it is necessary to consider whether the allegations in the complaint prima facie make out an offence or not. It is not necessary to scrutinise the allegations for the purpose of deciding whether such allegations are likely to be upheld in the trial. Any action by way of quashing the complaint is an action to be taken at the threshold before evidences are led in support of the complaint. For quashing the complaint by way of action at the threshold, it is, therefore, necessary to consider whether on the face of the allegations, a criminal offence is constituted or not.

A particular act may constitute both civil wrong as well as criminal wrong and merely because a civil action is also pursued, it does not render the criminal action impermissible. In the facts of the case, long after the completion of civil suits, the further investigation in connection with the complaints may not be expedient. It may be noted that the opinion given by the Senior Manager (Legal) that the credit facility which was given to DAIL for its tobacco division should be transferred to the newly formed Company, namely, New Tobacco Company Limited, it cannot be held to be per se mala fide or illegal in view of the provisions of Section 394 of the Companies Act. That apart, the legal opinion of the said Senior Manager (Legal) was placed for consideration by the highest administrative body of the Bank i.e. the Board of Directors and the decision was taken by the Board that the credit liability which stood in favour of DAIL should be transferred in favour of the New Tobacco Company Limited. In the aforesaid circumstances, even if the Senior Manager (Legal) or any other officer of the Bank had not acted properly, in view of the fact that the ultimate decision was taken by the Board of Directors, it cannot be reasonably held that some of the officers of the Bank connived and misled the Board. It may be noted that no allegation has been made against the members of the Board.

In the instant case there is enough justification for the High Court to hold that the case was basically a matter of civil dispute. The Banks had already filed suits for recovery of the dues of the Banks on account of credit facility and the said suits have been compromised on receiving the payments from the companies concerned. Even if an offence of cheating is prima facie constituted, such offence is a compoundable offence and compromise decrees passed in the suits instituted by the Banks, for all intents and purposes, amount to compounding of the offence of cheating. It is also to be noted that a long time has elapsed since the complaint was filed in 1987. It may also be indicated that although such FIRs were filed in 1987 and 1989, the Banks have not chosen to institute any case against the alleged erring officials despite allegations made against them in the FIRs Considering that the investigations had not been completed till 1991 even though there was no impediment to complete the investigations and further investigations are still pending and also considering the fact that the claims of the Banks have been satisfied and the suits instituted by the Banks have been compromised on receiving payments, the said complaint should not be pursued any further. *CBI* v. *Duncans Agro Industries Ltd.*, (1996) 5 SCC 591: 1996 SCC (Cri) 1045: AIR 1996 SC 2452.

Bench Strength 2. Coram: **G.N. Ray** and *G.B. Pattanaik*, JJ. [Date of decision: 9-7-1996]

[7401] — S. 482 — Quashing of criminal complaint merely because the complaint spelt out a civil wrong also, not justified if the alleged acts make out an offence — Cheating, forgery etc. — *On the basis of the complaint that Respondents 2 to 10 had fraudulently got the father of the complainant to execute a gift deed, process issued by Magistrate against the said respondents to face trial under Ss. 419, 420, 467 and 120-B IPC — Petition filed under S. 482 by the said respondents for quashing the complaint — Complaint quashed on ground that it spelled out civil wrong and continuance of criminal prosecution would be an abuse of process of the court — Held, order of the High Court cannot be sustained*

It is true that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts no offence is made out. If that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed. (Para 8). *Lalmuni Devi* v. *State of Bihar*, (2001) 2 SCC 17: 2001 SCC (Cri) 275.

Bench Strength 2. Coram: *M.B. Shah* and **S.N. Variava**, JJ. [Date of decision: 15-12-2000]

[7402] — Ss. 482 and 483 — Exercise of jurisdiction under S. 482 — When warranted — Case essentially involving a civil dispute — *Held, S. 482 serves a salutary purpose that a person should not undergo harassment of litigation even though no case has been made out against him — Besides, S. 483 casts a duty on High Court to supervise functioning of trial courts — Therefore, a matter which essentially involves dispute of civil nature should not be allowed to become subject-matter of criminal proceedings which may be resorted to as a short cut to execution of a non-existent decree — Complaint alleging cheating filed against appellants whereas the case in fact involved civil dispute relating to a contract — Held, High Court ought to have exercised its power under S. 482 — CPC, 1908, S. 9 — Contract Act, 1872, S. 73*

There was a dispute between the appellants and Respondent 2 regarding supply of a machine which would serve a specific purpose of purifying and desalting the dyes to a particular level as indicated by Respondent 2. Price of the machine was settled at Rs 17 lakhs plus, out of which advance payment of Rs 3 lakhs was also made. The machine when ready was inspected by Respondent 2 but it was found that it did not achieve the specified level of purifying and desalting the dyes. Respondent 2 filed a criminal complaint against the appellants. The criminal court took cognizance of offences under Sections 417, 420 read with Section 114 of the Penal Code, 1860. The appellants on the other hand alleged that Respondent 2 were not taking delivery of the machine and the appellants had blocked material worth Rs 14 lakhs on account of contract entered into with Respondent 2. The appellants therefore moved the High Court under Section 482 CrPC on the ground that no case for criminal offence was made out. The High Court dismissed the appellants' application under Section 482.

Allowing the appeal,

Held :

Only because civil law can be taken recourse to would not necessarily mean that criminal proceedings should be barred. However, there exists a distinction between pure contractual dispute of a civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, yet in the absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the court should not hesitate to exercise its jurisdiction under Section 482 CrPC. Section 482 serves a salutary purpose that a person should not undergo harassment of litigation for a number of years although no case has been made out against him. A matter which essentially involves dispute of a civil nature should not be allowed to be the subject-matter of a criminal offence, the latter being a short cut of executing a decree which is non-existent. The superior courts, with a view to maintain purity in the administration of justice, should not allow abuse of the process of court. They have a duty in terms of Section 483 to supervise functioning of trial courts. (Paras 16, 21, 23 and 28). *V.Y. Jose* v. *State of Gujarat*, (2009) 3 SCC 78.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 16-12-2008]

Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370: 1985 SCC (Cri) 180; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401; Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; State of M.P. v. Awadh Kishore Gupta, (2004) 1 SCC 691: 2004 SCC (Cri) 353, relied on

(11)(xvii) Civil remedies available/Civil proceedings pending *(contd.)*

[7403] — S. 482 — Criminal proceedings should not be quashed merely because of pendency of civil proceedings between the same parties, even if it be pending in a higher court — Forgery cases — *Nature and scope of and standard of proof required in civil and criminal proceedings are distinct — Inherent power under S. 482 should be exercised sparingly — When trial court found that the complainant had made out a prima facie case against the accused persons, of forgery of a document (a deed of dissolution of partnership firm), held, High Court was not justified in quashing the criminal proceedings merely on the ground that the same document was under scrutiny by it in a civil proceeding initiated by the same complainant — Penal Code, 1860, Ss. 465, 467, 468, 471 and 120-B*

The appellant filed a complaint before the Magistrate alleging that the respondent-accused persons had brought into existence a deed of dissolution of a partnership firm by forging signatures of the partners, including the signature of the appellant for their personal gain and to the detriment of the partners of the firm. The Magistrate recorded the statement of the witnesses for the complainant, perused the record including opinion of a handwriting expert and his deposition and found that the appellant had made out a prima facie case under Sections 465, 467, 468, 471 and 120-B IPC against all the accused persons and therefore, issued summons for their presence. Instead of appearing before the trial Magistrate and contesting the case, the respondents approached the High Court by filing a petition under Section 482 CrPC praying for quashing of the proceedings initiated and process issued against them. The High Court quashed the proceedings observing:

> "Consideration is and should be whether any criminal proceeding instituted before a court subordinate to this Court should be allowed to continue when the very foundation of the criminal case, namely, forgery of document is under scrutiny by this Court in a civil proceeding instituted by same person i.e. the complainant in the criminal case. In my considered view it would not be proper to allow the criminal proceeding to continue when the validity of the document (deed of dissolution) is being tested in a civil proceeding before this Court."

Allowing the appeal and setting aside the impugned order passed by the High Court and restoring the order of the Magistrate with the direction to proceed with the trial of the case in accordance with the provisions of law and decide the same on merits,

Held :

The High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. Criminal prosecution cannot be thwarted at the initial stage merely because civil proceedings are also pending. There is no substance in the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings. The nature and scope of civil and criminal proceedings and the standard of proof required in both matters is different and distinct. Whereas in civil proceedings the matter can be decided on the basis of probabilities, the criminal case has to be decided by adopting the standard of proof of "beyond reasonable doubt". The revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at their face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction. (Paras 17, 9, 15 and 7).*Kamaladevi Agarwal* v. *State of W.B.*, (2002) 1 SCC 555: 2002 SCC (Cri) 200: AIR 2001 SC 3846.

Bench Strength **2**. Coram: *M.B. Shah* and **R.P. Sethi**, JJ.
[Date of decision: 17-10-2001]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; Hazari Lal Gupta v. Rameshwar Prasad, (1972) 1 SCC 452: 1972 SCC (Cri) 208; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401; Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., (2000) 3 SCC 269: 2000 SCC (Cri) 615; Lalmuni Devi v. State of Bihar, (2001) 2 SCC 17: 2001 SCC (Cri) 275; M. Krishnan v. Vijay Singh, (2001) 8 SCC 645: 2002 SCC (Cri) 19; M.S. Sheriff v. State of Madras, AIR 1954 SC 397: 1954 Cri LJ 1019, relied on

Manju Gupta v. Lt. Col. M.S. Paintal, (1982) 2 SCC 412: 1982 SCC (Cri) 459; Sardool Singh v. Nasib Kaur, 1987 Supp SCC 146: 1987 SCC (Cri) 672; Karamchand Ganga Pershad v. Union of India, (1970) 3 SCC 694, distinguished

Shiv Kishan Agarwal v. State of W.B., (2001) 1 Cal LJ 480 (Cal HC), reversed

See also K.G. Premshanker v. Inspector of Police, (2002) 8 SCC 87 in this regard

[7404] — S. 482 — Quashing of criminal proceedings — Grounds — Abuse of process of court — Dispute purely of civil nature —

Absence of ingredients of offences alleged in FIR *— A charitable society executing a power of attorney and sale agreement in respect of a land in favour of Respondent 3 — Respondent 3 failing to pay the balance amount in respect of sale in question despite several requests made by appellant office-bearers of the society — Respondents misusing the said deeds for further sale of the property in question — Hence, appellants, after giving due notice to respondents, forfeiting the earnest money and cancelling the said deeds and thereafter selling the part of land in question (which was subject-matter of above sale agreement) to one S to protect the interest of the society — Aggrieved against the said action, Respondent 3 lodging a criminal case against appellants under Ss. 420 and 467 IPC — Held, the present matter was purely a civil dispute — Even taking into account the entire averments made in FIR to be correct, no offence under Ss. 420 and 467 IPC made out against appellants — Hence, filing of criminal case against appellants was an abuse of process of court — In order to secure the ends of justice, it was imperative to quash FIR/criminal proceedings against appellants — Penal Code, 1860, Ss. 420 & 467*

The impugned judgment was passed by the High Court declining to quash the criminal proceedings initiated against the appellants by the respondents.

In 1923, a Sanatan Dharma Pratinidhi Sabha (for short "the Sabha") was founded. The said Sabha was registered in the year 1949 under the Societies Registration Act. In order to develop a ghat on the banks of a river, the Sabha issued an advertisement in the newspapers. It invited bids from the eligible civil contractors to construct the ghat in consideration of 13.5 bighas (approximately) of its land. The ghat was so constructed by Respondent 3. On completion of the construction of the ghat, the Sabha through its President executed a general power of attorney in favour of Respondent 3 in regard to the abovementioned land. A receipt of Rs 17,92,000 lakhs (approximately) was issued by the Sabha to Respondent 3 as an adjustment towards the cost of construction. On the same day the parties executed an agreement to sell the remaining land which was approximately 11.19 bighas. In pursuance to this, an earnest money of Rs 4,00,000 was received by the Sabha from Respondent 3. As per the agreement, Respondent 3 had to pay another Rs 1,00,000 to the Sabha by 31-1-1997. Respondent 3 paid the said amount on 21-3-1997. The balance amount of Rs 10,10,650 was to be paid by 31-3-1997.

According to the appellants (office-bearers of the society in question), time was the essence of the contract and Respondent 3 had failed to pay the balance amount. The Sabha had sent a legal notice to Respondent 3 to fulfil his contractual obligations under the sale agreement and informed him that if he failed to do so, the agreement to sell would stand cancelled and the amount paid as earnest money would be forfeited. In reply to the said notice, Respondent 3 stated that he had not defaulted in payment of the remaining amount. He stated that as per the agreement the land had to be measured and that he was ready to pay the balance amount once that was done. Subsequently, both the parties met at the site of the disputed land in the presence of Patwari (Revenue Official). The land was measured by the Patwari. The Sabha reduced the balance amount and gave some concession to Respondent 3. Respondent 3 was asked to pay Rs 8 lakhs. In the meantime the President of the Sabha had expired. Therefore, the general power of attorney executed by him had ceased to be in effect. Need of a fresh power of attorney was felt. Respondent 3 desired that the fresh power of attorney be executed in the name of his son i.e. Respondent 4 for the very same 13.5 bighas of land in regard to which earlier power of attorney had been given. Accordingly, the General Secretary of the Sabha, Appellant 1 herein, executed a fresh general power of attorney.

As per the appellants, the Sabha made several requests to Respondents 3 and 4 asking them to pay the balance amount of Rs 8,00,000. However, despite repeated requests, the respondents failed to do so. The appellants submitted that the Sabha had learnt from reliable sources that Respondent 3, by misrepresentation and by misusing his general power of attorney for the 13.5 bighas of land, was attempting to sell the entire 26 bighas of the Sabha's land to other parties and was executing sale deeds without any right whatsoever in respect of the remaining 11.19 bighas. Thereafter, Appellant 1 sent a legal notice (second notice) to Respondents 3 and 4 informing them that if the balance amount of Rs 8,00,000 was not paid, he would have to cancel the general power of attorney. No reply to the said notice was received from the respondents nor was Rs 8,00,000 paid. In these circumstances, Appellant 1 cancelled the power of attorney issued in favour of Respondent 4 and informed Respondent 4 accordingly. A public notice of the same was also published by the Sabha in a local newspaper. According to the appellants, in order to protect the interest of the Sabha, the remaining land of 11.19 bighas was sold to one *S*.

(11)(xvii) Civil remedies available/Civil proceedings pending *(contd.)*

After the said action of the appellants, Respondent 3 lodged a first information report against the appellants. Respondent 3 also filed a civil suit in the said matter. On being aggrieved by the filing of the false and incorrect charge-sheet in the said criminal case, the appellants filed a petition under Section 482 CrPC before the High Court for quashing the proceedings. The High Court dismissed the said petition on the ground that the record showed that the allegations in the FIR constituted an offence as alleged by the complainant. Hence, the present appeal.

Setting aside the judgment of the High Court,

Held :

The appellants who are office-bearers of a charitable organisation in order to protect the interests of the Sabha cancelled the power of attorney by executing a registered cancellation deed after giving notice to the power-of-attorney holders. The appellants sold only that part of the land to *S* on behalf of the society for which an agreement to sell with the complainants (the respondents) had already been terminated. The respondents' earnest money had been forfeited. All this was done only after the appellants had given the respondents due notice. (Para 21)

The veracity of the facts alleged by the appellants and the respondents can only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction. The dispute in question is purely of civil nature and Respondent 3 has already instituted a civil suit in the Court of the Civil Judge. In the facts and circumstances of this case, initiation of criminal proceedings by the respondents against the appellants is clearly an abuse of the process of the court. (Para 22)

Even if all the averments made in the FIR are taken to be correct, the case for prosecution under Sections 420 and 467 IPC is not made out against the appellants. To prevent abuse of the process of the court and to secure the ends of justice, it becomes imperative to quash the FIR and any further proceedings emanating therefrom. (Paras 45, 58 and 60). *Inder Mohan Goswami* v. *State of Uttaranchal*, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259: AIR 2008 SC 251: (2007) 144 DLT 257: (2007) 59 AIC 30 (SC): (2008) 1 All LJ 40.

Bench Strength **3**. Coram: *K.G. Balakrishnan*, *R.V. Raveendran* and **Dalveer Bhandari**, JJ. [Date of decision: 9-10-2007]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, applied

[7405] — S. 482 — Quashing of criminal proceedings — Merely because remedy by way of civil suit is available is not an impediment in maintaining a criminal complaint provided the complaint discloses the ingredients of the offence alleged — *In transaction involving passing of valuable properties between the parties, the aggrieved party may sue for damages and also file a complaint against the wrongdoer for criminal breach of trust or cheating — But the complaint must disclose essential ingredients of the offence — Default made by respondents in payment of instalments by way of repayment of loan advanced by appellant under a lease agreement between the parties for purchase of some article -Complaint filed by appellant alleging commission of offence under S. 420 IPC by respondents — Held on facts complaint does not disclose element of deception or fraud or dishonest inducement or wilful misrepresentation in the entire transaction — Hence complaint, on facts, was liable to be quashed*

The appellant is a registered non-banking financial company, carrying on business of leasing and hire-purchase. The first respondent is the Chairman and founder-trustee and the second respondent the wife of the first respondent, is also a trustee of a trust. The respondents entered into lease agreement with the appellant whereby the appellant agreed to finance the respondents for purchase of 100 hydraulically-operated dental chairs. As per the agreement, the respondents were liable to pay rentals quarterly and the appellant Company, the lessors would have sole and exclusive right, title and interest in the dental chairs supplied till the entire hire-purchase amount was paid. Accordingly, the appellant made the payment and the respondents got delivery of the dental chairs. However, the appellant alleged that the respondents were not regular in making the payments and committed default in payment of the instalments and that the bank had dishonoured certain cheques issued by the respondents. It also alleged that on physical verification, certain chairs were found missing from the premises of the respondents and thus they have committed cheating and caused misappropriation of the property belonging to the appellant. It filed a private complaint under Section 200 CrPC before the Chief Metropolitan Magistrate alleging that the respondents had committed offences under Sections 420, 406 and 423 read with Section 120-B IPC. In those proceedings, the appellant Company moved an application under Section 93 CrPC to issue a search warrant to seize the property in dispute and also to hand over these items to the complainant. The Magistrate took cognizance of the alleged complaint and issued summons to the respondents and passed an order on the application filed under Section 93 CrPC to have a search at the premises of the respondents and to take possession of the properties involved in the case. These proceedings were challenged by the respondents under Section 482 CrPC before a Single Judge of the High Court. The Single Judge quashed the entire proceedings and directed the appellant Company to return all the properties seized by the police pursuant to the warrant issued by the Magistrate. Thus, the order of the Magistrate taking cognizance and issuing process to the respondents as well as the order of search and the direction for restoration of the property to the appellant Company were set aside. In appeal before the Supreme Court it was contended on behalf of the appellant that the allegations in the complaint clearly made out offences punishable under Sections 420, 406, 423, 424 read with Section 120-B IPC and therefore, the Single Judge erred in quashing the proceedings. On behalf of the respondents, on the other hand, it was argued that the entire transaction was of civil nature and that the respondents have made a substantial payment as per the hire-purchase agreement and the default, if any, was not wilful and there was no element of misappropriation or cheating. The respondents also denied having removed any of the items of the disputed property clandestinely to defeat the interest of the appellant. The main question was whether a criminal complaint was maintainable when a remedy under civil law was available. On facts, the question was whether to maintain the complaint the ingredients of the alleged criminal offence were present. Single Judge was justified in invoking the powers under Section 482 CrPC in setting aside the proceedings pending before the Magistrate. Upholding the appellant's plea in law but dismissing his complaint on fact,

Held :

When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form the basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have a right to sue for damages or compensation and at the same time law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that the respondents committed the offence under Section 420 IPC and the case of the appellant is that the respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any wilful misrepresentation. Even according to the appellant, the parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception. Moreover, the appellant has no case that the respondents obtained the article by any fraudulent inducement or by wilful misrepresentation. It has been informed that the respondents, though committed default in paying some instalments, have paid substantial amount towards the consideration. Having regard to the facts and circumstances, it is difficult to discern an element of deception in the whole transaction, whereas it is palpably evident that the appellant had an oblique motive of causing harassment to the respondents by seizing the entire articles through magisterial proceedings. Therefore, the Single Judge of the High Court was perfectly justified in quashing the proceedings. (Paras 11 and 12). *Alpic Finance Ltd.* v. *P. Sadasivan*, (2001) 3 SCC 513: 2001 SCC (Cri) 565: AIR 2001 SC 1226: 2001 Cri LJ 1247.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **K.G. Balakrishnan**, JJ. [Date of decision: 16-2-2001]

Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47; Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370: 1985 SCC (Cri) 180, relied on

[7406] — S. 482 — Quashing of criminal proceedings — Pendency of a civil suit in respect of the matter concerned would not be a bar to resort to criminal proceedings — *Criminal proceedings initiated against the accused for offence under S. 420 IPC, held, were wrongly quashed by the High Court merely on the ground of pendency of a civil suit for specific performance in the matter concerned — Penal Code, 1860, S. 420. Vitoori Pradeep Kumar* v. *Kaisula Dharmaiah*, (2002) 9 SCC 581: 2001 Cri LJ 4948.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 3-4-2000]

(11)(xvii) Civil remedies available/Civil proceedings pending *(contd.)*

[7407] — S. 482 — Quashing of criminal proceedings — Sought on the ground of pendency of civil proceedings in the matter concerned — Permissibility — *Considerations in quashing criminal proceedings restated — Complaint case alleging forgery of documents and wrongful gain on their basis — Proceedings initiated against accused-respondents under Ss. 193, 209, 406, 468 and 471 read with S. 120-B IPC, quashed by the High Court due to the pendency of a civil suit filed by accused disputing genuineness of the documents — Setting aside High Court's impugned judgment, held, mere pendency of the civil suit between the parties cannot be a ground for quashing the criminal proceedings against the accused — If permitted, such practice would be an easy way out for accused to avoid criminal proceedings*

Allowing the appeal,

Held :

The High Court appears to have been impressed by the fact that as the nature of the dispute was primarily of a civil nature, the appellant was not justified in resorting to the criminal proceedings. Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. The proceedings could not be quashed only because the respondents had filed a civil suit. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. (Paras 4 and 5)

In a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. (Para 5)

Where factual foundations for the offence have been laid down in the complaint, the High Court should not hasten to quash criminal proceedings merely on the premise that one or two ingredients have not been stated with the details or that the facts narrated reveal the existence of commercial or money transaction between the parties. The revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report do not prima facie disclose the commission of an offence or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge. The impugned judgment being contrary to the settled position of law is thus not sustainable. (Paras 6, 9 and 11). *M. Krishnan* v. *Vijay Singh*, (2001) 8 SCC 645: 2002 SCC (Cri) 19: AIR 2001 SC 3014.

Bench Strength **2**. Coram: *M.B. Shah* and **R.P. Sethi**, JJ. [Date of decision: 11-10-2001]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239, applied

Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401; Shantilal v. Vimalchand, (2001) 8 SCC at p. 649, below, considered

[7408] — S. 482 — Quashing of criminal proceedings FIR — Dispute of civil nature — FIR lodged after two years — *Held on facts, criminal proceedings initiated by complainant amounted to abuse of process of law — Hence, FIR rightly quashed by High Court*

The appellant entered into a registered partnership firm *K* with one *S*. The Firm was stockist and distributor of a company *J*. In 2001, differences arose between the appellant and *S*, the two partners of the firm *K*. *S* joined another firm *M* with certain other persons as partners. According to the appellant, *S* with a view to cheat and defraud the appellant, misrepresented before *J* that the name of firm *K* was changed to *M*. On the basis of such representation *S* informed *J* that payment which was required to be made by *J* to *K* should now be made to *M*. Accordingly, *J* made payments to *M* in 2001. The appellant in 2003 issued legal notice to the respondents, stating that *J* was required to make payments to *K* but instead of making such payments the same had been misappropriated and that the officials of *J* colluded with the partners of *M* and all of them played fraud on the appellant. The appellant also filed a complaint in 2003 before the Director General of Police seeking inquiry into the matter. Pursuant thereto inquiry was made and the respondents submitted their replies but nothing further was done in the matter. The appellant thereupon lodged an FIR against the respondents alleging offences punishable under Sections 468, 406 read with Section 120-B IPC. The police arrested all the accused.

The respondents filed application before the High Court under Section 482 CrPC for quashing of FIR registered against them. The High Court found that the dispute related to settlement of accounts between the principal *J* and its agent *K* (earlier) and *M* (later). It further found that it was *K* which informed *J* that *K* had closed its business which was thereafter continued by *M* and all drafts be issued in favour of *M* and that accordingly, *J* substituted in the company record the name of *M* in place of *K*, as a result of which whatever sums were due to *K* were considered due to *M*. The High Court also took note of the fact that even the complainant had informed *J* that there was dispute between the partners of *K* and hence no payment could be made to *M* till the dispute was finally resolved between the parties. The High Court, in the circumstances, observed that the case was of one partner trying to drag the principal company into a criminal litigation to recover dues which the principal had paid to the other partner. The appellant had a dispute with *S* but instead of tackling him, he lodged an FIR to pressurise the respondents to settle the matter. It was not a direct case in which any contractual relationship between the complainant (appellant) with *J* had been breached. The appellant had no direct relationship with the company *J* as it was *K*, of which he was a partner, had developed contractual relationship and later *M* got substituted in place of *K*. The appellant ignored this development and issued the legal notice after a long lapse of time which was to drag the company into the inter se dispute between the two partners. The complaint and the steps taken by police had thus converted a tripartite civil dispute into a criminal one. The High Court, therefore, concluded that the steps taken by the complainant were in clear abuse of process of law and accordingly allowed the petition under Section 482 and quashed the first information report.

Dismissing the appeals,

Held :

The High Court rightly considered the facts in their proper perspective. The High Court was right in coming to the conclusion that a civil dispute — pure and simple — between the parties was sought to be converted into a criminal offence only by resorting to pressure tactics and by taking police help which was indeed abuse of process of law and has been rightly prevented by the High Court. It is clear from the case put forward by the appellant himself that the proceedings were virtually "civil" in nature. Thus the order for quashing the criminal proceedings passed by the High Court is in consonance with law and requires no interference. (Paras 18, 25, 15 and 26). *Suneet Gupta* v. *Anil Triloknath Sharma*, (2008) 11 SCC 670: (2008) 3 SCC (Cri) 920: (2008) 67 AIC 203 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *Aftab Alam*, JJ. [Date of decision: 28-4-2008]

State of Punjab v. Dharam Vir Singh Jethi, 1994 SCC (Cri) 500, distinguished

[7409] — S. 482 — Quashment of criminal proceedings on initiation of civil proceedings — Permissibility — *Held, filing of divorce petition in civil court cannot be a ground to quash criminal proceedings under S. 482 as it is well settled that criminal and civil proceedings are separate and independent and pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out of same set of facts — Hindu Marriage Act, 1955, S. 13 — Penal Code, 1860, Ss. 498-A and 406*

The present appeal was preferred against the judgment and order of the High Court whereby the High Court in the exercise of its inherent powers under Section 482 CrPC quashed FIR dated 31-12-2001 lodged at the instance of the appellant. The said FIR was registered by the appellant complainant against the respondent-accused for the alleged offences under Sections 498-A and 406 IPC.

In the facts of the case, the appellant had married Respondent 2 on 25-1-2000. Respondents 1, 3, 4 and 5 were the mother-in-law, brother-in-law, maternal father-in-law and the father-in-law of the appellant respectively. The appellant left her matrimonial home on 25-5-2001 with her father and brother. On 31-7-2001, the husband, Respondent 2, filed a petition before the Family Court praying for a decree of divorce on the ground of mental cruelty. On 31-12-2001, the appellant lodged an FIR against the respondents for the alleged offences under Sections 498-A and 406 IPC. The FIR was challenged by the respondents before the High Court under Section 482 CrPC praying for quashing of the same. While the petition under Section 482 CrPC was pending, a final investigation report was submitted on 13-2-2004 in the High Court.

The High Court by the impugned order quashed the FIR on the basis of the report of the investigating officer submitted before it and concluded that no offence under Sections 498-A and 406 IPC was made out by the appellant against the respondents. The High Court also observed that the FIR must be quashed to avoid undue harassment and mental agony to the respondents, more so when the divorce petition was still pending before the Family Court. Hence the present appeal.

(11)(xvii) Civil remedies available/Civil proceedings pending *(contd.)*

Two questions arose in the present case:

(*i*) Whether the High Court while quashing the FIR in exercise of its inherent powers under Section 482 CrPC was entitled to go beyond the complaint filed by the complainant; and

(*ii*) Whether the High Court was entitled to look into and consider the investigation report submitted by four officers of the rank of Dy. Superintendent of Police, for quashing the FIR, even before the same could be filed before the Magistrate concerned.

Partly allowing the appeal,

Held :

In the facts and circumstances of the case, the High Court was not justified in drawing an adverse inference against the appellant wife for lodging the FIR on 31-12-2001 on the ground that she had left the matrimonial home at least six months before that. This is because the High Court had failed to appreciate that the appellant and her family members were during this period making all possible efforts to enter into a settlement so that Respondent 2, the husband, would take her back to the matrimonial home. If any complaint was made during this period there was every possibility of not entering into any settlement with Respondent 2, the husband. (Para 15)

The complaint was filed only when all efforts to return to the matrimonial home had failed and Respondent 2, the husband, had filed a divorce petition under Section 13 of the Hindu Marriage Act, 1955. (Para 16)

Filing of a divorce petition in a civil court cannot be a ground to quash criminal proceedings under Section 482 CrPC as it is well settled that criminal and civil proceedings are separate and independent and the pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out of the same set of facts. (Para 16)

From a plain reading of the findings arrived at by the High Court while quashing the FIR, it is apparent that the High Court while exercising its inherent powers under Section 482 CrPC has gone beyond the allegations made in the FIR and has acted in excess of its jurisdiction and, therefore, the High Court was not justified in quashing the FIR by going beyond the allegations made in the FIR or by relying on extraneous considerations. (Paras 14 and 16). *Pratibha* v. *Rameshwari Devi*, (2007) 12 SCC 369: (2008) 1 SCC (Cri) 399: (2007) 59 AIC 159 (SC): 2008 Cri LJ 329.

Bench Strength 2. Coram: *A.K. Mathur* and **Tarun Chatterjee**, JJ. [Date of decision: 17-9-2007]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561: 1982 SCC (Cri) 283; Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370: 1985 SCC (Cri) 180; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; State of Bihar v. Murad Ali Khan, (1988) 4 SCC 655: 1989 SCC (Cri) 27, relied on

[7410] — S. 482 — To "prevent abuse of process of court" — Truck sold under hire-purchase agreement — Financier seizing truck on default in payment of instalment — Buyer launching criminal prosecution — *Held, was an abuse of process of the court since the dispute was essentially of a civil nature — Proceedings quashed. Sardar Trilok Singh* v. *Satya Deo Tripathi*, (1979) 4 SCC 396: 1979 SCC (Cri) 987: AIR 1979 SC 850: 1979 ALJ 634: 1980 Cri LJ 822.

Bench Strength 2. Coram: **N.L. Untwalia** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 11-1-1979]

[7411] — Ss. 482 and 173 — Inherent power of the High Court — When to be exercised — Complaint under Ss. 405, 406 and 408 IPC during pendency of civil litigation between the parties for dissolution of partnership firm and rendition of accounts — *Order of High Court staying the filing of the final report under S. 173 CrPC by the police till disposal of the suit not sustainable — Such an order also caused delay — Penal Code, 1860, Ss. 405, 406 and 408 — Constitution of India — Art. 21*

The width of power of the High Court under Section 482 CrPC, in principle, is very expansive but in practice the power is exercised in exceptional cases. The inherent power of the court is not an unrestricted power to make any order which the High Court desires to pass. The power is meant to be exercised to give effect to any order under CrPC or to prevent abuse of the process of any court or otherwise to secure the ends of justice. It is of utmost importance that criminal cases be disposed of expeditiously as right of an accused to have speedy trial is a right which flows from Article 21 of the Constitution. Far from ensuring a speedy trial the High Court placed an embargo at the pre-trial stage by staying the filing of final report by the police under Section 173 CrPC. The impugned order serves no useful purpose, nay, it is wholly extraneous to the purposes for which the power is preserved. (Para 5). *Usha Ahuja* v. *State of Haryana*, (1999) 7 SCC 486: 1999 SCC (Cri) 1283: AIR 1999 SC 3242.

Bench Strength 2. Coram: *K. Venkataswami* and **S.S.M. Quadri**, JJ. [Date of decision: 24-8-1999]

[7412] — S. 482 — Quashing of complaint — Permissible grounds — Initiation of civil proceedings — *High Court quashed the proceedings under S. 138 of the Negotiable Instruments Act, 1881 on the ground that appellant had already taken recourse to arbitration proceedings which is obviously of a civil nature — Held, there can be no bar to the simultaneous continuance of a criminal proceeding and a civil proceeding if the two arise from separate causes of action — Negotiable Instruments Act, 1881, S. 138* (Para 7). *Sri Krishna Agencies* v. *State of A.P.*, (2009) 1 SCC 69. Bench Strength **2**. Coram: *Altamas Kabir* and *Markandey Katju*, JJ. [Date of decision: 11-11-2008]

Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47, followed

[7413] — S. 482 — Disputes essentially civil in nature, filed as criminal complaints — Criminal court's duty to check abuse of process — *Held, criminal courts should ensure that criminal proceedings are not misused for settling scores or pressurising parties to settle civil disputes — However, civil disputes in some cases may also contain ingredients of criminal offences — Such disputes have to be entertained notwithstanding they are also civil disputes* (Para 8). *Mohd. Ibrahim* v. *State of Bihar*, (2009) 8 SCC 751: (2009) 3 SCC (Cri) 929. Bench Strength **2**. Coram: **R.V. Raveendran** and *R.M. Lodha*, JJ. [Date of decision: 4-9-2009]

G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, relied on

[7414] — S. 482 — Quashing of criminal proceedings — Triable issues — *Allegations relating to creation of a false agreement purporting to terminate original agreements and pilferage of records relating to a private limited company — Held on facts, issues raised in the complaint were not adjudicable solely by civil court or Company Law Board — High Court should not have quashed proceedings under S. 482 — Penal Code, 1860, Ss. 379, 468, 471, 420 and 506 Pt. II*

The appellant, who was the complainant, alleged in his complainant that there were two agreements between the respondents and a private limited company floated by the appellant, for development of land belonging to respondents. The respondents however forged another agreement by which the original agreements were terminated by the parties. The appellant further alleged that third accused had illegally taken away all records and accounts relating to private company floated by appellant, including two original agreements. However, the High Court concluded that there was no forgery of documents referred to in the complaint, and that there was no allegation that by using forged documents, the accused acquired gains. The High Court therefore quashed prosecution proceedings holding that appellant's grievance, if any, has to be got redressed through a civil court or Company Law Board.

Allowing the appeal,

Held :

The High Court has wrongly come to conclusion that the matter in issue has to be decided by a civil court or Company Law Board. Some of the allegations referred to by High Court are not adjudicable by civil court or Company Law Board. The exercise of jurisdiction by the High Court in terms of Section 482 CrPC, cannot be maintained in this case. (Para 13). *M. Viswanathan* v. *S.K. Tiles & Potteries (P) Ltd.*, (2008) 16 SCC 390: (2008) 72 AIC 68 (SC): (2009) 152 Comp Cas 335. Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 25-11-2008]

Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283, relied on

[7415] — Ss. 482 and 154 — Quashing of criminal proceeding — Exercise of jurisdiction under S. 482, when justified — Principles reiterated — Dispute purely of civil nature — *No offence made out from allegations in FIR — Initiation of criminal proceedings (under Ss. 420, 467, 468 and 469 IPC) in such a case, held, was not justified — Proceedings quashed — Penal Code, 1860, Ss. 420, 467, 468 and 469*

One *S* had five sons i.e. *G*, *N*, *B*, *R* and *H*. Appellants 1 and 2 were grandsons of *G*. Legal proceedings were initiated by son of *H* i.e. *L* claiming partition of his 1/3rd share in the suit property. The said suit was decreed by the Additional Sub-Divisional Officer. However, aggrieved thereby *L* challenged that decision in an appeal before the Commissioner. Aggrieved by the order of the Commissioner, son of *R* filed an appeal before the Board of Revenue, which set aside the order passed by the Commissioner and affirmed the order of the Additional Sub-Divisional Officer. Aggrieved thereby, *L* preferred a writ petition before the High Court wherein Appellants 1 and 2 were not impleaded. The High Court, while issuing notice, stayed the operation of the order passed by the Board of Revenue.

Thereafter, a sale deed was executed by Appellants 1 and 2 in favour of Appellants 3 and 4 stating therein that they had one-third share in the joint property although, according to the respondent co-sharer, they were not entitled therefor. Subsequent thereto, the respondent co-sharer filed a suit for cancellation of the said deed. He also lodged an FIR against the appellants.

(11)(xvii) Civil remedies available/Civil proceedings pending *(contd.)*

The appellants filed an application under Section 482 CrPC for quashing of FIR. The High Court, while dismissing the said application, directed the investigating officer to conclude the investigation within three months. After conclusion of the investigation, a charge-sheet was submitted before the Chief Judicial Magistrate concerned. The said Magistrate took cognizance of the offence. Questioning the legality of the said order, the appellants filed another application under Section 482 CrPC, which by reason of the impugned judgment had been dismissed. Hence, the present appeal.

Allowing the appeal,

Held :

It is now well settled that the High Court ordinarily would exercise its jurisdiction under Section 482 CrPC if the allegations made in the first information report, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing. (Para 24)

A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out. (Para 27)

The fact that the appellants are co-sharers is not in dispute. The dispute between the parties is confined to the extent of their respective shares. It must be determined only in a civil suit. (Para 11)

If Appellants 1 and 2 had executed a deed of sale in favour of a third party stating that they have one-third share in the entire properties, the same would not be binding on the respondent complainant. If any cause of action arose by reason of a threat of dispossession at the hands of the co-sharer or at the hands of the third party, as was contended, recourse to legal action could always be taken. Even for that purpose, a proceeding under Sections 144 and 145 CrPC would be maintainable. The decision of a criminal court in a case of this nature would not be binding on the civil court. (Paras 11). *Devendra* v. *State of U.P.*, (2009) 7 SCC 495: (2009) 3 SCC (Cri) 461.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47; Kamaladevi Agarwal v. State of W.B., (2002) 1 SCC 555: 2002 SCC (Cri) 200; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; Mahesh Chaudhary v. State of Rajasthan, (2009) 4 SCC 439: (2009) 2 SCC (Cri) 332, considered

[7416] — Ss. 482 and 154 — Quashing of FIR — Relevant considerations — Results of/material collected during preliminary investigations — Offences in relation to civil dispute — *Though FIR disclosing only a pure civil case, preliminary investigations revealing offences under Ss. 406 and 120-B IPC and under RBI Act, 1934 — Effect — But High Court going by contents of FIR alone holding that S. 420 IPC not attracted and that it was a simple breach of contract and pure civil dispute and therefore quashing FIR — Sustainability — Held, materials collected during preliminary investigations are relevant — Hence quashment of FIR not sustainable — Fair and impartial investigation directed — Penal Code, 1860, Ss. 420, 406 and 120-B*

Respondent 1, accused was the Director of a Company, which floated a car buying and rental scheme, whereby, it promised to give its investors (investing a sum of Rs 97,907), a monthly rent of Rs 4000 and also give an option to the investor to take back his car at the end of sixty months. Respondent 2 complainant invested in the scheme, got his monthly rent of Rs 4000 as agreed upon but when after the expiry of sixty months, he demanded back his car, it was not given. Instead the Company gave Respondent 2 post-dated cheques amounting to Rs 25,000, Rs 20,000 and Rs 10,000. Respondent 2, therefore, filed an FIR, which however, was quashed under Section 482 CrPC by the impugned judgment of the High Court.

Grounds taken in the memorandum of SLP revealed that during investigations statements of various witnesses had been recorded. Public at large, especially middle class and lower class people had invested their hard-earned money in the scheme. It was also complained of by an investor that no vehicle had been purchased in his name. Statements of witnesses during preliminary investigations also revealed that the Company had resorted to false registrations of vehicles in the name of investors which were actually owned and registered by non-investors who had no link with the Company. For instance, as per the statement of a non-investor his Maruti Esteem car was shown in the Company data as being registered in the name of an investor.

Allowing the appeal,

Held :

There cannot be any doubt or dispute whatsoever that a simple breach of contract or a case involving a pure civil dispute would not attract any offence either under Section 406 or Section 420 IPC. Had the dispute between the parties rested on the aforementioned premise, interference with the judgment of the High Court probably would not have been warranted. The petition of the complainant did not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC. It was purely civil in nature. But then, certain evidences surfaced during investigation which are disclosed in the grounds stated in the memo of this appeal. (Paras 13 and 19)

The allegation made in the FIR and the materials collected during investigation, should be allowed to be taken to its logical end. A large number of illegalities were committed by the said Company including the violation of the provisions of the Reserve Bank of India Act. The High Court in its judgment only considered the case from the point of view of Section 420 IPC and not Sections 406 and 120-B thereof. The legal position in regard to exercise of jurisdiction by the High Court for quashing of an FIR is now well settled. The State contended that having regard to the well-settled principle of law, the High Court should not quash an FIR save and except sparingly and in the rarest of rare cases. In the peculiar facts and circumstances of this case and particularly in view of the materials which have surfaced during investigation, the impugned judgment cannot be sustained. It is set aside accordingly. (Paras 6, 10, 14 and 20)

The investigating officer shall conduct the investigation fairly and impartially and shall allow the Company to carry on its business without any hindrance whatsoever. If any books of account or other documents are required, the investigating officer subject to just exceptions may take the xerox copies thereof duly certified by the accused as also an undertaking that, as and when called upon, they would produce the said books of account in a court of law. Subject to the aforementioned directions, the investigating officer shall carry out the investigation in accordance with law. (Para 19). *State of Maharashtra* v. *Sayed Mohammed Masood*, (2009) 8 SCC 787: (2009) 3 SCC (Cri) 945.

Bench Strength **2**. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 4-8-2009]

R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; Mahesh Chaudhary v. State of Rajasthan, (2009) 4 SCC 439: (2009) 2 SCC (Cri) 332, relied on

Alpic Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513: 2001 SCC (Cri) 565; Radha Ballav Pal v. Emperor, AIR 1939 Cal 327; Velji Raghavji Patel v. State of Maharashtra, AIR 1965 SC 1433; Vir Prakash Sharma v. Anil Kumar Agarwal, (2007) 7 SCC 373: (2007) 3 SCC (Cri) 370; All Cargo Movers (India) (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776: (2009) 1 SCC (Cri) 947; New India Assurance Co. Ltd. v. Sadanand Mukhi, (2009) 2 SCC 417: (2009) 1 SCC (Cri) 815; Uma Shankar Gopalika v. State of Bihar, (2005) 10 SCC 336: (2006) 2 SCC (Cri) 49, distinguished

[7417] — Ss. 482 and 320 — Whether FIR under Ss. 420/468/471/34/120-B IPC can be quashed either under S. 482 or under Art. 226, when accused and complainant had compromised and settled the matter between themselves — B.S. Joshi case, *(2003) 4 SCC 675 holding that powers of High Court under S. 482 of the Code to quash criminal proceedings or FIR or complaint were not circumscribed by S. 320 — Submission by respondent State that having regard to S. 320 CrPC especially sub-section (9) thereof,* B.S. Joshi case *required a second look — Per Altamas Kabir, J., rejecting the submission, held, what was decided in* B.S. Joshi case *was the power and authority of High Court to exercise jurisdiction under S. 482 CrPC or under Art. 226 of the Constitution to quash offences which were not compoundable — Law stated in the said case simply indicates the powers of High Court to quash any criminal proceeding or first information report or complaint whether it be compoundable or not — Ultimate exercise of discretion under S. 482 CrPC or under Art. 226 of the Constitution is with the court which has to exercise such jurisdiction in the facts of each case — Impugned order set aside and proceedings directed to be quashed — Per Markandey Katju, J. (concurring), held, except for S. 420 IPC, which can be compounded with the permission of the court other offences under Ss. 468, 471, 34 and 120-B IPC (which are mentioned in FIR) cannot even be compounded with the permission of the court — Hence, High Court or even Supreme Court would not ordinarily be justified in doing something indirectly which could not be done directly — However, S. 320 CrPC cannot be read in isolation but has to be read along with the other provisions in CrPC — Words "Nothing in this Code" used in S. 482 is a non obstante clause, and gives it overriding effect over other provisions in CrPC — Further, words "or otherwise to secure the ends of justice" in S. 482 implies that to secure the interests of justice sometimes (though only in very rare cases) High Court can pass an order in violation of a provision in CrPC — Matter however should be determined elaborately by a larger Bench — Constitution of India — Art. 226* (Paras 2, 4 to 6 and 16 to 23). *Manoj Sharma* v. *State*, (2008) 16 SCC 1: (2008) 4 KLT 417: (2009) 73 AIC 187 (SC).

Bench Strength **2**. Coram: **Altamas Kabir** and *Markandey Katju*, JJ. [Date of decision: 16-10-2008]

(11)(xvii) Civil remedies available/Civil proceedings pending *(contd.)*

B.S. Joshi v. State of Haryana, (2003) 4 SCC 675: 2003 SCC (Cri) 848; Nikhil Merchant v. CBI, (2008) 9 SCC 677: (2008) 3 SCC (Cri) 858, followed

Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; G.V. Rao v. L.H.V. Prasad, (2000) 3 SCC 693: 2000 SCC (Cri) 733; Aravali Golf Club v. Chander Hass, (2008) 1 SCC 683: (2008) 1 SCC (L&S) 289; Govt. of A.P. v. P. Laxmi Devi, (2008) 4 SCC 720; Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University, (2008) 9 SCC 284: (2008) 2 SCC (L&S) 887; Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani, (2004) 8 SCC 579; Brown v. Board of Education, 98 L Ed 837: 347 US 483 (1954); Miranda v. Arizona, 16 L Ed 2d 694: 384 US 436 (1966); Roe v. Wade, 35 L Ed 2d 147: 410 US 113 (1973), relied on

Simrikhia v. Dolley Mukherjee, (1990) 2 SCC 437: 1990 SCC (Cri) 327; R.P. Kapur v. State of Punjab, AIR 1960 SC 866; Sooraj Devi v. Pyare Lal, (1981) 1 SCC 500: 1981 SCC (Cri) 188, limited

Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10, held limited

[7418] — Ss. 482 and 320 — Quashing of criminal proceedings — Compromise in dispute of purely personal nature arising out commercial transactions not involving any public consequences — *FIR registered alleging offences under Ss. 419, 420, 465, 468, 469, 471, 472, 474 r/w S. 34 IPC — During pendency of proceedings in Supreme Court, compromise entered into between the parties — In terms of the compromise, dispute purely of personal nature arising out of commercial transactions, settled with the stipulation that proceedings pending in court may be withdrawn or compromised or quashed — Dispute being purely personal and no public policy being involved in the transactions, held, to continue with the proceedings would be a futile exercise — Hence FIR quashed — Penal Code, 1860, Ss. 419, 420, 465, 468, 469, 471, 472, 474 r/w S. 34. Jagdish Chanana* v. *State of Haryana*, (2008) 15 SCC 704: (2009) 3 SCC (Cri) 1157: AIR 2008 SC 1968: (2008) 65 AIC 111 (SC): 2008 Cri LJ 2237.

Bench Strength 2. Coram: *Tarun Chatterjee* and *H.S. Bedi*, JJ. [Date of decision: 3-4-2008]

[7419] — Ss. 482 and 190 — Quashing of criminal proceedings — *Complaint of forcibly taking away movable articles belonging to the husband of the appellant after his death — Police submitting final report — Magistrate taking cognizance of offence under S. 380 IPC after examining the complainant and her witnesses — Held, High Court not justified in quashing the proceedings on ground that the dispute was of a civil nature — Civil dispute regarding partition of immovable property of appellant's husband has nothing to do with complaint about forcible removal of movable articles — Proceedings could not be said to be abuse of process of law — Further held, in the circumstances of the case, complaint filed after submission of final report by police could not be quashed in limine by treating it stale. A.E. Rani* v. *V.S.R. Sarma*, (1995) 1 SCC 627: 1995 SCC (Cri) 262: (1995) 32 ACC 179: 1995 Cr LR (SC) 78.

Bench Strength 2. Coram: *S.C. Agrawal* and **G.N. Ray**, JJ. [Date of decision: 14-12-1994]

[7420] — Ss. 482 and 202 — Quashment — When warranted — Compromise arrived at between parties — *Complainant Respondent 1 filing complaint in his capacity of Chief Managing Trustee alleging that the accused had committed a breach of contractual obligation to construct a multi-purpose community hall at their own cost on a part of land owned and possessed by the Trust, in consideration of which they were to get all rights of development of the remaining land; that instead they sold the construction, earned crores of rupees and ultimately constructed in place and instead of the community hall, 10 rooms which did not fulfil the requirements of the agreement and specifications of the community hall; that from the very beginning their intention was to cheat the Trust and ultimately they succeeded in doing so — Magistrate ordering enquiry and also issuing process against accused — Said order challenged by accused before Addl. Sessions Judge, which was rejected — Specific stand before Sessions Judge and the High Court by the petitioners was that a compromise had been effected and, therefore, the proceedings were not to be continued — High Court by impugned judgment dismissing their petition — However, a connected civil suit* Ravi Constructions Co., *(2006) 10 SCC 669 was held to be not maintainable in view of the compromise arrived at by the Trust and the accused — In view of the same, held, continuance of instant proceedings would amount to sheer abuse of process of law, and hence quashed — Penal Code, 1860, Ss. 418, 409, 166 r/w S. 114* (Paras 2, 3, 6 and 7). *Nalini Shankaran* v. *Neelkanth Mahadeo Kamble*, (2007) 12 SCC 90: (2008) 2 SCC (Cri) 228.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Tarun Chatterjee*, JJ. [Date of decision: 27-2-2007]

Ravi Constructions Co. v. Somvanshi Arya Kshatriya Samaj, (2006) 10 SCC 669, considered

[7421] — Ss. 482 and 320 — Quashing of prosecution — High Court cannot advert to case diary, or rely upon letter addressed by parties to officer-in-charge of police station and quash the prosecution on ground that parties had settled their dispute — *Offences under Ss. 467, 468 and 471 IPC are not compoundable — Respondent* *ready to transfer the amount in question to bank — Hence, it would not be expedient to allow the prosecution to continue — Direction made to the bank not to disburse the said amount except under orders of court of competent jurisdiction — Penal Code, 1860, Ss. 467, 468 and 471. Karpoori Thakur* v. *Baikunth Nath Dey*, 1990 Supp SCC 136: 1990 SCC (Cri) 642.

Bench Strength **2**. Coram: *A.P. Sen* and *E.S. Venkataramiah*, JJ. [Date of decision: 12-1-1988]

[7422] — Ss. 482 and 401 — Simultaneous criminal and civil proceedings — Stay of criminal proceedings granted by High Court pending disposal of civil suit — *Stay granted on statement of respondent that he would plead guilty in criminal case if in pending suit injunction was granted — Propriety of stay — Conceded by respondent to be improper — Matter remitted to High Court to dispose of criminal revision. Institute of Chartered Accountants of India* v. *Assn. of Chartered Certified Accountants*, (2005) 12 SCC 226.

Bench Strength **2**. Coram: *B.P. Singh* and *Arun Kumar*, JJ. [Date of decision: 14-2-2005]

[**Ed.**: See also *M.S. Sheriff* v. *State of Madras*, 1954 SCR 1144: AIR 1954 SC 397: 1954 Cri LJ 1019; (2002) 8 SCC 87 and (2002) 1 SCC 555.]

[7423] — S. 482 — Inherent power of High Court to quash criminal proceedings — Repayment of loan under settlement — Effect — *Held, the same did not exempt the accused persons (respondents herein) from criminal proceedings on account of forgery, cheating, corruption, etc.* (Para 46). *CBI* v. *A. Ravishankar Prasad*, (2009) 6 SCC 351.

Bench Strength **2**. Coram: **Dalveer Bhandari** and *H.S. Bedi*, JJ. [Date of decision: 15-5-2009]

(xviii) Quashment in case of economic offences/commercial transactions, breach of trust, cheating, etc.

See also '(11)(xvii) Civil remedies available/Civil proceedings pending', above, and

'(11)(xix) Quashment re offences involving companies', below

[7424] — S. 482 — S. 420 IPC — Ingredients of offence conspicuously lacking in complaint — *Quashing of criminal proceedings — Ground — Abuse of process of court — Cognizance taken of offence under S. 420 IPC — Ingredients of offence in question conspicuously lacking in the complaint — On facts, held, allowing the criminal proceedings to go on against the appellant, would result in abuse of the process of the court — Hence, proceedings against the appellant quashed — Penal Code, 1860, S. 420 — Constitution of India — Art. 136*

Except using the expressions "fraudulent misappropriation" and "mala fide intention", the allegations in the complaint do not at all disclose as to how the appellant can be found guilty of the offence under Section 420 IPC. The ingredients constituting Section 420 are conspicuously lacking in the complaint. All the courts have failed to address themselves to the crucial question whether as far as the appellant is concerned any offence under Section 420 or for that matter any offence under Section 409 has been committed. Even going by the allegations in the complaint, allowing the criminal proceedings to go on against the appellant, would result in abuse of the process of the court. Hence, the proceedings against the appellant are quashed. (Para 5). *Vijaya Rao* v. *State of Rajasthan*, (2005) 7 SCC 69: 2005 SCC (Cri) 1600.

Bench Strength **2**. Coram: *P. Venkatarama Reddi* and *B.N. Srikrishna*, JJ. [Date of decision: 29-7-2005]

[7425] — S. 482 — Quashing of FIR — Scope of jurisdiction of High Court — When can High Court interfere with criminal proceedings — Tests — Offences of fraud, cheating, etc. alleged — *Whether offences alleged in FIR prima facie made out — Whether criminal proceedings initiated only to cause harassment to accused and continuance thereof would amount to abuse of process of court — Disputed question of fact not required to be gone into by Court — But documents of unimpeachable character can be taken into consideration — Although Court should not encourage the practice of initiating criminal proceedings when large number of disputes could ordinarily be determined by civil courts, but Court cannot go beyond its jurisdiction to interfere with the criminal proceedings otherwise genuine — Plausible defence of accused not good enough for exercise of inherent powers — FIR lodged by appellant on charges under Ss. 406, 420 and 436 IPC alleging that blank cheques were issued by appellant to respondents which were later fraudulently used by respondents — Respondents after issuing notice on appellant filed complaint petition under Ss. 138 and 141 of Negotiable Instruments Act alleging dishonour of certain cheques issued by appellant and also filed application under S. 482 for quashing of FIR — Quashing application allowed by High Court taking the view that FIR was lodged only to pre-empt respondents from filing the complaint petition — Held, on facts, High Court erred in going into merits of the case and interfering with the criminal proceedings — However, since allegedly the blank cheques were earlier given to respondents for use for business purposes when relation between the parties were good but the*

(11)(xviii) Quashment in case of economic offences/ commercial transactions, breach of trust, cheating, etc. *(contd.)*

alleged fraudulent use took place few years thereafter when dispute arose between them, S. 420 IPC not attracted as fraudulent inducement must be there at the inception and not at a later stage to attract S. 420 IPC — But S. 406 IPC was invocable — Hence investigation should be confined to charge under S. 406 IPC only — Penal Code, 1860, Ss. 406 and 420

The private parties were Directors of the appellant Company and were closely related. The Company had two units. The Managing Director of the Company was one *L*. Allegedly, pursuant to negotiations between *L* on the one hand and Accused 2 and 3 Directors on the other, signed blank cheques were handed over by *L* to the said accused persons during period 2000 to 2004 as process for obtaining cheques from the Managing Director had been taking considerable time. However, dispute between the parties arose in 2005. A company petition was filed before the High Court. A scheme for arrangement submitted by the parties was approved, pursuant whereto one unit was transferred to Accused 1 and the other unit to *L*. For that purpose the units were demerged. *L* allegedly made oral requests to Accused 2 and 3 to return the unused signed blank cheques. However, allegedly on the premise that Respondents 2 and 3 entered into a conspiracy to misuse the said cheques *L* filed an informal complaint with the police in 2006 with an endorsement that there was no role for the police at that stage. The respondents thereafter issued a letter stating that with a view to repay a part of the institutional liability of Respondent 1 a cheque had been drawn by the appellant in favour of Respondent 1 which had been deposited for collection. A first information report was then lodged by the appellant alleging that the blank signed cheques issued in the year 2001-2002 had been fraudulently used. Legal notices were, however, issued by Respondent 1 upon the appellant with regard to dishonour of three cheques. On or about 13-11-2006 an application was filed before the High Court for quashing the first information report. On 6-12-2006, a complaint petition was filed by Respondent 1 under Sections 138 and 141 of the Negotiable Instruments Act against the appellant and also its Chairman and Managing Director. The High Court not only considered the ingredients for the offences under Sections 406, 420 and 463 IPC but also the background facts leading to the dispute between the parties so as to enable it to ascertain whether the ingredients thereof stood satisfied or not. It proceeded on the basis that in view of the demerger scheme, the conduct of the appellant in keeping mum for a long time for getting the unused blank cheques returned is tell tale. It entered into the question as to whether the complaint petition was filed only with a view to pre-empt the respondents herein to take recourse to the remedies available to them to initiate a criminal proceeding under Section 138 of the Negotiable Instruments Act or the complaint petition in effect and substance should be permitted to be raised only by way of defence. It was held that the said complaint petition was filed on the basis whereof the first information report was directed to be lodged only to pre-empt the accused from filing a complaint petition under Section 138 of the Negotiable Instruments Act and that even taking the allegations in the complaint to be true and correct, they did not make out a prima facie case of cheating or criminal breach of trust or forgery. Accordingly, the High Court held that continuation of the proceedings amounted to abuse of process of the Court.

Allowing the appeal in part,

Held :

The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 CrPC is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of well-known legal principles involved in the matter. It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 CrPC should be exercised. (Paras 17 and 18)

Criminal proceedings should not be encouraged when it is found to be mala fide or otherwise abuse of the process of court. (Para 20)

Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of jurisdiction under Section 482. The High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of the process of court or that the complaint petition is filed for causing mere harassment to the accused. Although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable. (Para 22)

In this case what has failed to attract the attention of the High Court was that maintainability of a criminal proceeding like the present one should not be determined only upon raising a presumption in terms of Section 139 of the Negotiable Instruments Act, it being a rebuttable one. (Para 23)

The High Court should have further taken into consideration the fact that in the event, the defence of the appellant is accepted in the criminal case, it will have no remedy to prosecute the respondents again. To contend that the acquittal of the appellant would have been the springboard for filing a complaint will not be correct. Nobody knows when the criminal case would come to an end. In a given situation, even it may become barred by limitation. It must also be borne in mind that commercial expediencies may lead a person to issue blank cheques. The course of action in the aforementioned situation, which could be taken recourse to was to make an attempt to find out as to whether the complaint petition even if given face value and taken to be correct in its entirety constitutes an offence under Sections 420, 406 and 463 of the Penal Code or not. (Para 24)

Ingredients of cheating are:

(*i*) deception of a person either by making a false or misleading representation or by other action or omission; and

(*ii*) fraudulent or dishonest inducement of that person to either deliver any property to any person or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. (Para 25)

Sections 415 read with Section 420 IPC indicates that fraudulent or dishonest inducement on the part of the accused must be at the inception and not at a subsequent stage. In this case blank cheques were handed over to the accused during the period 2000-2004 for use thereof for business purposes but the dispute between the parties admittedly arose much thereafter i.e. in 2005. Thus no case for proceeding against the respondent under Section 420 of the Penal Code is, therefore, made out. (Paras 26 to 28)

Filling up of the blanks in a cheque by itself would not amount to forgery. Whereas in the complaint petition, allegations have been made that it was Respondents 2 and 3 who had entered into a conspiracy to commit the said offence as indicated hereinbefore, in the counter-affidavit, it has been alleged that the employees of the respondent Company did so. (Para 29)

Although, Section 120-B IPC has been added, there does not exist any averment that Respondents 2 and 3 had entered into any conspiracy with their employees. No case for proceeding with the offence of forgery against the respondents has, thus, also been made out. (Para 30)

However, a case for proceeding against the respondents under Section 406 IPC has been made out. A cheque being a property, the same was entrusted to the respondents. If the said property has been misappropriated or has been used for a purpose for which the same had not been handed over, a case under Section 406 IPC may be found to have been made out. It may be true that even in a proceeding under Section 138 of the Negotiable Instruments Act, the appellant could raise a defence that the cheques were not meant to be used towards discharge of a lawful liability or a debt, but the same by itself would not mean that in an appropriate case, a complaint petition cannot be allowed to be filed. (Para 31)

The respondents were keeping watch over the matter. As soon as a first information report was lodged, a notice was immediately sent. A quashing application was filed within a few days of the lodging of the first information report. The investigation was not allowed to take place at all. Whereas it would have been the duty of the court to uphold and/or to protect the personal liberty of an accused in a case, but where the first information report prima facie discloses commission of a cognizable offence, the High Court, ordinarily, should not have interfered with investigation thereof by the statutory authority. (Para 32)

Investigation by IO may now be confined to the charge under Section 406 IPC. (Para 33). *Suryalakshmi Cotton Mills Ltd.* v. *Rajvir Industries Ltd.*, (2008) 13 SCC 678: AIR 2008 SC 1683: (2008) 63 AIC 146 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 9-1-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; Indian Oil Corp. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776; B. Suresh Yadav v. Sharifa Bee, (2007) 13 SCC 107, relied on

(11)(xviii) Quashment in case of economic offences/ commercial transactions, breach of trust, cheating, etc. *(contd.)*

[7426] — S. 482 — Cheating — Essentials to constitute offence — Intention to cheat — *Held, misrepresentation from the very beginning is a sine qua non for constitution of an offence of cheating, although in some cases, intention to cheat may develop at a later stage of formation of the contract — Respondent co-sharer in joint property, lodging FIR against appellant co-sharers by levelling allegation against them that they executed a deed of sale in favour of a third party stating that they had one-third share in the joint property although they were not entitled therefor — On such facts, considering that appellants had not made any representation to respondent complainant and that no contract and/or transaction had been entered into by and between the complainant and the appellants, held, it could not be said that by reason of the alleged act of the appellants, the complainant had been cheated — Hence, criminal proceedings against appellants quashed — Penal Code, 1860, Ss. 415 and 420* (Paras 14 to 16). *Devendra* v. *State of U.P.*, (2009) 7 SCC 495: (2009) 3 SCC (Cri) 461.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

V.Y. Jose v. State of Gujarat, (2009) 3 SCC 78: (2009) 1 SCC (Cri) 996; Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168: 2000 SCC (Cri) 786; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Vir Prakash Sharma v. Anil Kumar Agarwal, (2007) 7 SCC 373: (2007) 3 SCC (Cri) 370; Ravindra Kumar Madhanlal Goenka v. Rugmini Ram Raghav Spinners (P) Ltd., (2009) 11 SCC 529, relied on

[7427] — S. 482 — Fraud — Question to be determined — Quashment of proceedings if warranted — *Positive assertion in complaint that assurance had been given by petitioner (attorney of Accused 1) to complainant that property in question was free from all encumbrances and that Accused 1 was sole owner and that had not such a representation been made relating to status of ownership of property in question, complainant may not have entered into transaction at all — Held, whether petitioner was truly mistaken as regards information given by him is an important issue which needs to be decided in answering the charge made — Prima facie case for going to trial, thus, made out — Hence, no interference with impugned judgment dismissing petitioner's application under S. 482 CrPC called for — Penal Code, 1860, S. 420 r/w S. 34* (Paras 15 to 20). *S.P. Gupta* v. *Ashutosh Gupta*, (2010) 6 SCC 562.

Bench Strength 2. Coram: **Altamas Kabir** and *Anil R. Dave*, JJ. [Date of decision: 13-5-2010]

Nageshwar Prasad Singh v. Narayan Singh, (1998) 5 SCC 694: 1998 SCC (Cri) 1378, referred to

[7428] — S. 482 — Forgery — Essentials to constitute offence of — Making of any false document, held, is a sine qua non therefor — *What is necessary is that the document must have been executed with the intention of causing it to be believed that such document inter alia was made by the authority of a person by whom or by whose authority he knows that it was not made — In present case, respondent co-sharer in joint property, lodging FIR against appellant co-sharers by levelling allegation against them that they executed a deed of sale in favour of a third party stating that they had one-third share in the joint property although they were not entitled thereto — Held, if somebody was aggrieved by false assertions made in sale deed, it would be the vendees and not the co-sharers — Further, appellants were not alleged to be guilty of creating any false document — Thus, offence as to forgery not made out — Hence, criminal proceedings against appellants quashed — Penal Code, 1860, Ss. 463 and 465* (Paras 18 to 20). *Devendra* v. *State of U.P.*, (2009) 7 SCC 495: (2009) 3 SCC (Cri) 461.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 6-5-2009]

[7429] — S. 482 — Inherent powers of High Court — Parameters of — Appellant's petition for quashing the charge-sheet and consequent proceedings initiated against him by complainant (Respondent 2) for allegedly committing offences punishable under Ss. 420, 467, 468 and 471 IPC, dismissed by High Court on ground that it was not permissible for it to look into the materials placed before the Magistrate — *Held, such an approach was not in consonance with the broad parameters, enumerated in a series of decisions of the Supreme Court to be applied while dealing with a petition under S. 482 for discharge and therefore, the impugned order unsustainable — To arrive at the conclusion whether or not the appellant had made out a case for quashing of the charge-sheet against him, High Court ought to have taken into consideration the material which was placed before the Magistrate — For dismissal of the petition, High Court had to record a finding that the uncontroverted allegations, as made, establish a prima facie case against the appellant — In absence of material stated to have been filed along with the charge-sheet, High Court did not get an opportunity to apply its mind as to whether on the basis of the material before the Magistrate, a prima facie case had been made out against the appellant-accused — Impugned order set aside and the matter is remitted to High Court for fresh* *consideration in accordance with law — Penal Code, 1860, Ss. 420, 467, 468 and 471* (Paras 19, 21 and 22). *Fakhruddin Ahmad* v. *State of Uttaranchal*, (2008) 17 SCC 157: (2008) 6 All LJ 249: (2009) 1 ECrN 455 (SC): 2008 Cri LJ 4377: (2008) 3 APLJ 163 (SC).

Bench Strength **2**. Coram: *C.K. Thakker* and **D.K. Jain**, JJ. [Date of decision: 5-9-2008]

[7430] — S. 482 — Petition under, for quashing of criminal complaint under Ss. 420, 467, 468, 471 and 506 IPC — Principles for exercise of power under, restated — *Penal Code, 1860, Ss. 420, 467, 468 and 471*

The parameters of interference with a criminal proceeding by the High Court in exercise of its jurisdiction under Section 482 CrPC are well known. One of the grounds on which such interference is permissible is that the allegations contained in the complaint petition even if given face value and taken to be correct in their entirety, commission of an offence is not disclosed. The High Court may also interfere where the action on the part of the complainant is mala fide. (Para 12). *Hira Lal* v. *State of U.P.*, (2009) 11 SCC 89: (2009) 3 SCC (Cri) 1247: AIR 2009 SC 2380: 2009 Cri LJ 2849: (2009) 4 All LJ 520: (2009) 78 AIC 134 (SC): (2009) 2 APLJ 42 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 8-4-2009]

[7431] — S. 482 — Quashing of FIR — Alleged commission of the offences punishable under Ss. 420/465/467/468/471 and 120-B IPC — Appellants alleged to have transferred a portion of the property without having complete ownership over it — *Appellants, however, in possession of the same and a decree restraining the respondents from interfering with their possession, and construction carried by them, passed in their favour — Order of mutation passed in their favour was, however, cancelled — Held, unless there exists a statutory interdict, a person in possession may transfer his right, title and interest in favour of a third party — Further held, only because the appellants are said to have transferred a portion of the property without having complete ownership over it by itself does not satisfy the ingredients of Ss. 467, 468 and 469 IPC — Furthermore, it is one thing to say that the appellants had committed acts of criminal misconduct while trying to obtain orders of mutation but it is another thing to say that only because they filed such an application, the same by itself would tantamount to commission of a criminal offence — Hence, institution of a criminal case must be held to be an act of mala fide on the part of the respondents — Penal Code, 1860, Ss. 420/465/467/468/471* (Paras 14, 15, 16 and 19). *Ramesh Dutt* v. *State of Punjab*, (2009) 15 SCC 429: (2009) 81 AIC 183 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *Deepak Verma*, JJ. [Date of decision: 21-7-2009]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

[7432] — S. 482 — Quashing of FIR — Where allegations contained in FIR, even if given face value and taken to be correct, do not disclose commission of the alleged offence and disclose only a civil dispute, FIR liable to be quashed — *Penal Code, 1860 — Ss. 405 and 420*. *Dalip Kaur* v. *Jagnar Singh*, (2009) 14 SCC 696: (2009) 80 AIC 212 (SC).

Bench Strength **2**. Coram: **S.B. Sinha** and *A.K. Ganguly*, JJ. [Date of decision: 7-7-2009]

Ajay Mitra v. State of M.P., (2003) 3 SCC 11: 2003 SCC (Cri) 703; Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712: (2009) 3 SCC (Cri) 620, relied on

R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; Hira Lal v. State of U.P., (2009) 11 SCC 89, applied

[7433] — S. 482 — Quashing of proceedings — On facts, allowed — *Huge quantities of paddy alleged to have been diverted by Accused 1 and made to disappear with active assistance of Accused 2 to 9 and further that he purchased properties in name of benamis with their assistance — No specific role ascribed to appellants (Accused 2, 3, 6, 7 and 8) — Allegations were bald and vague — Hence, held, no useful purpose would be served by allowing the prosecution to continue — Proceedings against them liable to be quashed — Penal Code, 1860, Ss. 406, 420 and 424 r/w S. 37*

A-1 was the sole proprietor of a rice mill. Accused 2 to Accused 5 were the family members of Accused 1, whereas Accused 6 to Accused 8 were the son-in-law, the daughter of Accused 1 and the brother of the son-in-law of Accused 1 respectively. Accused 2 and Accused 3 were the two sons of Accused 1 who are aged about 28 and 25 years respectively. Accused 1 was purchasing paddy from the local paddy growers in the village and he issued vouchers to some of them, while to others promissory notes ranging from Rs 30,000 to Rs 3 lakhs were executed as security towards the purchase of paddy. He had also obtained Rs 30 lakhs as loan from SBI. However, his business declined and consequently he owed debts to the banks, several financial institutions and to the public and his liabilities aggregated to Rs 89,51,600. Therefore, on 24-6-2005, he filed an insolvency petition. Consequent upon filing of the aforesaid insolvency

(11)(xviii) Quashment in case of economic offences/ commercial transactions, breach of trust, cheating, etc. *(contd.)*

petition several representations were made to the District Collector by the villagers making allegations against Accused 1 and his family members. A charge-sheet was filed under Ss. 406, 420 and 424 r/w S. 37 IPC against Accused 1 to 9. In the said charge-sheet the police stated that Accused 1 to Accused 9, developed an evil idea by colluding themselves and fraudulently directed the loans and gold secretly in benami names in order to defraud the persons who supplied paddy to them. It was further stated that during the year 2005 Accused 1 purchased paddy crop from several farmers saying that he would pay the cost of paddy as per the existing market value. They blindly believed Accused 1 and unloaded huge quantities of paddy produced by them and entrusted the same with Accused 1. But Accused 1 diverted part of the paddy to Accused 5 who was running rice mill on the ground of inadequate power supply and secretly sold it for his own use. It was further stated that 10 days before that he had also diverted huge quantities to "NRI Industries". Eventually, Accused 1 gained unlawfully to the tune of Rs 1,20,00,000 by cheating the abovementioned paddy suppliers.

Accused 1 to Accused 9 including the appellants herein (Accused 2 and Accused 3) jointly filed petition under Section 482 CrPC for quashing the complaint and charge-sheet on the ground that it was only a civil liability arising out of breach of contract by Accused 1 in payment of price of paddy and, therefore, it was improper on the part of the police to come to their aid to recover the money under a transaction by filing criminal cases and that the said criminal complaint itself was a counterblast to the insolvency petition filed by Accused 1. However, High Court observed that accused had collected paddy from various agriculturists worth Rs 1,20,00,000 by making them to believe that the cost of paddy would be paid immediately but after having collected the paddy, they failed to pay the amount to the agriculturists and thereby they cheated those persons. So, it was held that there was prima facie material against all the accused i.e. Accused 1 to Accused 9. Accordingly, the High Court dismissed the criminal petition. Hence, the present appeal.

Partly allowing the appeal,

Held :

When at an initial stage a prosecution is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made in the complaint filed prima facie establish the offence. It is also for the court to take into consideration any special feature that may appear in a particular case while considering whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose. (Para 31)

In the instant case, on perusing the report filed with SHO, and the charge-sheet submitted by him, it is found that most of the allegations in the aforesaid charge-sheet are mainly directed against Accused 1. (Para 33)

The allegations made against the other accused are that Accused 1 diverted huge quantities of paddy to NRI Industries, and made it disappear with the active assistance of Accused 2 to Accused 9 and that he purchased lands in the name of benamis with the assistance of Accused 6 and Accused 2. These are the only allegations made against the role of the present appellants, namely, Accused 2 and 3 and Accused 6, 7 and 8. Without ascribing any specific role to any one of them the aforesaid allegation appears to be very bald and vague. Similarly the allegations made against Accused 2 and Accused 3 that they had helped their father in purchasing some property is also very vague as no specific role is ascribed to them. (Paras 34 and 35)

Hence, no useful purpose would be served by allowing the prosecution to be continued against them. Proceedings as against the appellants herein i.e. Accused 2 and 3 and Accused 6 to 8 quashed. However, no opinion expressed so far as the allegations made in the said charge-sheet against Accused 1 and the other accused persons are concerned. Further clarified that observations were only with respect to the criminal proceedings and none of these observations should be construed as an opinion so far civil liability, if any, is concerned. (Paras 36 and 37). *Chunduru Siva Ram Krishna* v. *Peddi Ravindra Babu*, (2009) 11 SCC 203: (2009) 3 SCC (Cri) 1297.

Bench Strength 2. Coram: *S.B. Sinha* and **Dr. M.K. Sharma**, JJ. [Date of decision: 25-3-2009]

[7434] — Ss. 482 and 156 — Interference by High Court under S. 482 during investigation by police — Limitations of — Overstepping limits of judicial interference — Impermissibility — Offences under Ss. 406/420 IPC — *Held, it is statutory obligation and duty of police to investigate into crime and courts normally ought not to interfere and guide investigating agency as to in what manner investigation has to proceed — Jurisdiction* *under S. 482 conferred on High Court has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the test laid down in provision itself — Herein, interference by High Court, without recording any reasons, with investigation, which is within exclusive domain of police, by virtually directing police to investigate case from a particular angle and take certain steps, which the police, depending upon evidence collected and host of other circumstances, may or may not have attempted to take in its discretion, held, was overstepping limits of judicial interference — Penal Code, 1860, Ss. 406 and 420*

In the instant case, the respondent lodged an FIR against the appellants alleging commission of offences under Sections 406 and 420 IPC. The police, having registered the case against the appellants, commenced its investigation. Even while the investigation was in progress, for some inexplicable reasons, the respondent moved the High Court under Section 482 CrPC, seeking directions to the police. The petition was filed within one week of registration of the crime, by which time the police had already started serious investigation. None of the appellants were impleaded as party-respondents to the petition filed under Section 482 CrPC. The State alone was impleaded as the respondent.

The High Court disposed of the same observing, inter alia, that it was obligatory on the part of the police to conduct investigation in accordance with law, including recording of statements from witnesses, arrest, seizure of property, perusal of various documents and filing of charge-sheet. The High Court accordingly directed the police to expedite and complete the investigation. The impugned order resulted in drastic consequences far-reaching in nature. Hence the present appeals.

Allowing the appeals,

Held :

It is the statutory obligation and duty of the police to investigate into the crime and the courts normally ought not to interfere and guide the investigating agency as to in what manner the investigation has to proceed. The High Court, without recording any reason whatsoever, directed the police that it is obligatory on their part to record statements from witnesses, arrest, seize property and file charge-sheet. It is difficult to discern as to how such directions resulting in far-reaching consequences could have been issued by the High Court in exercise of its jurisdiction under Section 482 CrPC, which also resulted in much harassment of the appellants. The High Court interfered with the investigation of crime, which is within the exclusive domain of the police, by virtually directing the police to investigate the case from a particular angle and take certain steps which the police, depending upon the evidence collected and host of other circumstances, may or may not have attempted to take any such steps in its discretion. (Paras 24, 25 and 31)

It is not necessary that every investigation should result in arrest, seizure of the property and ultimately in filing of the charge-sheet. The police, in exercise of its statutory power coupled with duty, upon investigation of a case, may find that a case is made out requiring it to file charge-sheet or may find that no case as such is made out. It needs no reiteration that the jurisdiction under Section 482 CrPC conferred on the High Court has to be exercised sparingly, carefully and with caution only where such exercise is justified by the test laid down in the provision itself. (Para 32)

There was no allegation of dereliction of any duty on the part of the investigating agency. There was also no allegation of any collusion and deliberate delay on the part of the investigating agency in the matter of investigation into the case, that had been promptly registered on the information lodged by the respondent. (Para 17)

The impugned order must be held to be an order passed overstepping the limits of judicial interference. Even in public interest litigation proceedings, appropriate directions may be issued and the purpose in issuing such directions is essentially to ensure performance of statutory duty by the investigating agency. The duty of the court in such proceedings is to ensure that the agencies do their duties in compliance with law. (Paras 28 and 29)

The High Court, in the instant case, did not even advert to the relevant facts. As stated in the order itself, it was more guided by the arguments made across the Bar that the police has not taken any steps to arrest the persons and seize the amounts involved in this case from the appellants though there is no such factual foundation as such laid in the petition. The High Court has altogether ignored the counter filed by the police that the police had already examined ten witnesses within a short span of time after the registration of crime and recorded their statements. (Para 30)

The submission made by the respondent that the High Court did not issue any directions but merely disposed of the petition with the observations reminding the police of its duty, is not impressive. The question that arises for consideration is whether there was any occasion or necessity to make those "observations" even if they are to be

(11)(xviii) Quashment in case of economic offences/ commercial transactions, breach of trust, cheating, etc. *(contd.)*

considered to be observations and not any directions. It is not even remotely suggested that there was any deliberate inaction or failure in the matter of discharge of duties by the police. There was no allegation of any subversion of processes of law facilitating the accused to go scot-free nor is there any finding as such recorded by the High Court in its order. (Para 35)

For the aforesaid reasons, the impugned judgment of the High Court cannot be sustained, and hence, is set aside. (Para 42). *D. Venkatasubramaniam* v. *M.K. Mohan Krishnamachari*, (2009) 10 SCC 488: (2009) 82 AIC 245 (SC): (2009) 3 APLJ 205 (SC).

Bench Strength **2**. Coram: *R.V. Raveendran* and **B. Sudershan Reddy**, JJ. [Date of decision: 14-9-2009]

King Emperor v. Khwaja Nazir Ahmad, (1943-44) 71 IA 203: AIR 1945 PC 18; State of W.B. v. S.N. Basak, AIR 1963 SC 447: (1963) 2 SCR 52; State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272; M.C. Mehta (Taj Corridor Scam) v. Union of India, (2007) 1 SCC 110: (2007) 1 SCC (Cri) 264; M.C. Abraham v. State of Maharashtra, (2003) 2 SCC 649: 2003 SCC (Cri) 628, relied on

[7435] — Ss. 482 and 250 — Quashment — Commercial transactions — Misuse of — Criminal proceedings — Need for exercise of power under S. 250 — *If allegations in the complaint, taken at their face value, disclose a criminal offence, complaint cannot be quashed merely because it relates to a commercial transaction or breach of contract for which civil remedy is available or has been availed — A commercial transaction or dispute may also involve criminal offence — If it is found that a frivolous criminal complaint had been filed knowing well that remedy lay only in civil law, person who filed such complaint should himself be made accountable in accordance with law at the end of such proceeding — Court should exercise power under S. 250 CrPC frequently where there is malice or frivolousness or ulterior motives on the part of the complainant*

The appellant Indian Oil Corporation (IOC) entered into a contract with the respondent NEPC India Ltd., agreeing to supply aircraft fuel. According to the appellant, in respect of the fuel supplied under the contract, the respondent committed default in making payments. The respondent hypothecated its two aircrafts to the appellant under a deed. It was stipulated in clause (2) of the deed that the hypothecation was by way of charge and as security for payment of the amounts due. Clause (3) read with the schedule set out the instalments' schedule for payment of the amount due. Under clause (6), NEPC India declared that it would not assign, sell, pledge, charge, underlet or otherwise encumber or part with the possession, custody or beneficial interest in respect of the two aircrafts without the previous written consent of IOC. It also undertook not to do any act which may diminish the value of the hypothecated property without clearing the entire outstanding amount. Clause (9) provided that if NEPC India failed to pay any of the instalments with interest within the stipulated time, or if any undertaking or assurance given by NEPC India was found to be false, IOC shall have the "right to take possession of the hypothecated property" and sell the same by public auction or by private contract and appropriate the sale proceeds towards the outstanding dues without recourse to court of law. Clause (12) confirmed that NEPC India had handed over the title deeds relating to the aircraft to IOC, and agreed to receive them back only after paying the amounts due. As the respondent failed to pay the first two instalments as per the schedule, appellant stopped supply of fuel. However, subsequently, under a fresh agreement, a revised payment schedule was agreed upon and the appellant agreed to recommence supply of aircraft fuel on "cash-and-carry" basis. But this agreement also came to an end as the instalments were not paid. Apprehending that the respondent may remove one of the hypothecated aircraft from Coimbatore Airport to a place outside its reach, the appellant filed a suit in the High Court seeking a mandatory injunction to the authorities concerned to detain the aircraft so as to enable it to take possession thereof. The High Court granted an interim injunction. In regard to the other hypothecated aircraft kept at Chennai Airport the appellant filed another suit in City Civil Court for a similar mandatory injunction. The appellant then filed two complaints against NEPC India and its two directors under Section 200 CrPC alleging that NEPC India unauthorisedly and clandestinely removed the engines and certain other parts from the two hypothecated aircrafts so as to defeat IOC's right to take possession of the two aircrafts in view of default in payments made by NEPC India and further that such act was against the terms of the hypothecation deed and would amount to offences punishable under Sections 378 (theft), 403 (dishonest misappropriation of property), 405 (criminal breach of trust), 415 (cheating), 425 (mischief) of the Penal Code, 1860. The respondents thereupon filed petitions under Section 482 CrPC for quashing the said two complaints on the following grounds:

(*i*) The complaints related to purely contractual disputes of a civil nature in respect of which IOC had already sought injunctive reliefs and money decrees.

(*ii*) Even if all the allegations in the complaints were taken as true, they did not constitute any criminal offence as defined under Sections 378, 403, 405, 415 or 425 IPC.

The High Court by a common judgment allowed both the petitions and quashed the two complaints. It accepted the second ground urged by the respondents herein, but rejected the first ground. The said order of the High Court is under challenge in these appeals. On the rival contentions urged, the following points arose for consideration:

(*i*) Whether existence or availment of civil remedy in respect of disputes arising from breach of contract, bars remedy under criminal law?

(*ii*) Whether the allegations in the complaint, if accepted on face value, constitute any offence under Sections 378, 403, 405, 415 or 425 IPC?

Held :

A given set of facts may make out: (*a*) purely a civil wrong; or (*b*) purely a criminal offence; or (*c*) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed of, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not. (Para 12)

In this case, it is no doubt true that IOC has initiated several civil proceedings to safeguard its interests and recover the amounts due. These acts show that civil remedies were and are available in law and IOC has taken recourse to such remedies. But it does not follow therefrom that criminal law remedy is barred or IOC is estopped from seeking such remedy. (Para 15)

The respondents, no doubt, have stated that they had no intention to cheat or dishonestly divert or misappropriate the hypothecated aircraft or any parts thereof. But these are defences that will have to be put forth and considered during the trial. Defences that may be available, or facts/aspects when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At this stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not. (Para 16)

The High Court was, therefore, justified in rejecting the contention of the respondents that the criminal proceedings should be quashed in view of the pendency of several civil proceedings. (Para 17)

However, there is a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. (Para 13)

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. (Para 14). *Indian Oil Corpn.* v. *NEPC India Ltd.*, (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188: AIR 2006 SC 2780: (2006) 2 Guj LH 753.

Bench Strength **2**. Coram: *H.K. Sema* and **R.V. Raveendran**, JJ. [Date of decision: 20-7-2006]

Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; Central Bureau of Investigation v. Duncans Agro Industries Ltd., (1996) 5 SCC 591: 1996 SCC (Cri) 1045; State of Bihar v. Rajendra Agrawalla, (1996) 8 SCC 164: 1996 SCC (Cri) 628; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., (2000) 3 SCC 269: 2000 SCC (Cri) 615; Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168: 2000 SCC (Cri) 786; M. Krishnan v. Vijay Singh, (2001) 8 SCC 645: 2002 SCC (Cri) 19; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283, relied on

(11)(xviii) Quashment in case of economic offences/ commercial transactions, breach of trust, cheating, etc. *(contd.)*

[7436] — S. 482 — Quashing of criminal complaint — Propriety of quashing complaint against some of the accused when complaint made specific allegations against all — *Complaint filed by appellant alleging that Chairman & MD (A-1), Principal Manager (Finance) and Company Secretary (A-2) Joint Secretary and Manager (Finance) (A-3) of a company together committed offence under Ss. 465 and 466 r/w S. 34 IPC by filing a forged certificate in court in a pending proceeding between them and the appellant — Magistrate coming to the conclusion that prima facie the offence as alleged was disclosed against all the three accused and accordingly issuing summons — Writ petition filed before High Court for quashing the proceedings — High Court taking the view that it was incumbent on the part of the complainant to plead the role of each accused in the making of the document and accordingly holding that A-2 was involved in the forgery but the allegations contained in the complaint were not sufficient to implicate A-1 and A-3 and as such quashing the proceedings initiated against them — Held, High Court erred in quashing the proceedings initiated against A-1 and A-3 when in the complaint it was specifically alleged that all the three accused had together forged the document which was presented in Court — Penal Code, 1860, Ss. 465/34 — Constitution of India — Art. 226. Tarun K. Shah* v. *C.R. Alimchandani*, (2001) 9 SCC 728.

Bench Strength 2. Coram: *B.N. Kirpal* and *D.P. Mohapatra*, JJ. [Date of decision: 18-7-2000]

C.R. Alimchandani v. J.K. Shah, 1999 Cri LJ 2416 (Bom), reversed

[7437] — S. 482 — Offences under Ss. 406 and 420 IPC — Necessary ingredients — *Allegation of intention to cheat and of refusal by appellants to pay price for goods received from complainant — No allegation in complaint however, that at very inception of the contract between the parties, there was any intention to cheat — Held, no criminal offence is disclosed, much less under Ss. 406 and 420 and the case is one purely of civil liability — Not quashing prosecution of the appellants on such a complaint would amount to an abuse of process of court, hence appeal allowed and prosecution quashed — Contract Act, 1872, Ss. 37 and 73 — Penal Code, 1860, Ss. 406 and 420. Hotline Teletubes and Components Ltd.* v. *State of Bihar*, (2005) 10 SCC 261: 2005 SCC (Cri) 1515.

Bench Strength 2. Coram: *B.N. Agrawal* and *Tarun Chatterjee*, JJ. [Date of decision: 4-11-2004]

[7438] — S. 482 — Quashment — Breach of trust, fraud, cheating, etc. — *Criminal complaint filed by the complainant alleging that the appellants had refused to execute the written agreement transferring the plot in his favour for which he had already paid part consideration pursuant to an oral agreement — Cognizance under Ss. 406, 419, 420 and 120-B IPC taken by the Magistrate — High Court by the impugned order dismissing appellants' petition for quashing the cognizance — Inherent jurisdiction of High Court — Held, should be exercised in extreme exceptions — Held on facts, version of the complainant was self-contradictory since at one place he had stated that the oral agreement to sell took place in July 2002, while at the other he alleged that he started paying consideration amount between 15-7-2000 and 15-12-2002 — No prima facie case was made out against the appellants involving them in the commission of alleged offences — Even if the allegations made in the complaint are accepted to be true and correct the appellants cannot be said to have committed any offence of cheating or criminal breach of trust — Neither can any guilty intention be attributed to them nor can there possibly be any intention on their part to deceive the complainant — Averments of the complaint and the statements of the complainant and his witnesses recorded by the Magistrate would amount to civil liability* **inter se** *the parties and not criminal liability — Hence, cognizance taken by the Magistrate was clearly an abuse of the process of court warranting interference in the interest of justice — Instant case was a case of extreme exception where the High Court ought to have exercised its inherent jurisdiction and power to set aside the unwarranted and unjustified order of the Magistrate — Impugned order quashed — Penal Code, 1860, Ss. 406, 419, 420 and 120-B* (Paras 4, 10 and 11). *Ram Biraji Devi* v. *Umesh Kumar Singh*, (2006) 6 SCC 669: (2006) 3 SCC (Cri) 176: AIR 2006 SC 2035: 2006 Cri LJ 2782: (2006) 102 Cut LT 385.

Bench Strength 2. Coram: *Ashok Bhan* and **Lokeshwar Singh Panta**, JJ. [Date of decision: 11-5-2006]

Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47, distinguished

[7439] — S. 482 — Quashing of complaint — Complaints alleging commission of offences under Ss. 420, 406 and 120-B IPC, etc. — *Held, no prima facie case made out against appellants in respect of alleged offences under Ss. 420 and 406 IPC, hence question of alleged conspiracy between appellants does not arise — Complaint lacks any such substance regarding conspiracy — It was a fit case where High Court should have exercised its* *jurisdiction under S. 482 CrPC — Complaint case, quashed — Penal Code, 1860, Ss. 420, 406 and 120-B* (Paras 8 to 10, 14, 15 and 39 to 41). *V.P. Shrivastava* v. *Indian Explosives Ltd.*, (2010) 10 SCC 361: (2010) 159 Comp Cas 529.

Bench Strength 2. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 24-9-2010]

All Cargo Movers (India) (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776: (2009) 1 SCC (Cri) 947; R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; Dinesh Dutt Joshi v. State of Rajasthan, (2001) 8 SCC 570: 2002 SCC (Cri) 24; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513, relied on

[7440] — S. 482 — Cheating — Pre-requisite for — Fraudulent and dishonest intention, from when to subsist — Distinction from breach of contract — *Contract for supply of goods — Fraudulent and dishonest intention must be shown to be existing from the very beginning of the transaction — From mere failure to keep the promise at a subsequent stage, offence of cheating cannot be made out — Distinction between offence of cheating and mere breach of contract should be kept in mind — Mere use of words cheating in the complaint would not be sufficient — Substance of the complaint has to be seen — Having regard to the substance of the complaint in the instant case, held, it pertains to a civil case of breach of contract and not a criminal case of offence of cheating — Hence Magistrate erred in issuing process — Contract Act, 1872, Ss. 73, 74 and 75 — Penal Code, 1860, Ss. 415, 418 and 420*

The respondent Company filed a complaint against the appellant alleging that a memorandum of understanding (MoU) was executed between the accused-appellant and the complainant for supply of steel grip tapes inter alia stipulating that 50% of the payments against monthly quantity would be given in advance and balance 50% on receipt of the goods. The complainant delivered 56,94,120 reels of steel grip tapes valued at Rs 3,38,62,860 to the accused and out of this amount, the accused made only part-payment of Rs 3,05,39,086 leaving balance amount of Rs 33,23,774. It was alleged that after making this payment, the accused did not make further payment despite repeated demands and started giving reasons besides raising disputes in respect of the material purchased six years back being defective. After making the aforesaid averments in the complaint, it was concluded that "that MoU was signed by the accused with mala fide and criminal intention of grabbing money and goods from the complainant's Company and to deceive, cheat and cause wrongful loss to the complainant's Company, but the complainant was not aware of the criminal intention of the accused while execution of above MoU". The complainant had also sent a notice to the accused wherein there was no mention about any deceit or cheating. In a complaint filed by the complainant with the police also except for a vague allegation about cheating, nothing of substance was stated. According to the complainant, on the advice of the police the complaint in question was filed before the Magistrate. The Magistrate issued process against the accused. But the Sessions Court set aside the order of the Magistrate issuing process and the High Court reversed the judgment of the Sessions Court.

Allowing the appeal,

Held:

From mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning, that is, when he made the promises cannot be presumed. A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. (Paras 6 and 8)

In the present case except for mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MoU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. It is clear from the substance of the complaint that present is a simple case of civil disputes between the parties. Requisite averments so as to make out a case of cheating are absolutely absent. The Sessions Court had rightly set aside the order of the Magistrate issuing process to the appellant. (Paras 8 and 10). *Anil Mahajan* v. *Bhor Industries Ltd.*, (2005) 10 SCC 228.

Bench Strength 3. Coram: *Y.K. Sabharwal, D.M. Dharmadhikari* and *Tarun Chatterjee*, JJ. [Date of decision: 6-10-2004]

Alpic Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513: 2001 SCC (Cri) 565, relied on

[7441] — S. 482 — S. 406 IPC proceedings — Quashment — Matter purely of civil nature — *Proceedings against petitioner for shortage of paddy and rice procured by him for FCI — Arbitration agreement between petitioner and respondent permitting shortage up to certain limit and for payment of*

(11)(xviii) Quashment in case of economic offences/ commercial transactions, breach of trust, cheating, etc. *(contd.)*

penalty beyond that at rates prescribed in the agreement — Matter referred to and pending arbitration — Meanwhile criminal proceedings under S. 406, IPC initiated and cognizance taken by Magistrate — In appeal against High Court's refusal to quash the criminal proceedings, held that matter being purely of a civil nature, the proceedings must be quashed — Penal Code, 1860, S. 406. Bal Kishan Das v. *P.C. Nayar,* 1991 Supp (2) SCC 412: 1991 SCC (Cri) 1055: AIR 1991 SC 1531: 1991 Cri LJ 1837.

Bench Strength 2. Coram: *S. Ratnavel Pandian* and *K. Jayachandra Reddy*, JJ. [Date of decision: 26-3-1991]

[7442] — S. 482 — Criminal breach of trust — Ingredients of — Entrustment/dominion over property — Misappropriation — *Held, there was nothing in complaint which even remotely suggested that respondent IEL had entrusted any property to appellant accused — No evidence that appellants had dominion over any of properties of respondent, which they dishonestly converted to their own use — Complaint quashed — Penal Code, 1860, Ss. 405 and 406* (Paras 33 to 38). *V.P. Shrivastava* v. *Indian Explosives Ltd.*, (2010) 10 SCC 361: (2010) 159 Comp Cas 529.

Bench Strength 2. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 24-9-2010]

Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561: (2008) 1 SCC (Cri) 507; Common Cause v. Union of India, (1999) 6 SCC 667: 1999 SCC (Cri) 1196; Jaswantrai Manilal Akhaney v. State of Bombay, AIR 1956 SC 575: 1956 Cri LJ 1116; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, relied on

[7443] — S. 482 — Criminal breach of trust and cheating — Pleadings — Ingredients of the offence not averred in criminal complaint filed one year after civil suit — *Civil suit was filed alleging negligence and breach of contractual obligations — Held, breach of contract simpliciter does not constitute an offence — Allegations in the criminal complaint must disclose the necessary ingredients therefor — Court can for the purpose of finding out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents — Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the court — Superior courts while exercising inherent power should also strive to serve the ends of justice — Penal Code, 1860, Ss. 406 and 420*

The parties had entered into a contract of carriage. The first respondent approached the appellants for delivery of six consignments valued at US $98,715.29 to the original consignee, M/s Universal Apparels (EPZ), Mombassa, Kenya. By reason of a fax message, the appellants asked their counterparts in Mombassa, Kenya to confirm delivery of consignment asking it to see that the cargo is delivered only against presentation of original bills of lading. The goods in question were said to have been delivered by the agent of the petitioner to the original consignee without their producing the bills of lading. The respondent complainant issued a notice to the accused persons attributing negligence to the agencies in delivering the cargo without the original bill of lading, committing a breach of carriage and acting in violation of their contract and obligation. A claim for a sum of US $84,353.31 was made and a suit filed by the respondent herein. More than one year after filing of the said suit a complaint petition was filed against the appellants for committing criminal breach of trust by causing criminal misappropriation of the valuable property of the complainant.

An application for quashing of the order issuing summons to the appellant was dismissed by the High Court which held that the allegations made in the complaint prima facie disclosed the offence of breach of trust.

Challenge in this appeal is to the order of the High Court.

Allowing the appeal,

Held :

The allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence. No allegation whatsoever was made against the appellants in the notice. What was contended was negligence and/or breach of contract on the part of the carriers and their agent. Breach of contract simpliciter does not constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, the court can for the purpose of finding out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. (Para 16). *All Cargo Movers India (P) Ltd.* v. *Dhanesh Badarmal Jain*, (2007) 14 SCC 776: AIR 2008 SC 247: (2007) 60 AIC 92 (SC).

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 12-10-2007]

G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513, followed

Anil Mahajan v. Bhor Industries Ltd., (2005) 10 SCC 228: (2006) 1 SCC (Cri) 746; Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257: 2003 SCC (Cri) 1121, relied on

[7444] — S. 482 — Exercise of power *ex debito justitiae* — *Power to be exercised sparingly and only when prosecution is launched maliciously or with ulterior motive — Inherent power ought not be exercised to stifle legitimate prosecution — Criminal complaint filed against respondent Company on the ground that appellant Company was dishonestly induced to make investment in a subsidiary company floated by respondent Company thereby respondent Company committed offence of cheating — Complaint filed by appellant Company prima facie disclosing offence of cheating when allegations made in complaint taken on their face value — Both the parties had much to say in support of their respective cases — The case was of considerable importance not only to parties but also world of trade and commerce — There was nothing on record that complaint was filed with any mala fide motive — High Court quashing criminal proceedings at stage when trial court ordered issue of process — Held, High Court exceeded its jurisdiction in quashing the proceedings — Prosecution proceedings therefore allowed to continue* (Paras 76 to 78). *Iridium India Telecom Ltd.* v. *Motorola Inc.*, (2011) 1 SCC 74.

Bench Strength 2. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 20-10-2010]

Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568: 2005 SCC (Cri) 415; M.N. Ojha v. Alok Kumar Srivastav, (2009) 9 SCC 682: (2010) 1 SCC (Cri) 101; Kurukshetra University v. State of Haryana, (1977) 4 SCC 451: 1977 SCC (Cri) 613; Raj Kapoor v. State, (1980) 1 SCC 43: 1980 SCC (Cri) 72; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Divine Retreat Centre v. State of Kerala, (2008) 3 SCC 542: (2008) 2 SCC (Cri) 9, considered and relied on

Dhanalakshmi v. R. Prasanna Kumar, 1990 Supp SCC 686: 1991 SCC (Cri) 142; Central Railway Co. of Venezuela v. Kisch, 1867 LR 2 HL 99; New Brunswick and Canada Railway Co. v. Muggeridge, (1860) 1 Dr & Sm 363 at pp. 381-82: 62 ER 418; Redgrave v. Hurd, (1881) 20 Ch D 1 at p. 13: (1881-85) All ER Rep 77 (CA); Aaron's Reefs v. Twiss, 1896 AC 273 (HL); Commr. (Assessment) v. Velliappa Textiles Ltd., (2003) 11 SCC 405: 2004 SCC (Cri) 1214; Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 SCC 530: 2005 SCC (Cri) 961; Kalpnath Rai v. State, (1997) 8 SCC 732: 1998 SCC (Cri) 134; Raghubir Saran (Dr.) v. State of Bihar, AIR 1964 SC 1: (1964) 1 Cri LJ 1; M.V. Javali v. Mahajan Borewell & Co., (1997) 8 SCC 72: 1997 SCC (Cri) 1239; A.K. Khosla v. T.S. Venkatesan, 1992 Cri LJ 1448 (Cal), cited

[7445] — S. 482 — Abuse of the process of law — Ingredients of offence not in the complaint — Breach of trust, cheating, etc. — *Allegation against appellant that lesser salary was being paid to the complainant with signatures for higher amount — Complaint petition itself stating bona fide reasons for deductions such as repayment at the time of retirement, etc. — Contradictory stand by the complainant in S. 33-C(2) petition under Industrial Disputes Act, 1947 — High Court's conclusion that deductions were made without any rhyme or reason, held, was without any basis — The complaint was nothing but an abuse of the process of law — Penal Code, 1860, Ss. 403, 405 and 415 r/w S. 34*

A complaint was filed on 13-1-2006 alleging commission of offence punishable under Sections 403, 405 and 415 read with Section 34 IPC. The Judicial Magistrate took cognizance and issued process. In fact, the respondent had filed petition in terms of Section 33-C(2) of the ID Act and also filed writ petition claiming parity in salary which was disposed of by giving the direction to consider the respondent's case. In the petition under Section 33-C(2) the respondent had stated that lesser amounts were paid and signatures for higher amounts were taken. The High Court by the impugned order dismissed the 482 CrPC petition.

Allowing the appeal,

Held :

The complaint was nothing but an abuse of the process of law. Close reading of the complaint reveals that the ingredients of Sections 403, 405 and 415 IPC did not exist. The statements made in the complaint were contrary to the averments made in the petition in terms of Section 33-C(2), ID Act. High Court came to the conclusion that deductions were made without any rhyme and reason and without any basis. That was not the case of the complainant. On the other hand, it tried to make out a case that the deduction was made with an object. It was stated in the complaint that the complainant was given to understand that certain amounts were being deducted for repayment at the time of retirement or cessation of his job. In the writ petition

(11)(xviii) Quashment in case of economic offences/ commercial transactions, breach of trust, cheating, etc. *(contd.)*

before the High Court there was no mention about any deduction. In the notice issued on 23-11-2004, there was no mention about it either. (Paras 9, 7 and 3). *K.L.E. Society* v. *Siddalingesh*, (2008) 4 SCC 541: (2008) 1 SCC (L&S) 1071: (2008) 2 SCC (Cri) 455: AIR 2008 SC 1702: (2008) 64 AIC 124 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Aftab Alam*, JJ. [Date of decision: 3-3-2008]

State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89; R.P. Kapur v. State of Punjab, AIR 1960 SC 866, relied on

[7446] — S. 482 — Complaint of theft, cheating and criminal breach of trust in case of recovery of possession by financier in hire-purchase contract — Petition under S. 482 by financier, held, ought to have been allowed — *Hire-purchase contract — Held, recovery of possession of goods by owner-financier as per terms of the hire-purchase agreement, does not amount to a criminal offence — Such an agreement is an executory contract of sale, conferring no right in rem on the hirer until the conditions for transfer of the property to him have been fulfilled — Held, on facts, where respondent hirer had defaulted in instalment payments of motor vehicle and agreement specifically provided that appellant financiers were entitled to repossess the vehicle in case of default and their agents were authorised to enter any premises for the purpose, and appellants had actually recovered possession of the vehicle, no offence was made out against the appellants — High Court erred in dismissing their petition under S. 482 CrPC challenging issue of summons on complaint filed under Ss. 406/420/120-B and 379 IPC — Hire Purchase Act, 1972, Ss. 8 and 20 (not yet in pure)*

The respondent *S*, entered into a hire-purchase agreement dated 3-5-1994 with the appellants, owners of a non-banking financial institution, in respect of a motor vehicle. Rs 3,02,884 was the total consideration agreed to be paid for the vehicle; *S* initially paid Rs 69,308 and agreed to pay the balance in 36 monthly instalments of Rs 8400 each. A dispute developed at some stage and on 3-12-1998 *S* filed a criminal complaint alleging that during the night of 16-9-1996, when the vehicle had been in the custody of a motor mechanic, the appellants had taken it away; they had thus committed offences under Sections 406/420/120-B IPC. Cognizance was taken by the Magistrate and summons issued to the appellants.

The appellants filed a petition under Section 482 CrPC before the High Court seeking to have the proceedings quashed. They averred in the petition that *S* had defaulted in making the instalment payments, that as of 1-9-1996 the outstanding amount was Rs 1,34,887; they had therefore been obliged to terminate the hire-purchase agreement. They also stated that *S* surrendered the vehicle to them. The High Court, however, dismissed the petition under Section 482 CrPC holding that it was possible to make out offences, particularly under Section 379 IPC, on the basis of the allegations in the complaint.

In appeal before the Supreme Court, it was submitted on behalf of the appellant financiers that in recovering possession of the vehicle, they had only exercised their right under the hire-purchase agreement as owners of the vehicle; that no offence could be made out from the allegations in the complaint. The agreement, which was produced in court, contained a clear provision that the appellants could repossess the vehicle in case of default by the hirer-purchaser; the appellants or their agents were also entitled to enter any premises for the purpose of inspection or of repossession and were specifically exempted from civil or criminal liability at the instance of the hirer.

Allowing the appeal,

Held :

Hire-purchase agreements are executory contracts under which the goods are let on hire and the hirer has an option to purchase in accordance with the terms of the agreement. These types of agreements were originally entered into between the dealer and the customer and the dealer used to extend credit to the customer. But as hire-purchase schemes gained in popularity, the dealers who were not endowed with liberal amount of working capital found it difficult to extend the scheme to many customers. Then the financiers came into the picture. The finance company would buy the goods from the dealer and let them to the customer under hire-purchase agreement. The dealer would deliver the goods to the customer who would then drop out of the transaction leaving the finance company to collect instalments directly from the customer. Under hire-purchase agreement, the hirer is simply paying for the use of the goods and for the option to purchase them. The finance charge, representing the difference between the cash price and the hire-purchase price, is not interest but represents a sum which the hirer has to pay for the privilege of being allowed to discharge the purchase price of goods by instalments. (Para 5)

In the present case agreement executed by the parties is to the effect that the hirer would not become the owner of the property until he pays the entire instalments. (Para 10)

The whole case put forward by the respondent complainant is to be appreciated in view of the stringent terms incorporated in the agreement. If the hirer himself has committed default by not paying the instalments and under the agreement the appellants have taken repossession of the vehicle, the respondent cannot have any grievance. The respondent cannot be permitted to say that the owner of the vehicle has committed theft of the vehicle or criminal breach of trust or cheating or criminal conspiracy as alleged in the complaint. When the agreement specifically says that the owner has got a right to repossess the vehicle, there cannot be any basis for alleging that the appellants have committed criminal breach of trust or cheating. (Para 11)

The plea that the appellants have committed theft is without any basis as the appellants have taken repossession of the vehicle in exercise of their right under the agreement. There may be instances where the owner of the goods may commit theft of his own goods as indicated in Illustration (*k*) of Section 378 IPC. But in the instant case, the owner repossessing the vehicle delivered to the hirer under the hire-purchase agreement will not amount to theft as the vital element of "dishonest intention" is lacking. The element of "dishonest intention" which is an essential element to constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer. (Paras 12 and 13)

The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on the hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the repossession of goods as per the term of the agreement may not amount to any criminal offence. (Para 17)

In the present case the agreement specifically gave authority to the appellants to repossess the vehicle and their agents to enter any property or building wherein the motor vehicle was likely to be kept. Under the hire-purchase agreement, the appellants have continued to be the owners of the vehicle and even if the entire allegations against them are taken as true, no offence was made out against them. The learned Single Judge seriously flawed in his decision and failed to exercise jurisdiction vested in him by not quashing the proceedings initiated against the appellants. (Para 17). *Charanjit Singh Chadha* v. *Sudhir Mehra*, (2001) 7 SCC 417: 2001 SCC (Cri) 1557: AIR 2001 SC 3721.

Bench Strength 2. Coram: *K.T. Thomas* and **K.G. Balakrishnan**, JJ. [Date of decision: 31-8-2001]

R.M. Goode: Hire Purchase Law & Practice, 2nd Edn., p. 846; Sardar Trilok Singh v. Satya Deo Tripathi, (1979) 4 SCC 396: 1979 SCC (Cri) 987; K.A. Mathai v. Kora Bibbikutty, (1996) 7 SCC 212: 1996 SCC (Cri) 281, relied on

[7447] — S. 482 — Criminal proceedings when can be quashed at preliminary stage by High court under — Breach of trust — Ingredients of offence wanting — *Summons issued on a complaint filed by a trustee alleging that Secretary and Manager of the trust property in conspiracy with the co-trustee and his wife created tenancy in respect of the property in favour of the co-trustee's wife — Defence case that the property intended for tenancy and accordingly co-trustee's wife, being an independent person having her own income, inducted as tenant at the rate of rent which outgoing tenant was paying as higher rent was not chargeable under existing law — Tenant-wife volunteering to surrender the tenancy in response to a notice — On facts and in view of strained relationship between settlor of the trust and the co-trustee and his wife, held, High Court justified in quashing the proceedings as ingredients of criminal offence wanting — It was a civil wrong — Penal Code, 1860, Ss. 406, 467 r/w Ss. 34 and 120-B — Trusts Act, 1882, S. 53*

When a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

Though a case of breach of trust may be both a civil wrong and a criminal offence but there would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. The present case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting. Having regard to the relevant documents including the trust deed as also the correspondence following the creation of the tenancy, the submissions advanced on behalf of the parties, the natural relationship between the settlor and the trustee as mother and son and the fall out in

(11)(xviii) Quashment in case of economic offences/ commercial transactions, breach of trust, cheating, etc. *(contd.)*

their relationship and the fact that the wife of the co-trustee was no more interested in the tenancy, it must be held that the criminal case should not be continued. *Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre*, (1988) 1 SCC 692: 1988 SCC (Cri) 234: AIR 1988 SC 709: 1988 Cri LJ 853.

Bench Strength **3**. Coram: **Ranganath Misra**, *G.L. Oza* and *M.M. Dutt*, JJ. [Date of decision: 9-2-1988]

[7448] — S. 482 — Quashing criminal proceedings — Criminal breach of trust — Diversion of funds of company — Transactions prior to occupying the positions mentioned in S. 409, held, did not attract Ss. 409 & 120-B — *Precondition for Respondents 1 and 2 to become directors of the company was to deposit a certain amount — In order to fulfil the said pre-condition they allegedly obtaining loan from a party who, as a supplier, had been advanced an identical sum by that company — In such circumstances, the said allegations even if accepted in entirety, held, did not constitute an offence under Ss. 120-B and 409 — Therefore, continuance of criminal proceedings against Respondents 1 and 2 under those provisions being manifestly unjust, the charge and the proceedings were rightly quashed by the High Court in exercise of its powers under S. 482, CrPC — Penal Code, 1860, Ss. 409 & 120-B. Ashim Kumar Roy* v. *Bipinbhai Vadilal Mehta*, (1998) 1 SCC 133: 1998 SCC (Cri) 269: AIR 1997 SC 3976: (1998) 91 Comp Cas 1.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **K. Venkataswami**, JJ. [Date of decision: 14-10-1997]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: (1960) 3 SCR 388, applied

[7449] — S. 482 — Quashing of FIR — Power to quash — Forgery of documents, records, etc. alleged — *Held, said power must be exercised very sparingly and with circumspection and that too in the rarest of rare cases — Court cannot inquire about reliability or genuineness or otherwise of the allegations made in FIR — Court has also no power to inquire whether the allegations are likely to be established or not — In a suit for permanent injunction filed by appellant, Respondents 2 to 4 filing written statement wherein they relied upon three documents — Appellant claiming that he never executed the said documents — Hence, on his complaint, FIR lodged against said respondents under Ss. 468, 470, 471 and 120-B IPC — Petition filed by Respondents 2 and 3 for quashing of FIR — High Court examining the documents, comparing the signatures thereon and then concluding that the documents were not false or fabricated — High Court holding the complaint to be vexatious, frivolous and false after considering the material produced by respondents — No conclusion by High Court that allegations in complaint, even if taken at their face value and accepted in their entirety, did not prima facie constitute any offence — Also, no conclusion that complaint did not disclose a cognizable offence — Quashing of FIR by High Court, held, not justified* (Paras 6 and 5). *M. Narayandas* v. *State of Karnataka*, (2003) 11 SCC 251: 2004 SCC (Cri) 118.

Bench Strength **2**. Coram: **S.N. Variava** and *H.K. Sema*, JJ. [Date of decision: 19-9-2003]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

[7450] — S. 482 — Petition under for quashing complaint — *Court's prima facie satisfaction must be based only on the allegations made in the complaint taking them to be correct — If clear allegations constituting the offence alleged are made, the court should be reluctant to interfere*

Per majority

In case no offence is committed on the allegation and the ingredients of Ss. 405 and 406, IPC are not made out, the High Court in exercise of power under S. 482, CrPC would be justified in quashing the proceedings. But the High Court should very sparingly exercise its discretion under S. 482, CrPC. For the purpose of exercising its power under S. 482, CrPC to quash an FIR or a complaint the High Court should proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se. It has no jurisdiction to examine the correctness or otherwise of the allegations. In the present case the allegations made in the complaint were clear, specific and unambiguous and prima facie constitute an offence under S. 406, IPC. Therefore, the appellant cannot be denied the right to prove her case at the trial by pre-empting it at the very behest by the order passed by the High Court. It is, of course, open to the accused at the trial to take whatever defences that were open to him but that stage had not yet come and therefore, the High Court erred in speculating on the merits of the case at that stage and quashing the proceedings.

Per Varadarajan, J. (dissenting)

In a petition under S. 482, CrPC for quashing a criminal complaint, the allegations made in the complaint have to be taken to be correct in order to find out whether they constitute the various ingredients of the offence alleged. For the purposes of the petition under S. 482, CrPC the articles mentioned in the list attached to the complaint in this case must be prima facie considered to be dowry or stridhan of the appellant-wife. *Pratibha Rani* v. *Suraj Kumar*, (1985) 2 SCC 370: 1985 SCC (Cri) 180: AIR 1985 SC 628: 1985 Cri LJ 817.

Bench Strength 3. Coram: **S. Murtaza Fazal Ali**[1], **A. Varadarajan**[2] and *Sabyasachi Mukharji*, JJ. [Date of decision: 12-3-1985]

[7451] — S. 482 — Petition under, for quashing of criminal complaint under Ss. 415/420 IPC — *High Court directing the CJM, with whom the matter was pending for disposal on merits, to consider all the objections raised by the petitioner and to pass a reasoned order — Petitioner-appellant then filing objections before CJM and seeking dropping of the proceeding — By a reasoned order CJM rejecting the application taking the view that summons should be issued to the accused — Appellant once again moving the High Court under S. 482 — High Court disposing of the petition with the observation that the applicant shall have right to raise all the grounds at the time of framing of charge — Held, High Court was not justified in declining to exercise its jurisdiction and adjudicating the matter on merits — Objection regarding maintainability of the complaint need not always be raised only at the time of framing the charge — Matter remitted to High Court for disposal afresh — Penal Code, 1860, Ss. 415 and 420*

On an earlier occasion when the appellant had moved the High Court, the High Court had directed the CJM, to consider the objections raised by the appellant and to pass a reasoned order. Thereafter, the CJM, passed an order overruling the objections and decided to proceed with the case. When the appellant approached the High Court again against the speaking order passed by the CJM, the High Court once again declined to decide the petition on merits, but left it to be raised before the trial court at the time of framing the charge. Now, raising the very same objections at the time of framing the charge would practically be an empty formality as the trial court had already taken a definite view in the matter. The High Court in passing the impugned order has virtually ignored the spirit behind the direction given and observations made in the earlier order. There is no hard-and-fast rule that the objection as to cognizability of offence and maintainability of the complaint should be allowed to be raised only at the time of framing the charge. Such was not the intention of the High Court in passing the earlier order. The determination of the question as regards the propriety of the order of the Magistrate taking cognizance and issuing process need not necessarily wait till the stage of framing the charge. It may be that in a given case it would be more appropriate and proper to raise objections of this nature at the time of the charge-framing, but this is not a case of that nature, especially looking at the observations made in the earlier order of the High Court. Therefore, the subsequent order of the High Court is set aside and the matter is remitted back to the High Court for fresh disposal of the petition for a decision expeditiously. As the High Court declined to express any view on the crucial question whether the alleged offence has been made out, it is not appropriate and proper to undertake the task of deciding the question which the High Court ought to have decided. (Paras 8 and 9). *Kunstocom Electronics (I) (P) Ltd.* v. *Gilt Pack Ltd.*, (2002) 2 SCC 383: 2002 SCC (Cri) 336: AIR 2002 SC 739: 2002 Cri LJ 1012.

Bench Strength 2. Coram: *D.P. Mohapatra* and **P. Venkatarama Reddi**, JJ. [Date of decision: 24-1-2002]

Ashok Chaturvedi v. Shitul H. Chanchani, (1998) 7 SCC 698: 1998 SCC (Cri) 1704, relied on

[7452] — S. 482 — Quashing of complaint and criminal proceedings — Abuse of process of court — Breach of trust, cheating, etc — *Transaction of sale of land by appellants to Respondent 2 Society — Cheques issued by Respondent 2 in favour of appellant dishonoured by bank because of insufficiency of amount in the account of drawer — FIR lodged under Ss. 406, 420 and 120-B IPC — As a counterblast complaint filed by Respondent 2 against appellants alleging offences under Ss. 418, 420, 423, 504 and 120-B IPC — Appellants filing petition for quashing of the complaint/FIR filed by Respondent 2 — Allegations in the complaint read as a whole not indicating, expressly or impliedly, any intentional deception on the part of the appellants right from the beginning of the transaction — Thus prima facie the allegations made by Respondent 2 not constituting offence punishable under S. 420 or allied offences mentioned in the complaint — Held, continuing the criminal proceedings against the appellants would amount to an abuse of process of the court — High Court erred in refusing to quash the complaint and the proceedings*

The High Court was not right in declining to quash the complaint and the proceeding initiated on the basis of the same. That being the position the case comes within the first category of cases enumerated in *State of Haryana* v. *Bhajan Lal* and as such warrants interference by this Court. (Para 16). *Hridaya Ranjan Prasad Verma* v. *State of Bihar*, (2000) 4 SCC 168: 2000 SCC (Cri) 786: AIR 2000 SC 2341: 2000 Cri LJ 2983.

Bench Strength 2. Coram: *K.T. Thomas* and **D.P. Mohapatra**, JJ. [Date of decision: 31-3-2000]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, applied

(11)(xviii) Quashment in case of economic offences/ commercial transactions, breach of trust, cheating, etc. *(contd.)*

[7453] — Ss. 482 and 397 — Quashing of criminal proceedings — *Accused film-maker taking loan from a bank for which State of Punjab standing as guarantor — Accused undertaking to utilise entire amount of income in repayment of loan — Allegation that accused misappropriated entire proceeds of picture thereby committing offences under Ss. 406 and 420 IPC — Opportunities given by court to accused to settle the matter amicably but no settlement reached — On perusal of order of trial court and other documents on record held, no ground to quash criminal proceedings made out.* Chetan Anand v. *State of Punjab*, (1994) 1 SCC 463: 1994 SCC (Cri) 544: (1994) 31 ACC 24: (1994) 1 BC 450.

Bench Strength **2**. Coram: **Kuldip Singh** and *K. Ramaswamy*, JJ. [Date of decision: 15-10-1993]

[7454] — S. 482 — Breach of trust, cheating, etc. — Quashment — *Mere fact that the offence was committed during the course of a commercial transaction by itself not sufficient to quash the complaint — For quashing the complaint Court has to see whether on the fact situation 'civic profile' outweighs the 'criminal outfit' — Commission of offence under Ss. 120-B, 418, 415 and 420 r/w 34 IPC by respondent in the course of a contractual transaction alleged — Held, on facts, in the factual matrix quashing of complaint not warranted — Penal Code, 1860, Ss. 415, 418, 420, 120-B*

The respondents approached the appellant for the purpose of securing ethambutol hydrochloride drug in bulk for sale and use in various pharmaceutical drugs and products being manufactured by the respondent Company. The appellant has come out with a definite case that by reason of a promise of maintaining a continuous supply of raw materials to the appellant for the purpose of manufacturing ethambutol hydrochloride and in such a way so as not to cause any interruption or hindrance to the manufacturing activity of the appellant-complainant's factory, the complainant entered into an agreement. On failure to comply with that agreement the appellant filed a complaint alleging to have lost a substantial amount of money to the extent of about rupees one crore and the sufferance of loss has been by reason of specific assurance and representation which turned out to be false. Misrepresentation on the part of the accused-respondent persons to the complainant, had been the major grievance and a definite and specific case had been made out that such a misrepresentation was intentionally effected since the accused persons were in the know of things that in the event the supplies were not effected, as per the agreement, the complainant was likely to suffer a wrongful loss which in the interest of the transaction between the parties, the accused persons were bound to protect. Proceedings were initiated against the respondents under Sections 120-B, 418, 415 and 420 read with Section 34 IPC. Against the said proceedings the respondents moved the High Court under Section 482 CrPC for quashing the complaint. A Single Judge of the High Court taking the view that the complaint did not disclose any offence allowed the petition for quashing the complaint. Allowing the appeal of the complainant,

Held :

The factual matrix would be relevant in the matter of assessment of the situation as to whether "civic profile" would outweigh the "criminal outfit". (Para 3)

In the matter of exercise of the High Court's inherent power, the only requirement is to see whether continuance of the proceeding would be a total abuse of the process of court. The Criminal Procedure Code contains a detailed procedure for investigation, charge and trial, and in the event the High Court is desirous of putting a stop to the known procedure of law, the High Court must use a proper circumspection and very great care and caution to quash the complaint in exercise of its inherent jurisdiction. (Para 16)

While Section 415 is an offence of cheating, Section 418 deals with cheating with knowledge that wrongful loss may ensue to a person whose interest the offender is bound to protect and Section 420 is cheating and dishonestly inducing delivery of property. In order to attract the provisions of Sections 418 and 420 the guilty intent, at the time of making the promise is a requirement and an essential ingredient thereto and subsequent failure to fulfil the promise by itself would not attract the provisions of Section 418 or Section 420. Mens rea is one of the essential ingredients of the offence of cheating under Section 420. As a matter of fact Illustration (*g*) to Section 415 makes the position clear enough to indicate that mere failure to deliver in breach of an agreement would not amount to cheating but is liable only to a civil action for breach of contract and it is this concept which obviously has weighed with the Single Judge. But considering the factual aspect of the matter it must be held that the issue involved in this case is not one in which the criminal trial should have been short-circuited. (Paras 11 and 19). *Medchl Chemicals & Pharma (P) Ltd.* v. *Biological E. Ltd.*, (2000) 3 SCC 269: 2000 SCC (Cri) 615: AIR 2000 SC 1869: 2000 Cri LJ 1487.

Bench Strength **2**. Coram: *G.B. Pattanaik* and **U.C. Banerjee**, JJ. [Date of decision: 25-2-2000]

Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370: 1985 SCC (Cri) 180; L.V. Jadhav v. Shankarrao Abasaheb Pawar, (1983) 4 SCC 231: 1983 SCC (Cri) 813; Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47; Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; Nagpur Steel & Alloys (P) Ltd. v. P. Radhakrishna, 1997 SCC (Cri) 1073; Ram Jas v. State of U.P., (1970) 2 SCC 740: 1970 SCC (Cri) 516, relied on

Dr. Sharma's Nursing Home v. Delhi Admn., (1998) 8 SCC 745: 1999 SCC (Cri) 91, distinguished

[7455] — S. 482 — Quashing of complaint or FIR — Cheating alleged — Criminal prosecution, held, cannot be thwarted merely because a civil proceedings are also maintainable — *Existence of an arbitration clause in the contract for supply of goods between appellant Company and another company, held, not a sufficient ground for quashing the complaint filed by the appellant against the supplier company alleging cheating by supplying inferior goods — Penal Code, 1860, Ss. 415 and 420*

The Chairman of the appellant Company filed a complaint before the Judicial Magistrate of the First Class alleging that the directors of another company offered to supply "toasted soyabean extractions" for a price higher than the market price. The appellant had to pay the price in advance as demanded by the accused. So the same was paid through cheques. But the accused sent the commodity which was of the most inferior and sub-standard quality, thereby the complainant suffered a loss of Rs 17 lakhs. According to the appellant he was induced to pay the price on the representation that the best quality commodity would be supplied and the price was paid on such representation. But by supplying the most inferior quality the accused deceived the complainant. The Magistrate forwarded the complaint of the appellant for investigation as per his order passed under Section 156(3) CrPC. The accused Directors thereupon moved the High Court of Gujarat under Section 482 CrPC for quashing the complaint. The respondent's counsel in the High Court put forward mainly two contentions. The first was that the dispute was purely of a civil nature and hence no prosecution should have been permitted, and the second was that the Judicial Magistrate of the First Class had no jurisdiction to entertain the complaint. On the first count the Single Judge pointed out that there was a specific clause in the memorandum of understanding arrived at between the parties that disputes, if any, arising between them in respect of any transaction could be resolved through arbitration. The High Court took the view that the question whether the complainant Company did suffer the loss as alleged by it are matters to be adjudicated by the civil court and cannot be the subject-matter of criminal prosecution. The Single Judge also accepted the alternative contention regarding want of jurisdiction of the Magistrate. Allowing the appeal,

Held :

Quashing of FIR or a complaint in exercise of the inherent powers of the High Court should be limited to very extreme exceptions. Merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. The provision incorporated in the agreement for referring the disputes to arbitration is not an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases. (Paras 7 to 9). *Trisuns Chemical Industry* v. *Rajesh Agarwal*, (1999) 8 SCC 686: AIR 1999 SC 3499: 1999 Cri LJ 4325.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 17-9-1999]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259, relied on

Followed in Sri Krishna Agencies v. State of A.P., (2009) 1 SCC 69

[7456] — S. 482 — Quashing of criminal proceedings — Offence under S. 420 IPC alleged — *Allegation in complaint that the complainant supplied material to the accused on unequivocal assurance given by him and accepted cheque which was later dishonoured for lack of funds — Held, merely because the alleged offence was committed during the course of a commercial transaction the High Court was not justified in quashing the complaint — Whether or not the allegations in the complaint were true is to be decided on the basis of the evidence led at the trial — Penal Code, 1860, S. 420. Nagpur Steel & Alloys (P) Ltd.* v. *P. Radhakrishna*, 1997 SCC (Cri) 1073.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and *K. Venkataswami*, JJ. [Date of decision: 6-5-1997]

(11)(xviii) Quashment in case of economic offences/ commercial transactions, breach of trust, cheating, etc. *(contd.)*

[7457] — S. 482 — Quashing of criminal complaint — Forgery, criminal breach of trust, etc. *— If complaint itself discloses an offence, High Court should not embark upon an inquiry as to genuineness of the allegations made in the complaint or whether those allegations were likely to be established on evidence or not — Where the complaint disclosed that goods had been entrusted to the transporter for transporting them to another place and the transporter had accepted the goods, issued lorry receipt but had not delivered the goods, held, police was obliged to register an FIR and/or to make an inquiry as to whether there was any criminal breach of trust and forgery as claimed in the complaint — In the circumstances High Court was justified in refusing to quash the complaint and dismissing the writ petition — Constitution of India — Art. 226*

The second respondent filed a complaint with the police alleging that he had handed over a consignment of goods to a transporter firm for transporting the goods from Delhi to Guwahati in Assam and that the firm issued lorry receipt but did not deliver the consignment. In the complaint it was claimed that there was breach of trust and forgery on the part of the petitioners who were the proprietors of the said firm. On the basis of this complaint the police called the petitioners and thereafter registered an FIR. The petitioners had in the meantime applied for anticipatory bail. The same was refused by the Court. No appeal or revision was filed against the order refusing anticipatory bail. The petitioners then filed a writ petition in the High Court though in the Criminal Procedure Code there are sufficient provisions which enable a party to move the High Court if there is abuse of the process of law. The High Court dismissed the petition. However, by this method the petitioners have managed to stall a proper inquiry for the last over 2 1/2 years. The petitioners preferred the SLP. Before the Supreme Court it was submitted that one J.R. Consumer Electronics Pvt. Ltd. and the 2nd respondent were both companies of the 3rd respondent and that these companies had used the said firm for transport of their goods and had not paid charges and that therefore, even before the complaint was filed by the 2nd respondent the said firm had addressed a notice to J.R. Consumer Electronics Pvt. Ltd. calling upon them to pay outstanding amounts which were due and payable. It was pointed out that a copy of the notice was also sent to the second respondent. It was further submitted that thereafter the said firm had sent another notice to J.R. Consumer Electronics Pvt. Ltd., 2nd respondent and the 3rd respondent pointing out that over a crore of rupees was due and payable by them to the said firm and that a number of cheques issued by them had bounced and that in the notice it was stated that the firm was exercising their lien over the goods till their dues were paid. A copy of this notice was stated to have been sent to the police. Both the notices were said to have been received by those companies much prior to the complaint. It was submitted that these facts show that there was no case of breach of trust and/or of forgery and that the complaint was a false complaint made merely with the intention of misusing the process of law and subjecting the petitioners to undue harassment. It was submitted that on these facts the police should have refused to register an FIR and should have directed the parties to settle their disputes and differences in a civil court. Dismissing the SLP,

Held :

None of these facts can be gathered from the complaint. Further, even if these facts are correct, the alleged exercise of lien is not in respect of amounts due in respect of the consignment withheld but dues in respect of prior consignments which had already been delivered. It is not the petitioners' case that payment had not been made in respect of the consignments withheld by them. Also to be noted that goods are of the 2nd respondent. Yet they are also withheld for dues of J.R. Consumer Electronics Pvt. Ltd. Except for the say-so of the petitioners, it had not been established that the two companies were one and the same. (Para 7)

In this case the complaint only discloses that goods have been entrusted to the firm for transporting to Guwahati; that the transporter has accepted the goods, issued a lorry receipt but has not delivered the goods. The complaint does not disclose any further fact. It would have been dereliction of duty on the part of the police to look at facts outside the complaint. On those facts the police had to inquire whether there was any criminal breach of trust and forgery as claimed. On these facts it could not be said that the police should not have registered an FIR and/or to make an inquiry. (Paras 8 and 10)

Therefore, the High Court was right in dismissing the petition. No case has been made out for interference at all. As the petitioners have stalled inquiries for the last over 2 1/2 years, it is directed that the police should now complete the investigation as expeditiously as possible and submit the final report in accordance with law. It is clarified that the police are at liberty to seize and/or attach the goods and remove the same from the godown of the petitioners to some other place, if they so choose. (Para 11)

The power of quashing criminal proceedings must be exercised very sparingly and with circumspection and that too in the rarest of rare cases. One such case would be when the complaint itself does not disclose any offence. The present is not such a case. The court would not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint or as to whether the allegations in the complaint are likely to be established by evidence or not. (Paras 5 and 10). *Mahavir Prashad Gupta* v. *State of National Capital Territory of Delhi*, (2000) 8 SCC 115: 2000 SCC (Cri) 1453: AIR 2000 SC 3101.

Bench Strength **3**. Coram: *K.T. Thomas*, *R.P. Sethi* and **S.N. Variava**, JJ. [Date of decision: 27-9-2000]

Punjab National Bank v. Surendra Prasad Sinha, 1993 Supp (1) SCC 499: 1993 SCC (Cri) 149; Sunil Kumar v. Escorts Yamaha Motors Ltd., (1999) 8 SCC 468: 1999 SCC (Cri) 1466; Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168: 2000 SCC (Cri) 786, distinguished

State of Bihar v. Murad Ali Khan, (1988) 4 SCC 655: 1989 SCC (Cri) 27; State of Haryana v. Bhajan Lal, (1992) Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

Mahabir Prasad Gupta v. State, (2000) 85 Delhi LT 56, affirmed

[7458] — S. 482 — Quashing of complaint at initial stage — Partnership property in the hands of partner — Liability of partner for criminal breach of trust in respect of such property — *It must be shown that the property was specially entrusted to the accused under a special contract and he held that property in fiduciary capacity under the special contract — On facts, allegation against the accused had not been made in his capacity as a partner of the firm — Hence, compliant cannot be quashed at initial stage — Penal Code, 1860, S. 406*

Partnership firm is not a legal entity but a legal mode of doing business by all the partners. Until the firm is dissolved as per law and the accounts settled, all the partners have dominion in common over the property and funds of the firm. Only after the settlement of accounts and allotment of respective shares, a partner becomes owner of his share. However, criminal breach of trust under Section 406 is not in respect of the property belonging to the partnership firm, but is an offence committed by a person in respect of the property which has been specially entrusted to such a person under a special contract and he holds that property in fiduciary capacity under special contract. If he misappropriates the same, it is an offence. (Para 8)

In the instant case it is not the case of the complainant that the accused persons were entrusted with the dominion of the property of the firm in their capacity as partners of the complainant firm. On the other hand the complainant firm entered into a contract with the accused firm, entrusted a film for exhibition and for accounting the sale proceeds and to return the film. They had neither accounted for, nor returned the film. Under these circumstances it cannot be said that the imputations alleged against the appellant have been done in his capacity as a partner of the firm. Whether the offence has been made out, whether he is liable and what are the defences open to him are not matters at this stage for consideration. It is for the trial court to proceed with the trial and to deal with according to law. Therefore, the complaint cannot be quashed. (Para 10). *Anil Saran* v. *State of Bihar*, (1995) 6 SCC 142: 1995 SCC (Cri) 1051: AIR 1996 SC 204.

Bench Strength **2**. Coram: *K. Ramaswamy* and *B.L. Hansaria*, JJ. [Date of decision: 24-8-1995]

[7459] — S. 482 — Quashing of criminal proceedings — Accused charged under Ss. 420, 468, 471 IPC for defrauding a bank — *Merely for the reason that a compromise had been reached between the bank officials and the accused and accused paid the disputed amount found due to the bank, held, High Court was not justified in quashing the trial which had reached almost the penultimate stage — Penal Code, 1860, Ss. 420, 468 and 471. Inspector of Police, CBI* v. *B. Raja Gopal*, (2002) 9 SCC 533.

Bench Strength **2**. Coram: *K.T. Thomas* and *S.N. Phukan*, JJ. [Date of decision: 21-1-2002]

[7460] — S. 482 — Quashing of criminal proceedings — Charge against a Bank Manager of entering into criminal conspiracy with appellant and others — *Overdraft facility alleged to have been granted by the manager to appellant beyond the scope of manager's power — Circumstances raising suspicion regarding payment of illegal gratification by appellant to the manager, which would require investigation — Some link or factor connecting the charge of criminal conspiracy existing — Held, no prejudice would be caused to the appellant in allowing the criminal proceedings to continue against him — Penal Code, 1860, S. 120-B*

An FIR was lodged against one *R*, Branch Manager of a nationalised bank, alleging that he by entering into a criminal conspiracy with some named accused, had cheated the Bank to the tune of Rs 7,47,000 by misusing his official position and thus caused wrongful loss to the Bank and wrongful gain to himself. Though in the FIR name of the

(11)(xviii) Quashment in case of economic offences/ commercial transactions, breach of trust, cheating, etc. *(contd.)*

appellant was not mentioned as one of the accused but his name did figure therein as a person receiving large amount as loan in clear breach of financial obligation. However, subsequently, the appellant was made an accused and a charge-sheet was submitted by CBI in the Court of Special Judge stating that he having an account in the Bank had made an application on 8-2-1985 for sanction of loan of Rs 14 lakhs for urgent payment to labourers in contract work and *R* had given sanction and allowed a total amount of overdraft facility to the extent of Rs 21,50,000 on different dates to the appellant even though he had no power to grant overdraft facility beyond a sum of Rs 10,000. The Special Judge took cognizance of the matter and issued summons and the appellant in terms thereof appeared before the Special Court and was granted bail. Subsequently, however, upon receipt of the copies of the documents, the appellant moved an application before the Special Judge, CBI for discharging him from the case and to drop the proceedings against him. Similar application for discharge was also filed by other accused persons and the Special Court in a common judgment came to a conclusion that there were sufficient materials existing for a prima facie case against the said accused persons for framing of charges. The appellant moved the High Court under Section 482 CrPC to quash the proceeding against him under Sections 120-B, 409, 420, 468, 471, 477-A IPC read with diverse provisions of Prevention of Corruption Act, pending before the Court of Special Judge. But the High Court dismissed the application. The Additional Solicitor General contended that there was a charge under Section 120-B and as such, question of setting free the appellant at this stage of the proceeding did not and could not arise. He contended that the offence under Section 120-B is an independent offence and while it is true that the gist of the offence is the agreement between two or more offenders, but particular facts of the conspiracy need not even be shown in the charge. Some general evidence pertaining to the conspiracy would be sufficient to form part of the charge of conspiracy in the charge-sheet. As a matter of fact some connecting link or connecting factor somewhere would be good enough for framing of charge since framing of charge and to establish the charge of conspiracy cannot possibly be placed on a par. To establish the charge of conspiracy, there is required cogent evidence of meeting of two minds in the matter of commission of an offence — in the absence of which the charge cannot be sustained — this is however not so, in the matter of framing of charge since the incidence of the offence shall have to be investigated. It is on this count that the Additional Solicitor General contended that since conspiracy is generally a matter of inference and since the appellant herein did take advantage of the overdraft facility knowing fully well that the same was beyond the financial limits of the Branch Manager, the natural inference may be drawn that the same must have been done upon some other consideration and it is the assessment of the same which should prompt the Supreme Court not to thwart such an attempt. Dismissing the appeal,

Held :

There may not be any direct evidence against the appellant as regards the payment of illegal gratification by him to the Branch Manager or the Accountant, but the factum of having enjoyed the privilege of having large sums of money on term loans without any authorisation to allow the same obviously raises some eyebrows somewhere and this is in spite of the fact of repayment of the term loan with interest. The question cannot be avoided as to the reasons for such an act which stands beyond the powers — is this a purely customer and bank relationship or something else — this is what is to be investigated more so having regard to this so-called habit of *R*. The criminal purpose in the matter cannot possibly be ruled out as against the appellant. The allegation pertaining to the factum of the habit of the Branch Manager, of receiving illegal gratification from the other accused may or may not be sufficient to bring home the charge of conspiracy but that by itself would not authorise the Court to call it a day in regard to the charge of conspiracy in the wake of the factual matrix of the situation at this stage of proceedings. Criminal prosecution does not necessarily mean harassment and in the event prosecution of this nature is allowed to be continued, it would not be a travesty of justice or any undue prejudice or even otherwise prejudicial, since ultimately in the event the charge is not proved, he would be acquitted. The counter-affidavit filed by the respondents does disclose some materials for scrutiny against the appellant; as such the order of the High Court cannot and ought not to be interfered with on the given set of facts. (Paras 9, 11 and 12). *Hardeo Singh* v. *State of Bihar*, (2000) 5 SCC 623: 2000 SCC (Cri) 1008: AIR 2000 SC 2245: 2000 Cri LJ 2978.

Bench Strength **2**. Coram: *G.B. Pattanaik* and **U.C. Banerjee**, JJ. [Date of decision: 11-5-2000]

[7461] — S. 482 — Quashing of criminal proceedings — Forgery of documents — Document styled as "family arrangement" relied on by respondent-husband before Family Court — *Appellant-wife filing complaint before the Court of Judicial Magistrate alleging the document to be forged and commission of offences under Ss. 465, 466 and 467 IPC by respondent — Magistrate taking cognizance of the offences and issuing process against the respondent — Respondent's revision before Sessions Court against the summons dismissed but his petition under S. 482 for quashing the summons allowed by High Court — Without going into the rival contentions regarding the forgery aspect of the document, held, Family Court may first decide the genuineness of the said document and question of initiating criminal proceedings would arise if Family Court reaches a finding that the document is forged. Mohini Hemant Jadia* v. *Hemant Ghanshyamlal Jadia*, (2002) 9 SCC 767.

Bench Strength **2**. Coram: *K.T. Thomas* and *S.N. Variava*, JJ. [Date of decision: 10-10-2001]

[7462] — S. 482 — Quashing of criminal proceedings — Power of High Court to interfere with the investigation — Limitations and factors to be considered — Forgery case — *FIR u/Ss. 419, 467, 420 and 120-B IPC filed against respondents (two private persons) and 6 revenue officers for committing forgery of assessment order of compensation payable under Bihar Land Reforms Act and misappropriating govt. money — High Court quashed entire investigation against respondents — Held, the extraordinary power under Art. 226 or inherent power under S. 482 CrPC can be exercised by the High Court either to prevent abuse of process of any court or otherwise to secure the ends of justice — Such power should be exercised sparingly and with circumspection and that too in rarest of the rare cases — In view of the settled law, where there were specific allegations in FIR against the accused persons disclosing commission of a cognizable offence, High Court erred in interfering with the investigation against the accused respondents — Constitution of India — Art. 226 — Penal Code, 1860, Ss. 419, 467, 420 and 120-B*

The respondents, two persons, on being helped in an illegal manner by the revenue officers committed the forgery of the assessment order of compensation payable under the Bihar Land Reforms Act and misappropriated the govt. money. The State impugned herein the judgment of the High Court which quashed the entire investigation against the respondents.

Allowing the appeal,

Held :

Law is well settled regarding interference by the High Court with an investigation of a case. The extraordinary power under Article 226 or inherent power under Section 482 CrPC can be exercised by the High Court either to prevent abuse of process of any court or otherwise to secure the ends of justice. The power of quashing a criminal proceeding should be exercised sparingly and with circumspection and that too in the rarest of the rare cases. (Paras 4 and 7)

Thus, where specific allegations were made in the FIR and a prima facie case was made out against the accused persons including the respondents disclosing a cognizable offence, the High Court committed a grave error in quashing the entire proceedings against the respondents. (Para 8).*State of Bihar* v. *Mohd. Khalique*, (2002) 1 SCC 652: 2002 SCC (Cri) 228: 2002 Cri LJ 553: (2002) 1 CHN (Supp) 28.

Bench Strength **2**. Coram: *K.T. Thomas* and **S.N. Phukan**, JJ. [Date of decision: 28-11-2001]

State of Haryana v. Bhajan Lal, 1992 Supp (1) 335: 1992 SCC (Cri) 426, followed

[7463] — S. 482 — Quashing of criminal proceedings at initial stage — When not permissible — Forgery cases — *Allegation in complaint against school authorities that they drew complainant's salaries and dearness allowance from government fund by forging his signatures when he had gone abroad for higher education — Copies of salary statements of the relevant period produced in the court — Held, a prima facie case of cheating, breach of trust and forgery clearly made out — High Court was not justified in quashing the complaint by considering rival versions and entering into debatable area of deciding which of the versions was true — Penal Code, 1860, Ss. 406, 409, 420 and 467. Mushtaq Ahmad* v. *Mohd. Habibur Rehman Faizi*, (1996) 7 SCC 440: 1996 SCC (Cri) 443: AIR 1996 SC 2982.

Bench Strength **2**. Coram: *S.P. Bharucha* and *M.K. Mukherjee*, JJ. [Date of decision: 31-1-1996]

[7464] — S. 482 — Quashing of proceedings on the ground of lack of jurisdiction of the Special Court — Proceedings under Ss. 420, 467, 468, 471, 120-B IPC and S. 5, Imports and Exports (Control) Act — *Quashed mainly on the ground that the Special Court (Economic Offences) had no jurisdiction to try the offences under IPC as the said court was created by a notification for trial of offences relating to only certain specific Acts including the Imports and Exports (Control) Act —*

(11)(xviii) Quashment in case of economic offences/ commercial transactions, breach of trust, cheating, etc. *(contd.)*

Considering the relevant provisions of CrPC and the language of the notification, held, the said Special Court had jurisdiction to try the offences under IPC — None of the grounds stated by the High Court for quashing the proceedings held to be proper — However, since the Imports and Exports (Control) Act had been repealed and in the departmental proceedings taken under the aforesaid Act, the Central Government had passed orders in favour of the accused-respondents, held, no useful purpose would be served by the trial of the respondents at this stage — Hence, the proceedings against the respondents quashed

Sub-section (1) of Section 4 CrPC lays down that all offences under IPC shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the said Code. Sub-section (2) of the same section lays down that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. The Imports and Exports (Control) Act, 1947 does not make any provision for regulating the manner of trying of offences under the said Act and, therefore, they have to be inquired into, tried and otherwise dealt with according to the provisions of CrPC. (Para 5)

Further, in view of specific provision contained in clause (*a*) of sub-section (4) of Section 3 CrPC, it is only a Judicial Magistrate who can try an offence under the Imports and Exports (Control) Act, 1947 and under Section 26 CrPC such a Magistrate has also the jurisdiction to try those offences under IPC, which the respondents are alleged to have committed. (Para 5)

That apart, the source of power for the State Government to issue a notification for creation of a Special Court is proviso to sub-section (1) of Section 11 CrPC and this provision nowhere says that upon issuance of such a notification the Judicial Magistrate concerned would be divested of the power and jurisdiction which he otherwise had under CrPC. The Judicial Magistrate, First Class, who by virtue of the notification became a Special Court (Economic Offences) was not divested of the jurisdiction which he otherwise possessed under Section 26 CrPC. Further, the language of the notification also does not show that powers or jurisdiction of a Judicial Magistrate, who is to perform the functions of a Special Court (Economic Offences) to try the offences under the Acts mentioned in the schedule are being affected or curtailed in any manner. (Para 6)

The High Court has referred to Section 5 of the Prevention of Corruption Act, Section 12-AA of the Essential Commodities Act and Section 9 of the Terrorist and Disruptive Activities (Prevention) Act, and on the basis of these provisions, it has held that in the absence of any specific provision conferring power upon the Special Court (Economic Offences) to try the offences under IPC the said Special Court would not have the jurisdiction to try the offences under IPC. The aforesaid reasoning of the High Court is wholly fallacious. The enactments referred to above by the High Court are special statutes which themselves created the offences, made specific provision for appointment of a Special Judge or a Designated Court for trial of offences, laid down their powers and also made specific provisions regarding procedure which was to be followed by such courts. Such is not the position here. The State Government has merely exercised power under proviso to sub-section (1) of Section 11 CrPC for creation of a Special Court. The Acts mentioned in the schedule to the notification issued by the State Government do not themselves provide for creation of any Special Court nor do they lay down the procedure for trial of the offences therein. The only effect of the notification was that instead of the trials being held in the courts of various Judicial Magistrates posted in Bangalore Metropolitan Area and in the district of Bangalore, they were all to be tried by one court. (Para 7)

Thus, the view taken by the High Court is wholly unsustainable in law and must be set aside. (Para 12)

But as the Imports and Exports (Control) Act, 1947 has since been repealed and in the departmental proceedings taken under the aforesaid Act the Central Government has passed orders in favour of the respondents, no useful purpose would be served by the trial of the accused-respondents in the criminal court at this stage. The criminal proceedings instituted against the accused-respondents on the basis of the complaints filed by the Deputy Chief Controller of Imports and Exports are, therefore, quashed. (Para 13). *Dy. Chief Controller of Imports & Exports* v. *Roshanlal Agarwal*, (2003) 4 SCC 139: 2003 SCC (Cri) 788: AIR 2003 SC 1900: 2003 Cri LJ 1698: (2003) 155 ELT 216.

Bench Strength 2. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 5-3-2003]

[7465] — Ss. 482 and 196(2) — High Court's jurisdiction under S. 482 to quash criminal complaint and proceedings — Limits of — *If prima facie offences made out on the basis of the allegations made in the complaint without going into truth or otherwise of the allegations, High Court cannot exercise its power under S. 482 — Penal Code, 1860, S. 120-B — Import and Export (Control) Act, 1947, S. 5*

The Deputy Chief Controller of Imports and Exports (the appellant) made a complaint under S. 120-B, IPC and S. 5 of the Imports and Exports (Control) Act against the accused persons (respondents) on charges that they in criminal conspiracy with each other and also with other persons illegally imported prohibited articles (beef tallow) by entering into a contract with a non-existent foreign firm in order to facilitate the import under licence under circumstances which were not permissible. The Metropolitan Magistrate took cognizance and issued summons against the accused. But the High Court quashed the complaint under S. 482, CrPC on the basis of a subsequent report of CBI which had not yet been proved and considered in the background of the allegations made.

Held :

The High Court erred in quashing the criminal proceedings under S. 482, CrPC on an erroneous basis when on prima facie being satisfied the Metropolitan Magistrate had taken cognizance of the alleged offences. The question at this stage, is not whether there was any truth in the allegations made but it is whether on the basis of the allegations, a cognizable offence or offences had been alleged to have been committed. The facts subsequently found out to prove the truth or otherwise on the allegation is not a ground on the basis of which the complaint can be quashed. Taking all the allegations in the complaint to be true, without adding or subtracting anything, at this stage, it can be said that a prima facie case for trial had been made out. That is the limit of the power to be exercised by the High Court under S. 482, CrPC. The High Court in the instant case exceeded that jurisdiction. *J.P. Sharma* v. *Vinod Kumar Jain*, (1986) 3 SCC 67: 1986 SCC (Cri) 216: AIR 1986 SC 833: 1986 Cri LJ 917.

Bench Strength 2. Coram: *R.S. Pathak* and **Sabyasachi Mukharji**, JJ. [Date of decision: 8-4-1986]

(1985) 2 Comp LJ 225 (Del), reversed

[7466] — S. 482 — Quashing of criminal proceedings under — Non-consideration of relevant aspects — Unsustainability — *Reiterated, exercise of the inherent powers to quash criminal proceedings is called for where the complaint does not disclose any offence or is frivolous, vexatious or oppressive — If no material is shown that the complaint/FIR is mala fide, High Court is not justified in interfering — On facts, complaint filed against respondents alleging offence punishable under S. 120-B IPC for conveying joint property of land into unauthorised "colony" by violating provisions of S. 36 of Punjab Apartment and Property Regulation Act, 1995 — Under the Act, "colony" meant an area of land not less than 1000 sq m — Respondents, sold joint family property of 1861.16 sq yd (1556 sq m) area of land in a joint khasra to different purchasers dividing into equal shares of 465.29 sq yd i.e less than 1000 sq m — High Court quashed the proceedings against them holding that even if the property was a joint one, but respondents had sold their respective shares — Held, High Court did not consider relevant aspects for quashment of criminal proceedings in exercise of power under S. 482 — Individual share of land, whether could be less than 1000 sq m, was not a relevant aspect for such consideration — High Court's order unsustainable, hence quashed* (Para 10). *State of Punjab* v. *Inder Mohan Chopra*, (2009) 3 SCC 497.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 12-2-2009]

State of A.P. v. Bajjoori Kanthaiah, (2009) 1 SCC 114: (2009) 1 SCC (Cri) 481; State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522, relied on

[7467] — S. 482 — Quashment of proceedings — Evaluation of plausibility/credibility of averments in complaint — Permissibility — Doubt as to the same, held, must be based on some material — *High Court cannot quash complaint if allegations prima facie disclose commission of cognizable offence — Complaint alleging sale of cooperative society land illegally for higher price but showing lesser price in records and conspiracy to cheat society and its members — High Court quashing entire criminal proceedings holding that averments in complaint were "imaginary" — Sustainability — In present case, allegations in complaint disclose conspiracy to put cooperative society and its members to loss in view of report of Registrar and hence prima facie disclose commission of cognizable offence — High Court's conclusion that averments in complaint are imaginary is not based on any material — Hence, judgment of High Court is unsustainable — Penal Code, 1860, Ss. 420, 120-B and 34*

Allowing the appeal,

Held :

It is now a well-settled principle of law that the High Court in exercise of its inherent jurisdiction under Section 482 of the Code may quash a criminal

(11)(xviii) Quashment in case of economic offences/ commercial transactions, breach of trust, cheating, etc. *(contd.)*

proceeding inter alia in the event the allegations made in the complaint petition even if they are taken at their face value and accepted in their entirety do not disclose commission of a cognizable offence. (Para 14)

The opinion of the High Court that the averments made in the complaint petition are imaginary is not based on any material. Even assuming that the complainant had a score to settle against the accused, the same by itself may not be a ground to quash the entire criminal proceedings particularly in view of the fact that at least a prima facie case has been established in view of the report of the Registrar. (Para 22)

The allegations made in the complaint petition disclose commission of a cognizable offence. A conspiracy is said to have been entered into for putting the Society and consequentially the members to a great loSs. A conspiracy is also said to have been hatched for the aforementioned purpose as a result whereof not only an allotment was made in favour of a person who was not entitled thereto but also the allotted plot was assigned in favour of a third party for a huge sum. Whether the allegations made in the complaint petition are correct or not have to be considered during trial. It may be true that the question as to whether the report of the Registrar can be relied upon for the purpose of showing as to how the act of cheating has been committed by the respondents is a matter which must be considered at the time of trial but there cannot be any doubt whatsoever that so long as the report is not set aside, the same could form the basis for forming of an opinion at least for the purpose of proceeding against the respondents that they manipulated the records of the cooperative Society to make unlawful gain for themselves and causing unlawful loss to the Society. (Paras 16, 17 and 19). *K. Ashoka* v. *N.L. Chandrashekar,* (2009) 5 SCC 199.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph,* JJ. [Date of decision: 15-4-2009]

Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, followed

[7468] — S. 482 — Quashing of FIR/charge-sheet/complaint — Principles for — High Court should exercise its inherent power to quash FIR/ charge-sheet/complaint only in rarest of rare cases — Economic offences — *It should not weigh the pros and cons of the prosecution case or consider effect of non-compliance of mandatory provision of law — In cases of economic offences or offences involving moral turpitude or crimes of grave nature greater circumspection and care and caution must be borne in mind by the High Court*

The exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into a cognizable offence. After the investigation is concluded and the charge-sheet is laid, the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out, no further act could be done except to quash the charge-sheet. But only in exceptional cases, i.e., in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance the criminal process is availed of in laying a complaint or FIR which itself does not disclose at all any cognizable offence — the court may embark upon the consideration thereof and exercise the power.

When the High Court exercises its inherent power under Section 482, the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the court. When investigating officer spends considerable time to collect the evidence and places the charge-sheet before the court, further action should not be short-circuited by resorting to exercise inherent power to quash the charge-sheet. The social stability and order requires to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising inherent power. The accused involved in an economic offence destabilises the economy and causes grave incursion on the economic planning of the State. When the legislature entrusts the power to the police officer to prevent organised commission of the offence or offences involving moral turpitude or crimes of grave nature and are entrusted with power to investigate into the crime in intractable terrains and secretive manner in concert, greater circumspection and care and caution should be borne in mind by the High Court when it exercises its inherent power. Otherwise, the social order and security would be put in jeopardy and to grave risk. The accused will have field day in destabilising the economy of the State regulated under the relevant provisions. *State of H.P.* v. *Pirthi Chand*, (1996) 2 SCC 37: 1996 SCC (Cri) 210: AIR 1996 SC 977.

Bench Strength 2. Coram: *K. Ramaswamy* and *S.B. Majmudar*, JJ. [Date of decision: 30-11-1995]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059, followed

[**Ed.**: In this case order of discharge passed by the Sessions Judge was confirmed by the High Court in its revisional jurisdiction. Scope of High Court's inherent jurisdiction to quash criminal proceeding was not in issue.]

[7469] — S. 482 — Quashing of prosecution — High Court cannot hold a parallel trial in exercise of power under — If offence prima facie falls under the Penal Code, launching of prosecution cannot be thwarted by High Court under S. 482 merely because penal action open under any other statute — *Cognizance of offence taken by Magistrate under S. 409 IPC against managing director and directors (appellants) of a public limited company on the basis of charge-sheet submitted by CBI and other material prima facie disclosing dishonest misappropriation of share and debenture moneys collected from public — Application filed by appellants under S. 482 seeking their discharge on ground of availability of penal provisions for such offence under Companies Act — Held, High Court justified in dismissing the application — Penal Code, 1860, Ss. 409, 420 and 405 — Companies Act, 1956, Ss. 69, 63 and 73*

Though the Companies Act contains provisions regarding the issuance of prospectus, applications for shares and allotment thereof and provides different checks over the misuse of the fund collected from the public for issuance of shares or debentures, but where persons issue prospectus and collect moneys from public assuring them that they intend to do business with the public money for their benefit and the benefit of such public, but the real intention is to do no business other than collecting the moneys from the public for their personal gain, such persons cannot be said to be immune from the provisions of the Penal Code. The persons managing the affairs of such company cannot use the juristic entity and corporate personality of the company as a shield to evade themselves from prosecution for offences under the Penal Code, if it is established that primary object of the incorporation and existence of the Company is to defraud the public.

But, at the same time, while taking cognizance of alleged offences in connection with the registration, issuance of prospectus, collection of moneys from the investors and the misappropriation of the fund collected from the shareholders which constitute one offence or other under the Penal Code, court must be satisfied that prima facie an offence under the Penal Code has been disclosed on the materials produced before the court. For prosecution for offences under the Penal Code the complainant has to make out a prima facie case against the individuals concerned, regarding their acts and omissions which constitute the different ingredients of the offences under the Penal Code. There is a basic difference between the offences under the Penal Code and acts and omissions which have been made punishable under different Acts and statutes which are in nature of social welfare legislations. For framing charges in respect of those acts and omissions, in many cases, mens rea is not an essential ingredient; the concerned statute imposes a duty on those who are in charge of the management, to follow the statutory provisions and once there is a breach or contravention, such persons become liable to be punished.

In the facts of the present case itself, the prosecution has to prove that the appellant as promotors or directors, had dishonest intention since the very beginning while collecting the moneys from the applicants for the shares and debentures or that having collected such moneys they dishonestly misappropriated the same. The ingredients of the different offences under the Penal Code need not be proved only by direct evidence: they can be shown from the circumstances of a particular case that the intention of the promotors or the directors was dishonest since the very inception or that they developed such intention at some stage, for their wrongful gain and causing wrongful loss to the investors. All the circumstances and the materials to prove such a charge have to be collected during the investigation and inquiry and ultimately have to be produced before the court at the stage of trial for a verdict as to whether the ingredients of offence in question have been established on behalf of the prosecution.

(11)(xviii) Quashment in case of economic offences/ commercial transactions, breach of trust, cheating, etc. *(contd.)*

In the present case the quashing of the prosecution pending against the appellants only on the ground that it was open to the applicants for shares to take recourse to the provisions of the Companies Act, cannot be accepted. It is a futile attempt on the part of the appellants, to close the chapter before it has unfolded itself. It will be for the trial court to examine the matter on the materials produced on behalf of the prosecution. That exercise cannot be performed either by the High Court or by the Supreme Court. The trial court should proceed with the case in accordance with law.

The High Court should not, while exercising power under S. 482 of the Code, usurp the jurisdiction of the trial court. The power under S. 482 of the Code has been vested in the High Court to quash a prosecution which amounts to abuse of the process of the court. But that power cannot be exercised by the High Court to hold a parallel trial, only on basis of the statements and documents collected during investigation or inquiry, for purpose of expressing an opinion whether the accused concerned is likely to be punished if the trial is allowed to proceed. *Radhey Shyam Khemka* v. *State of Bihar*, (1993) 3 SCC 54: 1993 SCC (Cri) 591: (1993) 77 Comp Cas 356: 1993 Cri LJ 2888: (1993) 1 Crimes 1132.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **N.P. Singh**, JJ. [Date of decision: 26-3-1993]

[7470] — Ss. 482 and 2(d), 154, 155 and 190, 200 — Quashing of complaint — *If averments in complaint prima facie make out a case for investigation the High Court cannot quash the complaint merely because one or two ingredients of the offence have not been stated in detail — Quashing of complaint on ground that the complaint disclosed a commercial or money transaction not justified — Many a cheating is committed in the course of commercial or money transaction — Constitution of India — Art. 226 — Penal Code, 1860, Ss. 420 & 417, 415*

It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence.

It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions.

The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that the respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that the respondent after receiving the goods had sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

In the present case the High Court seems to have adopted a strictly hypertechnical approach and sieved the complaint through a cullendar of finest gauzes for testing the ingredients under Section 415 IPC. Such an endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a commercial transaction simpliciter wherein no semblance of criminal offence is involved. *Rajesh Bajaj* v. *State NCT of Delhi*, (1999) 3 SCC 259: 1999 SCC (Cri) 401: AIR 1999 SC 1216: 1999 Cri LJ 1833.

Bench Strength **2**. Coram: **K.T. Thomas** and *S.S.M. Quadri*, JJ. [Date of decision: 12-3-1999]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

(1998) 3 Chand Cri Cases 238 (P&H), reversed

***Distinguished** in Anil Ritolla v. State of Bihar, (2007) 10 SCC 110*

[7471] — Ss. 482 and 468 — Offences under Ss. 420, 467, 471 and 474 IPC — Quashing of complaint by High Court on the ground that it was filed belatedly — Legality — Bar of limitation under S. 468 — Applicability of — *Most of the offences in question punishable with imprisonment for a term exceeding three years — Hence held, bar* *of limitation not attracted — Further, if the effect of delay, if any, in instituting the complaint was necessary to be determined for considering the merits of the charge, that could only be done at the stage of trial on the basis of the evidence on record — Accordingly, High Court's order set aside* (Para 6). *Harnam Singh* v. *Everest Construction Co.*, (2004) 6 SCC 754: 2004 SCC (Cri) 1828.

Bench Strength **2**. Coram: **P. Venkatarama Reddi** and *B.P. Singh*, JJ. [Date of decision: 17-8-2004]

[7472] — Ss. 482 and 154 — Power to quash criminal proceeding — Where FIR ex facie makes out no offence criminal proceeding instituted on the basis of such FIR liable to be quashed — Cheating, forgery, etc. — *Allegations same against all accused — Prosecution of bank officials and account-holders for withdrawing certain amount from bank by making false credit entries in books of account and connected credit and debit vouchers — No particulars of alleged entries given in FIR — Absence of deliberate intention to cause any wrongful gain or wrongful loss — High Court rightly held that allegations made in FIR did not constitute any offence of cheating or forgery as such proceedings amounted to abuse of process of court — Failure to make entries in books of account cannot be characterised as false entries — Since allegations same against all accused persons entire proceedings and not only against one, as High Court did, liable to be quashed — Penal Code, 1860, Ss. 420, 468, 471 and 120-B — Prevention of Corruption Act, 1947, S. 5(2) read with S. 5(1)(d). State of U.P.* v. *R.K. Srivastava*, (1989) 4 SCC 59: 1989 SCC (Cri) 713: AIR 1989 SC 2222: 1989 Cri LJ 2301.

Bench Strength **3**. Coram: **M.M. Dutt**, *S. Ratnavel Pandian* and *Dr. T.K. Thommen*, JJ. [Date of decision: 11-8-1989]

[7473] — S. 482 — Quashing of prosecution — When warranted — Complaint not disclosing any offence either under S. 420 or S. 120-B IPC — Case in question, a purely civil dispute — *On such facts, held, allowing investigation to continue would amount to abuse of process of court — Hence, prosecution quashed — Constitution of India — Art. 136 — Penal Code, 1860, Ss. 420/120-B* (Para 7). *Uma Shankar Gopalika* v. *State of Bihar*, (2005) 10 SCC 336.

Bench Strength **2**. Coram: *B.N. Agrawal* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 24-3-2004]

[7474] — Ss. 482, 154, 156(3) and 157 — Quashing of FIR and investigation — Propriety — Factors to be considered — Breach of trust, cheating etc. — *Private complaint made to Magistrate alleging that general power of attorney issued in favour of first respondent was misused by him, hence appellant complainant had cancelled the same — Despite that Respondent 1 had executed a registered sale deed in favour of Respondent 2 — Magistrate handing over the complaint for investigation, on basis of which FIR lodged — However, said FIR quashed by High Court holding that it was a case of civil profile and none of the ingredients that constitute the offences punishable under Ss. 464, 423 and 420 r/w S. 34 IPC were discernible from the said allegations — Held, it is settled law that an FIR and the consequent investigation cannot be quashed unless there is no offence spelt out from the same — FIR is to be taken on its face value for adjudging the same — No question of considering the merits of the allegations contained in FIR at that stage or testing the veracity of allegations would arise — In the instant case, investigation was in progress and police had also not reported back to the Magistrate the result of their investigation — In such circumstances, FIR could have been quashed only and only if there appeared to be no offence spelt out therein — High Court at the stage of investigation could not have examined the nature of transaction or whether any offence was actually committed by the accused persons or not — Only enquiry that could have been undertaken was to see as to whether the complaint or FIR did contain allegations of any offence — High Court erred in quashing the FIR — Penal Code, 1860, Ss. 464, 423, 420 r/w S. 34* (Paras 3, 4, 7 and 8). *T. Vengama Naidu* v. *T. Dora Swamy Naidu*, (2007) 12 SCC 93: (2008) 2 SCC (Cri) 231: (2007) 52 AIC 65 (SC).

Bench Strength **2**. Coram: *P.K. Balasubramanyan* and **V.S. Sirpurkar**, JJ. [Date of decision: 27-2-2007]

(xix) Quashment re offences involving companies

See also '(11)(xvii) Civil remedies available/Civil proceedings pending', and

'(11)(xviii) Quashment in case of economic offences/commercial transactions, breach of trust, cheating, etc.', above

[7475] — S. 482 — Prosecution of Chairman, Managing Director and Officers of the company for offences under S. 25-M read with S. 25-Q, ID Act — Maintainability and propriety of continuance of — Long lapse of time — *The company, liable under a contract to pay 75% of electricity charges irrespective of the actual supply of electricity, being unable to clear electricity dues as its productive activities had suffered immensely due to chronic shortage of power supply — Consequently electricity disconnected — Co. resorting to lay-off*

(11)(xix) Quashment re offences involving companies *(contd.)*

without statutory permission — Repelling the challenge to the constitutionality of S. 25-M, maintainability of the prosecution upheld but in view of the inevitability of the lay-off under compulsive circumstances beyond the control of the company and the long lapse of time (about 12 years in this case), continuance of the prosecution prohibited — Further held, such course of action not only was within the scope of S. 482 of CrPC but would also secure the ends of justice — Industrial Disputes Act, 1947, Ss. 25-M, 25-Q and 32. Ashok Kumar Jain v. *State of Bihar,* (1995) 1 SCC 516: 1995 SCC (L&S) 353: (1995) 1 LLN 400: (1995) 1 CLR 207: (1995) 2 LLJ 685.

Bench Strength 2. Coram: **G.N. Ray** and *B.L. Hansaria*, JJ. [Date of decision: 8-12-1994]

[7476] — S. 482 — Quashing of complaint (under S. 73 of Companies Act) at the initial stage — *Complaint quashed by the High Court on ground that the accused was not an officer in default and that the complainant had no locus standi to file the complaint — Held, High Court not justified in quashing the complaint — Companies Act, 1956, Ss. 73, 621 and 621-A. P. C. Wadhwa* v. *S. C. Bhatia*, 1995 Supp (4) SCC 244.

Bench Strength 2. Coram: *J.S. Verma* and *K.S. Paripoornan*, JJ. [Date of decision: 24-3-1995]

[7477] — S. 482 — Quashing of criminal proceedings — Power should be exercised sparingly by High Court — Complaint filed by a director of a company against other directors of the company alleging commission of offences under Ss. 60, 63, 68 and 68-A r/w S. 621 of Companies Act — *Summons issued by Special Judge requiring the accused Directors (appellants) to appear in person before the Court — Petition filed by the accused under S. 482 for quashing the proceedings inter alia on ground that no offence was made out by the complaint — Having regard to the complaint, material produced by the complainant and relevant provisions of Companies Act, held, a prima facie case was made out against the accused-appellants — Hence High Court was justified in declining to quash the proceedings — Companies Act, 1956, Ss. 60, 63, 68, 68-A & 621*

The appellants and the first respondent are Directors of a Power Company (Spectrum Power Generation Ltd.) incorporated under the Indian Companies Act. The respondent filed a complaint alleging offences under Sections 60, 63, 68, 68-A read with Section 621 of the Act against the appellants, alleging inter alia that the accused persons by making false, deceptive and misleading statements and by suppressing relevant facts induced various persons to pay them money for purchase of shares of the Power Company; raised millions of dollars from Non-Resident Indians (NRIs); siphoned off those funds into bogus companies exclusively owned by them in offshore companies and purchased shares of the Power Company in India in the names of bogus offshore companies owned/controlled by them. In this process the original investors who were promised shares in the Power Company were never allotted any shares. On the other hand shares were allotted to offshore companies which have nothing to do with the Power Company and which are exclusively owned and controlled by the accused persons. It was specifically alleged in the complaint petition that the accused persons in effect committed fraud on the Power Company in whose name they collected money, invested that in their own companies and those companies in turn applied and got shares at the instance of the accused persons, with the result that all these overseas investors are left high and dry. On receipt of the complaint the Special Judge issued summons to the accused persons. On receipt of the same, the accused persons filed the petition under Section 482 CrPC in the High Court with the prayer to quash the criminal proceedings. The main grounds of challenge against the proceeding was that the complaint does not make out any of the offences alleged by the complainant and as such it is bad in law and not maintainable; that the Act has no application to the transactions alleged in the complaint as the petitioners are the citizens of USA and they are the Directors of the overseas company which has been incorporated and functioning abroad and that the offer for investment was made to NRIs in USA; that the investing companies headed by the petitioners have taken necessary RBI permission to invest in the Power Company and accordingly have made the investment, and therefore they have not violated any law of the land; that even otherwise, the investing companies did invest all the monies collected by them in the Power Company and as such the Power Company does not stand to lose anything; that the complainant who is not a mere shareholder but is the Vice-Chairman and Managing Director of the Power Company is in no way aggrieved by any of the alleged acts by the petitioner, and therefore, the complaint has been filed with an oblique motive. The further ground taken by the petitioners was that in view of the fact that the companies involved herein are not companies coming within the purview of the Companies Act and as there has been no prospectus issued by them as defined in Section 60 of the Act, the section has no applicability to the facts of the case on hand. The High Court declined to quash the complaint petition and to drop the case against the accused persons.

Dismissing the appeal,

Held:

Reading of the complaint petition and the materials produced by the complainant with it in the light of provisions of Sections 60, 63(1), 68 and 68-A of the Companies Act, it cannot be said that the allegations made in the complaint taken in entirety do not make out even prima facie, any of the offences alleged in the complaint petition. The merits of the case need not be discussed further since any observation in that regard may affect one party or the other. The allegations made are serious in nature and relate to the Power Company registered under the Act having its head office in this country. Whether the appellants were or were not citizens of India at the time of commission of the offences alleged and whether the offences alleged were or were not committed in this country, are questions to be considered on the basis of the evidence to be placed before the Court at the trial of the case. The questions raised are of involved nature, determination of which requires enquiry into facts. Such questions cannot be considered at the preliminary stage for the purpose of quashing the complaint and the proceeding initiated on its basis. It is relevant to note here that from Sections 4 and 188 CrPC, it is clear that even if the offence is committed by a citizen of India outside the country the same is subject to the jurisdiction of courts in India. Therefore, in the context of the facts and circumstances of the case, the High Court was right in declining to quash the complaint petition and the proceedings initiated on its basis. (Paras 23 and 24)

Power of quashing a criminal complaint and the proceeding initiated on its basis under Section 482 CrPC or Article 226 of the Constitution is to be exercised very sparingly and with circumspection and that too in the rarest of rare cases. (Para 13). *A.V. Mohan Rao* v. *M. Kishan Rao*, (2002) 6 SCC 174: 2002 SCC (Cri) 1281: AIR 2002 SC 2653: (2002) 111 Comp Cas 390.

Bench Strength **2**. Coram: **D.P. Mohapatra** and *K.G. Balakrishnan*, JJ. [Date of decision: 16-7-2002]

Central Bank of India Ltd. v. Ram Narain, AIR 1955 SC 36: 1955 Cri LJ 152; Mobarik Ali Ahmed v. State of Bombay, AIR 1957 SC 857: 1957 Cri LJ 1346: 1958 SCR 328; Ajay Aggarwal v. Union of India, (1993) 3 SCC 609: 1993 SCC (Cri) 961; State of Bihar v. Murad Ali Khan, (1988) 4 SCC 655: 1989 SCC (Cri) 27; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Mahavir Prasad Gupta v. State of National Capital Territory of Delhi, (2000) 8 SCC 115: 2000 SCC (Cri) 1453, relied on

[7478] — S. 482 — Deception — Scope of — Non-disclosure of relevant information — Held, to be treated as misrepresentation leading to deception — *Further held, S. 415 Expln. gives statutory recognition to the judicially evolved principle that misleading statements which withhold vital facts for intentionally inducing a person to do or omit to do something, would amount to deception — Misleading statement causing damage wrongfully to the person deceived, amounts to cheating — A corporate body seeking investment by means of misleading statement may therefore be subjected to prosecution for cheating — Companies Act, 1956, Ss. 56, 58-A, 60-A, 60-B and 61 to 68 — Penal Code, 1860, S. 415 Expln. and Ss. 24 and 23*

Section 415 can be divided into two parts. The first part makes it necessary that the deception by the accused of the person deceived, must be fraudulent or dishonest. Such deception must induce the person deceived to either: (*a*) deliver property to any person; or (*b*) consent that any person shall retain any property. The second part also requires that the accused must by deception intentionally induce the person deceived either to do or omit to do anything which he would not do or omit, if he was not so deceived. Furthermore, such act or omission must cause or must be likely to cause damage or harm to that person in body, mind, reputation or property. Thus, it is evident that deception is a necessary ingredient for the offences of cheating under both parts of this section. The complainant, therefore, necessarily needs to prove that the inducement had been caused by the deception exercised by the accused. Such deception must necessarily produce the inducement to part with or deliver property, which the complainant would not have parted with or delivered, but for the inducement resulting from deception. The Explanation to the section would clearly indicate that there must be no dishonest concealment of facts. In other words, non-disclosure of relevant information would also be treated as a misrepresentation of facts leading to deception. (Para 68)

The Explanation appended to Section 415 gives a statutory recognition to the legal principles established through various judicial pronouncements that misleading statements which withhold the vital facts for intentionally inducing a person to do or to omit to do something would amount to deception. Further, in case it is found that misleading statement has wrongfully caused damage to the person deceived it would amount to cheating. (Para 72)

(11)(xix) Quashment re offences involving companies *(contd.)*

The appellants were entitled to an opportunity to prove the averments made in the complaint. They were entitled to establish that they have been deliberately induced into making huge investments on the basis of representations made by Respondent 1 and its representatives, which representations subsequently turned out to be completely false and fraudulent. The appellants were entitled to an opportunity to establish that Respondent 1 and its representatives were aware of the falsity of the representations at the time when they were made. The appellants have given elaborate details of the positive assertions made by Respondent 1 which were allegedly false to its knowledge. It is also claimed by the appellants that Respondent 1 and its representatives wilfully concealed facts which were material and ought to have been disclosed, but were intentionally withheld so as to deceive the appellant into advancing and expending a sum of Rs 500 crores. (Para 75). *Iridium India Telecom Ltd.* v. *Motorola Inc.*, (2011) 1 SCC 74.

Bench Strength **2**. Coram: *B. Sudershan Reddy* and **S.S. Nijjar**, JJ. [Date of decision: 20-10-2010]

Central Railway Co. of Venezuela v. Kisch, 1867 LR 2 HL 99; New Brunswick and Canada Railway Co. v. Muggeridge, (1860) 1 Dr & Sm 363 at pp. 381-82: 62 ER 418, relied on

Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686: 2000 SCC (Cri) 47, referred to

Small v. Attwood, You 407: 159 ER 1051; Dobell v. Stevens, 3 B&C 623: 107 ER 864, cited

[7479] — S. 482 — Quashing of prosecution — High Court cannot hold a parallel trial in exercise of power under — If offence prima facie falls under the Penal Code, launching of prosecution cannot be thwarted by High Court under S. 482 merely because penal action open under any other statute — *Cognizance of offence taken by Magistrate under S. 409 IPC against managing director and directors (appellants) of a public limited company on the basis of charge-sheet submitted by CBI and other material prima facie disclosing dishonest misappropriation of share and debenture moneys collected from public — Application filed by appellants under S. 482 seeking their discharge on ground of availability of penal provisions for such offence under Companies Act — Held, High Court justified in dismissing the application — Penal Code, 1860, Ss. 409, 420 and 405 — Companies Act, 1956, Ss. 69, 63 and 73*

Though the Companies Act contains provisions regarding the issuance of prospectus, applications for shares and allotment thereof and provides different checks over the misuse of the fund collected from the public for issuance of shares or debentures, but where persons issue prospectus and collect moneys from public assuring them that they intend to do business with the public money for their benefit and the benefit of such public, but the real intention is to do no business other than collecting the moneys from the public for their personal gain, such persons cannot be said to be immune from the provisions of the Penal Code. The persons managing the affairs of such company cannot use the juristic entity and corporate personality of the company as a shield to evade themselves from prosecution for offences under the Penal Code, if it is established that primary object of the incorporation and existence of the Company is to defraud the public.

But, at the same time, while taking cognizance of alleged offences in connection with the registration, issuance of prospectus, collection of moneys from the investors and the misappropriation of the fund collected from the shareholders which constitute one offence or other under the Penal Code, court must be satisfied that prima facie an offence under the Penal Code has been disclosed on the materials produced before the court. For prosecution for offences under the Penal Code the complainant has to make out a prima facie case against the individuals concerned, regarding their acts and omissions which constitute the different ingredients of the offences under the Penal Code. There is a basic difference between the offences under the Penal Code and acts and omissions which have been made punishable under different Acts and statutes which are in nature of social welfare legislations. For framing charges in respect of those acts and omissions, in many cases, mens rea is not an essential ingredient; the concerned statute imposes a duty on those who are in charge of the management, to follow the statutory provisions and once there is a breach or contravention, such persons become liable to be punished.

In the facts of the present case itself, the prosecution has to prove that the appellant as promotors or directors, had dishonest intention since the very beginning while collecting the moneys from the applicants for the shares and debentures or that having collected such moneys they dishonestly misappropriated the same. The ingredients of the different offences under the Penal Code need not be proved only by direct evidence: they can be shown from the circumstances of a particular case that the intention of the promotors or the directors was dishonest since the very inception or that they developed such intention at some stage, for their wrongful gain and causing wrongful loss to the investors. All the circumstances and the materials to prove such a charge have to be collected during the investigation and inquiry and ultimately have to be produced before the court at the stage of trial for a verdict as to whether the ingredients of offence in question have been established on behalf of the prosecution.

In the present case the quashing of the prosecution pending against the appellants only on the ground that it was open to the applicants for shares to take recourse to the provisions of the Companies Act, cannot be accepted. It is a futile attempt on the part of the appellants, to close the chapter before it has unfolded itself. It will be for the trial court to examine the matter on the materials produced on behalf of the prosecution. That exercise cannot be performed either by the High Court or by the Supreme Court. The trial court should proceed with the case in accordance with law.

The High Court should not, while exercising power under S. 482 of the Code, usurp the jurisdiction of the trial court. The power under S. 482 of the Code has been vested in the High Court to quash a prosecution which amounts to abuse of the process of the court. But that power cannot be exercised by the High Court to hold a parallel trial, only on basis of the statements and documents collected during investigation or inquiry, for purpose of expressing an opinion whether the accused concerned is likely to be punished if the trial is allowed to proceed. *Radhey Shyam Khemka* v. *State of Bihar*, (1993) 3 SCC 54: 1993 SCC (Cri) 591: (1993) 77 Comp Cas 356: 1993 Cri LJ 2888: (1993) 1 Crimes 1132.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **N.P. Singh**, JJ. [Date of decision: 26-3-1993]

[7480] — Ss. 482 and 202, 203 & 245 — Powers of High Court under S. 482 — Complaint case instituted by the Company, under S. 630 of the Companies Act, against the respondent — *Respondent-accused, using Company property after ceasing to be the director of Company, moving petition for discharge under S. 245 CrPC and raising objections against the criminal proceedings due to the pendency of civil proceedings before different forums — Magistrate taking cognizance of the offence but High Court exceeding its jurisdiction under S. 482 by considering the documents purported to be filed by the respondent in civil suits and relying upon the orders/observations made thereunder while quashing the criminal proceedings against respondent — In view of the facts, held, powers of High Court under S. 482 should be cautiously exercised only to prevent the abuse of the process of court or gross miscarriage of justice — Setting aside the High Court's order, complaint proceedings directed to proceed in accordance with law — Companies Act, 1956, S. 630. Maratt Rubber Ltd.* v. *J.K. Marattukalam*, (2000) 9 SCC 547: 2001 SCC (Cri) 646.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *R.P. Sethi*, JJ. [Date of decision: 27-1-2000]

[7481] — Ss. 482 and 190 — Quashment of proceedings — When justified — Offence by company — Ex-Director proceeded against — *Where basic ingredients of the offence alleged against accused are altogether absent, held, he should not be compelled to face criminal prosecution — On totality of facts, such being the case, proceedings pending before Magistrate under S. 420 IPC r/w Ss. 3, 4, 5 and 6, Prize Chits and Money Circulation Schemes (Banning) Act, 1978 against ex-Director of company which had invited deposits from public but had subsequently closed its business without paying interest and repaying dues of investors, quashed — Penal Code, 1860, Ss. 420, 415, 24 and 25 — Prize Chits and Money Circulation Schemes (Banning) Act, 1978, Ss. 3 to 6 — Companies Act, 1956, S. 290*

The appellant was one of the Directors of a company. He resigned w.e.f. 27-12-1997. Respondent 2 filed a complaint FIR with the police alleging that the said company had invited deposits from the public and that monies had been invested by Respondent 2 and his wife in the Pensioner's Benefit Fund, pursuant to the approval of the scheme by Reserve Bank of India. That the company had since closed its business without repaying the money due to the complainant. Respondent 2 lodged an FIR alleging offences under Section 420, Penal Code, 1860 read with Sections 3, 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. Consequent to the FIR, the Additional Chief Metropolitan Magistrate issued a non-bailable warrant against the appellant.

The appellant filed a petition before the High Court under Section 482 CrPC seeking quashment of the proceedings on the ground that the appellant could not be held liable for any of the alleged illegalities committed by the company after he had resigned from the company. However, the High Court held that it was for the trial court to ascertain the questions arising in the petition and pass necessary orders. The appellant then filed the present appeal by special leave.

Before the Supreme Court, the appellant contended that even according to the averments of the complaint in the first information report there were no allegations whatsoever against the appellant, and the High Court ought to have quashed the proceedings against the appellant.

(11)(xix) Quashment re offences involving companies *(contd.)*

Allowing the appeal,

Held :

The inherent power should not be exercised to stifle the legitimate prosecution but at the same time no person be compelled to face criminal prosecution if basic ingredients of the offence alleged against him are altogether absent. (Para 38)

In the instant case, the appellant ceased to be a Director of the company from 27-12-1997 whereas the alleged offences, if any, were committed during the period from 24-5-1998 to 17-9-1999. There were no allegations against the appellant in the first information report. The company had invited investment from the depositors to invest in the business/benefit funds after receiving due approval of the scheme from Reserve Bank of India. Therefore, in any event, the element of cheating as alleged cannot be made out by any stretch of imagination. [Paras 37(*a*) to (*c*)]

Respondent 2 complainant has submitted in writing to that he does not want to proceed against the appellant because according to him the appellant has been inadvertently included as an accused by the investigating officer. He further mentioned in the letter that he had already received 55% of the deposited amount from the Official Liquidator and he did not want to proceed against the appellant. [Para 37(*d*)]

Even assuming that there could have been a vicarious liability thrust on the appellant, even then there cannot be any such vicarious liability in the absence of any allegations and material to show that the appellant was in charge of or responsible for the conduct of the company's business which had given rise to the offence. From any angle of the matter, the appellant cannot be compelled to face the criminal trial in the present case. [Para 37(*e*)]

On consideration of the totality of the facts and circumstances of the present case, the proceedings initiated against the appellant are quashed. (Para 39). *M.A.A. Annamalai* v. *State of Karnataka*, (2010) 8 SCC 524.

Bench Strength **2**. Coram: **Dalveer Bhandari** and *A.K. Patnaik*, JJ. [Date of decision: 12-8-2010]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, considered

Rajesh Bajaj v. State (NCT of Delhi), (1999) 3 SCC 259: 1999 SCC (Cri) 401; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., (2000) 3 SCC 269: 2000 SCC (Cri) 615, considered and relied on

Kuriachan Chacko v. State of Kerala, (2008) 8 SCC 708: (2008) 3 SCC (Cri) 631, cited

Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257: 2003 SCC (Cri) 1121; Uma Shankar Gopalika v. State of Bihar, (2005) 10 SCC 336: (2006) 2 SCC (Cri) 49; S.V.L. Murthy v. State, (2009) 6 SCC 77: (2009) 2 SCC (Cri) 941; Vir Prakash Sharma v. Anil Kumar Agarwal, (2007) 7 SCC 373: (2007) 3 SCC (Cri) 370, relied on

[7482] — Ss. 482 & 204 — Quashing of criminal proceedings — Offence by company — Non-application of mind in issuing summons — *On the basis of a complaint, cognizance of offence under Ss. 24 and 25, punishable under Ss. 43 and 44 r/w S. 47 of Water (Prevention and Control of Pollution) Act, 1974 taken and issue of process ordered by Judicial Magistrate against appellant-directors of a company — No allegation made in the complaint or in the statement recorded by the Magistrate before issue of summons that the offence was committed by the company with the consent or connivance, of or was attributable to any negligence on the part of the appellants as required under S. 47(2) of the Act — Further, sample of water was taken immediately after the Factory Manager of the company had informed the Board that FRP lining provided in the oil and grease trap of the effluent treatment plant having got damaged at some places, the tank had to be shut down temporarily and would be restarted soon after repair/replacement — Held, summons was issued without application of mind and Judicial Magistrate committed error in issuing the same hence liable to be set aside — In view of the special facts and circumstances of the case, question regarding conflict, if any, between decisions of Supreme Court in* Municipal Corpn. of Delhi *v.* Ram Kishan Rohtagi *and* State of Haryana *v.* Brij Lal Mittal *on the one hand and in* U.P. Pollution Control Board *v.* Modi Distillery *on the other hand need not be considered — Water (Prevention and Control of Pollution) Act, 1974, Ss. 43, 44 r/w 47 and 24 & 25. Nalin Thakor* v. *State of Gujarat*, (2003) 12 SCC 461.

Bench Strength **3**. Coram: *V.N. Khare*, *C.J.* and *S.B. Sinha* and *Dr. Ar. Lakshmanan*, **JJ**. [Date of decision: 4-11-2003]

Distinguished in U.P. Pollution Control Board v. Dr. Bhupendra Kumar Modi, (2009) 2 SCC 147

[7483] — S. 482 — Quashment of proceedings under Ss. 192 and 199 r/w S. 34 IPC — Offence by company — Vicarious liability of its Chairman — When can be fastened — Requisite averments in complaint — *Complaint filed against accused Company and its Chairman for fabricating documents produced on record in arbitration proceedings, on the basis of arbitrator's adverse observations in award — High Court declining to quash complaint — Sustainability —*

Held, presumption cannot be drawn that a Chairman of a company is responsible for all acts committed by or on behalf of the company — Wherever by a legal fiction principle of vicarious liability is attracted it has to be specifically provided in the statute concerned — Neither S. 192 nor S. 199 IPC incorporate principle of vicarious liability — Therefore, it is incumbent on complainant to specifically aver role of each of accused in complaint — Absence of any such specific averment in complaint demonstrating role of Chairman (Appellant 2) in commission of offence — However, so far as (Appellant 1) Company is concerned, fact that said tampered document was submitted to support averments in written statement filed on their behalf to possibly influence decision of Arbitral Tribunal, offences under Ss. 192 and 199 IPC prima facie made out against it — No prima facie case made out against Appellant 2 in respect of offences under Ss. 192 and 199 IPC even with aid of S. 34 IPC — Complaint quashed against Appellant 2 — Penal Code, 1860, Ss. 192 and 199 r/w S. 34

Disposing the appeal in terms below,

Held :

Though the inherent powers of the High Court under Section 482 of the Code are very wide in amplitude, yet they are not unlimited. However, it is neither feasible nor desirable to lay down an absolute rule which would govern the exercise of inherent jurisdiction of the Court. Nevertheless, powers under the said provision have to be exercised sparingly and with caution to secure the ends of justice and to prevent the abuse of the process of the court. Where the allegations in the first information report or the complaint taken at its face value and accepted in their entirety do not constitute the offence alleged, the High Court would be justified in invoking its powers under Section 482 of the Code to quash the criminal proceedings. (Para 18)

For constituting an offence under Section 192 IPC the following ingredients must be satisfied:

(*i*) Causing any circumstance to exist, or making any false entry in any book or record or making any document containing a false statement.

(*ii*) Doing one of the above acts with the intention that it may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant or an arbitrator.

(*iii*) Doing such act with the intention that it may cause any person, who in such proceeding, is to form an opinion upon the evidence to entertain an erroneous opinion touching any point material to the result of such proceeding. (Para 25)

Section 199 IPC requires the following ingredients to be established:

(*i*) Making of a declaration which a court or a public servant is bound or authorised by law to receive in evidence.

(*ii*) Making of a false statement in such declaration knowing or believing it to be false.

(*iii*) Such false statement must be touching any point material to the object for which the declaration is made or used. (Para 26)

It is trite law that wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned. Neither Section 192 IPC nor Section 199 IPC incorporate the principle of vicarious liability, and therefore, it was incumbent on the complainant to specifically aver the role of each of the accused in the complaint. (Para 30)

The only averment made against Appellant 2 in the complaint is that Appellant 1 i.e. MSEB was acting under the control and management of Appellant 2 along with other three accused. Though Appellant 2 happened to be the Chairman of MSEB at the relevant time but it is a settled proposition of law that one cannot draw a presumption that a Chairman of a company is responsible for all acts committed by or on behalf of the company. In the entire body of the complaint there is no allegation that Appellant 2 had personally participated in the arbitration proceedings or was monitoring them in his capacity as the Chairman of MSEB and it was at his instance that the subject interpolation was made in commissioning report (Ext. C-64). Even the Board resolution, adduced by the complainant, does not establish that Appellant 2 was involved in the alleged fabrication of false evidence or adducing the same in evidence before the Arbitral Tribunal. In the absence of any such specific averment demonstrating the role of Appellant 2 in the commission of the offence, it is difficult to hold that the complaint, even assuming it to be correct in its entirety, discloses the commission of an offence by Appellant 2 under Sections 192 and 199 IPC. (Paras 27, 28 and 31)

Insofar as the case of Appellant 1 Company is concerned, the fact that Ext. C-64 was submitted with the intention to support the averments in the written statement filed on their behalf, which could possibly influence the decision of the Arbitral Tribunal in relation to the conduct of Respondent 1 while discharging their obligations under the contract between them and Appellant 1, prima facie, a case of offences under Sections 192 and 199 IPC is made out against them. (Para 32)

(11)(xix) Quashment re offences involving companies *(contd.)*

No prima facie case has been made out against Appellant 2 in respect of offences under Sections 192 and 199 IPC even with the aid of Section 34 IPC. Therefore, it was a fit case where the High Court should have exercised its powers under Section 482 of the Code by quashing the complaint against Appellant 2. The appeal is dismissed qua Appellant 1; it is allowed in relation to Appellant 2; and consequently the order of the Magistrate taking cognizance against Appellant 2 in the complaint is quashed. (Paras 37 and 38). *Maharashtra State Electricity Distribution Co. Ltd.* v. *Datar Switchgear Ltd.*, (2010) 10 SCC 479: (2010) 159 Comp Cas 545.

Bench Strength 2. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 8-10-2010]

Som Mittal v. Govt. of Karnataka, (2008) 3 SCC 574: (2008) 2 SCC (Cri) 1: (2008) 1 SCC (L&S) 910; R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194: 1995 SCC (Cri) 1059; Babu Lal v. State of U.P., AIR 1964 SC 725: (1964) 1 Cri LJ 555; S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89: 2005 SCC (Cri) 1975; S.K. Alagh v. State of U.P., (2008) 5 SCC 662: (2008) 2 SCC (Cri) 686, relied on

Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259; K.L.E. Society v. Siddalingesh, (2008) 4 SCC 541: (2008) 2 SCC (Cri) 455: (2008) 1 SCC (L&S) 1071; Baijnath Jha v. Sita Ram, (2008) 8 SCC 77: (2008) 3 SCC (Cri) 428; Suneet Gupta v. Anil Triloknath Sharma, (2008) 11 SCC 670: (2008) 3 SCC (Cri) 920; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Sunita Jain v. Pawan Kumar Jain, (2008) 2 SCC 705: (2008) 1 SCC (Cri) 537; Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; Keki Hormusji Gharda v. Mehervan Rustom Irani, (2009) 6 SCC 475: (2009) 2 SCC (Cri) 1113; N.K. Wahi v. Shekhar Singh, (2007) 9 SCC 481: (2007) 3 SCC (Cri) 203; Sharon Michael v. State of T.N., (2009) 3 SCC 375: (2009) 2 SCC (Cri) 103; Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668: (2008) 2 SCC (Cri) 692; Tarun K. Shah v. C.R. Alimchandani, (2001) 9 SCC 728: 2002 SCC (Cri) 1030; K.M. Mathew v. K.A. Abraham, (2002) 6 SCC 670: 2002 SCC (Cri) 1480, referred to

[7484] — S. 482 — Company involved — Fastening of vicarious liability on persons running the affairs of the company — Requirements for — *In the instant case, Respondents 1 and 2 were sought to be proceeded against on the premise that they were vicariously liable for the affairs of the company — For that the company must be made an accused as legal fiction is raised both against the company as well as the person responsible for the acts of the company — Besides, when the vicarious criminal liability is fastened on a person on the premise that he was in charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled — Respondents 1 and 2 were charged in their individual capacity for commission of offences of cheating, criminal breach of trust and forgery — As there had never been any interaction between the appellant and them, the question of any representation which is one of the main ingredients for constituting an offence of cheating, would not arise — So far as allegations in regard to commission of the offence of forgery are concerned, the same had been made only against Respondent 3 and not against Respondent 2 — Sending a copy thereof to the National Stock Exchange without there being anything further to show that Respondent 2 had any knowledge of the fact that the same was a forged and fabricated document cannot constitute an offence — Similarly, it has not been alleged that they were entrusted with or otherwise had dominion over the property of the appellant or they have committed any criminal breach of trust — Hence, impugned judgment quashing FIR against Respondents 1 and 2 calls for no interference — Penal Code, 1860 — Ss. 420, 463 & 405. R. Kalyani* v. *Janak C. Mehta*, (2009) 1 SCC 516.

Bench Strength 2. Coram: **S.B. Sinha** and *Aftab Alam*, JJ. [Date of decision: 24-10-2008]

[7485] — S. 482 — Food adulteration offences by companies — Facts required to be pleaded in complaint regarding individual liability of a Director — *Held, specific allegations regarding role of a Director in the management of a company has to be pleaded in order to make him liable — Further held on facts, when one particular manager had been named under S. 17(2) as person responsible for ensuring prevention of adulteration, other Directors could not be prosecuted therefor — Prevention of Food Adulteration Act, 1954, Ss. 17(1) and (2)*

In a complaint against a company and its Directors, the complainant has to indicate in the complaint itself as to whether the Directors concerned were either in charge of or responsible to the Company for its day-to-day management, or whether they were responsible to the Company for the conduct of its business. A mere bald statement that a person was a Director of the Company against which certain allegations had been made is not sufficient to make such Director liable in the absence of any specific allegations regarding his role in the management of the Company. Having considered the matter in its totality and also having regard to the fact that a manager had been nominated under Section 17(2) of the 1954 Act to be a person in charge of and responsible to the Company for the conduct of its business, the appeals are allowed. (Paras 50 and 52). *Pepsico India Holdings (P) Ltd.* v. *Food Inspector*, (2011) 1 SCC 176.

Bench Strength 3. Coram: **Altamas Kabir**, *Cyriac Joseph* and *Deepak Verma*, JJ. [Date of decision: 18-11-2010]

S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89: 2005 SCC (Cri) 1975, relied on

N. Rangachari v. BSNL, (2007) 5 SCC 108: (2007) 2 SCC (Cri) 460, distinguished

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; Everest Advertising (P) Ltd. v. State (Govt. of NCT of Delhi), (2007) 5 SCC 54: (2007) 2 SCC (Cri) 444; MCD v. Purshotam Dass Jhunjunwala, (1983) 1 SCC 9: 1983 SCC (Cri) 123, cited

[7486] — S. 482 — Quashing of summons — Propriety — Vicarious liability of Directors — "In charge of and responsible for conduct of business" — Absence of specific averments in respect of — *Respondent-accused was Regional Technical Director handling quality control of offending Company whose quality of product was not found conforming to ISI specifications — Neither any specific role attributed to respondent in commission of alleged offence, nor established that respondent was in any way responsible or in charge of affairs of Company to be vicariously liable — Held, in absence of such clear averments in the complaint, respondent cannot be compelled to face criminal trial — Imperative to specifically aver in complaint that accused was in charge of and was responsible for conduct of business of the Company — Further held, every Director need not be and is not in charge of business of Company and in case of such non-Director officers, it is all the more necessary to state what his duties and responsibilities were, and how and in what matter he was liable — Insecticides Act, 1968, S. 33* (Paras 11 to 20). *State (NCT of Delhi)* v. *Rajiv Khurana*, (2010) 11 SCC 469: AIR 2010 SC 2986: (2010) 158 Comp Cas 151: (2010) 171 DLT 769: (2010) 93 AIC 28.

Bench Strength **2**. Coram: **Dalveer Bhandari** and *K.S. Radhakrishnan*, JJ. [Date of decision: 30-7-2010]

S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89: 2005 SCC (Cri) 1975; Monaben Ketanbhai Shah v. State of Gujarat, (2004) 7 SCC 15: 2004 SCC (Cri) 1857; MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; State of Haryana v. Brij Lal Mittal, (1998) 5 SCC 343: 1998 SCC (Cri) 1315; K.P.G. Nair v. Jindal Menthol India Ltd., (2001) 10 SCC 218: 2002 SCC (Cri) 1038; Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd., (2002) 7 SCC 655: 2003 SCC (Cri) 151; Sabitha Ramamurthy v. R.B.S. Channabasavaradhya, (2006) 10 SCC 581: (2007) 1 SCC (Cri) 621; K.K. Ahuja v. V.K. Vora, (2009) 10 SCC 48: (2010) 2 SCC (Cri) 1181, relied on

[7487] — Ss. 482 and 204 — Application for quashing summons — Maintainability of — Whether allegations in complaint petition disclosed commission of any cognizable offence — Ascertainment of — Vicarious liability — When not attracted — *High Court dismissing appellants' applications under S. 482 for quashing summons issued to them on a complaint filed under Ss. 120-B, 409 and 420 IPC — Challenge to — Appellants contending that dispute between parties having arisen out of a contract qua contract, complaint petition not maintainable — Sustainability — Held, dispute between parties was civil in nature — Allegations made against appellants were in relation to execution of contract — No case of criminal misconduct on their part was made out before formation of contract — There is nothing to show that appellants, who held different positions in appellant Company, made any representation in their personal capacities and, thus, they cannot be made vicariously liable only because they were employees of the Company — Therefore, impugned judgment unsustainable, hence, set aside — Impugned summons issued to the appellants, quashed — Penal Code, 1860, Ss. 120-B, 405, 409 and 420 — Ingredients of Ss. 405, 409 and 420, reiterated — Contract Act, 1872, Ss. 182 and 73*

In the instant case, *E*, a German company, approached *M* in Hong Kong, for supply of certain garments. *M* contacted *T*, the appellant Company, to procure those goods and supply them to *E*. The appellant Company approached *A*, the complainant, for supply of the aforesaid goods. Pursuant thereto, in furtherance of the contract entered into by and between the parties, *T* and *A*, export of the said garments were made by *A*, which was certified by *T* to be in good condition.

The buyer company *E*, refused to accept the shipment on the premise that on a random checking too many defects disqualifying the goods were found and, thus, the goods being sub-standard, were not acceptable. They asked for the goods to be picked up from their warehouse. *A*, the complainant, however, did not make any attempt to re-export the said goods from Germany to India. It filed a complaint petition with the police to help it to recover dues from the appellant Company. The appellant Company, thereafter sent a legal notice to the complainant, inter alia, stating that it had suffered damages by the non-performance of the complainant asking it to pay compensation to the appellant Company. The complainant was also called to withdraw the complaint which amounted to malicious prosecution meant to harass the appellant Company.

An FIR was then lodged by the complainant for taking legal action against the appellants for the alleged offences committed by them and to recover the amount from them. Thereupon a case was registered and summons were issued to the appellants. The appellants then filed an application under Section 482 CrPC before the High Court for quashing the summons issued, which was dismissed. Hence the present appeal.

(11)(xix) Quashment re offences involving companies *(contd.)*

Allowing the appeal,

Held :

Indisputably the complainant is the producer of the garments. The buyer is a German company. Rightly or wrongly, the buyer refused to accept the goods, inter alia, on the premise that the same were defective and sub-standard. It is assumed that the appellant Company was assured payment for such supplies. Even if that be so, it would be a del credere agent. Its liability is, therefore, a civil liability. The allegations contained in the FIR did not reveal that any misrepresentation was made at the time of formation of the contract. The goods were to be supplied by the complainant. They were presumably required to meet the requirements of the buyer. Even if the certificate granted by the appellant Company was incorrect, an appropriate action against them could have been taken for breach of contract. (Para 12)

The FIR contains details of the terms of contract entered into by and between the parties as also the mode and manner in which they were implemented. Allegations have been made against the appellants in relation to execution of the contract. No case of criminal misconduct on their part has been made out before the formation of the contract. There is nothing to show that the appellants herein who hold different positions in the appellant Company made any representation in their personal capacities and, thus, they cannot be made vicariously liable only because they are employees of the Company. (Para 16)

The liability of the Company is, therefore, a civil liability. It is also not a case where although a prima facie case had been made out disclosing commission of an offence, the court is called upon to consider the defence of the accused. The FIR itself refers to the documents. They can, therefore, be taken into consideration for the purpose of ascertaining as to whether the allegations made in the complaint petition read as a whole, even if taken to be correct in its entirety, discloses commission of any cognizable offence or not. As admittedly the complainant was the supplier of garments which were found out to be defective in nature, therefore, the dispute between the parties is civil in nature. (Paras 18 and 19). *Sharon Michael* v. *State of T.N.*, (2009) 3 SCC 375.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 19-12-2008]

R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516, relied on

[7488] — S. 482 — Property entrusted to or in dominion of company, but Chairman sought to be made liable — Averments necessary to implicate Chairman — *Respondent company making security deposit to bid for tenders with MSEB — Due to certain disputes, it sought immediate refund of said amount, as it was no longer interested in participating in tenders — MSEB informed respondent that deposit had been adjusted against dues payable by respondent — Respondents filed complaint against appellant, Chairman of MSEB, that said amount of Rs 5 lakhs was in dominion of appellant-accused, entrusted to MSEB for a specific purpose and, therefore, by adjusting said amount for some other purpose, accused dishonestly and wilfully, with common intention, deprived complainant use of money and committed offence in terms of S. 405 r/w S. 409 IPC — High Court declined to quash complaint — Held, said amount was deposited by complainant company with MSEB and there is nothing in complaint which may even remotely suggest that complainant had entrusted any property to appellant or that appellant had dominion over said money — In absence of any such specific averment demonstrating role of accused in commission of offence, no prima facie case has been made out against appellant in respect of offence under S. 409 r/w S. 405, even with aid of S. 34 IPC — It was a fit case where High Court should have exercised its powers under S. 482 CrPC by quashing complaint — Penal Code, 1860, Ss. 405, 409 and 34* (Paras 3 to 7, 19 and 21 to 27). *Asoke Basak* v. *State of Maharashtra*, (2010) 10 SCC 660.

Bench Strength 2. Coram: **D.K. Jain** and *H.L. Dattu*, JJ. [Date of decision: 8-10-2010]

S.K. Alagh v. State of U.P., (2008) 5 SCC 662: (2008) 2 SCC (Cri) 686, followed

[7489] — S. 482 — Cheating — Ingredients of — *Mere failure to perform the promise, held, by itself not enough — To hold a person guilty of cheating, reiterated, it is necessary to show that at time of making promise he had fraudulent or dishonest intention to deceive or to induce person so deceived to do something which he would not otherwise do — Such a culpable intention right at the time of entering into an agreement cannot be presumed merely from his failure to keep the promise subsequently — In present case, there were no specific averments that appellant a retired senior employee of FCIL, officer-in-charge of supply of ammonium nitrate by FCIL at the time had dishonestly "induced" respondent IEL to enter into any agreement/arrangement with FCIL — On the contrary, complaint clearly reveals that IEL was fully conscious of precarious financial health of FCIL at the time IEL decided to enter into tripartite agreement —*

Basis of complaint was that by deliberately suppressing fact that FCIL had already been referred to BIFR after erosion of net worth and thus likely to be declared a "sick company", appellant induced IEL to pay about Rs 4.2 crores as advance payment and in return FCIL did not supply goods as promised — Mere mention of words "defraud" and "cheat" in complaint is not sufficient to infer that appellants had dishonest intention right at the beginning — A tripartite agreement was signed after due deliberations considered to be in the interest of all parties concerned — Held, at best, it was a case of breach of contract, for which FCIL was already defending civil suit filed by IEL — Penal Code, 1860, Ss. 415 and 420 (Paras 22 and 25 to 32). *V.P. Shrivastava* v. *Indian Explosives Ltd.*, (2010) 10 SCC 361: (2010) 159 Comp Cas 529.

Bench Strength **2**. Coram: **D.K. Jain** and *H.L. Dattu*, **JJ.** [Date of decision: 24-9-2010]

Ram Jas v. State of U.P., (1970) 2 SCC 740: 1970 SCC (Cri) 516; Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168: 2000 SCC (Cri) 786; S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241: 2002 SCC (Cri) 129; Kuriachan Chacko v. State of Kerala, (2008) 8 SCC 708: (2008) 3 SCC (Cri) 631; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., (2000) 3 SCC 269: 2000 SCC (Cri) 615; Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257: 2003 SCC (Cri) 1121; Anil Mahajan v. Bhor Industries Ltd., (2005) 10 SCC 228: (2006) 1 SCC (Cri) 746, relied on

(xx) Quashment in cheque dishonour cases

[7490] — S. 482 — S. 138, NI Act proceedings — Notice — Service — Requirement of — Notice sent to respondents through registered post and under a certificate of posting to their correct address — *High Court quashing the proceedings on ground that because of the endorsement of the postal peon, the service could not be said to have been effected — Held, High Court was not justified in so holding — Further held, it is well settled that once notice has been sent by registered post with acknowledgment due to a correct address, it must be presumed that the service has been made effective — Impugned order set aside and proceedings under S. 138 restored — Negotiable Instruments Act, 1881, S. 138* (Paras 5 and 8 to 11). *Indo Automobiles* v. *Jai Durga Enterprises*, (2008) 8 SCC 529: (2008) 3 KLT 480.

Bench Strength **2**. Coram: *Tarun Chatterjee* and *Aftab Alam*, **JJ.** [Date of decision: 15-7-2008]

K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510: 1999 SCC (Cri) 1284; V. Raja Kumari v. P. Subbarama Naidu, (2004) 8 SCC 774: 2005 SCC (Cri) 393, followed

[7491] — S. 482 — Stop payment instructions, held, cannot obviate the offence under S. 138, NI Act if otherwise made out — *Further held, neither such liability could have been avoided by giving notice to the payee or holder in due course prior to presentation of the cheque wherein the payee or holder in due course was advised not to present the same for encashment and he does present it and the cheque is returned as per the stop payment instructions — Ruling to that effect in para 6 of* Electronics Trade and Technology Development Corpn. case, *(1996) 2 SCC 739 and followed in* K.K. Sidharthan case, *(1996) 6 SCC 369, being contrary to the object and purpose Ss. 138-142, overruled — That presumption under S. 139 is attracted to such situation, held, was wrongly ignored — Drawer of cheque will have opportunity to rebut the presumption at the trial — High Court therefore was not justified, on facts, in quashing the complaint under S. 482, CrPC at the threshold — Matter therefore restored before the Magistrate concerned and all contentions will be open — Negotiable Instruments Act, 1881, Ss. 138 and 139*

It was alleged by the appellant that the respondent had drawn three cheques in Feb. 1994 in favour of the appellant in partial discharge of liability/debt. The appellant presented the cheques on 9-8-1994 for encashment through their banker. On 6-9-1994 the banker of the respondent returned the cheques as unpaid with the endorsement "payment stopped by the drawer". Later it transpired that the respondent by his letter dated 8-8-1994 to his banker had instructed to stop the payments. The appellant on 13-9-1994 sent a legal notice in terms of Section 138 of the Negotiable Instruments Act to the respondent demanding payment of the amounts under the cheques. Since the respondent failed and neglected to make the payment of the amount of the aforesaid three cheques within the stipulated period of 15 days which expired on 2-10-1994, the appellant filed three criminal complaints against the respondent under Section 138. The respondent filed applications for staying the proceedings which were rejected. The respondent then filed three petitions under Section 482 CrPC in the High Court for quashing the complaints. The High Court allowed the petitions and quashed the complaints on the following reasons:

(*i*) The appellant had not pleaded in his complaint that the cheques were returned by the bank unpaid "either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank". The necessary ingredients of Section 138 of the Act having not been pleaded the Court could not have taken cognizance of the offence.

(11)(xx) Quashment in cheque dishonour cases *(contd.)*

(*ii*) Mere endorsement of the bank "payment stopped" was not sufficient to entertain the complaint as that was not an ingredient of the offence under Section 138 of the Act.

Allowing the appeals

Held :

Even if a cheque is dishonoured because of 'stop payment' instruction to the bank, Section 138 would get attracted.

The position will not be different even if the drawer had instructed the bank to stop the payment prior to the presentation of the cheques for encashment as in the present case. The observations of the Supreme Court in *Electronics Trade & Technology Development Corpn. Ltd.* in para 6 to the effect "Suppose after the cheque is issued to the payee or to the holder in due course and before it is presented for encashment, notice is issued to him not to present the same for encashment and yet the payee or holder in due course presents the cheque to the bank for payment and when it is returned on instructions, Section 138 does not get attracted", does not fit in with the object and purpose of the provision which is to promote the efficacy of banking operations and to ensure credibility in transacting business through cheques. Acceptance of this proposition will make Section 138 a dead letter, for, by giving instructions to the bank to stop payment immediately after issuing a cheque against a debt or liability the drawer can easily get rid of the penal consequences notwithstanding the fact that a deemed offence was committed. Once the cheque is issued by the drawer a presumption under Section 139 must follow and merely because the drawer issues a notice to the drawee or to the bank for stoppage of the payment it will not preclude an action under Section 138 of the Act by the drawee or the holder of a cheque in due course. *Modi Cements Ltd.* v. *Kuchil Kumar Nandi*, (1998) 3 SCC 249: AIR 1998 SC 1057: 1998 Cri LJ 1397: (1998) 92 Comp Cas 88: (1998) 1 KLT 582.

Bench Strength 3. Coram: *M.K. Mukherjee*, **S.P. Kurdukar** and *K.T. Thomas*, JJ. [Date of decision: 2-3-1998]

Electronics Trade & Technology Development Corpn. Ltd. v. Indian Technologists & Engineers (Electronics) (P) Ltd., (1996) 2 SCC 739: 1996 SCC (Cri) 454; K.K. Sidharthan v. T.P. Praveena Chandran, (1996) 6 SCC 369: 1996 SCC (Cri) 1340, overruled on this point

Kuchil Kumar Nandi v. Modi Cement Ltd., 1997 Cri LJ 805 (Cal), reversed

Affirmed in Goaplast (P) Ltd. v. Chico Ursula D'Souza, (2003) 3 SCC 232

[**Ed.**: While the legislature in introducing Sections 138-142 has attempted to promote the efficacy of banking operations and ensure credibility in transacting business through cheques, it is sad to note that the banks themselves have done little to amend their banking practices in keeping with the legislative change, though it is nearly a decade since the provisions were introduced. If only the language of the endorsements made while returning the unpaid cheque were amended and more details provided, many of the problems faced in cases under Section 138 would not have arisen.

Take the endorsement of "payment stopped by drawer". If it was made obligatory for banks to also specify in such instances whether funds or arrangement with the bank was sufficient or not at the time of returning the cheque it would lend transparency to the transaction which would help both in avoiding unnecessary litigation and in felicitating quick disposal of the complaint in case it is filed.

So also the endorsement "refer to drawer" should be substituted by a more explicit statement regarding insufficiency of funds or arrangement with the bank. Such euphemism or courtesy to the customer is misplaced and not in keeping with the object and purpose of Section 138. There has been some controversy about such endorsement. In *Manohar* v. *Mahalingam*, 1992 LW (Cri) 367, it was held that the answer 'Refer to Drawer' often adopted by the bankers could mean anything from shortage of funds to death or insolvency of the drawer and could also include insufficiency of funds. It is seen therefore, that the nomenclature of the return by itself would not be decisive of the cause of return. Again in *Union Roadways* v. *Shah Raman Lal Satish Kumar*, (1992) 2 BC 216: 76 Comp Cas (AP) 3151, it was held by the Andhra Pradesh High Court that from the endorsement 'Refer to Drawer' the complainant cannot draw an inference that the cheque was issued without funds and that in such a case offence under Section 138 was not made. In *Dada Silk Mills* v. *Indian Overseas Bank*, (1995) 82 Comp Cas 35, it has been held by the Gujarat High Court that the endorsement refer to drawer, necessarily in banking parlance means that 'the cheque has been returned for want of funds in the account of the drawer of the cheque.' Refer to Drawer in their ordinary meaning amounted to a statement by the Bank — 'We are not paying, go back to the drawer and ask him why'. *M.M. Malik* v. *Prem Kumar Goyal*, 1991 Cri LJ 2594.

Therefore it is high time the Reserve Bank of India or the association of Nationalised Banks intervened and made necessary change in banking practices and in the format/language of the memo attached while returning unpaid cheques to further the object of Section 138.]

[7492] — S. 482 — Dishonour of cheque on ground of insufficiency of funds — Notice issued to the Managing Director of the company who signed the cheques — Held, there was no infirmity in the notice — *High Court not justified in quashing the complaint on ground that notice was sent to the Managing Director at his office address* *since that could not mean that the notice was sent to the company itself — Negotiable Instruments Act, 1881, Ss. 138 and 142. Bilakchand Gyanchand Co.* v. *A. Chinnaswami*, (1999) 5 SCC 693: 1999 SCC (Cri) 1034: AIR 1999 SC 2182: 1999 Cri LJ 3498: (1999) 98 Comp Cas 573.

Bench Strength 2. Coram: *B.N. Kirpal* and *S. Rajendra Babu*, JJ. [Date of decision: 12-3-1999]

[7493] — S. 482 — Dishonour of cheque — As per complainant's own pleadings, bank account from where cheque had been issued, was not held in the name of appellant — *Therefore, one of the requisite ingredients of S. 138 was not satisfied — Hence, continuance of further proceedings against appellant would be an abuse of process of court — High Court, under S. 482 CrPC should have quashed the complaint — Negotiable Instruments Act, 1881, S. 138* (Paras 11, 22 and 21). *Jugesh Sehgal* v. *Shamsher Singh Gogi*, (2009) 14 SCC 683: (2009) 80 AIC 9 (SC).

Bench Strength 2. Coram: **D.K. Jain** and *R.M. Lodha*, JJ. [Date of decision: 10-7-2009]

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Kurukshetra University v. State of Haryana, (1977) 4 SCC 451: 1977 SCC (Cri) 613; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Som Mittal v. Govt. of Karnataka, (2008) 3 SCC 574: (2008) 1 SCC (L&S) 910: (2008) 2 SCC (Cri) 1, relied on

[7494] — S. 482 — Dishonour of cheques — Continuance of prosecution after the entire amount involved was deposited with the court — Legality — *Such payment although may have some effect in the matter of awarding of sentence, held, does not absolve the accused, of criminal liability — Hence, could not sustain the High Court's order quashing the criminal proceedings on that ground — Negotiable Instruments Act, 1881, S. 138*

Once the offence is committed any payment made subsequent thereto will not absolve the accused of the liability of criminal offence, though in the matter of awarding of sentence, it may have some effect on the court trying the offence. But by no stretch of imagination, a criminal proceeding could be quashed on account of deposit of money in the court. (Para 7). *Rajneesh Aggarwal* v. *Amit J. Bhalla*, (2001) 1 SCC 631: 2001 SCC (Cri) 229: AIR 2001 SC 518: 2001 Cri LJ 708: (2001) 104 Comp Cas 332.

Bench Strength 2. Coram: **G.B. Pattanaik** and *U.C. Banerjee*, JJ. [Date of decision: 4-1-2001]

[7495] — S. 482 — Dishonour of cheque — Cause of action to file complaint on non-payment despite issue of the notice, held, arises but once — *Another cause of action would not arise on repeated dishonour on presentation of same cheque again subsequent to non-payment after the first notice — Payee is free to present the cheque repeatedly within its validity period but once notice has been issued and payment not received within 15 days of the receipt of the notice, payee has to avail the very cause of action arising thereupon and file the complaint — Dishonour of cheque on each presentation gives a fresh right to present it again during the period of its validity, but, held, it does not give rise to a fresh cause of action — Complaint has to be filed within one month from the day immediately following the day on which the period of 15 days from the date of receipt of the first notice by the drawer expires — Negotiable Instruments Act, 1881, Ss. 138 & 142(b)*

On 27-1-1995 the respondents gave a cheque of Rs 5,15,053.72 to the appellant in respect of balance amount payable to the appellant for supply of goods to them. The said cheque was dishonoured due to inadequacy of funds in the account. Hence, the appellant sent a lawyer's notice to the respondents on 17-2-1995 calling upon them to make the payment. The respondents requested the appellant to give some more time to pay the said amount. On the said request, the cheque was again presented on 6-7-1995, but the same was again dishonoured due to inadequacy of funds. Thereafter, another notice dated 24-7-1995 was served on the respondents demanding payment, but the respondents sent a reply on 10-8-1995 refuting the allegations contained in the legal notice. Hence, a complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short "the Act") was lodged on 28-8-1995.

By the impugned judgment, the High Court exercising jurisdiction under Section 482 CrPC quashed the proceedings by holding that the requirements of Section 142 of the Act were not met. Hence, the complainant preferred the instant appeal.

Before the Supreme Court, the appellant submitted that the High Court erroneously placed reliance on the decision of the Supreme Court in *Sadanandan Bhadran* v. *Madhavan Sunil Kumar*, (1998) 6 SCC 514: 1998 SCC (Cri) 1471. It was pleaded that the period of limitation had to be reckoned from 10-8-1995 i.e. the date on which the respondents replied to the second legal notice dated 24-7-1995. As the complaint was filed on 28-8-1995 the same was well within time. On the contrary, the respondents supported the judgment of the High Court. They pointed out that the effect of the first notice was lost in view of the fact that the second notice was given. According to them, the High Court rightly applied the ratio in *Sadanandan Bhadran case*.

(11)(xx) Quashment in cheque dishonour cases *(contd.)*

Dismissing the appeal,

Held :

Clause (*a*) of the proviso to Section 138 does not put any embargo upon the payee to successively present a dishonoured cheque during the period of its validity. This apart, in the course of business transactions it is not uncommon for a cheque being returned due to insufficient funds or similar such reasons and being presented again by the payee after some time, on his own volition or at the request of the drawer, in expectation that it would be encashed. The primary interest of the payee is to get his money and not prosecution of the drawer, recourse to which, normally, is taken out of compulsion and not choice. On each presentation of the cheque and its dishonour, a fresh right — and not a cause of action — accrues in his favour. He may, therefore, without taking pre-emptory action in exercise of his such right under clause (*b*) of Section 138, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. (Para 8)

But once he gives a notice under clause (*b*) of Section 138, he forfeits such right as in case of failure of the drawer to pay the money within the stipulated time he would be liable for the offence and the cause of action for filing the complaint will arise. (Para 9)

Proceeding on the basis of the generic meaning of the term "cause of action", certainly each of the above facts would constitute a part of the cause of action but clause (*b*) of Section 142 gives it a restrictive meaning, in that, it refers to only one fact which will give rise to the cause of action and that is the failure to make the payment within 15 days from the date of the receipt of the notice. A combined reading of Sections 138 and 142 makes it clear that cause of action is to be reckoned accordingly. The combined reading of the above two sections of the Act leaves no room for doubt that cause of action within the meaning of Section 142(*b*) arises — and can arise — only once. (Para 10)

One of the indispensable factors to form the cause of action envisaged in Section 138 of the Act is contained in clause (*b*) of the proviso to that section. It involves the making of a demand by giving a notice in writing to the drawer of the cheque "within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid". If no such notice is given within the said period of 15 days, no cause of action could have been created at all. (Para 13)

Thus, it is well settled that if dishonour of a cheque has once snowballed into a cause of action it is not permissible for a payee to create another cause of action with the same cheque. The period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of the receipt of the notice by the drawer expires. (Paras 14 and 11). *Prem Chand Vijay Kumar* v. *Yashpal Singh*, (2005) 4 SCC 417: 2005 SCC (Cri) 1153: (2005) 4 Mah LJ 100: (2005) 125 Comp Cas 338.

Bench Strength 2. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 2-5-2005]

Sadanandan Bhadran v. Madhavan Sunil Kumar, (1998) 6 SCC 514: 1998 SCC (Cri) 1471, applied

SIL Import, USA v. Exim Aides Silk Exporters, (1999) 4 SCC 567: 1999 SCC (Cri) 600, relied on

[**Ed.**: What if no notice is sent and cheque presented again, or again, and ultimately dishonoured? In this regard it is opined in para 13 that: 'If no such notice is given within the said period of 15 days, no cause of action could have been created at all.' Similar view has been expressed in *Uniplas India Ltd.* v. *State*, (2001) 6 SCC 8 where it has been opined that such dishonour would remain without further escalation and would not snowball into a cause of action. Hence it would seem that despite repeated presentations and dishonour each time, only when notice is sent after any of the subsequent dishonour (and payment not received) would the cause of action arise for the first time, to be availed for filing the complaint. Therefore it may be said that it is not essential to issue notice after the first dishonour. One can wait and see by presenting the cheque again before initiating the legal process under Section 138 by issue of a notice in writing.

It has been further clarified in *Dalmia Cement (Bharat) Ltd.* v. *Galaxy Traders & Agencies Ltd.*, (2001) 6 SCC 463 that it is not the giving of the notice but its receipt by the drawer which culminates in the cause of action. Hence in that case, on the drawer intimating that the purported notice was an empty envelope, the second notice based on second presentation and its dishonour was held to be proper.]

[7496] — S. 482 — Presumption must be drawn that holder of the cheque received the cheque of the nature referred to in S. 138, NI Act for the discharge of any debt or other liability unless the contrary is proved — *Held, therefore High Court not justified in quashing complaints at initial stage of proceedings — Negotiable Instruments Act, 1881, Ss. 139 and 138. Maruti Udyog Ltd.* v. *Narender*, (1999) 1 SCC 113.

Bench Strength 2. Coram: *M.K. Mukherjee* and *S.S.M. Quadri*, JJ. [Date of decision: 24-7-1998]

[7497] — S. 482 — Offences by companies — Persons vicariously liable for — Proper stage for determination of such persons if any, held, is at

the time of framing of charge and not earlier — *Hence, where a company and its Directors were arraigned as accused and one of them, after unsuccessfully seeking under S. 482 quashment of the proceedings, approached Supreme Court and sought the resolving of the alleged conflict between* Ram Kishan Rohtagi case *reported in (1983) 1 SCC 1: 1983 SCC (Cri) 115 and* Modi Distillery case *reported in (1987) 3 SCC 684: 1987 SCC (Cri) 632, held, it was not necessary to advert to that question at this stage — Negotiable Instruments Act, 1881, S. 141*

The appellant was one of the Directors of a Company arraigned as accused along with the Company under Section 141 of the Negotiable Instruments Act, 1881. One of them, having unsuccessfully tried for such relief before the High Court in jurisdiction under Section 482 CrPC approached the Supreme Court. The matter was referred to a larger Bench to resolve an apparent conflict between the judgments in *Ram Kishan Rohtagi case* (1983) 1 SCC 1: 1983 SCC (Cri) 115 and *Modi Distillery case*, (1987) 3 SCC 684: 1987 SCC (Cri) 632.

Held :

Section 141 of the Negotiable Instruments Act mandates that some facts must come on the record in order to figure as to who should answer the charge ultimately. Necessarily, pre-charge evidence assumes importance. The complainant will have to put his side of the case as given out in the complaint and the persons summoned would have to put on the record all what is material to extricate themselves out. In any case, the crucial time would be when framing charge whereat a decision in that respect would be required to be made by the court. Presently, it would be premature to resolve the conflict. Therefore, it would be for the court concerned to pass appropriate orders at the time of framing of charge. (Para 4). *P. Rajarathinam* v. *State of Maharashtra*, (2000) 10 SCC 529: 2001 SCC (Cri) 1502.

Bench Strength 2. Coram: *K.T. Thomas* and *M. Srinivasan*, JJ. [Date of decision: 28-1-1998]

[7498] — S. 482 — Dishonour of cheque issued on behalf of a company — Post-dated cheque becoming due for payment after respondent had resigned from Directorship and had given notice of resignation to the complainant — Liability of such person — *Held, lower courts rightly discharged respondent from array of accused persons — Negotiable Instruments Act, 1881, Ss. 141, 138 and 140*

A person who had resigned within the knowledge of the complainant in 1996 could not be a person in charge of the Company in 1998 when the cheque was dishonoured. He had no say in the matter of seeing that the cheque is honoured. He could not ask the Company to pay the amount. He as a Director or otherwise could not have been made responsible for payment of the cheque on behalf of the Company or otherwise. (Para 21)

When post-dated cheques are issued and the same are accepted, although it may be presumed that the money will be made available in the bank when the same is presented for encashment, but for that purpose, the harsh provision of constructive liability may not be available except when an appropriate case in that behalf is made out. (Para 23)

Section 140 of the Act cannot be said to have any application whatsoever in this case. Reason to believe on the part of a drawer that the cheque would not be dishonoured cannot be a defence. But, then one must issue the cheque with full knowledge as to when the same would be presented. It appears to be a case where the appellant has taken undue advantage of the post-dated cheques given on behalf of the Company. The statute does not envisage misuse of a privilege conferred upon a party to the contract. (Para 24). *DCM Financial Services Ltd.* v. *J.N. Sareen*, (2008) 8 SCC 1: (2008) 3 SCC (Cri) 401: AIR 2008 SC 2255: (2008) 2 KLT 762: (2008) 144 Comp Cas 55: 2008 Cri LJ 3178.

Bench Strength 2. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 13-5-2008]

Saroj Kumar Poddar v. State (NCT of Delhi), (2007) 3 SCC 693: (2007) 2 SCC (Cri) 135; Everest Advertising (P) Ltd. v. State, Govt. of NCT of Delhi, (2007) 5 SCC 54: (2007) 2 SCC (Cri) 444; Raghu Lakshminarayanan v. Fine Tubes, (2007) 5 SCC 103: (2007) 2 SCC (Cri) 455; Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338: 2004 SCC (Cri) 1927, relied on

[7499] — S. 482 — Company as an accused for commission of offence under S. 138, NI Act — Pleadings necessary — *Persons who at the time of commission of offence were in charge of, and were responsible to the company for conduct of its business — Pleadings did not disclose any responsibility of Respondents 4 and 5 and therefore High Court rightly quashed criminal proceedings against them under S. 482 CrPC — However, Respondent 3 who was the authorised signatory and had signed the cheque could not be discharged, nor could Respondent 2 which was the accused firm — High Court judgment insofar as it discharged Respondents 2 and 3 therefore set aside — Negotiable Instruments Act, 1881, Ss. 141 and 138* (Paras 3 to 6). *Green Earth Asphalt & Power (P) Ltd.* v. *State of Maharashtra*, (2008) 8 SCC 278: (2008) 3 SCC (Cri) 481: (2008) 69 AIC 13 (SC): (2008) 106 Cut LT 696.

Bench Strength 2. Coram: *S.B. Sinha* and *Aftab Alam*, JJ. [Date of decision: 13-8-2008]

(11)(xx) Quashment in cheque dishonour cases *(contd.)*

[7500] — S. 482 — Offence by company — General allegation that all Directors were responsible — No ground to quash the proceedings under S. 482 CrPC — *Negotiable Instruments Act, 1881, Ss. 138 and 141*

So far as allegations against the Directors are concerned about their position in the Company the complaint specifically contained the averments regarding the position of the accused Directors in the company. (Para 8). *Malwa Cotton & Spg. Mills Ltd.* v. *Virsa Singh Sidhu*, (2008) 17 SCC 147: AIR 2008 SC 3273: 2008 Cri LJ 4316: (2008) 145 Comp Cas 61: (2008) 3 APLJ 142 (SC): (2008) 69 AIC 14 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 13-8-2008]

S.V. Muzumdar v. Gujarat State Fertiliser Co. Ltd., (2005) 4 SCC 173: 2005 SCC (Cri) 1020; N. Rangachari v. BSNL, (2007) 5 SCC 108: (2007) 2 SCC (Cri) 460, relied on

[7501] — S. 482 — Quashing of criminal proceedings — Not justified where disputed questions of fact involved — *Complaint filed by appellant against Directors of a company alleging commission of offence under S. 138 of Negotiable Instruments Act — High Court quashed the proceedings against Respondent 1 on ground that he had resigned from directorship before the cheques were issued, though Form 32, which was required to be filed with Registrar of Companies, was filed after the cheques were issued — High Court also quashed proceedings against other Directors in charge of day-to-day management work of the company on ground that there were no specific allegations and some general allegations were made that all Directors were responsible — Held, factual disputes were involved which were required to be established in trial and High Court was not justified in quashing the proceedings while dealing with applications under S. 482 — Negotiable Instruments Act, 1881, Ss. 138 and 142*

In these cases, factual disputes are involved. What was the effect of delayed presentation before the Registrar of Companies is essentially a matter of trial. Whether Respondent 1 had intimated the Company and whether there was any resolution accepting his resignation are matters in respect of which evidence has to be led. Therefore, the High Court was not justified in its view. (Para 7). *Malwa Cotton & Spg. Mills Ltd.* v. *Virsa Singh Sidhu*, (2008) 17 SCC 147: AIR 2008 SC 3273: 2008 Cri LJ 4316: (2008) 145 Comp Cas 61: (2008) 3 APLJ 142 (SC): (2008) 69 AIC 14 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 13-8-2008]

[7502] — S. 482 — Dishonour of cheque — Offence by company — Proceedings against Director of company — Propriety — *Where complaint clearly alleged that the named Directors were in charge of and responsible to the company for the conduct of its business, held, High Court rightly refused to quash it under S. 482 CrPC — Questions whether the accused at the relevant time were not in charge of the affairs of the Company or any restriction on their power or existence of any special circumstance made them not liable to be convicted, could be considered during trial — Companies Act, 1956, S. 291 — Evidence Act, 1872, S. 106 — Negotiable Instruments Act, 1881, Ss. 141 and 138*

The present case involved commission of offence by a company under Section 138 of the Negotiable Instruments Act, 1881.

Two cheques were issued by a company *D* in favour of the respondent Bharat Sanchar Nigam Limited (hereinafter referred to as "BSNL"). The said cheques were duly presented by BSNL but were dishonoured for insufficiency of funds. BSNL thereupon issued requisite notices calling upon *D* to pay the amounts due under the cheques. The payments not having been made, BSNL filed a complaint under the NI Act, 1881.

In the complaint, BSNL alleged that the cheques were issued to it by *D* in discharge of a pre-existing liability based on the business transactions between the companies. The appellant and the other accused were Directors of *D* and they were in charge of and responsible for the conduct of the business of *D*.

The appellant moved the High Court under Section 482 CrPC seeking the quashing of the complaint insofar as it related to him. The appellant pleaded that he being a nominated Chairman and holding an honorary post in the Company *D*, he was never assigned with any of the Company's financial or other business activities. He was the Chairman for namesake and was never entrusted with any job or business or constituted a signing authority. It was further pleaded that the two cheques that were the subject-matter of the complaint, were not signed by him. These cheques were dated 31-8-2004, after the appellant had effectively resigned. It was argued that as the complaint did not contain adequate averments to justify initiation of a criminal proceeding against the appellant, the same was liable to be quashed.

The High Court, on going through the complaint in the context of Sections 138 and 141 of the NI Act came to the conclusion that the Court could not decide the pleas put forward by the appellant in dealing with a petition filed under Section 482 CrPC and that the defences sought to be put forward by the accused had to be established at the trial. Taking the view that the complaint disclosed adequate material for proceeding against the appellant in terms of Section 138 read with Section 141 of the NI Act, the High Court refused to accede to the prayer of the appellant and dismissed the application filed under Section 482 CrPC. Hence, the present appeal.

Dismissing the appeal,

Held :

Under Section 141 of the NI Act, 1881, a prosecution could be launched not only against the company on behalf of which the cheque issued has been dishonoured, but it could also be initiated against every person who at the time the offence was committed, was in charge of and was responsible for the conduct of the business of the company. In fact, Section 141 deems such persons to be guilty of such offence, liable to be proceeded against and punished for the offence, leaving it to the person concerned, to prove that the offence was committed by the company without his knowledge or that he has exercised due diligence to prevent the commission of the offence. (Para 16)

A company, though a legal entity, cannot act by itself but can only act through its Directors. Normally, the Board of Directors act for and on behalf of the company. This is clear from Section 291 of the Companies Act. Therefore, a person in the commercial world having a transaction with a company is entitled to presume that the Directors of the company are in charge of the affairs of the company. If any restrictions on their powers are placed by the memorandum or articles of the company, it is for the Directors to establish it at the trial. It is in that context that Section 141 of the NI Act provides that when the offender is a company, every person, who at the time when the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, shall also be deemed to be guilty of the offence along with the company. (Paras 17 and 19)

A person normally having business or commercial dealings with a company, would satisfy himself about its creditworthiness and reliability by looking at its promoters and Board of Directors and the nature and extent of its business and its memorandum or articles of association. Other than that, he may not be aware of the arrangements within the company in regard to its management, daily routine, etc. Therefore, when a cheque issued to him by the company is dishonoured, he is expected only to be aware generally of who are in charge of the affairs of the company. It is not reasonable to expect him to know whether the person who signed the cheque was instructed to do so or whether he has been deprived of his authority to do so when he actually signed the cheque. Those are matters peculiarly within the knowledge of the company and those in charge of it. So, all that a payee of a cheque that is dishonoured can be expected to allege is that the persons named in the complaint are in charge of its affairs. The Directors are prima facie in that position. (Para 21)

Hence, following the ratio in *S.M.S. Pharmaceuticals Ltd.*, (2005) 8 SCC 89 what is to be looked into is whether in the complaint, in addition to asserting that the appellant and another are the Directors of the company, it is further alleged that they are in charge of and responsible to the company for the conduct of the business of the company. (Paras 23 and 17 to 20)

In the present case, reading the complaint as a whole, it is clear that the allegations in the complaint are that at the time at which the two dishonoured cheques were issued by the Company, the appellant and another were the Directors of the Company and were in charge of the affairs of the Company. It is not proper to split hairs in reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to show that at the relevant point of time the appellant and the other are not alleged to be persons in charge of the affairs of the Company. Obviously, the complaint refers to the point of time when the two cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour. (Para 26)

Therefore, in the circumstances, the High Court has rightly come to the conclusion that it is not a fit case for exercise of jurisdiction under Section 482 CrPC for quashing the complaint. In fact, an advertence to Sections 138 and 141 of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company to show that they are not liable to be convicted. Any restriction on their power or existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial such a restriction or to show that at the relevant time they were not in charge of the affairs of the Company. Reading the complaint as a whole, it is satisfied that it is a case where the

(11)(xx) Quashment in cheque dishonour cases *(contd.)*

contentions sought to be raised by the appellant can only be dealt with after the commencement of the trial. (Para 27). *N. Rangachari* v. *BSNL*, (2007) 5 SCC 108: (2007) 2 SCC (Cri) 460: AIR 2007 SC 1682: (2007) 137 Comp Cas 198: (2007) 2 KLT 1030: (2007) 5 Mah LJ 375: 2007 Cri LJ 2448.

Bench Strength 2. Coram: *Tarun Chatterjee* and **P.K. Balasubramanyan**, JJ. [Date of decision: 19-4-2007]

R.K. Dalmia v. Delhi Admn., AIR 1962 SC 1821: (1963) 1 SCR 253; Rajesh Bajaj v. State (NCT of Delhi), (1999) 3 SCC 259: 1999 SCC (Cri) 401; Bilakchand Gyanchand Co. v. A. Chinnaswami, (1999) 5 SCC 693: 1999 SCC (Cri) 1034; Rajneesh Aggarwal v. Amit J. Bhalla, (2001) 1 SCC 631: 2001 SCC (Cri) 229; Monaben Ketanbhai Shah v. State of Gujarat, (2004) 7 SCC 15: 2004 SCC (Cri) 1857, relied on

S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89: 2005 SCC (Cri) 1975, followed

Saroj Kumar Poddar v. State (NCT of Delhi), (2007) 3 SCC 693: (2007) 2 SCC (Cri) 135, distinguished

***Distinguished in** DCM Financial Services Ltd. v. J.N. Sareen, (2008) 8 SCC 1*

[7503] — S. 482 — Dishonour of cheque — Offence by company — Vicarious liability of Directors of company — If made out — Requirements for launching prosecution against Directors — Necessity of requisite averments in complaint — Rationale for, explained — *Reiterated, merely being a Director would not make a person liable for offence committed by company — For launching prosecution against Directors under Ss. 138/141 Negotiable Instruments Act, there has to be a specific allegation in complaint in regard to part played by them in transaction in question — Allegations have to be clear and unambiguous showing that Directors were in charge of and responsible for business of company — Herein, save and except for statement in complaint that respondents and some of the other accused, were Directors of accused Companies and were responsible and liable for acts of said Companies, no specific allegation was made against any of them — Question of proving a fact which was not mentioned in complaint, therefore, does not arise — High Court, therefore, rightly quashed the proceedings against respondents — Penal Code, 1860 — Ss. 120-A and 120-B — Quashment, Ss. 120-B and 420 — Negotiable Instruments Act, 1881, Ss. 138, 139 and 141* (Paras 17 to 19). *Central Bank of India* v. *Asian Global Ltd.*, (2010) 11 SCC 203: AIR 2010 SC 2835: (2010) 93 AIC 141 (SC).

Bench Strength 2. Coram: **Altamas Kabir** and *Cyriac Joseph*, JJ. [Date of decision: 6-7-2010]

S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89: 2005 SCC (Cri) 1975; N.K. Wahi v. Shekhar Singh, (2007) 9 SCC 481: (2007) 3 SCC (Cri) 203, followed

[7504] — S. 482 — Cheque dishonour — Limitation — Proviso empowering court to extend the period of limitation for filing complaint under S. 138, NI Act — Temporal nature of — Proviso is prospective in nature — *Complaint under S. 138 filed on 28-11-1998 by respondent averring that a cheque issued by appellant on 31-3-1998 was dishonoured by bank when presented on 1-4-1998 for which notice was issued on 27-4-1998 and that on appellant's assurance the cheque was again presented but was dishonoured on 30-9-1998 for which notice was again served on 13-10-1998 on appellant, but no payment made — Held, complaint barred by limitation prescribed under Cl. (b) — Since various events including filing of the complaint took place much prior to 2002 when the amending Act inserted the proviso to Cl. (b) and it was not the stand of respondent that the case was covered by the proviso, the proviso had no application in this case — Complaint thus being time-barred liable to be quashed — General Clauses Act, 1897, Ss. 5(1) & (3) — Negotiable Instruments Act, 1881, S. 142(b) proviso (as inserted by Act 55 of 2002). Anil Kumar Goel* v. *Kishan Chand Kaura*, (2007) 13 SCC 492: AIR 2008 SC 899: (2008) 1 KLT 50: (2008) 62 AIC 247 (SC): 2008 Cri LJ 1386.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Aftab Alam*, JJ. [Date of decision: 12-12-2007]

Sadanandan Bhadran v. Madhavan Sunil Kumar, (1998) 6 SCC 514; Punjab Tin Supply Co. v. Central Govt., (1984) 1 SCC 206, relied on

[7505] — S. 482 — Dishonour of cheque — Complaint pending in trial court — Interference with, by High Court in exercise of its inherent powers — Scope — *Held, at this stage High Court could not examine the merits of the complaint and could not, merely because the application did not contain a specific allegation to the contrary, hold that the cheques were not issued for any debt or existing liability — Onus to prove the non-existence of a debt or liability lay on the drawer and had to be discharged at the trial — Constitution of India — Art. 226 — Negotiable Instruments Act, 1881, Ss. 138 and 139*

The law is well settled that the power of quashing criminal proceedings should be exercised very stringently and with circumspection. It is settled law that at this stage the Court is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. At this stage the Court could not have gone into merits and/or come to a conclusion that there was no existing debt or liability. (Para 13). *M.M.T.C. Ltd.* v. *Medchl Chemicals and Pharma (P) Ltd.*, (2002) 1 SCC 234: 2002 SCC (Cri) 121: AIR 2002 SC 182: (2002) 108 Comp Cas 48: 2002 Cri LJ 266.

Bench Strength 2. Coram: *K.T. Thomas* and **S.N. Variava**, JJ. [Date of decision: 19-11-2001]

[7506] — **S. 482 — Quashing of criminal complaint — When warranted — Complaint under S. 138 of Negotiable Instruments Act filed by appellant** — *In pre-summoning statement, complainant stated that as per instruction of accused he deposited two cheques for collection through bank but both the cheques were returned by the bank to the complainant without payment stating "payment stopped by the drawer", that for the same he had issued legal notice to the accused and that reply notice was received from lawyer of accused with false allegations — Complaint quashed by High Court in exercise of power under S. 482 on ground that complainant had not stated in clear terms that accused had not paid the amount nor had he given any other explanation withholding the payment, which was mandatory — Held, it was contrary to averments made in the complaint as also the pre-summoning statement of complainant — Hence exercise of power of quashing was unwarranted — Negotiable Instruments Act, 1881, S. 138. T.K. Koya* v. *K. Devaraj*, (2005) 13 SCC 705: (2006) 2 SCC (Cri) 294.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 5-12-2003]

[7507] — **S. 482 — Quashing of criminal proceedings — Cognizance of offence by criminal court not barred under the RBI Act — Criminal proceedings, hence, not quashed** — *Offence under Ss. 420 and 120-B IPC, as well as S. 138 of the Negotiable Instruments Act — Held, taking cognizance of criminal proceedings is not barred under the RBI Act — Bar under Ss. 45-QA and 58-E of the RBI Act applies only to offences committed under the RBI Act — High Court, held, rightly acted by not quashing the order of cognizance taken by the criminal court — Penal Code, 1860, Ss. 420 and 120-B — Negotiable Instruments Act, 1881, S. 138 — Reserve Bank of India Act, 1934, Ss. 45-QA and 58-E. Prudential Capital Mkt. Ltd.* v. *State of Bihar*, (2000) 9 SCC 539: 2001 SCC (Cri) 644: AIR 2000 SC 3668.

Bench Strength 2. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 3-4-2000]

[7508] — **S. 482 — Quashing of criminal proceedings — Prayer for — Grant of — Matters to be considered — Cheque dishonour, cheating, etc.** — *Where allegations contained in complaint petition even if given face value and taken to be correct in its entirety do not disclose an offence, the complaint can be quashed — Cheques issued by accused towards payment regarding purchase of welding rods, got dishonoured — On demand of said money, accused allegedly stating that he had issued fabricated cheques knowingly with an intention to cheat the complainant and grab his money — Complaint filed alleging commission of offences of criminal breach of trust and cheating — Held, non-payment or underpayment of price of goods by itself does not amount to commission of offence of cheating or criminal breach of trust — It is essentially a civil dispute — Merely because the accused issued cheques which got dishonoured, the same by itself would not mean that he cheated the complainant — There was no allegation as to act of inducement on the part of the accused and intention to cheat the complainant from the very inception — Thus, in the absence of allegations in the complaint showing existence of ingredients of the alleged offences, held, the said offences not made out — Complaint was liable to be quashed — Penal Code, 1860, Ss. 405, 406, 409, 415, 420 & 417 — Negotiable Instruments Act, 1881, S. 138*

The appellant and the respondents entered into a contract for sale and purchase of welding rods. The appellant allegedly did not pay some amount due from him towards supply of the said article. He issued two cheques, but the said cheques were dishonoured. Alleging that by reason of such act, the appellant had committed offences under Sections 406, 409, 420 and 417 of the Penal Code, a complaint petition was filed by the first respondent. The complainant alleged that he contacted the accused several times regarding the dishonour of the said cheques and payment of money, but the accused kept on making excuses in making payment. At last the accused is alleged to have stated to the complainant that he had issued fabricated cheques knowingly with an intention to cheat the complainant and grab his money. The accused challenged the complainant that he would not pay his money and the complainant could do what he liked.

After the court took cognizance against the appellant, the appellant filed an application under Section 482 CrPC before the High Court for quashing of the said criminal proceeding. The High Court refused to exercise its jurisdiction under Section 482 CrPC. Hence, the present appeal.

(11)(xx) Quashment in cheque dishonour cases *(contd.)*

Allowing the appeal,

Held :

The principle underlying exercise of jurisdiction by the High Court under Section 482 CrPC is now well settled viz. that the allegations contained in the complaint petition even if given face value and taken to be correct in its entirety do not disclose an offence or not is the question. (Para 7)

In the present case, the dispute between the parties is essentially a civil dispute. Non-payment or underpayment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust. No offence, having regard to the definition of criminal breach of trust contained in Section 405 IPC can be said to have been made out. Neither any allegation has been made to show existence of the ingredients of the aforementioned provision nor any statement in that behalf has been made. (Para 8)

The ingredients of Section 420 IPC are: (*i*) deception of any persons; (*ii*) fraudulently or dishonestly inducing any person to deliver any property; or (*iii*) to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit. In the instant case, no act of inducement on the part of the accused-appellant has been alleged by the complainant. No allegation has been made that he had an intention to cheat the complainant from the very inception. (Para 13)

In law, only because the accused had issued cheques which were dishonoured, the same by itself would not mean that he had cheated the complainant. What has been alleged in the complaint petition as also the statement of the complainant and his witnesses relate to subsequent conduct of the appellant. The date when the statements in question (alleged to be constituting the offences involved herein) were made by the appellant had not been disclosed by the witnesses of the complainant. Assuming that such a statement had been made, the same does not exhibit that there had been any intention on the part of the appellant to commit an offence under Section 417 IPC. (Paras 15 and 14)

Hence, in the facts and circumstances of the case, no offence is made out. The impugned judgment is set aside. The order taking cognizance is quashed. (Para 17). *Vir Prakash Sharma* v. *Anil Kumar Agarwal*, (2007) 7 SCC 373: (2007) 3 SCC (Cri) 370: 2007 Cri LJ 3735: (2007) 57 AIC 32 (SC): (2007) 5 All LJ 321.

Bench Strength 2. Coram: **S.B. Sinha** and *H.S. Bedi*, JJ. [Date of decision: 1-8-2007]

Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168: 2000 SCC (Cri) 786; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, relied on

[7509] — S. 482 — Quashing of criminal proceedings for dishonour of cheque — Notice — Nature and object of — Held, is to give a chance to the drawer of the cheque to rectify his mistake and to protect an honest drawer — Thus notice must make a demand for payment of the amount of the cheque — *Last line of notice stating: "Kindly arrange to make the payment to avoid the unpleasant action of my client" — Held, on facts, High Court erred in overlooking this clear demand for payment and quashing pending criminal proceedings under S. 482 Criminal Procedure Code — Negotiable Instruments Act, 1881, S. 138 proviso (b)*

Respondent 1, a partnership firm, took a loan of over 1 crore rupees from the appellant Bank. The respondent issued three cheques dated 29-3-1994 for the amounts of Rs 1 lakh, Rs 2 lakhs and Rs 39,50,000 towards part-repayment of the loan. The three cheques were presented for collection, but were received back by the appellant unpaid on 25-4-1994 and 19-6-1994 with the remark "funds insufficient" on each. The appellants then sent, through their advocate, two registered notices dated 2-5-1994 and 27-6-1994. The notices, which were admittedly received, stated that the appellant Bank would present the cheques for collection again and if they were returned unpaid the matter would be reported to the police. Both notices reserved the right to initiate appropriate criminal cases and ended with the sentence "Kindly arrange to make the payment of the cheques if you intend to avoid the unpleasant action of my client".

Upon the second presentation of the cheques, they were returned once again with the remark "funds insufficient". The appellant then filed two complaints under Section 138 Negotiable Instruments Act, 1881 in the court of the Judicial Magistrate 1st class, where cognizance was taken. However, the High Court quashed the criminal proceedings under Section 482 CrPC on the ground that there was no proper notice as required by Section 138 of Negotiable Instruments Act, 1881.

Allowing the Bank's appeals,

Held :

The object of notice is to give a chance to the drawer of the cheque to rectify his omission and also to protect an honest drawer. Service of notice of demand in clause (*b*) of the proviso to Section 138 is a condition precedent for filing a complaint under Section 138 of the Negotiable Instruments Act, 1881. (Para 8)

Though no form of notice is prescribed in clause (*b*) of the proviso to of Section 138, the requirement is that the notice shall be given in writing within fifteen days of receipt of information from the bank regarding return of the cheque as unpaid and in the notice a demand for payment of the amount of the cheque has to be made. (Para 7)

Regarding demand for payment, the High Court was of the opinion that "the intention in the notice was that cheque was being presented again and the applicant/petitioner should arrange the payment on re-presentation of the cheque". But a cheque can be presented any number of times to the bank within the period of its validity. The appellant Bank had a legal right to re-present the cheques to the Bank as indicated in the notices and, therefore, the respondents could have arranged payment either through the Bank or directly to the appellant Bank. By not doing so the provision of Section 138 is clearly attracted. (Paras 10 and 11)

In fact in the present case, the following last line of the notice reading "Kindly arrange to make the payment to avoid the unpleasant action of my client" is a clear demand required by clause (*b*) of Section 138 proviso. The High Court erred in overlooking this line in the notice and in holding that there was no demand of payment. (Para 10). *Central Bank of India* v. *Saxons Farms*, (1999) 8 SCC 221: 1999 SCC (Cri) 1411: AIR 1999 SC 3607: (1999) 35 CLA 199: (1999) 98 Comp Cas 712.

Bench Strength **2**. Coram: *G.T. Nanavati* and **S.N. Phukan**, JJ. [Date of decision: 7-10-1999]

[7510] — S. 482 — Quashing of proceedings — On the ground of bar of limitation — Validity — Complaint under S. 138, Negotiable Instruments Act, 1881 — *Contention by accused that notice for payment was issued beyond 15 days of communication by bank regarding dishonour of cheque and, therefore, the complaint was clearly barred by limitation — As per the complainant, communication of dishonour of cheque was received after three days and, therefore, notice sent to accused was within 15 days thereafter — This being a matter of evidence, held, High Court was not justified in quashing the proceedings by holding that the complaint was barred by time — Negotiable Instruments Act, 1881, S. 138* (Paras 3 and 4). *T.N. Newsprint & Papers Ltd.* v. *Lakshmi*, (2004) 13 SCC 366.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 3-9-2004]

[7511] — S. 482 — Quashment of complaint on assumption of certain facts even before the evidence was led by the parties — Impermissibility — *Trial court's order summoning the accused — Interference with, by High Court on assumption of certain facts — Impermissibility — Dishonour of cheque issued by firm — Complaint against partners including S — Summonses issued but evidence was yet to be led — Order passed under S. 482 by High Court just at this stage annulling the summons issued to S on the assumption that S was not in charge of, or responsible for, the conduct of the business of the firm, held, improper — Negotiable Instruments Act, 1881, Ss. 138 and 141*

At the stage of summoning when evidence was yet to be led by the parties, the High Court could not on an assumption of facts come to a finding of fact that the respondent was not responsible for the conduct of the business. (Para 4). *Raj Lakshmi Mills* v. *Shakti Bhakoo*, (2002) 8 SCC 236.

Bench Strength **3**. Coram: *B.N. Kirpal*, C.J. and *K.G. Balakrishnan* and *Arijit Pasayat*, JJ. [Date of decision: 8-7-2002]

[7512] — S. 482 — Refusal to quash proceedings — Upheld — Dishonour of cheques of Company declared sick under the Sick Industrial Companies (Special Provisions) Act, 1985 — Proceedings initiated under S. 138, NI Act — Challenge to — Unsustainability of — *Appellant Company with full knowledge of having been declared sick placing orders for purchase of goods from respondent and making representation that payment would be made — But cheques issued towards payment for goods dishonoured — In reply to legal notice Company for the first time contending that it had been declared a sick company and, therefore, no legal proceedings for recovery could be initiated against it — Facts not only indicated that there was an undisputed debt, but also showed that right from the inception the appellant Company had no intention of making payment — In these circumstances, held, appellant Company not entitled to any interference under Art. 136 of the Constitution — High Court's judgment declining to quash the proceedings in question under S. 482 CrPC, upheld — Trial court directed to dispose of the cases within six months — Sick Industrial Companies (Special Provisions) Act, 1985, Ss. 22(1) & (3) — Negotiable Instruments Act, 1881, Ss. 138 and 141* (Paras 9 to 12). *Southern Steel Ltd.* v. *Jindal Vijayanagar Steel Ltd.*, (2008) 5 SCC 762: (2008) 3 SCC (Cri) 75: (2008) 66 AIC 26 (SC): 2008 Cri LJ 3960: (2008) 143 Comp Cas 466.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **Dalveer Bhandari**, JJ. [Date of decision: 8-5-2008]

BSI Ltd. v. Gift Holdings (P) Ltd., (2000) 2 SCC 737: 2000 SCC (Cri) 538; Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd., (2000) 2 SCC 745: 2000 SCC (Cri) 546, distinguished on facts

(11)(xx) Quashment in cheque dishonour cases *(contd.)*

[7513] — S. 482 — Scope — Complaint under S. 138, NI Act alleging dishonour of cheque — *Cognizance of the complaint is taken on being satisfied about existence of a prima facie case — Issuance of cheque raises a presumption under S. 139 — Drawer of the cheque gets an opportunity to rebut that presumption at the trial — Petition under S. 482 CrPC for quashing the complaint can be entertained only when no prima facie offence is made out — Whether a prima facie offence under S. 138 is made out would depend upon the averments made in the complaint — Negotiable Instruments Act, 1881, Ss. 138 & 139*

The Court taking cognizance of the complaint under Section 138 of the Act is required to be satisfied as to whether a prima facie case is made out under the said provision. The drawer of the cheque undoubtedly gets an opportunity under Section 139 of the Act to rebut the presumption at the trial. A petition under Section 482 CrPC is tenable when no offence even prima facie was made out in the complaint. But the application thereof will depend upon the averments made in the complaint. In this case the complaints of the appellant could not have been dismissed by the High Court at the threshold. *Modi Cements Ltd.* v. *Kuchil Kumar Nandi*, (1998) 3 SCC 249: AIR 1998 SC 1057: 1998 Cri LJ 1397: (1998) 92 Comp Cas 88: (1998) 1 KLT 582.

Bench Strength 3. Coram: *M.K. Mukherjee*, **S.P. Kurdukar** and *K.T. Thomas*, JJ. [Date of decision: 2-3-1998]

Kuchil Kumar Nandi v. Modi Cement Ltd., 1997 Cri LJ 805 (Cal), reversed

[7514] — Ss. 482, 407 and 220 — Transfer of complaint case *S* for joint trial with another complaint case *F* which was filed earlier — Direction by High Court in respect of — Propriety — Absence of prayer for joint trial — *Further, delay in filing of complaint S despite the knowledge of alleged offence — Proceedings in case F at final stage — On such facts, held, there was no ground for directing the said transfer and joint trial — High Court's said direction set aside — Negotiable Instruments Act, 1881, S. 138*

A cheque was issued by Company *KT* in favour of the respondent, who, in turn, endorsed it in favour of the first appellant. On 26-12-2001, *KT* made a complaint that the first appellant and the respondent and their companies had forged the cheque in question by altering the date from 21-5-2001 to 21-8-2001 and the amount from Rs 2 lakhs to Rs 42 lakhs. The said complaint was registered on 25-3-2002. (This complaint was stayed and is not relevant for the present controversy.)

The cheque in issue was deposited by the first appellant with the bank and on its dishonour, a complaint CC No. 67 of 2002 was filed under Section 138 of the Negotiable Instruments Act by the first appellant against the respondent on 23-1-2002. That apart, on 12-3-2003, a complaint CC No. 181 of 2003 was filed under Section 200 CrPC by the respondent against the first appellant, his wife and another, inter alia, alleging intimidation by the accused and forgery of the cheque in question by the first appellant. The appellants moved the High Court under Section 482 CrPC for quashing of this complaint. While dismissing the petition for quashing, the High Court transferred CC No. 181 of 2003 to the Court where CC No. 67 of 2002 was pending (in fact had reached its final stage and evidence of complainant had been recorded) and directed joint trial.

Allowing the appeal,

Held :

Apart from the fact that there was no prayer in the petition filed under Section 482 CrPC seeking joint trial nor was any independent petition filed by the respondent seeking joint trial, even otherwise, having regard to the facts and circumstances, there was no ground to direct transfer of the complaint and joint trial of the two complaint cases. The allegations about forgery were made as far back as in December 2001 and the complaint under Section 138 was filed as far back as on 23-1-2002 but the respondent filed his complaint nearly two years later on 12-3-2003. Further, the fact that the proceedings in complaint 67 of 2002 filed under Section 138 were at final stage, was another important aspect which ought to have been borne in mind. These aspects were not taken into consideration by the High Court while passing the impugned order. In the aforesaid circumstances, the direction in the impugned order for transfer of CC No. 181 of 2003 to be tried with CC No. 67 of 2002 is set aside. (Paras 5 and 6). *T.V. Mylsamy* v. *R. Meenakshi Sundaram*, (2004) 13 SCC 514.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *D.M. Dharmadhikari*, JJ. [Date of decision: 22-11-2004]

[7515] — Ss. 482 and 154 — Abuse of process of court — FIR not making out any offence — Rightly quashed — Cheque given by the appellant to respondents bouncing — *Appellants filing FIR under Ss. 420/406/468 alleging therein that respondents by an act of conspiracy committed criminal breach of trust by presenting for encashment blank cheques signed by the appellant* *for a purpose other than that for which the cheque had been given to them and thereby causing to the appellant loss of a certain amount — Apart from the fact that the said allegations did not make out the offence of cheating or criminal breach of trust, attendant circumstances indicating that FIR was lodged to pre-empt the filing of complaint under S. 138 of Negotiable Instruments Act against the appellant — In such circumstances, held, High Court was well within its jurisdiction to quash the FIR as amounting to abuse of the process of court — Hence, High Court's decision called for no interference under Art. 136 — Negotiable Instruments Act, 1881, S. 138 — Penal Code, 1860, Ss. 420/406/468 — Constitution of India — Art. 136* (Para 5). *Sunil Kumar* v. *Escorts Yamaha Motors Ltd.*, (1999) 8 SCC 468: 1999 SCC (Cri) 1466: AIR 2000 SC 27.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision: 27-10-1999]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259: 1999 SCC (Cri) 401; Punjab National Bank v. Surendra Prasad Sinha, 1993 Supp (1) SCC 499: 1993 SCC (Cri) 149, considered

[7516] — Ss. 482 and 204 — Dishonour of cheque — Offence by Company — Requisite averments in complaint — Strict compliance with the statutory requirements — Absence of — Effect — *Complaint not containing any statement that the appellant-accused were in charge of the business of the Company at the material time — Nor the statement of PW alleging that appellants were in charge of the business of the Company — Held, requirements of S. 141, NI Act not complied with — Hence, impugned judgments set aside and process issued against the appellants quashed — Negotiable Instruments Act, 1881, Ss. 138, 139 and 141*

Two complaint petitions were filed by the respondent herein describing appellants herein as Accused 6 and 8. In the said complaint petitions it was stated that the Company which had been dealing with imparting of computer education in rural areas borrowed a sum of Rs 2,25,000 from the respondent on an interest of 24% per annum. Towards payment of the said loan the accused had issued two cheques allegedly on behalf of the Company on 23-6-2001 and 30-6-2001 for a sum of Rs 1,24,406 each, in favour of the respondent, which upon being presented were dishonoured as the Company did not have sufficient funds. The appellants were not the Directors of the said Company at the material time. It was submitted by the complainant that the accused persons failed to clear the liability. It was further submitted that the accused, being the company, all the Directors were responsible for the clearance of liability under Section 141 of the Negotiable Instruments Act and that the acts and deeds of the accused persons were punishable under Section 138 of the Negotiable Instruments Act. Process were directed to be issued on the said statement for alleged commission of an offence under Section 138 of the Negotiable Instruments Act. The appellants filed an application under Section 482 CrPC praying for quashing of the process issued against them in the said proceedings. The High Court dismissed the said application.

Allowing the appeals,

Held :

A bare perusal of the complaint petitions demonstrates that the statutory requirements contained in Section 141 of the Negotiable Instruments Act had not been complied with. It may be true that it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused are vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company. Before a person can be made vicariously liable, strict compliance with the statutory requirements would be insisted upon. Not only the averments made in the complaint petitions do not meet the said statutory requirements, the sworn statement of the witness made by the son of the respondent herein does not contain any statement that the appellants were in charge of the business of the Company. In a case where the court is required to issue summons which would put the accused to some sort of harassment, the court should insist upon strict compliance with the statutory requirements. (Para 7). *Sabitha Ramamurthy* v. *R.B.S. Channabasavaradhya*, (2006) 10 SCC 581: AIR 2006 SC 3086: 2006 Cri LJ 4602.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dalveer Bhandari*, JJ. [Date of decision: 13-9-2006]

Monaben Ketanbhai Shah v. State of Gujarat, (2004) 7 SCC 15: 2004 SCC (Cri) 1857; Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd., (2002) 7 SCC 655: 2003 SCC (Cri) 151; S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89: 2005 SCC (Cri) 1975, followed

K.P.G. Nair v. Jindal Menthol India Ltd., (2001) 10 SCC 218: 2002 SCC (Cri) 1038, relied on

(11)(xx) Quashment in cheque dishonour cases *(contd.)*

[7517] — Ss. 482 and 245(2) — Quashing of complaint/discharge of accused — Dishonour of cheque — Requisite averments to be made in complaint — Quashing of complaint/discharge of accused when called for — Relevant considerations — *Held, not necessary to reproduce language of S. 141, NI Act verbatim in the complaint — If the substance of the allegations made in the complaint fulfil requirements of the said section, complaint has to proceed and is required to be tried — In construing a complaint a hypertechnical approach should not be adopted so as to quash the same — Power of quashing should be exercised very sparingly — Where, read as a whole, factual foundation for the offence has been laid in the complaint, it should not be quashed — But, court must discharge the accused if taking everything stated in the complaint as correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking — Negotiable Instruments Act, 1881, Ss. 138 and 141* (Para 4). *Monaben Ketanbhai Shah* v. *State of Gujarat*, (2004) 7 SCC 15: 2004 SCC (Cri) 1857: AIR 2004 SC 4274: (2004) 3 KLT 428.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *D.M. Dharmadhikari*, JJ. [Date of decision: 10-8-2004]

K.P.G. Nair v. Jindal Menthol India Ltd., (2001) 10 SCC 218: 2002 SCC (Cri) 1038; Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd., (2002) 7 SCC 655: 2003 SCC (Cri) 151, relied on

[**Ed.**: *See also* (1981) 2 SCC 335: 1981 SCC (Cri) 453: (1998) 5 SCC 343: 1998 SCC (Cri) 1315: (2000) 1 SCC 1: 2001 SCC (Cri) 174]

[7518] — Ss. 482 and 251 — Proceedings under S. 138, Negotiable Instruments Act — Quashing of by High Court on the ground that the Magistrate under S. 251 had not recorded a finding that the respondent alone was responsible to or in charge of the firm for conduct of the business so as to attract the provisions of S. 141 of Negotiable Instruments Act — *Setting aside High Court's order, held, Magistrate under S. 251 CrPC is required to incorporate substance of accusation and not details — Also liability under S. 141, Negotiable Instruments Act is not limited to a single director of a company or a single partner of a firm — Complaint specifically naming the respondent as one responsible for running the business. Bharat K. Gupta* v. *Arun Kumar*, (2000) 10 SCC 658: 2001 SCC (Cri) 1517.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *S.S.M. Quadri*, JJ. [Date of decision: 30-10-1998]

[7519] — Ss. 482 and 402 — Cheque dishonour case — Deemed service of notice sent by registered post — Presumption of receipt of notice — When arises — Fraudulent avoidance of notice — Nature and proof — *Held, when drawer refuses to accept the notice or when he evades service of the notice by fraudulent or unscrupulous means so that the envelope containing the notice is returned with a false endorsement such as premises locked or addressee not available, court may presume receipt of the notice by the drawer — Whether service of notice was fraudulently avoided by the drawer is a question of fact to be determined by court on the basis of evidence on record — There is no fixed rule that whenever notice could not be served due to non-availability of the addressee, court would presume service of the notice — When respondent drawee of the cheque issued notice to appellant drawer but the same was returned with the endorsement "Party not in station, arrival not known" whereupon respondent filed a complaint under S. 138, NI Act stating that the notice may be deemed to have been served and Magistrate passed orders under S. 204 CrPC registering a criminal case and issuing process against appellant, held, petition filed by appellant under S. 482 CrPC for quashing of the proceedings was premature as it was open to respondent to prove at trial that the endorsement was not correct and the drawer with the knowledge of the notice had deliberately avoided to receive the same — Therefore, High Court should not exercise its jurisdiction under S. 482 CrPC in such a situation — Object of S. 138, NI Act and especially its proviso (c) considered — Mischief rule of interpretation applied — General Clauses Act, 1897, S. 27 — Negotiable Instruments Act, 1881, Ss. 138 proviso (b), (c) and 142*

The drawer of the cheque makes himself liable for prosecution under Section 138 of the Act if he fails to make the payment within fifteen days of the receipt of the notice given by the drawee. His failure to make the payment within the stipulated period gives rise to a cause of action to the complainant to prosecute the drawer under Section 138 of the Act. It is not the "giving" of the notice but it is the failure to pay after "receipt" of the notice by the drawer which gives the cause of action to the complainant to file the complaint within the statutory period. (Paras 9 and 21)

It is no doubt true that the receipt of the notice has to be proved, but if the notice is refused by the addressee, it may be presumed to have been served. In a case where notice is not claimed even though sent by registered post, with the aid of Section 27 of the General Clauses Act, the drawer of the cheque may be called upon to rebut the presumption which arises in favour of service of notice. However, no rule of universal application can be laid down that in all cases where notice is not served on account of non-availability of the addressee, the court must presume service of notice. (Paras 21, 14 and 11)

The question is whether in a case of this nature, where the postal endorsement shows that the notice could not be served on account of the non-availability of the addressee, a cause of action may still arise for prosecution of the drawer of the cheque on the basis of deemed service of notice under clause (*c*) of proviso to Section 138 of the Act. (Para 11)

If in each such case the law is understood to mean that there has been no service of notice, it would completely defeat the very purpose of the Act. Also, if the complainant does not file a complaint within one month of the date on which the cause of action arises under clause (*c*) of the proviso to Section 138 of the Act, his complaint gets barred by time. Thus, a person who can dodge the postman for about a month or two, or a person who can get a fake endorsement made regarding his non-availability can successfully avoid his prosecution because the payee is bound to issue notice to him within a period of 30 days from the date of receipt of information from the bank regarding the return of the cheque as unpaid. He is, therefore, bound to issue the legal notice which may be returned with an endorsement that the addressee is not available on the given address. It may be that the address is correct and even the addressee is available but a wrong endorsement is manipulated by the addressee. In such a case, if the facts are proved, it may amount to refusal of the notice. If the complainant is able to prove that the drawer of the cheque knew about the notice and deliberately evaded service and got a false endorsement made only to defeat the process of law, the court shall presume service of notice. This, however, is a matter of evidence and proof. Thus even in a case where the notice is returned with the endorsement that the premises has always been found locked or the addressee was not available at the time of postal delivery, it will be open to the complainant to prove at the trial by evidence that the endorsement is not correct and that the addressee, namely, the drawer of the cheque, with knowledge of the notice had deliberately avoided to receive notice. (Paras 14 and 15)

Therefore, the question as to whether the service of notice has been fraudulently refused by unscrupulous means and whether there was deemed service of notice, in the sense that the endorsement made on the returned envelope was a manipulated and false endorsement, is essentially a question of fact, and that must be considered in the light of the evidence on record. (Paras 15 and 24)

Therefore, it would be premature at the stage of issuance of process, to move the High Court for quashing of the proceeding under Section 482 CrPC. In such a case the High Court ought not to exercise its jurisdiction under Section 482. In the present case, the High Court was right in rejecting the petitions filed by the appellant under Section 482 CrPC. (Paras 15 and 24)

There may be unscrupulous complainants, who may manage to get a false postal endorsement of "refusal" or "unclaimed" or "party not available" and then prosecute an innocent or bona fide drawer. In such cases the drawer is not without remedy. He can also establish by evidence the said endorsement of "refusal" or "unclaimed" or "not found" during delivery time to be false. Alternatively, he may pay the amount due and compound the matter. Be that it may. (Para 25)

Section 138 of the Act was enacted to punish those unscrupulous persons who purported to discharge their liability by issuing cheques without really intending to do so, which was demonstrated by the fact that there was no sufficient balance in the account to discharge the liability. With a view to avoid unnecessary prosecution of an honest drawer of a cheque, or to give an opportunity to the drawer to make amends, the proviso to Section 138 provides that after dishonour of the cheque, the payee or the holder of the cheque in due course must give a written notice to the drawer to make good the payment. Clause (*c*) of proviso to Section 138 provides that the section shall not apply unless the drawer of the cheque fails to make the payment within 15 days of the receipt of the said notice. The proviso is meant to protect honest drawers whose cheques may have been dishonoured for the fault of others, or who may have genuinely wanted to fulfil their promise but on account of inadvertence or negligence failed to make necessary arrangements for the payment of the cheque. The law treats such lapses induced by inadvertence or negligence to be pardonable, provided the drawer after notice makes amends and pays the amount within the prescribed period. The proviso is not meant to protect unscrupulous drawers who never intended to honour the cheques issued by them, it being a part of their modus operandi to cheat unsuspecting persons. (Para 13)

It is well settled that in interpreting a statute the court must adopt that construction which suppresses the mischief and advances the remedy. This is a rule laid down in *Heydon's case* also known as

(11)(xx) Quashment in cheque dishonour cases *(contd.)*

the rule of purposive construction or mischief rule. (Para 12). *D. Vinod Shivappa* v. *Nanda Belliappa*, (2006) 6 SCC 456: (2006) 3 SCC (Cri) 114: AIR 2006 SC 2179: 2006 Cri LJ 2897: (2006) 130 DLT 534: (2006) 3 KLT 94.

Bench Strength 2. Coram: **B.P. Singh** and *R.V. Raveendran*, JJ. [Date of decision: 25-5-2006]

K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510: 1999 SCC (Cri) 1284; Dalmia Cement (Bharat) Ltd. v. Galaxy Traders & Agencies Ltd., (2001) 6 SCC 463: 2001 SCC (Cri) 1163; V. Raja Kumari v. P. Subbarama Naidu, (2004) 8 SCC 774: 2005 SCC (Cri) 393; Prem Chand Vijay Kumar v. Yashpal Singh, (2005) 4 SCC 417: 2005 SCC (Cri) 1153; Sadanandan Bhadran v. Madhavan Sunil Kumar, (1998) 6 SCC 514: 1998 SCC (Cri) 1471, relied on

Heydon's case, (1584) 76 ER 637: 3 Co Rep 7a, relied on

***Affirmed in** C.C. Alavi Haji v. Palapetty Muhammed, (2007) 6 SCC 555*

[7520] — Ss. 482, 190 and 200 — Criminal proceedings initiated with ulterior motive — Continuance of such proceedings — Impermissibility of — Ingredients for exercising power under Art. 226 and S. 482, to prevent abuse of process of any court or to secure ends of justice, restated — *On facts, trial court taking cognizance of offence punishable under Ss. 406 and 420 IPC against appellants in a complaint filed by respondent — High Court declining to interfere under S. 482 CrPC with the order passed — Sustainability — Complaint nothing but abuse of process of law, being a counterblast to the proceedings initiated by appellants under S. 138, NI Act, 1881 against respondent — Held, perusal of complaint showed ulterior motive — Proceedings initiated by respondent clearly amounted to abuse of process of law — Hence, relying on* Bhajan Lal case, *1992 Supp (1) SCC 335, reiterating that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, held, proceedings initiated before trial court, by the respondent, stand quashed — Penal Code, 1860, Ss. 406 and 420 — Negotiable Instruments Act, 1881, S. 138 — Constitution of India — Art. 226* (Paras 2, 4, 18 to 20). *Mahindra & Mahindra Financial Services Ltd.* v. *Rajiv Dubey*, (2009) 1 SCC 706.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 4-12-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

[7521] — S. 482 — Multiple presentations, multiple notices — Precise date for arising of cause of action under S. 142(b), NI Act when cheque presented three times, dishonoured every time and notices of dishonour also issued thrice — *First two notices issued to wrong addressee — First notice also not received by the drawer — Second notice withdrawn by the complainant on an objection raised by drawer itself — Third notice addressed properly to drawer and received by him but payment not made within fifteen days — Held, cause of action arose with reference to third notice — Complaint was filed within a month thereof — All the conditions precedent for launching prosecution under S. 138 were therefore satisfied — Plea for quashing the proceedings under S. 482 CrPC, rejected — Negotiable Instruments Act, 1881 — Ss. 142(b) and 138 proviso, cls. (c) and (b)*

By successive issue of notices, the respondent merely made all attempts to comply with the legal requirements. The first notice was not served. The second notice was withdrawn. Therefore, the complainant cannot be said to have committed any illegality in presenting the cheque for the third time and issuing third notice upon the defaulter. As issuance of cheque, non-payment thereof on presentation, issuance of valid notice calling upon the drawer to pay the amount, and appellants' failure to pay to the complainant the amount in question within 15 days from the date of receipt of notice served upon them, the complainant cannot be said to have committed any illegality in presenting the cheque for the third time and issuing third notice upon the defaulter. (Paras 19, 20 and 22)

Herein, the cause of action for filing a complaint arose only once and not more than once. (Para 23). *S.L. Constructions* v. *Alapati Srinivasa Rao*, (2009) 1 SCC 500.

Bench Strength 2. Coram: *S.B. Sinha* and *Cyriac Joseph*, JJ. [Date of decision: 23-10-2008]

Sadanandan Bhadran v. Madhavan Sunil Kumar, (1998) 6 SCC 514: 1998 SCC (Cri) 1471, relied on

(xxi) Quashment re defamation allegations

[7522] — S. 482 — Defamation — True report — If defamatory — *Publication of news item disclosing accurate and true report of proceedings of Legislative Assembly — Statement of Minister disclosing misappropriation of govt. fund — Name of complainant mentioned as one of the persons involved in such misappropriation — Circumstances disclosing that the news item was published about public conduct of public servants for public good in good faith believing the statement to be true — Order of the Additional Sessions Judge quashing the proceedings in exercise of its revisional power restored — Penal Code, 1860, Ss. 499, 500, 501 and 502 read with S. 34. Jawaharlal Darda* v. *Manoharrao Ganpatrao Kapsikar*, (1998) 4 SCC 112: 1998 SCC (Cri) 815: AIR 1998 SC 2117.

Bench Strength 2. Coram: **G.T. Nanavati** and *V.N. Khare*, JJ. [Date of decision: 26-3-1998]

[7523] — S. 482 — Quashing of criminal proceedings at preliminary stage — Allegation not making out any case — Defamation complaint — *Complaint under S. 500 IPC filed in 1966 against the appellant alleging that in order to give credence to a book published by him the appellant falsely represented to the readers that the same was based on a manuscript of King Bhagyachandra — Complaint ending in compromise in 1968 in which the appellant tendered apology — Second complaint alleging that in 1989 the appellant reiterated his stand that the first book, which was the subject-matter of the 1966 complaint, was based on King Bhagyachandra's write-up — Held, there is no abuse of process of court and it cannot be said that a stale matter is being reagitated out of jealousy — However, complaint quashed on ground that allegations in the complaint do not make out any case against the appellant — Since the claim about the manuscript being in the hand of King Bhagyachandra had hurt the feelings of the people of the State, the appellant directed to make a public statement that the manuscript in question was not in the hand of King Bhagyachandra and he must give an undertaking not to state so in future — Constitution of India — Art. 226. Guru Bipin Singh* v. *Chongtham Manihar Singh*, (1996) 11 SCC 622: AIR 1997 SC 1448.

Bench Strength **2**. Coram: *G.N. Ray* and **B.L. Hansaria**, JJ. [Date of decision: 11-10-1996]

[7524] — S. 482 — Quashment — Defamation — *Penal Code, 1860, Ss. 499 & 500*

According to the appellant the respondents made false and malicious allegations with intention or knowingly or having reasons to believe that such imputations would harm his reputation; due to these imputations made by them, the reputation of the appellant has been lowered in the eyes of his partners, the staff and the workers of the factory. Hence he prayed for punishing the respondents for the offence under Section 500 IPC. The Magistrate, on the complaint, after taking cognizance of the offence, recorded the sworn statement of the complainant (appellant herein) and held that "there were sufficient grounds to proceed the case against the accused persons for the offence punishable under Section 500 IPC". Hence he issued summons to Respondents 1 to 3. Allowing the appeal,

Held:

For deciding whether the criminal proceedings should be allowed to continue or the same should be quashed, two aspects are to be satisfied: (*1*) whether the uncontroverted allegations, as made in the complaint, prima facie establish the offence, and (*2*) whether it is expedient and in the interest of justice to permit a prosecution to continue. On a plain reading of the order of the Magistrate issuing summons to the respondents, keeping in view the allegations made in the complaint and sworn statement of the appellant, it appears that a prima facie case is made out at that stage. There are no special features in the case to say that it is not expedient and not in the interest of justice to permit the prosecution to continue. The Single Judge of the High Court failed to apply this test. The High Court could not say at that stage that there was no reasonable prospect of conviction resulting in the case after a trial. Assuming that the imputations made could be covered by Exception 9 of Section 499 IPC, several questions still remain to be examined — whether such imputations were made in good faith, in what circumstances, with what intention, etc. All these can be examined on the basis of evidence in the trial. Having regard to the facts of the case it must therefore, be held that the High Court committed a manifest error in quashing the criminal proceedings exercising jurisdiction under Section 482 CrPC. (Paras 8 and 11).*M.N. Damani* v. *S.K. Sinha*, (2001) 5 SCC 156: 2001 SCC (Cri) 823: AIR 2001 SC 2037: 2001 Cri LJ 2571.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **Shivaraj V. Patil**, JJ. [Date of decision: 2-5-2001]

Sewakram Sobhani v. R.K. Karanjia, Chief Editor, Weekly Blitz, (1981) 3 SCC 208: 1981 SCC (Cri) 698; Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi, (1996) 6 SCC 263: 1996 SCC (Cri) 1310, relied on

Manjaya v. Sesha Shetti, ILR (1888) 11 Mad 477; Sayed Ally v. King Emperor, AIR 1925 Rang 360; Anthoni Udayar v. Velusami Thevar, AIR 1948 Mad 469: 49 Cri LJ 724: (1948) 1 MLJ 420; Baboo Gunnesh Dutt Singh v. Mugneeram Chowdry, (1872) 11 WR 283 SC; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234: AIR 1988 SC 709, distinguished

[7525] — S. 482 — Quashing criminal proceedings — Defamation — *Complaint alleging offence under S. 500 IPC filed by petitioner against 7 accused — Summons issued by Magistrate to all the accused — Magistrate's order challenged by accused-respondents 3 to 6 without impleading accused-respondent 2 as party — Notice under S. 251 given to all the accused — Petition filed under S. 482 for quashing the criminal proceedings and the notice under S. 251 — High Court finding that facts of the case did not disclose the offence of defamation against respondent 2 even taking the allegations in the complaint as correct on its face value and accordingly by its order quashing the proceedings against him — Held, order does not warrant interference of Supreme Court — Constitution of India — Art. 136. Dhanwanti Vaswani (Dr.)* v. *State*, 1991 Supp (2) SCC 329: 1991 SCC (Cri) 1040: AIR 1993 SC 1206.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 12-9-1991]

(11)(xxi) Quashment re defamation allegations *(contd.)*

[7526] — S. 482 — Quashment of criminal proceedings — Prosecution under Ss. 153-A, 499, 500, 509, 292 IPC and Ss. 4 and 6, Indecent Representation of Women (Prohibition) Act, 1986 — *Complaints not making out prima facie case for any of the offences alleged — Criminal proceedings, therefore, quashed — Constitution of India — Arts. 19(1)(a) and 136*

I, a news magazine conducted a survey on the subject of sexual habits of people residing in the bigger cities of India. One of the issues discussed therein was the increasing incidence of premarital sex. Thereafter, the magazine published the views expressed by various persons, including the appellant, a well-known actress. Expressing her personal opinion, she noted the increasing incidence of premarital sex, especially in the context of live-in relationships and called for societal acceptance of the same. Subsequently, *D*, a Tamil daily reproduced the appellant's statement published in the said magazine. It added that in a conversation with its correspondent, the appellant had defended her views and stated: "The persons who are protesting against my interview, are talking about which culture? Is there anyone who does not know about sex in Tamil Nadu? Is there anyone who does not know about AIDS? How many men and women do not have sex before marriage?" The appellant, however, in a legal notice to the editor of the said daily denied the said statement.

Several persons and organisations, particularly functionaries of a political party PMK filed as many as 23 criminal complaints against the appellant for the offences contemplated under Sections 499, 500, 509, 153-A and 292 IPC read with Sections 4 and 6 of the Indecent Representation of Women (Prohibition) Act, 1986. Most of the complaints were filed in various districts of T.N. State while one was filed in M.P.

The appellant then approached Madras High Court under Section 482 CrPC seeking quashment of said proceedings. Taking the view that the questions involved in the complaints required consideration by a trial Judge, the High Court rejected the plea of the appellant. However, the High Court directed all the complaints to be consolidated and tried by *CJM* at *E*. Aggrieved thereby, the appellant filed the present batch of appeals by special leave.

Before the Supreme Court, the appellant contended that: (*i*) the respondent complainants were not "persons aggrieved" within the meaning of Section 199(1) CrPC and could not therefore maintain the complaints; (*ii*) the opinion expressed by the appellant was protected by Article 19(1)(*a*) of the Constitution; (*iii*) the allegations made in the complaints, even if taken on their face value, did not disclose any offence under the provisions specified therein; and (*iv*) the criminal proceedings were instituted in a mala fide manner by workers of a particular political party to vilify the appellant and gain undue political mileage.

The respondents supported the order of the High Court.

Allowing the appeals,

Held :

The Framers of the Constitution recognised the importance of safeguarding the freedom of speech and expression since the free flow of opinions and ideas is essential to sustain the collective life of the citizenry. While an informed citizenry is a precondition for meaningful governance in the political sense, a culture of open dialogue must also be promoted when it comes to societal attitudes. (Para 45)

No doubt, in India, marriage is an important social institution, that there are certain individuals or groups who do not hold the same view. Notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and criminality are not coextensive. (Paras 46 and 50)

If the complainants vehemently disagreed with the appellant's views, then they should have contested her views through the news media or any other public platform. The law should not be used in a manner that has chilling effects on the freedom of speech and expression. Dissemination of news and views for popular consumption is permissible under our constitutional scheme. An expression of opinion in favour of non-dogmatic and non-conventional morality has to be tolerated as the same cannot be a ground to penalise the author. (Paras 47, 50 and 45)

In order to establish the offence under Section 509 IPC it is necessary to show that the modesty of a particular woman or a readily identifiable group of women has been insulted by a spoken word, gesture or physical act. Clearly this offence cannot be made out when the complainants' grievance is with the publication of what the appellant had stated in a written form. (Para 23)

Likewise Section 153-A IPC has no application to the present case since the appellant was not speaking on behalf of one group and the content of her statement was not directed against any particular group either. (Para 23)

References to sex cannot be considered obscene in the legal sense without examining the context of the reference. (Paras 25 and 32)

There are numerous decisions, both from India and foreign countries which mandate that "obscenity" should be gauged with respect to contemporary community standards that reflect the sensibilities as well as the tolerance levels of an average reasonable person. (Para 27)

In the present case, the appellant has merely referred to the increasing incidence of premarital sex and called for its societal acceptance. At no point of time the appellant described the sexual act or said anything that could arouse sexual desires in the mind of a reasonable and prudent reader. Furthermore, the statement has been made in the context of a survey which has touched on numerous aspects relating to the sexual habits of people in big cities. It was published in a news magazine thereby serving the purpose of communicating certain ideas and opinions on the abovementioned subject. In the long run, such communication prompts a dialogue within society wherein people can choose to either defend or question the existing social mores. It is not possible to hold that the statements published as part of the survey were in the nature of obscene communications. (Paras 28 and 24)

The respondents' claim that the appellant's remarks could have the effect of misguiding young people by encouraging them to indulge in premarital sex is a little far-fetched since the appellant had not directed her remarks towards any individual or group in particular. For the sake of argument, even if it were to be assumed that the appellant's statements could encourage some people to engage in premarital sex, no legal injury has been shown since the latter is not an offence. (Para 29)

"Offence" means "an act or instance of offending"; "commit an illegal act" and "illegal" means, "contrary to or forbidden by law". "Offence" has to be read and understood in the context as it has been prescribed under the provisions of Sections 40, 41 and 42 IPC which cover the offences punishable under IPC or under special or local law or as defined under Section 2(*n*) CrPC or Section 3(38) of the General Clauses Act, 1897. (Para 30)

There is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting, with the exception of "adultery" as defined under Section 497 IPC. (Para 31)

Moreover, it is necessary to fully understand the context and the purpose for which references to sex have been made in any given setting. (Paras 32 and 25)

There is no prima facie case of defamation in the present case. There was neither any intent on the part of the appellant to cause harm to the reputation of the complainants as contemplated by Section 499 IPC nor can one discern any actual harm done to their reputation. In short, both the elements i.e. mens rea and actus reus are missing. The appellant's statement published in *I* is a rather general endorsement of premarital sex and her remarks are not directed at any individual or even at a "company or an association or collection of persons". Even in the remarks published in *D* which have been categorically denied by the appellant, there is no direct attack on the reputation of anyone in particular. Instead, the purported remarks are in the nature of rhetorical questions wherein it was asked if people in Tamil Nadu were not aware of the incidence of sex. Even if those remarks are considered in their entirety, nowhere has it been suggested that all women in Tamil Nadu have engaged in premarital sex. (Paras 34 and 35)

The fact that most of the complainants are associated with PMK, a political party does add weight to the suggestion that the impugned complaints had been filed with the intention of gaining undue political mileage. (Para 36)

In respect of the offence of defamation, Section 199 CrPC mandates that the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is aggrieved. This limitation on the power to take cognizance of defamation serves the rational purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrates' Courts. In the given facts of the present case, the complainants cannot be properly described as "persons aggrieved" within the meaning of Section 199(1) CrPC as there was no specific legal injury caused to any of them. (Para 37)

In the present case, the complainants have alleged defamation in respect of imputations against the character of Tamil-speaking women, which could perhaps be viewed as a class of persons. However, the appellant's remarks did not suggest that all women in Tamil Nadu have engaged in premarital sex. Even if it were assumed that the news item carried in *D* caused mental agony to some sections of women in Tamil Nadu, there is no prima facie case for any offence. (Para 43)

(11)(xxi) Quashment re defamation allegations *(contd.)*

Thus, it has to be held that the institution of the numerous criminal complaints against the appellant was done in a mala fide manner. In order to prevent the abuse of the criminal law machinery, it would be appropriate to grant the relief sought by the appellant. In such cases, the proper course for Magistrates is to use their statutory powers to direct an investigation into the allegations before taking cognizance of the offences alleged. It is not the task of the criminal law to punish individuals merely for expressing unpopular views. The threshold for placing reasonable restrictions on the freedom of speech and expression is indeed a very high one and there should be a presumption in favour of the accused in such cases. It is only when the complainants produce materials that support a prima facie case for a statutory offence that Magistrates can proceed to take cognizance of the same. (Para 44)

In conclusion, it is held that the various complaints filed against the appellant do not support or even draw a prima facie case for any of the statutory offences as alleged. Therefore, the impugned judgment and order of the High Court is set aside. (Para 54). *S. Khushboo* v. *Kanniammal*, (2010) 5 SCC 600.

Bench Strength **3**. Coram: *K.G. Balakrishnan*, *C.J.* and *Deepak Verma* and **Dr. B.S. Chauhan**, JJ. [Date of decision: 28-4-2010]

S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574; Ranjit D. Udeshi v. State of Maharashtra, AIR 1965 SC 881: (1965) 2 Cri LJ 8; Samaresh Bose v. Amal Mitra, (1985) 4 SCC 289: 1985 SCC (Cri) 523; Gillick v. West Norfolk and Wisbech Area Health Authority, 1986 AC 112: (1985) 3 WLR 830: (1985) 3 All ER 402 (HL); M.S. Jayaraj v. Commr. of Excise, (2000) 7 SCC 552, followed

Proprietary Articles Trade Assn. v. Attorney General of Canada, AIR 1931 PC 94; Thomas Dana v. State of Punjab, AIR 1959 SC 375: 1959 Cri LJ 392; Jawala Ram v. State of Pepsu, AIR 1962 SC 1246: (1962) 2 Cri LJ 303; Standard Chartered Bank v. Directorate of Enforcement, (2006) 4 SCC 278: (2006) 2 SCC (Cri) 221; Lata Singh v. State of U.P., (2006) 5 SCC 475: (2006) 2 SCC (Cri) 478, relied on

G. Narasimhan v. T.V. Chokkappa, (1972) 2 SCC 680: 1972 SCC (Cri) 777; Knupffer v. London Express Newspaper Ltd., 1944 AC 116: (1944) 1 All ER 495 (HL), considered

[7527] — Ss. 482, 200 and 196 — Quashing of criminal complaint — Defamation — Private complaint alleging commission of offence under S. 500 IPC by appellant — *Magistrate prima facie coming to conclusion that allegations in the complaint might come within the definition of 'defamation' under S. 499 IPC and could be taken cognizance of — Held, at this stage Supreme Court's interference by quashing the complaint not called for — Penal Code, 1860, S. 500 — Constitution of India — Arts. 226 and 136*

It is not the province of the Supreme Court to appreciate at this stage the evidence or scope of and meaning of the statement. Certain allegations came to be made but whether these allegations do constitute defamation is a matter to be considered by the Magistrate at a later stage. At this stage, the Supreme Court cannot embark upon weighing the evidence and come to any conclusion to hold, whether or not the allegations made in the complaint constitute an offence punishable under Section 500. It is the settled legal position that a court has to read the complaint as a whole and find out whether allegations disclosed constitute an offence under Section 499 triable by the Magistrate. The Magistrate prima facie came to the conclusion that the allegations might come within the definition of 'defamation' under Section 499 IPC and could be taken cognizance of. But these are the facts to be established at the trial. The case set up by the appellant are either defences open to be taken or other steps of framing a charge at the trial at whatever stage known to law. Prima facie at this stage it is not a case warranting quashing of the complaint. *Shatrughna Prasad Sinha* v. *Rajbhau Surajmal Rathi*, (1996) 6 SCC 263: 1996 SCC (Cri) 1310.

Bench Strength **3**. Coram: *K. Ramaswamy*, *Faizan Uddin* and *G.B. Pattanaik*, JJ. [Date of decision: 10-9-1996]

[7528] — S. 482 — Miscarriage of justice — Factual error — Alleged harassment of Accused 6 by her husband and father-in-law published in newspaper at instance of Accused 6 and her father (Accused 5) — *Criminal complaint for defamation filed against editor, publisher, reporter, newspaper (Accused 1 to 4 respectively) and Accused 5 and 6 by appellant (father-in-law of Accused 6) and husband of Accused 6 (who committed suicide during pendency of complaint) — Subsequently at request of appellant proceedings against Accused 6 dropped — High Court by impugned judgment quashing complaint against Accused 1 to 4 on ground that since proceedings against principal tortfeasors Accused 5 and 6 had been dropped, whole genesis of complaint had vanished — However, factually proceedings were dropped only against Accused 6 — Held, inadvertent factual error about dropping of proceedings against Accused 5 had influenced the Court to great extent, resulting in miscarriage of justice — Hence, matter remanded to High Court for consideration afresh — Penal Code, 1860, S. 499 r/w Ss. 107/34* (Paras 4, 7, 11 and 12). *S.D. Kathuria* v. *N. Ravi*, (2010) 13 SCC 771.

Bench Strength **2**. Coram: *D.K. Jain* and *R.M. Lodha*, JJ. [Date of decision: 6-3-2009]

[7529] — Ss. 482, 228 and 240 — Quashing of proceeding — Application for — Rejection of, by High Court — Propriety — *High Court not interfering with the matter as the same was pending at the stage of charge — Accused challenging High Court's order by contending that taking into consideration the allegations as made in the complaint, no offence under S. 499 IPC was made out — Matter requiring detailed consideration — It was desirable that High Court should hear the parties and pronounce a reasoned order — Hence, matter remitted to High Court for disposal afresh — Penal Code, 1860, S. 499* (Para 4). *Terumo Penpol Ltd.* v. *NCT of Delhi*, (2005) 10 SCC 273: 2005 SCC (Cri) 1513.

Bench Strength **2**. Coram: *B.P. Singh* and *S.B. Sinha*, JJ. [Date of decision: 6-4-2005]

[7530] — Ss. 482 and 200 first proviso, 190(1)(a) & 204 — Private complaint in writing before Magistrate — Quashing of — Complaint must disclose all necessary facts constituting the offence alleged before taking cognizance of the offence — *Complaint alleging that appellant in an interview published in a magazine made statements outraging religious feeling of Marwari community and alleging that the members of that community were not a class belonging to India, having no faith and love towards India and being traitors and enemies of India — Magistrate taking cognizance and issuing notice to appellant for appearance — Writ petition preferred by appellant before High Court — High Court quashing the complaint as not constituting offence under S. 295-A IPC and no appeal filed against the same — However, High Court also observing that prima facie the allegations constituted an offence under S. 500 IPC — Held, allegations do not disclose offence under S. 500 and hence Magistrate not justified in issuing process against the appellant — Penal Code, 1860, Ss. 295-A and 500. Shatrughna Prasad Sinha* v. *Rajbhau Surajmal Rathi*, (1996) 6 SCC 263: 1996 SCC (Cri) 1310.

Bench Strength **3**. Coram: *K. Ramaswamy*, *Faizan Uddin* and *G.B. Pattanaik*, JJ. [Date of decision: 10-9-1996]

[7531] — Ss. 482 and 204 — Quashing of order issuing process on complaint — Applicability of Exception 8 to S. 499 IPC — *Allegation in complaint that the accused persons made a complaint to the Treasury Officer containing false imputation to the effect that the complainant had come to the office in a drunken state and abused the Treasury Officer — Magistrate directing the Treasury Officer to hold enquiry and submit a report — Report of the Treasury Officer indicating that a departmental enquiry had been initiated and the complainant was found guilty — Held, in the circumstances Exception 8 to S. 499 attracted — No case of defamation made out — Order of issuance of process and the proceeding itself quashed — Penal Code, 1860, Ss. 500 and 499 Exception 8. Rajendra Kumar Sitaram Pande* v. *Uttam*, (1999) 3 SCC 134: 1999 SCC (Cri) 393: AIR 1999 SC 1028: 1999 Cri LJ 1620.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *S. Rajendra Babu*, JJ. [Date of decision: 11-2-1999]

[7532] — S. 482 — Inherent powers of High Court — Application for quashing complaint petition filed by respondent against appellant under S. 500 IPC dismissed by High Court — Propriety — *FIR registered on basis of complaint made by appellant that the respondent had advised one N and one* **K** *to damage his nine coconut trees by pouring acid mixed with kerosene on them — However, no charge-sheet was filed within six months, nor extension of time was sought for conducting further investigation — Hence, closure of proceedings ordered by Magistrate — However, said allegations published in various newspapers — Hence, respondent filing private complaint alleging defamation under S. 500 IPC — Application by appellant for quashing said complaint dismissed by impugned order — Held, allegations made in the said complaint petition, make out a case for proceeding against the appellant under S. 500 IPC as thereby imputation concerning the respondent had been made intending to harm or knowing or having reason to believe that such imputation would harm his reputation — For the purpose of bringing his case within the purview of Eighth and Ninth Exception appended to S. 499 IPC, it would be necessary for the appellant to prove good faith for the protection of the interests of the person making it or of any other person or for the public good — Well settled that those who plead exception must prove it — Hence, burden of proof that his action was bona fide would, thus, be on the appellant alone — At that stage, however, it would have been premature for High Court to consider the materials placed by the appellant before it so as to arrive at a definite conclusion that there was no element of bad faith on the part of the appellant in making the said complaint before the police authorities — Question as to whether a totally false complaint has been made as against the respondent or not as he was not even in India prior to the date of occurrence, is required to be gone into by the learned trial Judge — No interference with impugned order called for — Penal Code, 1860, Ss. 499 and 500* (Paras 2, 18 to 21, 23 and 24). *M.A. Rumugam* v. *Kittu*, (2009) 1 SCC 101.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 7-11-2008]

Rajendra Kumar Sitaram Pande v. Uttam, (1999) 3 SCC 134: 1999 SCC (Cri) 393, considered

(11)(xxi) Quashment re defamation allegations *(contd.)*

[7533] — Ss. 482, 436 and 81 — Bailable offence — Forfeiture/Cancellation of bail granted by Magistrate under S. 482 on ground of violation of principles of natural justice — Bail cancelled on ground that complainant's right of being heard not complied with by Magistrate while granting bail — Sustainability — *Magistrate in an alleged offence under Ss. 399 and 500 IPC for defamatory remarks made by accused against complainant on a TV channel granting bail the very same day by noticing that offences alleged to have been committed were bailable — High Court cancelling bail on the ground that opportunity of hearing was not given to the complainant, held, unsustainable — Penal Code, 1860, Ss. 399 and 500*

The respondent filed a complaint case against the appellant-accused on the ground that the appellant-accused gave a defamatory interview against him on a TV channel. When the appellant-accused approached the Magistrate for grant of bail, the same was granted the very same day without hearing the respondent complainant by noticing that the offences alleged to have been committed were bailable offences under Sections 499 and 500 IPC. The High Court in a Section 482 CrPC petition filed by the respondent complainant cancelled the bail of the appellant-accused on the ground that the principles of natural justice had not been followed in as much as the complainant was not heard on the issue of grant of bail. Aggrieved thereagainst, the appellant-accused invoked the remedy under Article 136 of the Constitution of India.

Allowing the appeal,

Held :

The bail granted to the appellant for alleged commission of bailable offence could not have been cancelled by the High Court on the ground that the respondent complainant was not heard by the Magistrate while granting bail and that the principles of natural justice were violated. Principles of natural justice are not a "mantra" to be applied in a vacuum in all cases. The question as to what extent, the principles of natural justice are required to be complied with, will depend upon the facts of the case. They are not required to be complied with when it will lead to an empty formality. Therefore, the order of the High Court cancelling the bail granted to the appellant is hereby set aside and the order passed by the Magistrate is restored. (Paras 19 to 21)

The right to claim bail granted by Section 436 CrPC in a bailable offence is an absolute and indefeasible right. In bailable offences there is no question of discretion in granting bail as the words of Section 436 are imperative. As soon as it appears that the accused person is prepared to give bail, the police officer or the court before whom he offers to give bail, is bound to release him on such terms as to bail as may appear to the officer or the court to be reasonable. It would even be open to the officer or the court to discharge such person on his executing a bond as provided in Section 436 instead of taking bail from him. (Paras 10 and 9)

The only choice available to the officer or the court is as between taking a simple recognizance of the accused and demanding security with surety. The persons contemplated by Section 436 cannot be taken into custody unless they are unable or willing (*sic* unwilling) to offer bail or to execute personal bonds. There is no manner of doubt that bail in a bailable offence can be claimed by the accused as of right and the officer or the court, as the case may be, is bound to release the accused on bail if he is willing to abide by reasonable conditions which may be imposed on him. (Para 10). *Rasiklal* v. *Kishore*, (2009) 4 SCC 446.

Bench Strength **2**. Coram: *R.V. Raveendran* and **J.M. Panchal**, JJ. [Date of decision: 20-2-2009]

State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364: 1996 SCC (L&S) 717; Karnataka SRTC v. S.G. Kotturappa, (2005) 3 SCC 409: 2005 SCC (L&S) 484, relied on

(xxii) Quashment re taxation offences

[7534] — S. 482 — Prosecution under S. 276-C, IT Act — Quashment of, on grant of immunity by Settlement Commission — *AY 1988-89 — Assessee filing settlement application prior to launching of prosecution under S. 276-C — Assessee approaching High Court under S. 482 CrPC seeking quashment of prosecution in view of the pendency of the settlement application — In the absence of any order of Settlement Commission granting immunity to the assessee, High Court refusing relief — Assessee approaching Supreme Court and by then Settlement Commission granting immunity to the assessee against prosecution — In such circumstances, the view taken by High Court at that stage, held, justified — But, after the grant of immunity by Settlement Commission, prosecution under S. 276-C, held, liable to be quashed — However, further held, in case of failure to comply with the conditions of the grant of immunity the assessee would render himself liable as if no immunity had been granted — Income Tax Act, 1961, Ss. 276-C, 245-C, 245-F and 245-H(1) & (1-A)*

On 27-5-1991, the appellant firm filed an application for settlement in terms of Section 245-C in respect of AY 1988-89. Subsequently, on 27-2-1992, prosecution was launched against it for alleged concealment of income and wilful attempt to evade tax, and for making false statement on verification in terms of Section 276-C, IT Act. Cognizance was taken by the Special Court, Economic Offences. The appellant approached the Patna High Court under Section 482 CrPC contending that the criminal proceedings should not continue as settlement applications were pending before the Settlement Commission. However, in the absence of any order of the Settlement Commission granting any immunity, the High Court refused relief. The appellant then filed the instant appeals. The Settlement Commission meanwhile passed an order dated 20-9-1999 granting immunity to the appellant from prosecution under the IT Act and the Penal Code. The appellant contended that the criminal proceedings could not be continued. On the other hand, the respondent State contended that in case of a conditional order of the Commission unless the conditions stipulated were fulfilled, the proceedings ought to be continued.

Allowing the appeals,

Held :

The view taken by the High Court in declining to quash the proceedings on the ground that proceedings were pending before the Commission is on terra firma. But the position had changed as after the High Court's judgment final orders had been passed by the Commission according immunity on the application presented, apparently before the institution of the proceedings for prosecution. (Para 8). *Ashirvad Enterprises* v. *State of Bihar*, (2004) 3 SCC 624: (2004) 168 ELT 433: (2004) 266 ITR 578.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 22-3-2004]

Ashirvad Enterprises v. State of Bihar, (1998) 150 CTR 458 (Pat), partly reversed

P. Jayappan v. S.K. Perumal, 1984 Supp SCC 437: 1985 SCC (Tax) 7, relied on

[7535] — S. 482 — Tax evasion alleged — Summons issued by magistrate challenged in petition before High Court — *High Court finding that prima facie case made out against the assessee, hence trial to proceed — On facts, appeal dismissed by Supreme Court — Income Tax Act, 1961, Ss. 35(2-A), 276-C(1) Explanation (iv) and 278 — Penal Code, 1860, Ss. 120-B, 193 and 196. General Sales (P) Ltd.* v. *Gopal Mukherjee, ITO*, 1987 Supp SCC 737: (1987) 166 ITR 87.

Bench Strength **3**. Coram: *R.S. Pathak, C.J.* and *Ranganath Misra* and *M.M. Dutt*, JJ. [Date of decision: 20-2-1987]

General Sales (P) Ltd. v. ITO, (1987) 166 ITR 77 (Del), affirmed

[7536] — S. 482 — Continuation of criminal proceedings even after order setting aside levy of excise duty and penalty had attained finality — Sustainability — *In this case, since respondent Revenue did not take a contrary stand and also expressed the intention of not pressing for prosecution, Supreme Court quashed criminal complaint against appellant* (Paras 7 and 8). *J.P. Tobacco Products (P) Ltd.* v. *CCE*, (2008) 17 SCC 488: (2008) 229 ELT 325.

Bench Strength **2**. Coram: *Ashok Bhan* and *V.S. Sirpurkar*, JJ. [Date of decision: 5-8-2008]

[7537] — S. 482 — Abuse of the process of court — Power of High Court to prevent — Immunity from prosecution granted under S. 91, Kar Vivad Scheme — Scope — *Per Ar. Lakshmanan, J.*: Held, protects from proceeding under any and all laws and not only from the proceedings under the taxing statutes — *In the present case, Gujarat Cancer Society (GCS) importing certain machines availing of duty exemption under Customs Noti. Nos. 279/83-Cus. and 64/88-Cus. on the basis of exemption certificate issued in the name of Gujarat Cancer and Research Institute (GCRI) on the bona fide belief that since GCS funded all the activities of GCRI and all the operations of GCS were carried out through GCRI, the same was permissible — However, Collector of Customs holding otherwise and raising a demand but in view of charitable and philanthropic activities of GCS, not recommending any prosecution and imposing only a token redemption fine of Re 1 — CEGAT affirming Collector's decision and GCS filing appeal before Supreme Court — KVSS, 1998 coming into effect and GCS making a declaration thereunder — Designated authority determining the liability to duty — GCS withdrawing its appeal from Supreme Court — Certificate of full and final settlement issued granting to GCS immunity from prosecution for any offence under Customs Act or from imposition of penalty thereunder — In such circumstances, prosecution of office-bearers of GCS under Ss. 120-B/420 IPC on the ground of cheating the Government by evasion of customs duty and violation of the "actual-user" condition as per import-export policy, held, not maintainable — Further held, continuance of such prosecution would amount to subjecting the accused persons to double jeopardy after honourable acquittal by Collector of Customs — More so, when the accused persons were senior citizens aged 92 and 70 years — Further held, in penal law there is no vicarious liability unless provided in the statute — On facts held, the ingredients of Ss. 120-B, 420 and 415 were not made out — Further held, such offences, if any,*

(11)(xxii) Quashment re taxation offences *(contd.)*

stood compounded by virtue of the settlement — Hence, the process issued by the Magistrate was liable to be quashed under S. 482 CrPC and Art. 227 — Per Brijesh Kumar, J.: concurring in view of S. 95(iii), subsequent to the settlement, the Government cannot turn around and get the declarant convicted — More so, when under S. 90(4) the declarant was obliged to withdraw his appeal from the Supreme Court which might have affected the criminal proceedings too on merits — Hence, the prosecution would amount to abuse of the process of court — Per curiam: Therefore, the proceedings under S. 420 read with S. 120 IPC are quashed — Penal Code, 1860, Ss. 420, 415 and 120-B — Ingredients of offences under, on facts, held, not made out — Constitution of India, Arts. 227 and 20(2) — Kar Vivad Samadhan Scheme, 1998, Ss. 91, 90(2), (3) & (4), 95(ii) & (iii), 88, 89 and 87(h) & (j)

The Gujarat Cancer Society (for short "GCS") imported MRI and lithotripsy machines availing of duty exemption under Notifications Nos. 279/83-Cus. and 64/88-Cus. on the basis of exemption certificate issued in the name of Gujarat Cancer and Research Institute (for short "GCRI"). GCS did so on a bona fide premise that since all the activities of GCRI were funded by GCS and all the operations of GCS were carried out through GCRI and that they were akin to holding a subsidiary company, the same was permissible. Later, the Customs Authority raided the premises of GCRI and seized the machines and necessary paperwork on the ground that the exemption certificate was issued in the name of GCRI and not in the name of GCS and thus GCS was not entitled to exemption and was, therefore, liable to pay customs duty. The machines were immediately released on giving the usual undertaking. After issuing a show-cause notice on 11-10-1991 under the proviso to Section 28(1), Customs Act, the Collector of Customs held GCS to be liable to pay the customs duty and not entitled to exemption. Therefore, he raised a demand in a certain sum against GCS. However, considering the charitable and philanthropic activities of GCS, no prosecution was recommended and only a token redemption fine of Re 1 was imposed. Personal penalty under Section 112(*a*), Customs Act was also imposed on certain parties. After unsuccessfully approaching CEGAT, GCS filed an appeal before the Supreme Court. During the pendency of the appeal, the Kar Vivad Samadhan Scheme, 1998 (for short "KVSS") came into effect. The case of GCS was settled under KVSS and the tax liability was determined on 10-2-1999 by the Designated Authority. On 16-3-1999, the appellants withdrew the appeal from the Supreme Court. On 19-7-1999, a certificate for full and final settlement of tax arrears in respect of the KVSS, 1998 was issued to GCS. The said certificate, *inter alia*, certified the receipt of payment from GCS towards full and final settlement of tax arrears determined in the order dated 10-2-1999 and further granted immunity to GCS from any proceedings for prosecution for any offence under the Customs Act, 1962 or from the imposition of penalty under the said enactment, in respect of the matters covered in the declaration made by GCS. However, on 6-1-1999, consequent to an FIR lodged by the Joint Secretary, Ministry of Health, Government of India, the respondent CBI registered a case alleging that the appellants herein, who were office-bearers of GCS, in conspiracy with the Director of GCRI, Secretary of GCS and certain others had cheated the Government of India in terms of evasion of customs duty and had violated the provisions of "actual-user" condition as per the import-export policy during the year 1987-88. A charge-sheet was filed under Sections 120-B and 420 IPC. The trial court took cognizance and issued process. The appellants filed petitions under Section 482 CrPC read with Article 227 before the Delhi High Court seeking quashment of the FIR. The High Court dismissed the said petitions. Therefore, the appellants filed the instant two appeals by way of SLPs. Opposing the appeals and supporting the High Court's order as well as the issue of process by the Magistrate, the respondent CBI contended that the charges of cheating and other offences under IPC against the appellants were supported by documentary evidence. That it was not a civil dispute but a case of commission of criminal offences. That subsequent payment of duty could not be a ground for quashing criminal proceedings or absolving the accused persons of their criminal liability. That the settlement under KVSS, 1998 protected the individual only from prosecution under the taxing statute and not from criminal proceedings under the Penal Code. That the criminal proceedings could not be quashed merely on account of the fact that customs duty payment had been settled. That the machines were liable to confiscation under Section 111(*o*), Customs Act.

Allowing the appeals,

Held :

Per Ar. Lakshmanan, J.

The grant of immunity by the Designated Authority (KVSS-98) from instituting any proceeding for prosecution for any offence under the Customs Act, 1962, or from the imposition of penalty under the said enactment, in respect of matters covered in the declaration made by the declarant, the decision of the Collector not to recommend prosecution and to impose only a token fine of Re 1 only show that the Customs Authorities were satisfied that there was no intention to evade the customs duty. GCS is immune from any criminal proceedings pursuant to the certificate issued under KVSS. The appellants are being prosecuted in their capacity as office-bearers of GCS. As the customs duty has already been paid, the Central Government has not suffered any financial loss. Moreover, as per KVSS, 1998, whoever is granted the benefit under the said Scheme is granted immunity from prosecution for any offence under the Customs Act, 1962 including the offence of evasion of duty. In the circumstances, the complaint filed against the appellants is unsustainable. (Paras 23 and 24)

From the case of *Sushila Rani*, (2002) 2 SCC 697, it is clear that if an assessee takes the option under KVSS, he obtains immediate immunity under any proceeding under any and all laws in force. As such the present proceedings initiated under Section 120-B read with Section 420 IPC are bad and ought to have been quashed with immediate effect. (Para 27)

Moreover, in the present case, the alleged criminal liability stands compounded on a settlement with respect to the civil issues and, therefore, the FIR was erroneously issued and was totally unwarranted. From the judgment in *Duncans Agro Industries Ltd. case*, (1996) 5 SCC 591, the proposition that follows is that KVSS, 1998 was a voluntary scheme whereby if the disputed demand was settled by the authority and pending proceedings were withdrawn by the importer, the balance demand against the importer shall be dropped and the importer shall be immune from penal proceedings under any law in force. Therefore, the respondent's argument that KVSS, 1998 did not absolve the appellants of criminal liability under IPC cannot be sustained. The continuance of the proceedings in the instant case would only tantamount to driving the present appellants to double jeopardy when they had been honourably exonerated by the Collector of Customs, and further, GCS of which one of the appellants is the General Secretary in which capacity he is accused in the present case was granted amnesty under KVSS, 1998. The present case does not warrant subjecting a citizen especially senior citizens of the age of 92 and 70 years to fresh investigation and prosecution on an incident or fact situation giving rise to offence under both the Customs Act and IPC when the matter has already been settled. (Para 29)

Under the penal law, there is no concept of vicarious liability unless the statute covers the same within its ambit. In the instant case, under the said law which prevails in the field i.e. the Customs Act, 1962 the appellants have been wholly discharged and GCS granted immunity from prosecution. It is a well-established principle of law that the matter which has been adjudicated and settled need not be dragged into the criminal courts unless and until the act of the appellants could have been described as culpable. The true fact and import of KVSS, 1998 is that once the said Scheme is availed of and all the formalities complied with including the payment of the duty, the immunity granted under the provisions of the Customs Act, 1962 also extends to such offences that may prima facie be made out on identical allegations i.e. of evasion of customs duty and violation of any notification issued under the said Act. (Para 30)

In the present case, there is no prima facie case made out in respect of the alleged offence under Section 120-B read with Section 420 IPC and, therefore, the charge-sheet and the process issued thereunder has to be quashed. To bring home the charge of conspiracy within the ambit of Section 120-B IPC, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. It is difficult to establish conspiracy by direct evidence. (Paras 31 and 32)

The ingredients of Section 420 IPC are also not made out. There is no reason as to why the appellants must be made to undergo the agony of a criminal trial. (Para 33)

To hold a person guilty of cheating under Section 415 IPC, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise with an intention to retain the property. As the customs duty was paid by GCS, there was no fraudulent or dishonest intention on the part of GCS or its office-bearers to retain the property. Moreover, there was no inducing on the part of GCS or its office-bearers intentionally to retain the property since customs duty had been paid by GCS and, therefore the ingredients of the offence of cheating are missing for issuing the process against the appellants and, therefore, the same is liable to be quashed and set aside. (Paras 34 and 35)

Section 111(*o*) of the Customs Act, 1962 is not attracted in the present case. The subsequent proceedings initiated for confiscation of the goods is of no relevance nor does it retrospectively render the import illegal. (Para 37)

(11)(xxii) Quashment re taxation offences *(contd.)*

It is settled law that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his failure to keep promise subsequently, such a culpable intention right at the beginning cannot be presumed. The records show that the exemption certificate contained necessary conditions which were required to be complied with after importation of the machine. Since GCS could not comply with it, it rightly paid the necessary duties without taking advantage of the exemption certificate. The conduct of GCS clearly indicates that there was no fraudulent or dishonest intention of either GCS or the appellants in their capacities as office-bearers *right at the time of making application for exemption*. Therefore, the question of committing an offence under Section 420 IPC does not arise. There is no allegation in the first information report or the charge-sheet indicating expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellants right from the time of making the promise or misrepresentation. Nothing has been said on what those misrepresentations were and how the Ministry of Health was duped and what were the roles played by the appellants in the alleged offence. The appellants could not be attributed any mens rea of evasion of customs duty or cheating the Government of India as the Cancer Society is a non-profit organisation and, therefore, the allegations against the appellants levelled by the prosecution are unsustainable. The KVSS certificate and the law laid down by the Supreme Court clearly absolve the appellants herein of all charges and allegations under any other law once the duty so demanded has been paid and the alleged offence has been compounded. It is also settled law that once a civil case has been compromised and the alleged offence has been compounded, to continue the criminal proceedings thereafter would be an abuse of the judicial process. (Para 40)

Per Brijesh Kumar, J. (concurring)

On the one hand final settlement was made after determining the tax liability, as postulated in Section 95(*iii*), KVSS, 1998, that the appellants were neither convicted nor criminal proceedings were pending, relating to any offence under Chapter IX or XVII IPC, yet the criminal proceedings are being prosecuted which is apparently against the very spirit of KVSS. In view of the condition precedent under Section 95(*iii*) for settlement, when on that basis a settlement is brought about, it does not mean that later on, one could turn around and get the declarant convicted for a criminal offence too. More so, when in view of Section 90(4) of the Scheme the declarant is obliged to withdraw an appeal or proceedings regarding tax liability pending before the High Court or the Supreme Court, which had also been done in the present case. The declarant could not be dragged and chased in criminal proceedings after closing the other opening, making it a dead end. It is highly unreasonable and arbitrary to do so and initiation and continuance of such proceedings lack bona fides. (Para 44)

Therefore, it has to be inferred that the position as it stood, in regard to the criminal prosecution and conviction on the date the declaration was filed, as conditions precedent to settlement under the Scheme, would also stand finalized on full and final settlement of the matter under the Scheme. Later on, the declarant could not be or continued to be subjected to criminal prosecution to alter the position as it stood on the relevant date of the submission of declaration. The appellants virtually foreclosed their right to further pursue the proceedings before the authorities or courts of law challenging the legality, validity or the tax liability in terms of the Scheme. Undoubtedly, if the appellants' appeal which was pending in the Supreme Court had been allowed it might have affected the criminal proceeding too on merits. In certain circumstances, it could be put up as a defence by the declarant, in the criminal case but in terms of the Scheme he was bound to withdraw his appeal. The criminal prosecution could not be allowed to proceed by putting an end to a possible defence, beforehand. It certainly amounts to abuse of the process of law. (Para 45)

Per curiam

The FIR in question and the proceedings initiated in pursuance thereto against the appellants in the Court of Chief Metropolitan Magistrate under Sections 120-B and 420 IPC are quashed. (Para 46). *Hira Lal Hari Lal Bhagwati* v. *CBI*, (2003) 5 SCC 257: 2003 SCC (Cri) 1121: AIR 2003 SC 2545: (2003) 104 DLT 699: 2003 Cri LJ 3041: (2003) 155 ELT 433: (2003) 262 ITR 466.

Bench Strength **2**. Coram: **Brijesh Kumar**[2] and **Dr. AR. Lakshmanan**[1], JJ. [Date of decision: 2-5-2003]

Sushila Rani v. CIT, (2002) 2 SCC 697; CBI v. Duncans Agro Industries Ltd., (1996) 5 SCC 591: 1996 SCC (Cri) 1045; Union of India v. Sampat Raj Dugar, (1992) 2 SCC 66, followed

G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513, relied on

***Distinguished on facts** in M. Natarajan v. State, (2008) 8 SCC 413*

***Held limited** in M. Natarajan v. State, (2008) 8 SCC 413*

[7538] — S. 482 — Quashment — Relevant considerations — Preventing abuse of process of court or securing ends of justice — Nature of dispute — Quashment of proceedings relating to TDS — *Where proceeding is of civil nature which cannot be adjudicated by criminal court, High Court would be justified in exercising its inherent jurisdiction and quashing the same — High Court erred in refusing to exercise its jurisdiction under S. 482 and passing a cryptic order without assigning any reasons therefor when complaint did not disclose any offence of criminal nature — In face of assertion made by appellants that deduction towards income tax were made from salaries of all employees liable to pay the same in view of statutory provisions of IT Act, appropriate remedy for respondent was to approach authority/officer concerned — Moreover, report of SI had indicated that matter in issue was civil in nature — Proceedings against appellants quashed — Penal Code, 1860, Ss. 406/120-B — Income Tax Act, 1961, Ss. 192, 200, 206, 271-C, 276-B & 276-BB*

A private complaint was filed by the respondent before ACJM under Sections 461/468/406 read with Section 120-B IPC against the appellants alleging discrimination by unduly deducting Rs 1640 p.m. from the monthly salary as income tax and a further wrongful deduction of Rs 3050 on account of cooperative loan issued by the appellants/Company. It was also stated in the complaint that the amount so deducted was not deposited with the Income Tax Authority and should be refunded back. The ACJM directed SI to conduct an inquiry into the allegations made in the complaint. On 30-4-2004, the appellants informed that the amount of income tax deducted in consonance with Section 192 of the Income Tax Act being deposited in due course as tax to the credit of the respondent employee in terms of Section 199 of the Income Tax Act as uniformly done in respect of every employee and also produced Form 16 of the respondent for the period from 1-4-2003 to 31-3-2004. The report submitted by SI showed that complaint in issue was civil in nature. However, JM issued summons against the appellants for an offence under Sections 406/120-B of the Penal Code. In response to the summons, the appellants made an application under Section 205 of the Code before the Judicial Magistrate which was rejected. Subsequently, vide order dated 12-9-2005, the Judicial Magistrate issued warrant of arrest against the appellants.

The appellant's application under Section 482 CrPC for quashing the complaint and order dated 12-9-2005 was dismissed by the impugned judgment. Hence, the present appeal.

Allowing the appeal,

Held :

In the complaint, the respondent mentioned about the filing of a writ petition in 1991 before the High Court of Calcutta and the order passed therein in 2003. He also referred to his contempt petition before the High Court. He alleged that due to the direction of the High Court, which was issued at his instance, the officers entered into a criminal conspiracy and with a view to pressurise him for withdrawing the said contempt, started threatening him and illegally deducting Rs 1640 per month from his monthly salary as income tax though he did not fall within taxable income category. It was also pointed out that a sum of Rs 3050 had been deducted from his salary illegally on account of cooperative loan although, in the previous month, the deduction was only to the extent of Rs 50. (Paras 10 to 13)

A perusal of Sections 192, 200, 206, 271, 276-B and 276-BB of the Income Tax Act, makes it clear that it is obligatory on the part of the persons responsible for paying any income chargeable under the head "salaries", at the time of payment, to deduct income tax computed on the basis of the rates in force for the financial year on the estimated income of the assessee and pay the same to the authority concerned. They also make it clear that on failure to deduct tax at source they shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such persons failed to deduct or pay. They also show that failure to pay tax to the credit of the Central Government in certain cases or pay the tax collected at source under Section 276-BB shall be punishable with imprisonment. (Para 23)

In the case on hand, it is the categorical stand of the appellant management that the amount of tax that has been deducted from the respondent's salary as TDS under the head "salaries" in terms of Section 192 is uniformly done in respect of each and every employee of the Company and the amount so deducted is deposited to the credit of the employees including the respondent in terms of Section 199. They also produced a copy of Form 16 being the certificate under Section 203 of the Income Tax Act, 1961 for the tax deducted at source from the income of the respondent. (Para 24)

The JM had forwarded the complaint to SI for conducting an inquiry who had concluded that "the matter is civil in nature" and forwarded the same to the Additional CJM with a request to clarify the same. In spite of that the ACJM after recording stand of complainant had found that there was sufficient ground for proceeding against accused. It is

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not clear on what grounds ACJM had found so. From the materials placed, particularly, the contents of the complaint, relevant statutory provisions of the Income Tax Act, report of the SI, the complaint does not disclose any case to proceed against the accused persons as arrived at by the Additional CJM. Even if the respondent had some grievance with the appellants about non-promotion, direction of the High Court, pendency of contempt, etc. it is not a case for criminal prosecution. If he is very much interested to vindicate his grievance, the respondent could have very well approached the officer concerned of IISCO or the Income Tax Authority concerned. Though in the complaint, it is stated that the respondent had sent a notice under registered post with acknowledgment due on 17-11-2003, admittedly, no such proof had been placed before the Court. In fact, the appellants stoutly denied the receipt of such a notice. (Paras 26 and 27)

In spite of all the details and materials since the Additional CJM issued summons, the appellants approached the High Court under Section 482 of the Code for quashing the same. The High Court, by the impugned order, without adverting to any of the abovementioned relevant materials passed a cryptic order refusing to exercise its inherent jurisdiction which is unsustainable in law. (Para 28). *Rajeswar Tiwari* v. *Nanda Kishore Roy*, (2010) 8 SCC 442.

Bench Strength 2. Coram: **P. Sathasivam** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 19-8-2010]

Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Sardar Trilok Singh v. Satya Deo Tripathi, (1979) 4 SCC 396: 1979 SCC (Cri) 987; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Alpic Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513: 2001 SCC (Cri) 565; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188, considered and relied on

[7539] — S. 482 — Quashing of criminal proceedings — Finding of Income Tax Appellate Tribunal conclusive — *Held, prosecution cannot be sustained. G.L. Didwania* v. *ITO*, 1995 Supp (2) SCC 724.

Bench Strength 2. Coram: *K. Jayachandra Reddy* and *G.N. Ray*, JJ. [Date of decision: 24-11-1993]

[7540] — Ss. 482, 190, 228, 240 & 246 — Quashing of criminal proceedings — Relevant considerations — Consideration of the relevant statute to decide whether it provided complete immunity to the accused from prosecution — Permissibility of — *Kar Vivad Samadhan Scheme, 1998, S. 91 [of Finance (No. 2) Act, 1998]*

In the present case, the High Court came to the conclusion that it was permissible to look into the Kar Vivad Samadhan Scheme (KVSS), 1998 (which granted immunity from prosecution for any offence under any direct/indirect tax enactment on settlement of tax dues) to decide as to whether the present prosecution was legally launched or not and could continue or not. The Public Prosecutor argued that for the purposes of framing charges under the provisions of CrPC what could be seen was the material produced by the prosecution in charge-sheet and no other material. Therefore, the High Court could not have looked into the KVSS, 1998.

Held :

The High Court was right in examining the KVSS, 1998 to decide whether it provided complete immunity from the prosecution since that was the mainstay of the appellants' attack against the prosecution. (Para 17). *M. Natarajan* v. *State*, (2008) 8 SCC 413: (2008) 3 SCC (Cri) 507: (2008) 226 ELT 679.

Bench Strength 2. Coram: *P.P. Naolekar* and **V.S. Sirpurkar**, JJ. [Date of decision: 7-5-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

(xxiii) Quashment/stay re ecological offences/environmental matters

[7541] — S. 482 — Casual approach in respect of offences relating to forests, deprecated — Provisions of the Forest Act should be strictly complied with — Generally the seized forest produce and the vehicle, boat, tools etc. used in commission of forest offence should not be released — Even if court is inclined to release the same, the authorised officer must specify reasons therefor and must insist on furnishing of bank guarantee as the minimum condition — *Forest produce transported in violation of provisions of the Act — Vehicle used in connection with the transportation along with the forest produce seized — Vehicle released by authorised officer subject to certain conditions including furnishing of bank guarantee — Petition filed under S. 482 CrPC for quashing of the order of the authorised officer and unconditional release of the vehicle — Condition regarding bank guarantee modified by High Court and the petitioner-respondent instead directed to furnish two solvent sureties to the extent of Rs 1,50,000 each for the purpose of getting interim custody of the vehicle — Held, High Court adopted a casual approach and its order was contrary to law — Karnataka Forest Act, 1963 (5 of 1964), Ss. 71-A, 71-C, 71-G, 62 & 2(7)*

The provisions of the Act are required to be strictly complied with and followed for the purposes of achieving the object for which the Act was enacted. Liberal approach in the matter with respect to the property seized, which is liable to confiscation, is uncalled for as the same is likely to frustrate the provisions of the Act. Before passing an order for releasing the forest produce or the property used in the commission of the forest offence, the authorised officer or the appellate authority has to specify the reasons which justify such release, apparently, prima facie excluding the possibility of such forest produce or the property being confiscated ultimately. Generally, therefore, any forest produce and the tools, boats, vehicles, cattle, etc., used in the commission of the forest offence, which are liable to forfeiture, should not be released. This, however, does not debar the officers and the authorities under the Act including the appellate authority from passing appropriate orders under the circumstances of each case but only after assigning valid reasons. The liberal approach in the matter would perpetuate the commission of more offences with respect to the forest and its produce which, if not protected, is surely to affect mother earth and the atmosphere surrounding it. The courts cannot shut their eyes and ignore their obligations indicated in the Act enacted for the purposes of protecting and safeguarding both the forests and their produce. The forests are not only the natural wealth of the country but also the protector of human life by providing a clean and unpolluted atmosphere. When any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party till the culmination of all the proceedings in respect of such offence, including confiscatory proceedings, if any. Nonetheless, if for any exceptional reasons a court is inclined to release the vehicle during such pendency, furnishing a bank guarantee should be the minimum condition. No party shall be under the impression that release of vehicle would be possible on easier terms, when such vehicle is alleged to have been involved in commission of a forest offence. Any such easy release would tempt the forest offenders to repeat commission of such offences. Its casualty will be the forests as the same cannot be replenished for years to come. (Para 7)

The High Court had adopted a very casual approach while disposing of the petition under Section 482 of the Code of Criminal Procedure. Besides that the order impugned is contrary to law, the Supreme Court has its reservations with respect to the powers of the High Court under Section 482 CrPC in the matter which need not be expressed in this case. (Para 8). *State of Karnataka* v. *K. Krishnan*, (2000) 7 SCC 80: 2000 SCC (Cri) 1289: AIR 2000 SC 2729: 2000 Cri LJ 3971.

Bench Strength **2**. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 17-8-2000]

Followed in Oma Ram v. State of Rajasthan, (2008) 5 SCC *502*

[7542] — S. 482 — High Courts directed ordinarily not to grant stay of criminal proceedings initiated by Board under Water (Prevention and Control of Pollution) Act against industrialists responsible for causing such pollution on their applications under S. 482, CrPC — *Water (Prevention and Control of Pollution) Act, 1974 — Constitution of India — Arts. 32, 21, 48-A and 51-A(g)*

Since the problem of pollution of the water in the river Ganga has become very acute the High Courts should not ordinarily grant orders of stay of criminal proceedings in such cases and even if such an order of stay is made in any extraordinary case the High Courts should dispose of the case within a short period. The High Courts were, therefore, to take up for hearing all the cases where such orders have been issued under S. 482 of Cr PC, 1973 staying prosecutions under the Water Act within two months from the date of institution of such case. *M.C. Mehta* v. *Union of India*, (1988) 1 SCC 471: 1988 SCC (Cri) 141: AIR 1988 SC 1115.

Bench Strength **2**. Coram: **E.S. Venkataramiah** and *K.N. Singh*, JJ. [Date of decision: 12-1-1988]

[7543] — S. 482 — Order passed by Sessions Judge in appeal under S. 59(2), Forest Act — Challenge to — *Invocation of S. 482 CrPC to deal with — Not permissible in view of bar under S. 59(3) — Forest Act, 1927, Ss. 59(2) & (3) [inserted by H.P. Act 15 of 1991]* (Para 4). *State of H.P.* v. *Dhanwant Singh*, (2004) 13 SCC 331: 2005 SCC (Cri) 248: AIR 2004 SC 1636: 2004 Cri LJ 1431.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 12-2-2004]

[7544] — S. 482 — Exercise of power under — Stay of proceedings under Forest Act — *Held, High Court in exercise of such power erred in staying proceedings under S. 44(2-A) of A.P. Forest Act, 1967 merely because of subsequent initiation of prosecution under S. 45 of that Act. Divl. Forest Officer* v. *G.V. Sudhakar Rao*, (1985) 4 SCC 573: 1986 SCC (Cri) 34: AIR 1986 SC 328.

Bench Strength **2**. Coram: **A.P. Sen** and *D.P. Madon*, JJ. [Date of decision: 31-10-1985]

(11)(xxiii) Quashment/stay re ecological offences/environmental matters *(contd.)*

[7545] — S. 482 — Quashment of complaint — Principles reiterated — Quashing of complaint proceedings by High Court — Justifiable grounds — Matters to be considered at stage of issuing process — High Court quashing complaint on ground of inadequacy of materials on record though specific and detailed averments regarding commission of offence for violation of Ss. 25 and 26, Water Pollution Act, 1974 made in complaint — *Pollution Board (through its officers) filing complaint under S. 44 against Respondent 1 and other accused persons — Specific averments of continuous commission of offence, made — Specific role of each accused person in the day-to-day affairs and decision-making process, stated — Copies of inspection reports and communications regarding non-compliance with statutory provisions/conditional consent of Pollution Board regarding discharge/treatment of effluent, produced — Though Magistrate took cognizance of allegations, High Court quashed the complaint as against Respondent 1 (a Joint Managing Director of the Company) on main ground that there was no material on record to show that Respondent 1 was, at the relevant time, in charge of and responsible to the Company for conduct of its business — Held, in view of the specific averments in the complaint and Ss. 25, 26, 44 and 47, High Court was not correct in quashing the complaint relating to Respondent 1 — Appellant Board was not even required to place all the materials on record at the threshold — At stage of issuing process, Magistrate is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused — Therefore, order of High Court quashing complaint set aside — Special Judicial Magistrate (Pollution) directed to proceed with complaint and dispose of the same in accordance with law — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 49, 47, 44, 25, 26 and 2(k)*

A complaint before the Magistrate under Section 44 of the Water (Prevention and Control of Pollution) Act, 1974 (the Act) was filed by the appellant [the U.P. Pollution Control Board (Board)] through its officers against Respondent 1 (a Joint Managing Director of the Company) and others for violation of Sections 25 and 26 of the Act. The High Court by the impugned order quashed the complaint so far as it related to Respondent 1 on the main ground that there was no material on record to show that Respondent 1 was, at the relevant time, in-charge and responsible to the Company concerned for conduct of its business.

The complaint showed that the Company had applied for the grant of consent of the Board for the discharge of its trade effluent on 29-9-1982 which was received by the Board on 4-10-1982 and after considering all aspects conditional consent was issued in favour of the Company. According to the complainant, the Company had not sent the report for proper compliance with the condition which was imposed. According to the Board, the accused persons intentionally failed to comply with the conditions of the consent order dated 22-1-1983 and to construct a proper effluent treatment plant and were discharging the effluent without the consent of the Board.

It was not in dispute that Respondent 1, before letting out trade effluent into a stream or a river had to satisfy certain conditions in terms of the provisions of the Act and the order of the authorities concerned. It was also not in dispute that without a consent order by the Board, the Company could not let out untreated effluent into a land or stream or river. Though a consent order was issued by the Board, it has been specifically stated in the complaint that the conditions contained therein had not been fulfilled by the Company.

Allowing the appeal of the Board and setting aside the quashment of the complaint,

Held :

In view of the specific averments in the complaint and Sections 25, 26, 44 and 47 of the Act, the High Court was not correct in quashing the complaint relating to Respondent 1. The Company and all the persons in charge of the day-to-day affairs are required to abide by the mandatory provisions for operating their industrial establishment. In Para 17 of the complaint, it was specifically stated that at the time of commission of offence all the accused persons were in charge of the business of the Company and responsible for the day-to-day working of the Company and also for conducting of the business of the Company and continuous commissioning of offence under Section 44 of the Act and the construction of the effluent treatment plant could be taken up only when these senior authorities resolved to do so. Apart from specific averments regarding the guilt of Respondent 1 and others as well as their specific role in the day-to-day affairs and decision-making process, the Board also placed a letter dated 22-1-1983 granting conditional consent to Respondent 1, copy of the inspection reports, various letters/communications and their reply as Annexures P-1 to P-7. Therefore, the order of the High Court quashing the complaint is set aside. The Special Judicial Magistrate (Pollution) is directed to proceed with the complaint and dispose of the same in accordance with law. (Paras 14 to 19, 33 and 42)

Considering the facts, the appellant Board was not required to place all the materials on record at the threshold. In the interest of the public health, the appellant Board through its officers laid a complaint against the persons who were in charge of the day-to-day affairs and in the decision-making process. When the High Court quashed the complaint against Respondent 1 (a Joint Managing Director of the Company), the issue was about the averments/allegations against him in respect of his concern in the day-to-day affairs and in the decision-making process. It is a settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. (Paras 21 to 23)

Though the present case commenced in the year 1985, nonetheless lapse of such a long period cannot be a reason to absolve the respondents from the trial. Courts cannot afford to deal lightly with cases involving pollution of air and water. The message must go to all persons concerned whether small or big that the courts will share the parliamentary concern and legislative intent of the Act to check the escalating pollution level and restore the balance of our environment. Those who discharge noxious polluting effluents into streams, rivers or any other water bodies which inflicts harm on the public health at large, should be dealt with strictly dehors technical objections. Since escalating pollution level of our environment affects the life and health of human beings as well as animals, the courts should not deal with the prosecution for offences under the pollution and environmental Acts in a casual or routine manner as the High Court did by quashing the complaint by exercising inherent jurisdiction under Section 482 CrPC. Again, exercise of power under Section 482 CrPC is the exception and under the rule there are three circumstances under which the inherent jurisdiction may be exercised i.e. (*a*) to give effect to an order of the court; (*b*) to prevent abuse of process of court; (*c*) to otherwise secure the ends of justice. (Paras 38 and 39). *U.P. Pollution Control Board* v. *Dr. Bhupendra Kumar Modi*, (2009) 2 SCC 147.

Bench Strength **2**. Coram: *K.G. Balakrishnan, C.J.* and **P. Sathasivam**, J. [Date of decision: 12-12-2008]

Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; U.P. Pollution Control Board v. Mohan Meakins Ltd., (2000) 3 SCC 745, relied on

MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115, clarified

U.P. Pollution Control Board v. Modi Distillery, (1987) 3 SCC 684: 1987 SCC (Cri) 632, explained and distinguished

State of Karnataka v. Pratap Chand, (1981) 2 SCC 335: 1981 SCC (Cri) 453; State of Haryana v. Brij Lal Mittal, (1998) 5 SCC 343: 1998 SCC (Cri) 1315; Nalin Thakor v. State of Gujarat, (2003) 12 SCC 461: 2004 SCC (Cri) Supp 471, distinguished

[7546] — S. 482 — Exercise of power under, where bar of jurisdiction of criminal court in the matter concerned existing under the relevant Act — Legality — *Confiscation proceeding before authorised officer under Forest Act — Interim release of vehicles involved in forest offence during pendency of — Direction in respect of, made by High Court exercising jurisdiction under S. 482 — Held, not justified — Forest Act, 1927 — S. 52 [as amended by W.B. Act 22 of 1988, S. 10] and Ss. 59-A to 59-G [as inserted by W.B. Act 22 of 1988, S. 17]*

The High Court exceeded its jurisdiction in releasing the vehicles in exercise of its jurisdiction under Section 482 CrPC. Once a confiscation proceeding is initiated in terms of Section 59-G of the Act, the jurisdiction of the criminal court in this behalf stands excluded. The criminal court although indisputably has the jurisdiction to deal with the property which is the subject-matter of offence in terms of the provisions of the Code of Criminal Procedure but once a confiscation proceeding is initiated, the said power cannot be exercised by the Magistrate. (Paras 41 and 31). *State of W.B.* v. *Sujit Kumar Rana*, (2004) 4 SCC 129: 2004 SCC (Cri) 984: AIR 2004 SC 1851.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **S.B. Sinha**, JJ. [Date of decision: 20-1-2004]

Divisional Forest Officer v. G.V. Sudhakar Rao, (1985) 4 SCC 573: 1986 SCC (Cri) 34; State of W.B. v. Gopal Sarkar, (2002) 1 SCC 495: 2002 SCC (Cri) 161; State of Karnataka v. K.A. Kunchindammed, (2002) 9 SCC 90: 2003 SCC (Cri) 1085; Section Forester v. Mansur Ali Khan, (2004) 1 SCC 293; Shambhu Dayal Agarwala v. State of W.B., (1990) 3 SCC 549: 1990 SCC (Cri) 489; Dy. Commr., Dakshina Kannada District v. Rudolph Fernandes, (2000) 3 SCC 306: 2000 SCC (Cri) 632, followed

[7547] — S. 482 — Quashing of criminal proceedings under — When justified — Held, to be in very rare cases — Complaint (lodged against forest officers) involving mala fides — *Inherent improbabilities in complainant's case — Held, continuance of proceedings in such case would amount to abuse of the process of law — High Court erred in rejecting the petition under S. 482 — Judgment of the High Court set aside — Proceedings quashed*

The respondent filed a complaint against the appellants (six officers of the Orissa State Forest Department) alleging that they had falsely implicated him for offences under the Orissa Forest Act,

(11)(xxiii) Quashment/stay re ecological offences/environmental matters *(contd.)*

1972 and the Wild Life (Protection) Act, 1972. He further alleged that being not content with the said illegal acts, they seriously assaulted him thereby committing offences punishable under Sections 341, 323, 325, 506 and 386 read with Section 34 IPC. Before the Sub-Divisional Judicial Magistrate (SDJM), the appellants took the stand that the complaint was lodged as a counterblast and retaliatory measure because a large quantity of ivory was seized from the complainant and he could not produce any material to justify the possession thereof. According to them, the acts of search, seizure and arrest were done in pursuance of their official duty and they could not be proceeded against without necessary sanction as contemplated under Section 197 CrPC. The SDJM took the view that there was no necessity for sanction under Section 197. Thereafter the appellants preferred a petition under Section 482 CrPC before the High Court. The High Court, after taking the view that Section 197 CrPC had no application to the facts of the case, rejected the said petition.

Before the Supreme Court the appellants contended that in relation to the offences committed by the respondent, he was produced before the Magistrate. While hearing the bail application of the respondent when the SDJM specifically asked the respondent as to whether there was any ill-treatment, he did not make any grievance of any ill-treatment and on the contrary admitted that there was no ill-treatment. The respondent got himself examined by a private doctor after three days of the alleged incident and the complaint was lodged after 13 days. The appellants submitted that the complaint instituted by the respondent was nothing but an abuse of the process of the court and the High Court was not justified in holding that Section 197 CrPC was not applicable.

Allowing the appeal,

Held :

When the background facts of the case are considered, the question regarding applicability of Section 197 CrPC takes a temporary back seat. The respondent was produced before the Magistrate on 28-2-1991. He was specifically asked as to whether there was any ill-treatment. Learned SDJM specifically records that no complaint of any ill-treatment was made. This itself strikes at the credibility of the complaint. Additionally, the doctor who has examined him stated that for the first time on 2-3-1991 he treated the complainant. Though there are several other aspects highlighted in the version indicated in the complaint and the materials on record are there, it is not necessary to go into them because of the inherent improbabilities of the complainant's case and the patent mala fides involved. (Para 20)

It is no doubt true that at the threshold interference by exercise of jurisdiction under Section 482 CrPC has to be in very rare cases, and this case appears to be of that nature. The continuance of the proceeding by way of prosecution in this case would amount to abuse of the process of law. (Paras 20 and 21). *State of Orissa* v. *Ganesh Chandra Jew*, (2004) 8 SCC 40: 2004 SCC (Cri) 2104: AIR 2004 SC 2179: 2004 Cri LJ 2011.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 24-3-2004]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

Kumar Raghavendra Singh v. Ganesh Chandra Jew, (1996) 81 Cut LT 94 (Orissa), reversed

[7548] — S. 482 — Without hearing appeal on merits and coming to a clear finding that an offence is made out against the accused, held, High Court has no jurisdiction to issue notice directing the accused to show cause why he should not be sent for trial — *The order passed by the High Court at the initial stage amounts to a serious abuse of the process of the court inasmuch as it compels the accused appellant to rebut a charge never made or an allegation never proved against him. Such a cause of action at this stage results in gross and substantial injustice to the appellant and amounts to a gross misuse of power of the High Court under S. 482 CrPC. R.V. Murthy* v. *State of Maharashtra*, (1981) 4 SCC 157: 1981 SCC (Cri) 810: AIR 1982 SC 677.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and *A.P. Sen*, JJ. [Date of decision: 24-7-1981]

[7549] — Ss. 482 & 204 — Quashing of criminal proceedings — Offence by company — Non-application of mind in issuing summons — *On the basis of a complaint, cognizance of offence under Ss. 24 and 25, punishable under Ss. 43 and 44 r/w S. 47 of Water (Prevention and Control of Pollution) Act, 1974 taken and issue of process ordered by Judicial Magistrate against appellant-directors of a company — No allegation made in the complaint or in the statement recorded by the Magistrate before issue of summons that the offence was committed by the company with the consent or connivance, of or was attributable to any negligence on the part of the appellants as required under S. 47(2) of the Act — Further, sample of water was taken immediately after the Factory Manager of the company had informed the Board that FRP lining provided in the oil and grease trap of the* *effluent treatment plant having got damaged at some places, the tank had to be shut down temporarily and would be restarted soon after repair/replacement — Held, summons was issued without application of mind and Judicial Magistrate committed error in issuing the same hence liable to be set aside — In view of the special facts and circumstances of the case, question regarding conflict, if any, between decisions of Supreme Court in* Municipal Corpn. of Delhi *v.* Ram Kishan Rohtagi *and* State of Haryana *v.* Brij Lal Mittal *on the one hand and in* U.P. Pollution Control Board *v.* Modi Distillery *on the other hand need not be considered — Water (Prevention and Control of Pollution) Act, 1974, Ss. 43, 44 r/w 47 and 24 & 25. Nalin Thakor* v. *State of Gujarat*, (2003) 12 SCC 461.

Bench Strength **3**. Coram: *V.N. Khare, C.J.* and *S.B. Sinha* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 4-11-2003]

Distinguished in U.P. Pollution Control Board v. Dr. Bhupendra Kumar Modi, (2009) 2 SCC 147

[7550] — Ss. 482 & 451 — Release of confiscated vehicle involved in a forest offence during pendency of proceedings — Grounds for — *High Court directing release of such vehicle since expeditious disposal of proceedings not possible and on grounds of equity — Propriety of — Held, though power of the High Court to direct interim release is undisputed but it is to be exercised for good reasons and in exceptional cases only — Delay in disposal of proceedings, held, not a sufficient ground — Further held, while doing so minimum condition of furnishing a bank guarantee is to be strictly complied with — Karnataka Forest Rules, 1969, R. 69 — Forest Act, 1927, S. 53 — Karnataka Forest Act, 1963 (5 of 1964), Ss. 62, 63, 71-A and 71-G* (Paras 6, 8 to 10). *Section Forestor* v. *Mansur Ali Khan*, (2004) 1 SCC 293: 2004 SCC (Cri) 333: AIR 2004 SC 1251.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 11-12-2003]

State of Karnataka v. K. Krishnan, (2000) 7 SCC 80: 2000 SCC (Cri) 1289, relied on

[7551] — Ss. 482 and 452 — Seizure of elephant — *On facts, plea of the accused that on the date of seizure of the elephant his application for licence was pending accepted — Criminal proceedings against the accused quashed and custody of the elephant directed to be given to the Mutt on the basis of the affidavit filed by the accused — No law point laid down. Sh. Gunnaseelam* v. *State of T.N.*, AIR 1994 SC 1816: 1994 Cri LJ 3835.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and *R.M. Sahai*, JJ. [Date of decision: 11-10-1993]

(xxiv) Quashment in food/liquor/drugs/chemicals offences

[7552] — S. 482 — Quashing of criminal proceedings — Prosecution of company and its Managing Director under Ss. 7/16, Prevention of Food Adulteration Act, 1954 for the manufacture of adulterated beverage — *Preliminary evidence not showing as to how it could be said that the appellants were manufacturers of either the bottle or the beverage or both — Absence of material on record to show that the appellants held licence under Fruit Products Order, 1955 for the manufacture of the offending beverage — Held, in the circumstances of the case, continuance of proceedings against the appellants would be abuse of process of law — Hence quashed — Fruit Products Order, 1955, Cl. 8(1)(b) — Constitution of India — Arts. 226 and 227. Pepsi Foods Ltd.* v. *Special Judicial Magistrate*, (1998) 5 SCC 749: 1998 SCC (Cri) 1400: AIR 1998 SC 128: 1998 Cri LJ 1.

Bench Strength **2**. Coram: *Sujata V. Manohar* and **D.P. Wadhwa**, JJ. [Date of decision: 4-11-1998]

[7553] — S. 482 — Entitlement of accused, for getting second sample examined under S. 13(2) PFA — Delay of 15 months in serving Public Analyst's report of first sample on accused — *Delay leading to deterioration of second sample — Futility of further examination of second sample, leading to deprivation of valuable right conferred on accused by S. 13(2), PFA — Quashing of criminal proceedings on such grounds, refused by High Court — Held, in such a case there is no reason for continuing proceedings (which had lasted for about 20 years) in absence of any valid and reliable report with regard to second sample — Therefore, pending criminal proceedings, quashed — Prevention of Food Adulteration Act, 1954, Ss. 16(1)(a)(i) and 13(2)* (Paras 9 to 11). *Girishbhai Dahyabhai Shah* v. *C.C. Jani*, (2009) 15 SCC 64: (2009) 3 KLT 596.

Bench Strength **2**. Coram: *Altamas Kabir* and *Cyriac Joseph*, JJ. [Date of decision: 31-7-2009]

MCD v. Ghisa Ram, AIR 1967 SC 970: (1967) 2 SCR 116, followed

[7554] — S. 482 — Quashing of FIR — Specific allegations against respondent-accused about illegal transportation of black jaggery for preparation of illicit distilled liquor — *Prosecution also placing reliance on laboratory analysis report mentioning that seized jaggery was fit for fermentation, producing alcohol unfit for consumption — Held, in such circumstances, whether raw material in existence would be sufficient for holding respondent-accused guilty or not, has to be considered*

(11)(xxiv) Quashment in food/liquor/drugs/chemicals offences *(contd.)*

only at time of trial — Further, at time of framing charge, it can be decided whether prima facie case has been made out showing commission of offence and involvement of charged persons — It is immaterial whether case is based on direct or circumstantial evidence — Hence, interference at the threshold, quashing FIR, is to be exceptional and not routine, as ordered by High Court herein — It is not a case where it can be said that complaint did not disclose commission of an offence — Acceptability of materials to fasten culpability on accused persons is a matter of trial — Proceedings restored — Andhra Pradesh Excise Act, 1968 (17 of 1968), Ss. 34(e), 41 and 42 (Paras 21 to 23). *State of A.P.* v. *Gourishetty Mahesh*, (2010) 11 SCC 226: 2010 Cri LJ 3844: (2010) 92 AIC 98.

Bench Strength 2. Coram: **P. Sathasivam** and *Anil R. Dave*, JJ. [Date of decision: 15-7-2010]

[7555] — S. 482 — High Court quashing FIR registered under Ss. 7-A/8(e), Andhra Pradesh Prohibition Act, 1995 r/w S. 109 IPC — Sustainability — *Appellant State contending that High Court's approach was erroneous — That, it was not such a case where there was no material to show commission of crime — Whether there was adequate material already in existence or which could have been collected during investigation and its relevance, was essentially a matter of trial — Relying on settled principles of law, held, High Court's action in quashing FIR, herein, was not justified and cannot be maintained — Andhra Pradesh Prohibition Act, 1995 (17 of 1995), Ss. 7-A/8(e) — Penal Code, 1860, S. 109* (Paras 4 to 7). *State of A.P.* v. *Aravapally Venkanna*, (2009) 13 SCC 443: AIR 2009 SC 1863: (2009) 78 AIC 65 (SC).

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *L.S. Panta* and *P. Sathasivam*, JJ. [Date of decision: 15-4-2009]

State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522: 2004 SCC (Cri) 1805, relied on

[7556] — S. 482 — Liability of Directors (appellants herein) for affairs of company, under — Drug manufactured by Company for human consumption, found defective because of growth of fungus — Complaint against Company and its Directors therefor — Active involvement of Directors in offence, pleaded — *Petition under S. 482 CrPC by Company and its Directors thereagainst, dismissed by High Court — Sustainability — Held, specific averments in complaint that by manufacturing of such medicine for sale, Company and its Directors had committed breach of Drugs and Cosmetics Act — Thus, there was clear allegation that Directors were privy to manufacturing of medicine concerned by Company — Averments in complaint were not bald statements — Offence involved has direct impact on public health, hence, is serious — Therefore, High Court rightly took the view that Directors were responsible for affairs of Company and, therefore, when a drug manufactured by Company is found to be defective, all Directors could be prosecuted — It correctly proceeded on basis of specific language of S. 34(2) to hold that complaint filed against Directors could not be disposed of under S. 482 CrPC as it required appreciation of facts on basis of evidence to be led before trial court — Hence, interference with High Court's order not warranted — However, it will be open for Directors to prove before trial court that they had nothing to do with manufacturing process and, therefore, they should not be held liable under S. 34(2) — Drugs and Cosmetics Act, 1940', S. 34(2)* (Paras 8, 9, 1 and 10). *Dinesh B. Patel* v. *State of Gujarat*, (2010) 11 SCC 125.

Bench Strength 2. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 6-8-2010]

State of Haryana v. Brij Lal Mittal, (1998) 5 SCC 343: 1998 SCC (Cri) 1315, distinguished

[7557] — S. 482 — Quashing of criminal proceedings — Not justified — Respondents stored the food articles in the business premises with the intention to sell, and actually sold the articles to the Food Inspector — *Public analyst report showed that the samples contained "saccharin" — In the petition under S. 482 the specific stand was that there was no violation and the ingredients were within the permissible limit — High Court did not consider that there was no specific stand taken about the requisite norms having not been followed by the public analyst — Held, factual controversies involved could not have been adjudicated in the proceedings under S. 482 — The exercise of power under S. 482 is clearly indefensible — Prevention of Food Adulteration Act, 1954, S. 16 r/w Ss. 7(1) and 7(5)* (Para 8). *State of Gujarat* v. *Rameshchandra Shivratan Kosar*, (2009) 12 SCC 583: (2009) 81 AIC 149 (SC).

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 28-4-2009]

[7558] — S. 482 — Quashing of FIR — Propriety — High Court by impugned judgment quashed FIR registered under S. 7-A r/w S. 8(e) of Andhra Pradesh Prohibition Act, 1955 r/w S. 109 IPC — *Held, interference at the threshold with the FIR is to be in very exceptional circumstances — Whether the material already in* *existence or to be collected during investigation would be sufficient for holding the accused persons concerned guilty has to be considered at the time of trial — Charge can be framed if there are materials showing possibility about the commission of the crime as against certainty — At that stage also evidence cannot be gone into meticulously and it is immaterial whether case is based on direct or circumstantial evidence — In the instant case, it could not be said that the FIR did not disclose commission of an offence — Therefore, High Court was not justified in quashing the FIR — Andhra Pradesh Prohibition Act, 1995 (17 of 1995), S. 7-A r/w S. 8(e) r/w S. 109 IPC* (Paras 1, 6 and 7). *State of A.P.* v. *Vangaveeti Nagaiah*, (2009) 12 SCC 466: AIR 2009 SC 2646: (2009) 78 AIC 201 (SC).

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *L.S. Panta* and *P. Sathasivam*, JJ. [Date of decision: 15-4-2009]

State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522: 2004 SCC (Cri) 1805, followed

R.P. Kapur v. State of Punjab, AIR 1960 SC 866, relied on

[7559] — S. 482 — Power to quash trial proceedings under — Complaint alleging offence under Ss. 7/16/17, Prevention of Food Adulteration Act clearly stating that Chairman, Managing Director and Directors of the mill were in charge of and responsible for the conduct of its business at the time of commission of offence — *In view of the clear averment of the role played by each respondent and extent of their liability, held, complaint not liable to be quashed — Complaint not vague — Extent of available evidence against them not relevant at this stage*

In the instant case the complaint made a clear averment regarding the active role played by the accused-respondents and the extent of their liability. The complaint thus implicated all the respondents and the High Court failed to consider that the allegations were quite clear and explicit so as to be sufficient for taking cognizance of the offence against the accused. Thus a prima facie case for summoning the accused has been made out and as such it was not a fit case in which the High Court should have exercised its discretion under S. 482 in order to quash the proceedings against the accused-respondents. *Municipal Corpn. of Delhi* v. *Purshottam Das Jhunjhunwala*, (1983) 1 SCC 9: 1983 SCC (Cri) 123: AIR 1983 SC 158.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *E.S. Venkataramiah*, JJ. [Date of decision: 1-12-1982]

Municipal Corporation of Delhi v. Ram Kishan Rohtagi, (1983) 1 SCC 1, distinguished

***Followed in** Madhumilan Syntex Ltd. v. Union of India, (2007) 11 SCC 297: (2008) 1 SCC (Cri) 143*

[7560] — S. 482 — Quashing of trial proceedings under — If a complaint ex facie makes out no offence, proceedings commenced pursuant thereto can be quashed at initial stages — Food adulteration offences — *Complaint against accused Manager and Directors of manufacturing company for commission of offence under Ss. 7/16, Prevention of Food Adulteration Act, presuming that the accused were incharge of and responsible for the conduct of business of the Company at the time of sampling — Held, prima facie offence made out against the Manager in view of the very nature of his office and functions, but the complaint vague as regards the Directors and no offence revealed against them — Hence High Court justified in quashing proceedings against the Directors but erred in doing so against the Manager*

The Food Inspector, Municipal Corporation filed a complaint before the Metropolitan Magistrate against the respondents alleging commission of offence under Ss. 5/7, Prevention of Food Adulteration Act as the sample of food article (Morton toffees) manufactured by the Company (respondent 5) had been found by the Public Analyst to be not of the prescribed standard. The Inspector alleged in the complaint that the accused-respondents were manager (respondent 1) and Directors (respondents 2 to 4) of the Company (respondent 5) "and as such they were in charge of and responsible for the conduct of business of accused 2 (the Company) at the time of sampling". Pursuant to the complaint the proceedings against the respondents were commenced. But the High Court quashed the proceedings against all the respondents under S. 482, CrPC on the ground that the complaint did not disclose any offence.

The proceedings against an accused in the initial stages can be quashed under S. 482. The test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under S. 482, CrPC.

From the very nature of duties of the Manager of the Company, it is manifest that he must be in the knowledge about the affairs of the sale and manufacture of the disputed sample. Therefore, a case was clearly made out against him and he was vicariously liable for the offence, vicarious liability being an incident of an offence under the Act. But as regards the Directors, there was no evidence to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable.

(11)(xxiv) Quashment in food/liquor/drugs/chemicals offences *(contd.)*

In these circumstances, therefore, no case against the Directors had been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed. *MCD* v. *Ram Kishan Rohtagi*, (1983) 1 SCC 1: 1983 SCC (Cri) 115: AIR 1983 SC 67: 1983 Cri LJ 159.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *E.S. Venkataramiah*, JJ. [Date of decision: 1-12-1982]

Clarified in U.P. Pollution Control Board v. Dr. Bhupendra Kumar Modi, (2009) 2 SCC 147

[7561] — S. 482 — Quashing of complaint under PFA, 1954 — Prevention of Food Adulteration Rules, 1955 — R. 32(b) — Misbranded biscuits — Complaint alleging misbranding of an article of food (biscuits) in contravention of S. 7(2), PFA, 1954 punishable under S. 16(1)(a)(i) inasmuch as packets of biscuits manufactured by A-1 which were purchased by appellant from A-3 were not labelled in accordance with requirement of R. 32(b) — *Cash-memo filed along with the complaint merely recording sale of "biscuits" for Rs 4 without mentioning the brand name of the biscuits — Sanction order of Director, Health Service also filed along with the complaint showing that sanction was granted to prosecute A-1 only — No sanction for prosecution of A-2 or A-3 was granted — Held, on facts, complaint alleging misbranding was not maintainable in absence of mention in the cash-memo the brand name of the biscuits — Moreover, no sanction having been granted for prosecution of A-2 and A-3, trial court erred in issuing process against them — That apart in absence of sanction for prosecution of A-3, A-1 could not be prosecuted — Trial court failed to look into all these aspects before issuing the process against A-1 to A-3 — High Court, therefore rightly, quashed the complaint and the proceedings taken by the Magistrate — Prevention of Food Adulteration Act, 1954, Ss. 7(2), 16(1)(a)(i) & 2(ix)(k)* (Para 5). *Consumer Action Group* v. *Cadbury India Ltd.*, (2000) 9 SCC 56: 2000 SCC (Cri) 1160.

Bench Strength 3. Coram: *Dr. A.S. Anand, C.J.* and *K.T. Thomas, S. Rajendra Babu*, JJ. [Date of decision: 12-1-2000]

[7562] — Ss. 482 and 468 — Quashing of criminal proceedings — On ground of bar of limitation — Offence under Essential Commodities Act, 1955 — *Plea before High Court that maximum punishment for the alleged offence under S. 7(1)(a)(ii), EC Act was one year and, therefore, the charge-sheet filed about two years after the date of offence was clearly barred by limitation — Quashing of proceedings by accepting the said plea — Validity — Held, maximum punishment for an offence relatable to S. 7(1)(a)(ii) is not one year but seven years — Hence, High Court's order liable to be set aside — Essential Commodities Act, 1955, S. 7(1)(a)(ii)* (Paras 7 and 9). *State of A.P.* v. *Farmers Service Coop. Society*, (2004) 6 SCC 683: 2004 SCC (Cri) 1826.

Bench Strength 2. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 16-8-2004]

[7563] — S. 482 — Quashing of criminal proceedings — Prosecution under Prevention of Food Adulteration Act, 1954 — *Plea that appellant's company had nominated a person under S. 17(2) of the Act who would only be liable for any breach of the provisions of the Act — Held, this question is one of fact which can be gone into at the stage of trial — Constitution of India, Art. 136. Hari Shankar Jalan* v. *Food Inspector, Cherukole*, 1997 SCC (Cri) 968.

Bench Strength 2. Coram: *M.K. Mukherjee* and *S.P. Kurdukar*, JJ. [Date of decision: 24-4-1997]

[7564] — S. 482 — Inherent powers of High Court — Complaint alleging commission of offences punishable under S. 18(c) r/w S. 27(b)(ii) of the Drugs and Cosmetics Act, 1940 quashed by High Court — Sustainability — *Allegation that the three accused persons were manufacturing, selling and storing DXN Ganocelium (GL) and DXN Rishi and (RG) capsules, which are "drugs", without a manufacturing licence — Submission by respondent-accused that the seized drugs were nothing but ayurvedic drugs and that the licence was subsequently granted — Held, whether the goods in question are ayurvedic drugs is essentially a matter for trial — Mere fact that application for licence was filed, did not entitle the respondent to manufacture and/or to sell the drugs concerned — High Court, therefore, was not justified in quashing the proceedings — It was not a case where threshold interference by exercising power under S. 482 of the Code was called for — Drugs and Cosmetics Act, 1940, S. 18(c) r/w S. 27(b)(ii) and S. 3(b) — Quashment of complaint* (Paras 2 and 8 to 12). *State of Kerala* v. *Orison J. Francis*, (2009) 2 SCC 160.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 4-11-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

[7565] — Ss. 482, 173 and 240 — Quashment of proceedings — Whether justified — Proper stage for exercise of power — *Associate unit of a body corporate violating order under S. 3 of Essential Commodities Act, 1955 — At the stage of filing* *charge-sheet, final report to supplementary challan specifically mentioning officers of unit as liable under S. 10 of 1955 Act — Trial court summoning officers — High Court however quashing trial court's order holding unit was not covered by S. 10 of 1955 Act — Propriety — Held, the stand taken by accused officers before High Court was a defence to be taken at the stage of trial — Hence, High Court's order set aside* (Para 14). *State (Govt. of NCT of Delhi)* v. *D.A.M. Prabhu*, (2009) 3 SCC 264.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 11-2-2009]

Dulichand Laxminarayan v. CIT, AIR 1956 SC 354; Sheoratan Agarwal v. State of M.P., (1984) 4 SCC 352: 1984 SCC (Cri) 620; State of Punjab v. Kasturi Lal, (2004) 12 SCC 195: 2004 SCC (Cri) Supp 168, applied

[7566] — S. 482 — Technical offence — Sample of Pan Masala and Mouth Freshner found to contain saccharin to the extent of 2000 and 2450 p.p.m. which was in violation of R. 47, PFA Rules as then existing — *Rule valid and operative at the relevant time — Hence initiation of criminal cases against accused cannot be held to be without jurisdiction — Prima facie case made out — Petition for quashing the complaint rightly dismissed by the High Court — However, in view of the revised standard the addition of saccharin in Pan Masala and Mouth Freshner to the extent of 2000 and 2450 cannot be said to be injurious to health — Hence appellants have committed only technical offence — In special facts of the case criminal cases against the appellants are quashed on payment of costs at Rs 7500 in each of the appeals — Prevention of Food Adulteration Act, 1954, Ss. 7/16 — Technical breach — Constitution of India, Art. 142 — Prevention of Food Adulteration Rules, 1955, R. 47 (as it stood prior to 1993 amendment)*

In this case it was contended that even if addition of saccharin to the extent as stated to have been found by the analyst is accepted to have been correctly determined, such addition, as a matter of fact, was neither injurious to health nor it degenerated the articles sold so that they could be branded as adulterated food. The ban on the use of saccharin in pan masala and mouth freshner was imposed on a misconception and erroneous view of its injurious effect on human system. But later on, it has been accepted by the rule-making authority that use of saccharin to the extent of 8000 p.p.m. in pan masala will not be harmful for human consumption and Rule 47 of the Rules has been amended. As use of saccharin to the extent of 2000 and 2450 p.p.m. was not injurious to health at any point of time, it must be held that even before amendment of Rule 47 such use of saccharin to the above extent did not constitute an offence for adulterating food with substances injurious to health.

Held :

At the relevant time, saccharin content in pan masala and mouth freshner to the extent of 2000 and 2450 p.p.m. as found by the analyst was not permissible under the Prevention of Food Adulteration Rules. Rule 47 was valid and operative at the relevant time. Hence, there had been violation of the Food Adulteration Act and the Rules framed thereunder in selling pan masala and mouth freshner with saccharin content to the extent of 2000 and 2450 p.p.m. Hence, the complaints made by the Health Department of Delhi Administration and initiation of criminal cases against the accused cannot be held to be without justification. It cannot also be contended that on the face of the complaint, no offence was prima facie committed. Hence, the impugned decision of the High Court in dismissing the applications under Section 482 CrPC cannot be held to be unjustified.

Even if the complaint is accepted to be correct, the only offence committed by the appellants amounts to technical violation of the mandate of Rule 47 for adding saccharin to the extent of 2000 and 2450 p.p.m. in the Chutki Pan Masala and Mouth Freshner. Such addition of saccharin cannot be held to be injurious to health because, considering later findings on research and analysis on the effect of saccharin on human system, addition of saccharin to the extent of 8000 p.p.m. in pan masala has been allowed by amending Rule 47. The articles sold are not alleged to be injurious to health and such allegations, even if made, cannot be accepted. There is no allegation that any other injurious substance was added to the articles sold making them potentially health hazards. It is also not the case that pan masala and mouth freshner were of inferior quality and substandard. In a case like this, the offence committed is on account of technical violation of Rule 47. It should be emphasised that strict adherence to Prevention of Food Adulteration Act and Rules framed thereunder should be insisted and enforced for safeguarding the interest of consumers of articles of food.

The trial of the accused persons directed to be quashed on payment of costs at Rs 7500 in each of the appeals as on conviction of the appellants in the criminal cases initiated against them, such fine would have met the ends of justice. *Krishan Gopal Sharma* v. *Govt. of N.C.T. of Delhi*, (1996) 4 SCC 513.

Bench Strength **2**. Coram: **G.N. Ray** and *B.L. Hansaria*, JJ. [Date of decision: 7-5-1996]

Pyarali K. Tejani v. Mahadeo Ramchandra Dange, (1974) 1 SCC 167: 1974 SCC (Cri) 87: (1974) 2 SCR 154, followed

(11)(xxiv) Quashment in food/liquor/drugs/chemicals offences *(contd.)*

[7567] — S. 482 — Inherent power of High Court to quash criminal proceedings — Circumstances warranting exercise of power under S. 482 — Sweetened carbonated water (Pepsi) containing pesticide residue, carbofuran, to the extent of 0.001 mg/litre — Whether an adulterated food warranting prosecution — Failure of Central Government to define methods of analysis under S. 23(1-A)(hh), and to prescribe laboratories where food samples or adulterants to be analysed under S. 23(1-A)(ee) — Effect — *Limit up to which pesticide could be added to sweetened carbonated water also not prescribed in Table to R. 65(2) of 1955 Rules when samples were collected in 2006 — Samples however declared adulterated by adopting standards prescribed by Directorate General of Health Services (DGHS) — Held, in absence of parameters which ought to have been defined by Central Government under Ss. 23(1-A)(hh) & (ee) and R. 65(2), samples could not be considered as adulterated, particularly when content of pesticide residue was within tolerable limits (0.001 mg/litre) prescribed subsequently vide Noti. dt. 17-6-2009 — Pre-defining of these parameters is necessary so that public authorities have clear guidance as to which articles of food are to be subjected to chemical analysis and by what standards they are to be tested — This would avoid pick-and-choose method by public authorities — Mere presence of pesticide does not in itself render food as adulterated unless quantity of pesticide exceeds tolerance limit which has to be prescribed by Central Government in Rules itself — Criminal proceedings initiated against appellant Company therefore quashed — Prevention of Food Adulteration Rules, 1955, R. 65(2), Table — Prevention of Food Adulteration Act, 1954', Ss. 23(1-A)(ee), (hh) and 2(i-a)(h)*

Prosecution was launched against appellant Company on the ground that cold drinks (sweetened carbonated water) sold by them contained pesticide residue, carbofuran, which was found to be 0.001 mg per litre, which exceeded the limit as prescribed by Directorate General of Health Services (DGHS). The appellants challenged findings of Public Analyst on the ground that samples were not analysed in prescribed laboratory, and that there were no prescribed methods of analysis. The appellants approached the High Court for quashing of criminal proceedings under Section 482 of the Criminal Procedure Code, 1973. The High Court (Single Judge) refused to interfere in criminal proceedings inter alia by holding that Sections 23(1-A)(*ee*) and (*hh*) were only enabling provisions under which the Central Government was empowered to define methods of analysis and to prescribe laboratories where samples could be tested but it was not necessary to do before a food sample could be declared as adulterated. The appellants approached the Supreme Court.

The Supreme Court framed the following issues for consideration:

(*1*) In the absence of any prescribed and validated method of analysis under Section 23(1-A)(*hh*) of the Prevention of Food Adulteration Act, 1954, could a prosecution have been launched against the appellants based on a report submitted by the public analyst using the method of the Directorate General of Health Services (DGHS)?

(*2*) Could a prosecution have been launched against the appellants in the absence of any validated method of analysis to ascertain the percentage of pesticide residue present in a carbonated beverage, which renders the report of the public analyst unreliable, particularly when it does not indicate that such percentage of the pesticide residue is injurious to health and, therefore, "adulterated" within the meaning of Section 2(*i-a*)(*h*) of the aforesaid Act?

(*3*) What is the effect of non-specification of the level of tolerance in respect of the presence of pesticide residue in sweetened carbonated water in the Table appended to Rule 65(2) of the Prevention of Food Adulteration Rules, 1955?

Allowing the appeals,

Held :

The High Court misconstrued the provisions of Sections 23(1-A)(*ee*) and (*hh*) in holding that the same were basically enabling provisions and were not mandatory and the issue could, in any event, be solved by the Central Government by framing the Rules thereunder, by which specified tests to be held in designated laboratories could be spelt out. Consequently, the High Court also erred in holding that the non-formulation of rules under the aforesaid provisions of the 1954 Act could not be said to be fatal for the prosecution. The observation of the High Court that if the submissions made on behalf of the appellants herein were to be accepted, the mechanism of the Act and the Rules framed thereunder would come to a grinding halt, is not acceptable, since the same could lead to a pick and choose method to suit the prosecution. However, in any event, the percentage of carbofuran detected in the sample of Pepsi which was sent for examination to the forensic laboratory is within the tolerance limits prescribed for sweetened carbonated water with effect from 17-6-2009, hence the same would not attract the provisions of Sections 2(*i-a*)(*h*) or (*m*) of the 1954 Act or the consequences thereof. (Paras 44, 43, 39 and 40)

Both the questions regarding the failure of the Central Government to frame Rules to define the laboratories, where samples of food could be analysed by the public analyst, or to define the validated methods of analysis and the liability of the Directors, who are the appellants herein, are of great importance for the purpose of bringing home a charge against the accused for violation of the provisions of Rule 65 of the 1955 Rules and Section 2(*i-a*)(*h*) of the 1954 Act and for holding that the sweetened carbonated water manufactured by the appellants was adulterated in terms of the said Rules. Since the range indicated as to the limits of tolerance of the presence of pesticides in different articles of food, including sweetened carbonated water, which was included in the Table appended to Rule 65(2) with effect from 17-6-2009, provides very little or practically no margin for error, the selection of laboratories and the prescription of tolerance limits for different articles of food acquires great significance. (Para 47)

The High Court does not appear to have considered the implications of the failure of the Central Government to frame Rules for the aforesaid purpose. The mere presence of pesticide residue does not ipso facto render the article of food adulterated. Tolerance limits have been prescribed in the Table for this very purpose and the subsequent inclusion of sweetened carbonated water seems to indicate so and leans more in favour of the appellants. (Paras 48 and 40)

The High Court also appears to have overlooked the fact that the percentage of pesticides found by the public analyst in the sweetened carbonated water manufactured by the appellants was within the tolerance limits subsequently prescribed in respect of such product. The presence of insecticides within the limits prescribed in the Table to Rule 65 cannot be said to have caused adulteration of the article of food in question. (Paras 49 and 40). *Pepsico India Holdings (P) Ltd.* v. *Food Inspector*, (2011) 1 SCC 176.

Bench Strength **3**. Coram: **Altamas Kabir**, *Cyriac Joseph* and *Deepak Verma*, JJ. [Date of decision: 18-11-2010]

Hindustan Lever Ltd. v. Food Inspector, (2004) 13 SCC 83: (2006) 1 SCC (Cri) 288; Prem Ballab v. State (Delhi Admn.), (1977) 1 SCC 173: 1977 SCC (Cri) 78, relied on

[7568] — S. 482 — Quashing of FIR by High Court — Propriety — *FIR filed by the Prohibition and Excise Officers alleging commission of offences punishable under Andhra Pradesh Excise Act, 1968 (17 of 1968) and Andhra Pradesh Prohibition Act, 1995 (17 of 1995) quashed by High Court holding that there was no material to show that the seized articles were intended to be used for manufacturing illicit distilled liquor — In all the cases the allegation was that the accused concerned was either transporting or storing black jaggery/molasses for the purpose of manufacturing illicit distilled liquor or was an abettor so far as the offence of manufacturing illicit liquor is concerned — Held, ultimately the acceptability of the materials to fasten culpability on the accused persons is a matter of trial — These are not the cases where it can be said that the FIR did not disclose commission of an offence — Therefore, the High Court was not justified in quashing the FIR in the cases concerned — Andhra Pradesh Excise Act, 1968 (17 of 1968) — Andhra Pradesh Prohibition Act, 1995 (17 of 1995)* (Paras 2, 5 and 6). *State of A.P.* v. *Bajjoori Kanthaiah*, (2009) 1 SCC 114.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 20-10-2008]

[7569] — S. 482 — Delay in filing complaint under S. 27, DCA, 1940 — Effect — Loss of right under Ss. 25(3) and 25(4), DCA for retesting of drug — *Sample collected on 14-6-2000, for which Drug Inspector receiving Drug Analyst's report on 6-7-2001 — Show-cause notice issued to appellant Company on 14-8-2001 to which replies given vide letters dated 28-8-2001 and 13-9-2001 wherein analyst's report disputed — Complaint filed against appellant under S. 27 on 2-7-2002 whereas shelf life of the sample drug was to expire next month i.e. August 2002 — Magistrate's sample therefore could not be got tested in time, as provided in S. 25(4) — Held, appellant's rights under Ss. 25(3) and 25(4) lost due to delay in filing complaint and therefore complaint quashed — Drugs and Cosmetics Act, 1940, Ss. 25(3), 25(4), 27 and 23(4)(i)*

There is no explanation as to why the complaint itself had been filed about a month before expiry of shelf life of the drug and concededly the filing of the complaint had nothing to do with the appearance of the accused in response to the notices which were to be issued by the Court after complaint had been filed. Likewise, requests for retesting of drug had been made by the appellant in August/September 2001 and there is absolutely no reason as to why complaint could not have been filed earlier and fourth sample sent for retesting well within time. Facts of the case suggest that the appellants have been deprived of a valuable right under Sections 25(3) and 25(4) of the Act which must necessitate quashing of proceedings against them. (Para 19). *Medicamen Biotech Ltd.* v. *Drug Inspector*, (2008) 7 SCC 196: (2008) 3 SCC (Cri) 20: AIR 2008 SC 1939.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **H.S. Bedi**, JJ. [Date of decision: 13-3-2008]

(11)(xxiv) Quashment in food/liquor/drugs/chemicals offences *(contd.)*

State of Haryana v. Brij Lal Mittal, (1998) 5 SCC 343: 1998 SCC (Cri) 1315, distinguished

State of Haryana v. Unique Farmaid (P) Ltd., (1999) 8 SCC 190: 1999 SCC (Cri) 1404; Amery Pharmaceuticals v. State of Rajasthan, (2001) 4 SCC 382: 2001 SCC (Cri) 724, relied on

Medicamen Biotech Ltd. v. Rubina Bose, (2006) 4 Cal HN 727, reversed

[7570] — S. 482 — Quashment — When warranted — Valuable statutory right of defence of accused having been violated — Effect — *Statutory right of accused under S. 24, Insecticides Act, 1968 to get seized sample of insecticide examined in Central Insecticides Laboratory denied due to inaction of and delay by Insecticides Inspector, whereby shelf life of substance had expired and hence same had become untestable — Criminal proceedings, held, should have been quashed for said negligence — Insecticides Act, 1968, Ss. 24, 22 and 3(k)*

As per the report of the States Insecticides Laboratory, the sample did not conform to the prescribed standard and was therefore, misbranded. A Section 482 CrPC petition against the criminal prosecution was dismissed by the impugned order of the High Court.

Allowing the appeal,

Held :

Ordinarily in the absence of any material to the contrary, the report of the Insecticides Analyst will be accepted as final and conclusive of the material contained therewith. This is however, subject to the valuable right of the accused to have the sample examined by the Central Insecticides Laboratory provided he communicates his intention for the purpose within 28 days of the receipt of the copy of the report. (Para 11)

Continuing with the criminal prosecution against the appellant would be futile exercise and abuse of the process of Court. The appellants had intimated the Insecticides Inspector their intention to have the sample tested in the Central Insecticides Laboratory within the prescribed period of 28 days of the receipt of the copy of the State Analyst's Report. Due to the Insecticide Inspector's sheer inaction, it became impossible for appellants to have the sample examined by the Central Insecticides Laboratory and in the meantime, the shelf life of the sample of insecticide seized expired and for that reason no further step could be taken for its examination. Thus the High Court was not right in dismissing the Section 482 CrPC petition. The order passed by the High Court is, therefore, set aside. (Paras 12 and 13). *Gupta Chemicals (P) Ltd.* v. *State of Rajasthan*, (2010) 7 SCC 735.

Bench Strength **3**. Coram: *D.P. Mohapatra, Brijesh Kumar* and *D.M. Dharmadhikari*, JJ. [Date of decision: 18-4-2002]

[7571] — S. 482 — Offences under Insecticides Act, 1968 — Taking of samples of insecticide — Non-delivery of one portion of sample to the person from whom the insecticide was taken — *Held, accused has been deprived of his statutory opportunity to have the sample tested by the CIL — Complaint is liable to be quashed — Complaint should be lodged with utmost dispatch so that the accused may opt to avail of the statutory defence — Procedure for taking sample indicated — Insecticides Act, 1968, Ss. 22, 24 and 21. State of Punjab* v. *National Organic Chemical Industries Ltd.*, (1996) 11 SCC 613.

Bench Strength **2**. Coram: *K. Ramaswamy* and *S.P. Kurdukar*, JJ. [Date of decision: 25-10-1996]

[7572] — S. 482 — Abuse of the process of court — Accused's right to get the sample tested from CIL — Loss of, on account of non-response of Insecticides Inspector to the accused's request for the said purpose — Vitiating effect on continuance of prosecution — *In reply to notice of alleged violation of the provisions of the Act and Analyst's report the accused, within the statutory time-limit, notifying to the Inspector of the accused's intention to adduce evidence in controversion of the report, and requesting him to get the sample analysed from CIL at the accused's cost but the Inspector ignoring the same on the ground that such request could be made only to the court, and filing complaint — By the time the accused was summoned by the court to stand trial shelf life of the insecticides expiring and rendering the sending of the sample to CIL at that stage purposeless — In such circumstances, held, the accused was deprived of the right to get the sample tested by CIL and was thereby prejudiced in his defence — Hence, High Court rightly quashed the complaint as continuance thereof would amount to abuse of the process of the court — Contention that in absence of a statutory time-limit, the shelf life of sample was not relevant, rejected — Constitution of India, Art. 227 — Prevention of Food Adulteration Act, 1954, Ss. 11 and 13 — Drugs and Cosmetics Act, 1940, Ss. 23 and 25 — Insecticides Act, 1968, Ss. 24, 29, 22, 21, 30 and 3(k)*

An Insecticides Inspector appointed under the Insecticides Act, 1968 visited the shop premises of a firm and drew samples of Monochrotophos-36% SL insecticide. He gave one sample to the proprietor of the firm, sent the second sample to the Senior Analyst, Quality Control Laboratory (Insecticides) for testing and the third sample was deposited with the Deputy Director, Agriculture. Another firm *U* was the manufacturer of the said insecticide. The Quality Control Laboratory in its analysis report found the sample to be misbranded. Accordingly, notices along with the analysis report of the sample were sent on 30-9-1994 to the said firm and to *U* alleging that provisions of Sections 3(*k*)(*i*), 17 and 18 of the Act had been contravened. *U* sent a reply denying the said allegations and notifying its intention to adduce evidence to support its contention and requested for getting a sample tested by CIL at *U*'s cost. Without adverting to the said request of *U*, the Insecticide Inspector filed a criminal complaint against several parties including *U*. Thereafter, *U* and its Sale Officer approached the High Court under Section 482 of the CrPC and Article 227 of the Constitution. They contended that on the one hand their request for retesting of the sample was ignored by the Inspector, and on the other, by the time they were asked to appear in the Court to stand their trial, the shelf life of the insecticide, of which sample was taken, had already expired. They were, thus, deprived of the valuable right of their defence. The High Court upheld their contention and quashed the complaint. Before the Supreme Court the appellant State contended: (*i*) that the request for retesting of the sample ought to have been made to the court and not to the Insecticide Inspector; (*ii*) that no defence other than prescribed under Section 30 of the Act could be allowed to be raised in the prosecution filed under the Act, and (*iii*) that the shelf life of the sample was not relevant as the Act did not prescribe any expiry date. Rejecting these contentions and dismissing the appeals,

Held :

If the expiry date of the sample was not relevant, there was no reason why in the form prescribed for submission of the report by the Insecticide Analyst, the dates of manufacture of the article and the expiry date are mentioned. (Para 10)

Section 30 provides for defences which may or may not be allowed in prosecution under the Act. Section 30(1) only prescribes in effect that ignorance would be no defence but that does not mean that if there are contraventions of other mandatory provisions of the Act, the accused have no remedy. The procedure for testing the sample is prescribed and if it is contravened to the prejudice of the accused, he certainly has the right to seek dismissal of the complaint. Then in order to safeguard the right of the accused to have the sample tested from the Central Insecticides Laboratory, it is incumbent on the prosecution to file the complaint expeditiously so that the right of the accused is not lost. In the present case, by the time the respondents were asked to appear before the Court, the expiry date of the insecticide was already over and sending of the sample to the Central Insecticides Laboratory at that late stage would be of no consequence. Therefore, in view of Sections 24(3) and 24(4) of the Insecticides Act the report of the Insecticide Analyst was not conclusive. A valuable right had been conferred on the accused to have the sample tested from the Central Insecticides Laboratory and in the circumstances of the case the accused have been deprived of that right, thus, prejudicing them in their defence. In these circumstances, the High Court was right in concluding that it would be an abuse of the process of the court if the prosecution was continued against the accused persons. The High Court rightly quashed the criminal complaint. (Paras 10 to 13). *State of Haryana* v. *Unique Farmaid (P) Ltd.*, (1999) 8 SCC 190: 1999 SCC (Cri) 1404.

Bench Strength 2. Coram: **D.P. Wadhwa** and *R.P. Sethi*, JJ. [Date of decision: 7-10-1999]

State of Punjab v. National Organic Chemical Industries Ltd., (1996) 11 SCC 613: 1997 SCC (Cri) 312, followed

[7573] — S. 482 — Quashing of criminal proceedings — Sought on the grounds of (i) bar of limitation, and (ii) lack of authority of Drugs Inspector, Vijayawada, A.P. to lodge the complaint as he could not have assumed jurisdiction under the notification issued by Govt. of A.P. which was confined to Telangana area of A.P. only — *Complaint filed within the period of limitation (i.e. one year), but cognizance taken by court beyond the limitation period — Held, complaint not barred by limitation — Further held, the notification was applicable to the entire State of A.P. and not restricted to Telangana area only — Thus, High Court was justified in dismissing the petition under S. 482 CrPC* (Paras 10, 11, 8 and 13). *Bharat Damodar Kale* v. *State of A.P.*, (2003) 8 SCC 559: 2004 SCC (Cri) 39: AIR 2003 SC 4560.

Bench Strength 2. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 8-10-2003]

[7574] — Ss. 482 and 451 — Quashing of criminal proceedings — When not justified — *Seizure of molasses along with tanker while in transit and confiscation of the same on the ground that it was intended to be used for manufacturing illicit distilled liquor — Where there was material to proceed against the accused and commission of offence was disclosed held, High Court erred in quashing the entire proceedings — Acceptability of material to fasten guilt on accused further held, is a matter of* *trial — Proceedings revived — Direction for release of tanker and seized articles, set aside — Application for the said release, if filed before the court concerned, directed to be considered in accordance with law — Andhra Pradesh Excise Act, 1968 (17 of 1968), S. 45 — Andhra Pradesh Prohibition Act, 1995 (17 of 1995), S. 12*

In the present case, the statement of the driver of the vehicle and the panchnama show that there was some material to proceed against the accused-respondents. Obviously, the acceptability of the materials to fasten guilt on the accused is a matter of trial. This cannot be said to be a case where commission of offence was not disclosed. Therefore, the High Court was not justified in quashing the entire proceedings. Since the proceedings were held to be without authority of law, consequentially direction for release was given. No other reason has been given for directing release. That being so, the direction for release of the tanker and the seized articles cannot be sustained. The proceedings shall revive and continue in accordance with law. (Paras 4, 6, 7 and 8). *Dy. Commr. of Prohibition and Excise* v. *Balaji Cattle Feeds*, (2004) 7 SCC 274: 2004 SCC (Cri) 1925: AIR 2004 SC 4260.

Bench Strength **2**. Coram: *S.N. Variava* and **Arijit Pasayat**, JJ. [Date of decision: 31-8-2004]

State of A.P. v. Goloconda Linga Swamy, (2004) 6 SCC 522, relied on

(xxv) Quashment re NDPS Act offences

[7575] — S. 482 — Arrest and search by an officer not empowered or authorised, in violation of Ss. 41 and 42, ADPS Act being per se illegal would vitiate the trial — In such case powers under S. 482 CrPC can be invoked to quash the proceedings — *Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 41 & 42*

The appellant was searched by the Excise Inspector, Devikulam. On the allegation of recovering "ganja" from his possession the appellant was taken into custody. Under Section 20(*b*)(*i*) of the Narcotic Drugs and Psychotropic Substances Act, 1985 a charge was laid against him by the Excise Inspector whereas the statutory notification under which he became competent so to do, was issued by the Government of Kerala in GOMs No. 168/92/TD, authorising officers of and above the rank of Excise Inspectors of the Excise Department to file complaints under Section 36-A(1)(*d*) of the NDPS Act, on the ground that the Excise Inspector was not authorised to file the charge-sheet against the appellant and, therefore, the complaint was not maintainable, the appellant was discharged under Section 227 CrPC. The said Excise Inspector, Devikulam, however, filed a fresh charge-sheet against the appellant. The case was committed to the Court of the Additional Sessions Judge. The appellant filed a Crl. MC before the High Court of Kerala praying that the entire proceedings in sessions case be quashed. By the order under challenge the High Court dismissed the petition. Allowing the appeal and setting aside the order of the High Court, allowing the Crl. MC and quashing the proceedings in the sessions case,

Held :

No officer than an empowered officer can resort to Section 41(2) or exercise powers under Section 42(1) of the NDPS Act or make a complaint under clause (*d*) of sub-section (1) of Section 36-A of the NDPS Act. It follows that any collection of materials, detention or arrest of a person or search of a building or conveyance or seizure effected by an officer not being an empowered officer or an authorised officer under Section 41(2) of the NDPS Act, lacks sanction of law and is inherently illegal and as such the same cannot form the basis of a proceeding in respect of offences under Chapter IV of the NDPS Act and use of such a material by the prosecution vitiates the trial. (Para 16)

The power under Section 482 CrPC has to be exercised by the High Court, inter alia, to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. So, exercise of power under Section 482 CrPC to quash proceedings in a case like the one on hand, would indeed secure the ends of justice. (Para 18)

In the present case the search and recovery were by an officer who was not empowered so to do. If the proceedings in the instant case are not quashed, the illegality will be perpetuated resulting in grave hardship to the appellant by making him to undergo the ordeal of trial which is vitiated by the illegality and which cannot result in conviction and sentence. It is a fit case to exercise power under Section 482 CrPC to quash the impugned proceedings. (Para 20). *Roy V.D.* v. *State of Kerala*, (2000) 8 SCC 590: 2001 SCC (Cri) 42: AIR 2001 SC 137.

Bench Strength **2**. Coram: **S.S.M. Quadri** and *S.N. Phukan*, JJ. [Date of decision: 10-11-2000]

State of Punjab v. Baldev Singh, (1999) 6 SCC 172: 1999 SCC (Cri) 1080, distinguished

State of Punjab v. Balbir Singh, (1994) 3 SCC 299: 1994 SCC (Cri) 634, relied on

[7576] — S. 482 — Power of High Court to quash criminal proceedings — When and how to be exercised — Complaint under NDPS Act — *Held, said power has to be exercised sparingly and with caution and not to stifle legitimate prosecution — Such a power is required to be exercised in a case where the complaint does not disclose any offence and it is frivolous, vexatious or oppressive — At that stage, there cannot be meticulous analysis of the case — Complaint indicating huge recovery of heroin — Accused stated to be the real owner of the recovered substance — He not responding and failing to appear before the NCB officers despite written notices — Held, it could not be said that there was no material for taking cognizance — High Court in revision rightly declined the prayer to quash the complaint at this initial stage — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 21(c), 29 and 42* (Paras 8 and 6). *Mohd. Malek Mondal* v. *Pranjal Bardalai*, (2005) 10 SCC 608: 2005 SCC (Cri) 1640: AIR 2005 SC 2406: 2005 Cri LJ 2613.

Bench Strength 2. Coram: **Y.K. Sabharwal** and *Tarun Chatterjee*, JJ. [Date of decision: 6-5-2005]

Mohd. Malek Mondal v. Pranjal Bardalai, (2003) 4 CHN 521, affirmed

[7577] — S. 482 — Complaint under NDPS Act — Quashing of — Prayer in respect of, made on the ground of non-compliance with S. 42 of the said Act — Rejection of, by High Court — Propriety of — *Held, was proper — Question whether S. 42 complied with or not was a question of fact — Hence, it had to be considered on appreciation of evidence that might be adduced before the trial court — High Court rightly declined the prayer to quash the complaint at the initial stage when only cognizance had been taken — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 42* (Para 6). *Mohd. Malek Mondal* v. *Pranjal Bardalai*, (2005) 10 SCC 608: 2005 SCC (Cri) 1640: AIR 2005 SC 2406: 2005 Cri LJ 2613.

Bench Strength 2. Coram: **Y.K. Sabharwal** and *Tarun Chatterjee*, JJ. [Date of decision: 6-5-2005]

Mohd. Malek Mondal v. Pranjal Bardalai, (2003) 4 CHN 521, affirmed

[7578] — Ss. 482 and 378 — Prayer for quashing conviction under S. 58, NDPS Act, 1985 — Sustainability — *Appellant and Tahsildar convicted under S. 58, NDPS Act on basis of evidence led in trial held in respect of person whom they had allegedly sought to implicate under NDPS Act — Said person exonerated by trial court and based thereon, trial court convicting appellants under S. 58(1)(c), NDPS Act — Appellants failing to accept notice issued by trial court along with non-bailable warrants and instead filing petition under S. 482 — Appellants neither challenging findings recorded by trial court nor their conviction before High Court — High Court dismissing appellants' petition directing them to raise all issues and also to challenge findings recorded against them before trial court — Held, High Court committed no error in doing so — Narcotic Drugs and Psychotropic Substances Act, 1985, S. 58 — CrPC, 1973 — S. 482* (Paras 9 and 10). *Rajbir Singh* v. *State of Haryana*, (2009) 17 SCC 419.

Bench Strength 2. Coram: *Dr. M.K. Sharma* and *Dr. B.S. Chauhan*, JJ. [Date of decision: 26-5-2009]

(xxvi) Quashment re caste related offences

[7579] — S. 482 — Inherent powers of High Court — Exercise of, held on facts, was called for — Caste related offences — *Quashing of complaint filed against appellant by Respondent 3 — Complaint alleging that appellant abused Respondent 3 with name of his caste, demolished the compound wall of his plot, and intimidated him — Held, according to S. 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 the complainant ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view — When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law — Further, Respondent 3 was not even in possession of the suit property on the date of incident which fact had not been disputed — In such circumstances allegation made in the complaint, that the appellant demolished the wall are totally baseless and without any foundation — Criminal complaint was prima facie false and frivolous and filed with an oblique motive — Hence, High Court ought to have exercised its jurisdiction under S. 482 CrPC and quashed the complaint — Penal Code, 1860, Ss. 503, 506, 447 and 426 — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, S. 3(1)(x)* (Paras 3 to 6, 11 and 27). *Gorige Pentaiah* v. *State of A.P.*, (2008) 12 SCC 531.

Bench Strength 2. Coram: *Dalveer Bhandari* and *J.M. Panchal*, JJ. [Date of decision: 20-8-2008]

(11)(xxvi) Quashment re caste related offences *(contd.)*

Connelly v. Director of Public Prosecutions, 1964 AC 1254: (1964) 2 WLR 1145: (1964) 2 All ER 401 (HL); Director of Public Prosecutions v. Humphrys, 1977 AC 1: (1976) 2 WLR 857: (1976) 2 All ER 497 (HL); R.P. Kapur v. State of Punjab, AIR 1960 SC 866; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; Chandrapal Singh v. Maharaj Singh, (1982) 1 SCC 466: 1982 SCC (Cri) 249; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; G. Sagar Suri v. State of U.P., (2000) 2 SCC 636: 2000 SCC (Cri) 513; Roy V.D. v. State of Kerala, (2000) 8 SCC 590: 2001 SCC (Cri) 42; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122: 2005 SCC (Cri) 283; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259, considered and relied on

[7580] — S. 482 — Quashing of charges/criminal proceedings under S. 306 IPC — *Allegation that appellant wife who belonged to higher caste used to harass the deceased husband who belonged to lower caste and was working as a Civil Judge — Held, High Court rightly appreciated material on record before quashing the complaint — Penal Code, 1860, Ss. 306 and 107* (Para 8)

The present Respondent 1 was married to *MA* (hereinafter referred to as "the deceased") in the year 2003. According to the prosecution, the deceased was working as a Civil Judge. Respondent 1's in-laws did not approve of the marriage as Respondent 1 belonged to an upper caste while the deceased belonged to the Scheduled Caste. A child was born to them. The deceased consumed some poisonous substance and lost his life in 2007.

It was the case of the prosecution that during enquiry it surfaced that Respondent 1-accused used to harass the deceased and subject him to mental cruelty as she belonged to higher caste and she did not like association of the deceased with his parents and relatives. This was stated to be the ground of suicide and the accused abetted the suicide. Charge-sheet was filed in the Court of Magistrate.

An application under Section 482 of the Code was filed questioning the order passed by the learned Magistrate. The High Court quashed the proceedings. It was held that the ingredients of Section 306 were not established.

Dismissing the appeal, the Supreme Court held as above. *Kailashi Bai* v. *Aarti Arya*, (2009) 13 SCC 548: (2009) 79 AIC 256 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 27-4-2009]

State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539, applied

[7581] — S. 482 — Quashing of criminal proceedings — Relevant considerations while exercising power as to, reiterated — Caste based offences — *Held, proceedings cannot be quashed where on perusal of FIR, treating the allegations made therein to be correct, a criminal offence is prima facie made out against accused — Quashing is permissible in relation to accused against whom no prima facie offence is disclosed in the FIR — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, S. 3(1)(x) — Constitution of India — Art. 226*

At this stage where the trial has still to be held, all that the High Court can see in the petition under Section 482 CrPC or in a writ petition is whether on a perusal of the FIR, treating the allegations to be correct, a criminal offence is prima facie made out or not or whether there is any statutory bar. At this stage the correctness or otherwise of the allegations in the FIR has not to be seen by the High Court, and that will be seen at the trial. (Para 8)

Treating the allegations in the FIR to be correct, an offence under Section 3(1)(*x*) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is prima facie made out against Appellants 2 and 3. Hence, the FIR against Appellants 2 and 3 cannot be quashed. It will be open to Appellants 2 and 3 to put up their defence at the trial, and the trial court may or may not accept the correctness of the allegations made against them in the FIR. (Paras 25 and 26)

But, so far as Appellant 1 is concerned, a perusal of the FIR shows that no prima facie offence is made out against Appellant 1. Hence, the proceedings against him are quashed. (Paras 33 and 34). *Swaran Singh* v. *State*, (2008) 8 SCC 435: (2008) 3 SCC (Cri) 527: (2008) 69 AIC 25 (SC): 2008 Cri LJ 4369.

Bench Strength **2**. Coram: *Altamas Kabir* and **Markandey Katju**, JJ. [Date of decision: 18-8-2008]

Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; State of Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272, relied on

[7582] — S. 482 — Quashing of criminal proceedings initiated under S. 3(i)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act — *High Court proceeding on an erroneous assumption that the petitioner before it was in possession of the disputed plots and on that basis quashing the criminal proceedings — Setting aside the impugned order, held on facts, the High Court exceeded its jurisdiction while exercising power under S. 482 CrPC — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, S. 3(i)(v). Ram Narain* v. *Murat*, (2002) 9 SCC 705: AIR 2002 SC 2417.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *U.C. Banerjee*, JJ. [Date of decision: 30-3-2001]

[7583] — Ss. 482, 154 and 156(2) — Quashing of FIR — Case law discussed — Caste of accused not mentioned in FIR for offence under S. 3(1)(xi) of SCs and STs (Prevention of Atrocities) Act, 1989 — Effect — *Not mentioning caste of accused in FIR for offence under S. 3(1)(xi) of the 1989 Act, held, not a ground for quashing FIR — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, S. 3(1)(xi)*

The appellant filed an FIR under Section 154 CrPC alleging commission of offence punishable under Section 3(1)(*xi*) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. A petition under Section 482 CrPC for quashing the FIR was filed by the respondent-accused. The basic stand was that in the FIR the caste of the accused was not mentioned and therefore the proceedings could not be continued and deserved to be quashed. The High Court by the impugned order placing reliance on earlier decisions of the High Court allowed the petition of the respondent.

Allowing the appeal,

Held :

During investigation or at the time of framing of charge or at the time of trial it is open to the respondent-accused to show that he either belongs to SC or ST so that applicability of S. 3(1)(*xi*) of the Act is ruled out. It needs no reiteration that the FIR is not expected to be an encyclopdia. After ascertaining the facts during the course of investigation it is open to the IO to record that the accused either belongs to or does not belong to SC or ST. After final opinion is formed, it is open to the court to either accept the same or take cognizance. Even if the charge-sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the court that the materials do not show that the accused does not belong to Scheduled Caste or Scheduled Tribe. Even if charge is framed at the time of trial, materials can be placed to show that the accused either belongs or does not belong to SC or ST. (Paras 14,10 and 12)

The scope for interference on the basis of an application under Section 482 CrPC is well known. (Paras 8, 9 and 13). *Ashabai Machindra Adhagale* v. *State of Maharashtra*, (2009) 3 SCC 789.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *Dr. M.K. Sharma* and *H.L. Dattu*, JJ. [Date of decision: 12-2-2009]

CBI v. Tapan Kumar Singh, (2003) 6 SCC 175: 2003 SCC (Cri) 1305; Masumsha Hasanasha Musalman v. State of Maharashtra, (2000) 3 SCC 557: 2000 SCC (Cri) 722; Dinesh v. State of Rajasthan, (2006) 3 SCC 771: (2006) 2 SCC (Cri) 1; State of Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272; Minu Kumari v. State of Bihar, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310, relied on

(xxvii) Quashment re family/marital/ dowry, etc. disputes

[7584] — S. 482 — Quashing of criminal proceedings, held, justified on facts — Criminal proceedings initiated by wife after divorce notice from husband — *FIR lodged by respondent wife against appellant husband and his family members after issuance of legal notice by appellant intimating that he had divorced the respondent — Case registered under Ss. 406/498-A/34 IPC — Application for grant of anticipatory bail filed by appellant — Parties governed by Muslim Law — Settlement arrived at between the parties before and on the intervention of Addl. Sessions Judge averring that out of the total amount of Rs 2,75,000 payable by appellant to respondent, Rs 2,25,000 had been paid to her and the balance amount of Rs 50,000 would be paid at the time of her making statement and entering no objection for quashing of the FIR and that no dispute remained between the parties regarding payment of dower amount (mehar), dowry articles etc. — Pursuant to the settlement, application purportedly under S. 482 CrPC filed by appellants before High Court for quashing of the FIR — Respondent, however, instead of complying with the averment made in the agreement as also in her affidavit, filed objections to the application contending that she was not aware of the contents of the agreement and the affidavit which were got signed by her by misrepresentation of facts — In view of the stand taken by the respondent, High Court took the view that there was no ground to interfere as respondent wanted to continue with her complaint and was not intending to compromise the matter — Held, denial of execution of the deed of settlement was an afterthought and cannot be accepted in view of the fact that the settlement was arrived at the intervention of a judicial officer of the rank of Addl. Sessions Judge — Ex facie, the settlement appears to be genuine — In view of conduct of the respondent, continuance of the criminal proceedings would be an abuse of the process of court — Hence in exercise of jurisdiction under Art. 142, High Court's judgment set aside and the FIR quashed — Constitution of India — Arts. 136 & 142. Mohd. Shamim* v. *Nahid Begum*, (2005) 3 SCC 302: 2005 SCC (Cri) 722: AIR 2005 SC 757: 2005 Cri LJ 889: (2005) 99 Cut LT 631.

Bench Strength **2**. Coram: *N. Santosh Hegde* and **S.B. Sinha**, JJ. [Date of decision: 7-1-2005]

Ruchi Agarwal v. Amit Kumar Agrawal, (2005) 3 SCC 299: (2004) 8 Supreme 525, relied on

(11)(xxvii) Quashment re family/marital/dowry, etc. disputes *(contd.)*

[7585] — S. 482 — Quashing of proceedings under — Legality — Bigamy — Alleged offence of — *Decree for dissolution of marriage — Appeal against, filed before High Court by wife — Punjab & Haryana High Court vide order dt. 24-11-2000 staying the operation of said decree and restraining the husband from remarrying till further orders — Wife filing complaint before Judicial Magistrate alleging that during subsistence of a valid marriage, her husband contracted second marriage — Wife submitting that second marriage solemnised on 8-3-2001 when the order of stay dt. 24-11-2000 was in operation — J&K High Court, while quashing the proceedings initiated on the said complaint, acted on the basis that second marriage was solemnised on 8-3-2001 — No reference to the order of stay made in the impugned order — As per husband, second marriage was solemnised subsequent to the date of said decree but prior to the date of order of stay — High Court directed to rehear the matter afresh by taking into account the effect of the order of stay and adjudicating upon the question as to when the second marriage actually took place — Penal Code, 1860, S. 494 — Ranbir Penal Code, 1932 (1989 Smvt.), S. 494 — J&K Code of Criminal Procedure, 1989, S. 561-A (akin to S. 482 CrPC)*

Disposing of the appeal,

Held :

It is not in dispute that the order dated 24-11-2000 clearly restrained the husband from remarriage and the operation of the decree of divorce was stayed. The High Court, while acting under Section 561-A, Jammu and Kashmir Code of Criminal Procedure, 1989, proceeded on the basis that the marriage between the husband and *U* (second wife) took place on 8-3-2001 and applying the ratio in *Krishna Gopal case*, (2002) 10 SCC 216 it held that no offence was made out. The impugned order does not refer to the order of stay and the effect thereof. There is a great deal of factual distinction between *Krishna Gopal case* and the case at hand. Again it has to be noted that there is a dispute, as presently raised by the respondent husband, that the date of marriage was much before the date on which the order of stay was passed and subsequent to the date on which the decree for dissolution of marriage was passed. (Para 6)

In view of the above controversy, the matter needs to be reheard by the High Court. While considering the matter afresh, the effect of the order of stay dated 24-11-2000 shall be taken note of. Much would depend on the date when the marriage took place. There is no dispute that the respondent husband has married *U*. The crucial question is when the marriage took place. All these aspects are to be adjudicated by the High Court while dealing with the matter afresh. (Para 7). *Kunti Devi* v. *Som Raj*, (2004) 11 SCC 278.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 23-9-2004]

Krishna Gopal Divedi v. Prabha Divedi, (2002) 10 SCC 216: 2004 SCC (Cri) 473: AIR 2002 SC 389, distinguished on facts

[7586] — S. 482 — Exercise of inherent power under, to quash proceedings initiated pursuant to complaint when not called for — Divorce, Second marriage, etc. — *Complaint alleging offences under Ss. 494, 496, 498-A, 112, 120-B of Penal Code, 1860 — On facts, High Court was wrong in quashing the proceedings*

The appellant had married the first respondent but later they separated and the first respondent moved a divorce petition. The appellant instituted a criminal complaint against the respondent. The Court of Metropolitan Magistrate took cognizance of the offences under Ss. 494, 496, 498-A, 112, 114, 120, 120-B and 34 IPC. It was alleged that the first respondent secretly married the second respondent in the presence of respondents 3 to 6 while the proceedings for decree of divorce were still pending. On the application of the first respondent under S. 482 CrPC the High Court proceeded to analyse the case of the complainant in the light of all the probabilities in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceedings are to be quashed against all the respondents.

Allowing the appeal,

Held :

There are specific allegations in the complaint disclosing the ingredients of the offence taken cognizance of. It is for the complainant to substantiate the allegations by evidence at a later stage. In the absence of circumstances to hold prima facie that the complaint is frivolous when the complaint does disclose the commission of an offence there is no justification for the High Court to interfere under S. 482 CrPC.

In proceedings instituted on complaint, exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under S. 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. *Dhanalakshmi* v. *R. Prasanna Kumar*, 1990 Supp SCC 686: AIR 1990 SC 494: 1990 Cri LJ 320: 1990 Mah LJ 32.

Bench Strength **3**. Coram: *E.S. Venkataramiah, C.J.* and *K.N. Singh* and **M. Fathima Beevi**, JJ. [Date of decision: 15-11-1989]

Prasanna Kumar v. Dhanalakshmi, (1988) 2 Crimes 896: 1989 Cri LJ 1829, reversed

[7587] — S. 482 — Bigamy — Quashment application — *Where clear and specific allegation made in the complaint that accused 1 and 2, having married during subsistence of a valid marriage of accused 1 with the complainant, committed offence under S. 494 IPC and Magistrate having regard to the statement made on oath by the complainant as also evidence of witnesses produced by her and other material, reached his satisfaction regarding existence of a prima facie case against the accused, held, High Court not justified in quashing the complaint and the criminal proceedings on ground of abuse of process of court by relying on some additional material produced by the accused not admitted or accepted by the complainant*

The appellant was married to the first respondent but later they started living separately. The appellant lodged a complaint before the Chief Judicial Magistrate making specific and clear allegations that during the subsistence of the earlier valid marriage with her respondents 1 and 2 entered into a second marriage and thereby committed an offence falling under S. 494 IPC. She affirmed the fact on oath. She also produced two witnesses before the magistrate who supported her case. On the basis of the statement on oath of the complainant read along with the evidence of the two witnesses thus recorded and the materials available before the magistrate to get himself satisfied that cognizance should be taken and process issued, the magistrate was satisfied that an offence had been disclosed and accordingly the summons had been issued. But the High Court took the view that the continuance of the proceedings would be an abuse of the process of the court, only on the basis of the additional materials produced by the respondents. The materials thus produced had not been admitted or accepted by the appellant.

Allowing the appeal

Held :

The truth or otherwise of the allegations in the complaint is a matter for proof. When the materials relied on by the respondent require to be proved, no inference can be drawn on the basis of those materials to conclude that the complaint is false. The High Court was not justified in assuming that the first information report had been lodged by the complainant/appellant solely because she had not filed any reply before the High Court denying the fact. It does not appear that the sufficient opportunity was given to the appellant to do so. The affidavits of one of the persons who is stated to have performed the ceremonies would also be of no assistance in drawing any inference either way. Thus the High Court had clearly erred in reaching the conclusion that the proceedings are liable to be quashed. In the light of the allegations made in the complaint and the materials produced in support of those allegations by the appellant before the magistrate, the issue of the process to respondents 1 and 2 who are alleged to have solemnised the second marriage during the subsistence of an earlier valid marriage of the appellant is proper and when process has been issued, the proceedings have to continue in accordance with law against respondents 1 and 2. However, the allegations against the other accused namely, their parents and family members were vague and it may said that they had been unnecessarily and vexatiously roped in. *Chand Dhawan (Smt)* v. *Jawahar Lal*, (1992) 3 SCC 317: 1992 SCC (Cri) 636: AIR 1992 SC 1379: 1992 Cri LJ 1956.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **M. Fathima Beevi**, JJ. [Date of decision: 28-4-1992]

[7588] — S. 482 — Petition under, filed by husband for quashing criminal proceedings against him initiated by wife — *Cognizance of offence taken by Magistrate under Ss. 498-A & 494 IPC — Held, High Court erred in taking the view that cognizance of offence under S. 498-A IPC barred under S. 468 and quashing the entire proceedings on that ground under S. 482 — Moreover bar under S. 468 not applicable to offence under S. 494 IPC. Vanka Radhamanohari* v. *Vanka Venkata Reddy*, (1993) 3 SCC 4: 1993 SCC (Cri) 571.

Bench Strength **2**. Coram: *Kuldip Singh* and **N.P. Singh**, JJ. [Date of decision: 20-4-1993]

(11)(xxvii) Quashment re family/marital/dowry, etc. disputes *(contd.)*

[7589] — Ss. 482 and 320 — Inherent powers under S. 482 — Exercise of, in relation to matrimonial disputes — Scope — *Non-compoundable offences (offences under Ss. 498-A and 406 IPC in this case) — Quashing of criminal proceedings or FIR or complaint by High Court in respect of — Held, permissible since S. 320 does not limit or affect the powers under S. 482 — Constitution of India — Art. 226*

If for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power. Thus, the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code. (Paras 8 and 15)

It is, however, to be borne in mind that in the present case the appellants had not sought compounding of the offences. They had approached the Court seeking quashing of FIR. (Para 9)

It is well settled that the powers under Section 482 have no limits. Of course, where there is more power, it becomes necessary to exercise utmost care and caution while invoking such powers. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. (Para 6)

In the present case, the wife filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. In such eventuality, there would almost be no chance of conviction. So it would not be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences. It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides. Further, in *Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre*, (1988) 1 SCC 692 it was held that while exercising inherent power of quashing under Section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. The special features in such matrimonial matters are evident. It becomes the duty of the court to encourage genuine settlements of matrimonial disputes. (Paras 10, 11 and 12)

The object of introducing Chapter XX-A in IPC was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. A hypertechnical view would be counterproductive and would act against the interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of IPC. (Para 14). *B.S. Joshi* v. *State of Haryana*, (2003) 4 SCC 675: 2003 SCC (Cri) 848: AIR 2003 SC 1386: (2003) 2 KLT 1062: 2003 Cri LJ 2028.

Bench Strength **2**. Coram: **Y.K. Sabharwal** and *H.K. Sema*, JJ. [Date of decision: 13-3-2003]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10, considered and explained

Surendra Nath Mohanty v. State of Orissa, (1999) 5 SCC 238: 1999 SCC (Cri) 998, distinguished

Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699: 1977 SCC (Cri) 404; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; G.V. Rao v. L.H.V. Prasad, (2000) 3 SCC 693: 2000 SCC (Cri) 733, relied on

Followed in Nikhil Merchant v. CBI, (2008) 9 SCC 677

[7590] — S. 482 — Quashing of charge under S. 498-A IPC against parents-in-law of complainant-wife by High Court on the basis of concession made by the Government Advocate without going through the record, held, was improper — *On facts, there was sufficient material on record to frame a charge under S. 498-A against them — Government Advocates must conduct the case in more responsible manner in such cases — High Court also should verify the record before accepting the concession — Penal Code, 1860, S. 498-A. Deepti* v. *Akhil Rai*, (1995) 5 SCC 751: 1995 SCC (Cri) 1020.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **G.T. Nanavati**, JJ. [Date of decision: 14-9-1995]

[7591] — S. 482 — Quashing of complaint — Considerations — Mala fides — Absurdity — *Allegation of theft of bangles by appellant (brother of daughter-in-law of Respondent 1) during raid by police at Respondent 1's house — Respondent 1 arrested on complaint of his daughter-in-law —*

Held, it is absurd to think that appellant, who was present with police party, would venture to pocket the bangles in their presence — Accompanying police officers have not been made accused in complaint — Complaint wholly lacks bona fides — Complaint has to be quashed if allegations are found absurd and without any basis — When complaint is seen in backdrop of prosecution of Respondent 1 for offences under Ss. 498-A, 406 IPC, absurdity becomes more prominent — Criminal complaint was in retaliation to criminal prosecution which was being faced by Respondent 1 — Complaint quashed — Penal Code, 1860, Ss. 498-A and 406 (Paras 2 to 6 and 9 to 13). *Manoj Mahavir Prasad Khaitan* v. *Ram Gopal Poddar*, (2010) 10 SCC 673.

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 8-10-2010]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

[7592] — S. 482 — Quashing of FIR — FIR lodged by brother of divorced wife against husband and his family members alleging offences under Ss. 494 and 498-A IPC against accused persons — *Ingredients of Ss. 494 and 498-A IPC not made out from allegations made in FIR — Held, FIR manifestly attended with mala fides and actuated with ulterior motives — Prosecution of appellant was not legitimate, rather was frivolous, vexatious, unwarranted and abuse of process — Hence FIR liable to be quashed* (Paras 12 to 14). *Pashaura Singh* v. *State of Punjab*, (2010) 11 SCC 749: AIR 2010 SC 922: (2009) 4 APLJ 122: 2010 Cri LJ 875: (2010) 2 Guj LR 1817: (2010) 1 ECrN 708: (2009) 84 AIC 5.

Bench Strength **2**. Coram: *Tarun Chatterjee* and **R.M. Lodha**, JJ. [Date of decision: 13-11-2009]

[7593] — S. 482 — Applicability — Cruelty to married woman — Allegations of — Ingredients for presumption of offence under — Whether made out — *Complaint filed by respondent against husband and his appellant parents — Summons and non-bailable warrants issued against appellants — High Court dismissing application for quashing summoning order — Appeal against — Held, allegations relating to place where marriage took place have nothing to do with offence under S. 498-A IPC — Allegations that A-2 (mother-in-law) kicked respondent and told her that her mother was a liar, may make out some other offence but not one punishable under S. 498-A — Allegations that A-2 poisoned ears of her son against respondent; she gave two used lady's suits of her daughter to complainant; giving perpetual sermons to complainant; threatening her son may be divorced for the second time, held, do not give rise to offences punishable under S. 498-A — No case made out under S. 498-A IPC — Hence, summoning order passed against appellants, except A-2 set aside as proceedings against her could continue under S. 406 IPC only — Penal Code, 1860, Ss. 498-A, 406 and 34* (Paras 32, 36, 37, 40 and 61). *Bhaskar Lal Sharma* v. *Monica*, (2009) 10 SCC 604: (2009) 161 DLT 739.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 27-7-2009]

[7594] — S. 482 — Applicability — Held, in order to be charged under S. 498-A, one has to be "relative" of husband by blood, marriage or adoption — *Appellant being foster sister of complainant's husband and not belonging to his family or being his "relative" in any manner as referred to in S. 498-A, cannot be tried for offence under S. 498-A — Charge re S. 498-A IPC, quashed — Penal Code, 1860, S. 498-A* (Paras 11 to 13). *Vijeta Gajra* v. *State (NCT of Delhi)*, (2010) 11 SCC 618: AIR 2010 SC 2712: 2010 Cri LJ 3841: (2010) 92 AIC 76 (SC).

Bench Strength **2**. Coram: **V.S. Sirpurkar** and *Cyriac Joseph*, JJ. [Date of decision: 8-7-2010]

U. Suvetha v. State, (2009) 6 SCC 757: (2009) 3 SCC (Cri) 36, followed

T. Ashok Pai v. CIT, (2007) 7 SCC 162; Shivcharan Lal Verma v. State of M.P., (2007) 15 SCC 369: (2010) 3 SCC (Cri) 729, referred to

R. Ramanatha Aiyar's Advance Law Lexicon, Vol. 4, 3rd Edn., referred to

[7595] — S. 482 — Disputed question of fact — Whether complainant was the legally wedded wife of appellant — Non-interference, in exercise of its inherent jurisdiction — *High Court by impugned judgment dismissing application of appellant for quashing complaint filed against him under S. 498-A r/w S. 34 IPC, on ground that it involved disputed question of fact — Appellant contending that complainant was not his legally wedded wife as he was already married, and therefore S. 498-A IPC had no application — Held, no interference with impugned judgment called for — Penal Code, 1860, S. 498-A r/w S. 34* (Paras 2, 3, 8 and 9). *Koppisetti Subbharao* v. *State of A.P.*, (2009) 12 SCC 331: AIR 2009 SC 2684: (2009) 2 KLT 531: 2009 Cri LJ 3480: (2009) 2 APLJ 114 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 29-4-2009]

Reema Aggarwal v. Anupam, (2004) 3 SCC 199: 2004 SCC (Cri) 699, followed

Mayne: Early History of Institution, p. 319; Banerjee: Marriage and Stridhan, p. 345; Mayne's Hindu Law and Usage, cited

(11)(xxvii) Quashment re family/marital/dowry, etc. disputes *(contd.)*

[7596] — **S. 482 — Exceptional circumstances justifying exercise of power under S. 482 — Abuse of process of court — Criminal proceedings launched to harass husband and in-laws due to matrimonial differences — Matrimonial dispute arising in Canada whereas FIR lodged in India** — *No prima facie case of cheating or criminal breach of trust made out — Superintendent of Police after conducting investigation concluding that husband and in-laws had not committed any offence, yet charge-sheet filed against appellants — Held, High Court ought to have exercised its discretion under S. 482 in favour of appellants — Proceedings in question, quashed — Penal Code, 1860, Ss. 406, 415 and 420*

Appellant 1 (husband) and Respondent 3 (wife) were married in India but settled in Canada. Sometime in early 2006, matrimonial differences arose between Appellant 1 and Respondent 3 and the parties started living separately. Appellant 1 moved a divorce petition against Respondent 3 sometime around 1-5-2006. Before that, Respondent 3's father came to India and lodged complaint against appellants sometime around 21-4-2006 under Sections 406 (criminal breach of trust) and 420 (cheating and dishonestly inducing delivery of property) IPC, inter alia alleging that Appellant 1 married Respondent 3 solely for the purpose of getting entry into Canada and settling there, and that appellants had taken away dowry articles belonging to Respondent 3. The Superintendent of Police, after investigation, concluded that no allegations was proved against appellants and therefore the case should be closed, yet a charge-sheet was filed against appellants.

The appellants moved High Court under Section 482 CrPC for quashing criminal proceedings but High Court refused to do so. The issue involved was whether any offence was prima facie made out against appellants, or the High Court ought to have exercised its discretionary jurisdiction under Section 482 in favour of appellants.

Allowing the appeal and quashing the proceedings,

Held :

It is not a case where the court has to undertake a difficult task of appreciating the evidence brought on record by the parties. The submission that marriage between Appellant 1 and Respondent 3 was solemnised only for the purpose of getting the family settled at Canada is far-fetched. For the purpose of constituting an offence for criminal breach of trust and/or cheating, the ingredients thereof as contained in Sections 405 and 415 respectively must be borne out from the records. (Paras 21 and 22)

The larger part of offence, if any, has been committed only in Canada. It is difficult to comprehend why Respondent 3's father had to come from Canada to Jalandhar (in India) to lodge an FIR. Respondent 3 and the first informant do not say that the inquiry report submitted by the Superintendent of Police on the representation made by Appellant 2 was incorrect. It has also not been stated that as to on what material, the charge-sheet had been submitted. There is no doubt in the peculiar facts and circumstances of this case that allegations contained in the FIR had been made with an ulterior motive to harass the appellants. Continuance of criminal proceeding against them would, therefore, amount to abuse of process of the court. (Para 32)

Upon taking a holistic view of the matter vis-à-vis statutory provisions, it has to be held that the appellants have made out an exceptional case to invoke the inherent jurisdiction of High Court under Section 482 of the Code. It was obligatory on the part of the High Court to exercise its discretionary jurisdiction to prevent abuse of process of the court. (Para 35). *Harmanpreet Singh Ahluwalia* v. *State of Punjab*, (2009) 7 SCC 712: (2009) 3 SCC (Cri) 620: 2009 Cri LJ 3462.

Bench Strength **2**. Coram: **S.B. Sinha** and *Dr. M.K. Sharma*, JJ. [Date of decision: 5-5-2009]

State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; All Cargo Movers (India) (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776: (2009) 1 SCC (Cri) 947; V.Y. Jose v. State of Gujarat, (2009) 3 SCC 78: (2009) 1 SCC (Cri) 996; Hira Lal v. State of U.P., (2009) 11 SCC 89, relied on

Harmanpreet Singh Ahluwalia v. State of Punjab, Criminal Miscellaneous No. M-40020 of 2007 decided on 13-12-2007 (P&H), reversed

[7597] — **S. 482 — Petition for quashing complaint under S. 498-A IPC and S. 4, Dowry Prohibition Act, 1961 — Rejected by High Court** — *Marriage between Appellant 1 and complainant taking place on 25-11-1998, and Appellant 1 leaving for USA six months later — Complaint filed on 6-2-2000 — Held, even a cursory perusal of the complaint shows that the case falls within Category (7) highlighted in* Bhajan Lal case, *1992 Supp (1) SCC 335 viz. "where, a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge" — Hence, said* *complaint liable to be quashed — Penal Code, 1860, S. 498-A — Dowry Prohibition Act, 1961, S. 4* (Paras 9, 7, 2, 3 and 5). *Sunder Babu* v. *State of T.N.*, (2009) 14 SCC 244.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *L.S. Panta* and *P. Sathasivam*, JJ. [Date of decision: 19-2-2009]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, considered and applied

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Raghubir Saran (Dr.) v. State of Bihar, AIR 1964 SC 1; Minu Kumari v. State of Bihar, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310; Priya Vrat Singh v. Shyam Ji Sahai, (2008) 8 SCC 232: (2008) 3 SCC (Cri) 463, relied on

[7598] — S. 482 — Inherent Powers of High Court — Quashment of proceedings — General grounds for quashment — Quashing of charge-sheet — Factors to be considered — Possibility of discharge under S. 239 CrPC — Nature of cases being warrant cases — Relevance — *FIR by appellant wife alleging that her respondent husband married another lady in presence of other accused persons, from which a child was born and that appellant was subjected to cruelty for refusing to consent to her abortion and was driven out from her matrimonial home — Charge-sheet under Ss. 406, 494 and 498-A IPC filed — High Court quashed charge-sheet under Ss. 406 and 494 IPC because of non-fulfilment of ingredients constituting offences under these sections — Sustainability — Held, while considering application for quashing of charge-sheet, allegations made in FIR and materials collected during course of investigation are required to be considered — Truthfulness or otherwise of allegation is not fit to be gone into at this stage as it is always a matter of trial — High Court ought not to have interfered after submission of charge-sheet and even before Magistrate examining as to whether accused persons deserved to be discharged under S. 239 CrPC — When a report is submitted to Magistrate, he is required to be prima facie satisfied that facts disclosed therein constitute an offence — Magistrate is not bound by conclusion of investigating agency in police report i.e. in charge-sheet and it is open to him, after exercise of judicial discretion, to take view that facts disclosed in report do not constitute any offence for taking cognizance — Quashing of Ss. 406 and 494 IPC from charge-sheet, even before exercise of discretion by Magistrate under S. 190 CrPC, undesirable — Moreover, all offences are triable by Magistrate and quashing of charge-sheet under Ss. 406 and 494 IPC had not resulted in exonerating accused persons from facing trial itself — Matter would have been different had offences under Ss. 406 and 494 IPC been triable as a sessions case — Herein, High Court ought to have allowed aforementioned provisions of CrPC their full play — For all these reasons, High Court erred in holding that charge-sheet does not reveal ingredients constituting offences under Ss. 406 and 494 IPC — Hence, impugned judgment set aside — Penal Code, 1860, Ss. 406, 494 and 498-A* (Paras 13 to 20). *K. Neelaveni* v. *State*, (2010) 11 SCC 607: AIR 2010 SC 3191: 2010 Cri LJ 2819: (2010) 2 ECrN 541 (SC): (2010) 88 AIC 58 (SC).

Bench Strength **2**. Coram: *D.K. Jain* and **C.K. Prasad**, JJ. [Date of decision: 22-3-2010]

[7599] — S. 482 — Quashing of FIR — No ingredients of offence allegedly made out on face of the record — *Respondent 2 alleged that she was married to the appellant who worked in Saudi Arabia and who had come home on leave for four months and Rs 5 lakhs was given to him as dowry which he spent in buying properties for his family; that initially for about 2-3 months he sent her money for household expenses and was affectionate towards her, but later believing his family members who were spreading wrong information about her conduct stopped to do so — It was further alleged that when he came to India on leave he stayed with his younger brother and when Respondent 2 went there she was driven out, and hence, because of such treatment meted out to her she was suffering both mentally and physically — Held, for application of Expln. (a) of S. 498-A IPC there has to be such conduct on the part of the appellant which could be said to be amounting to cruelty of such a nature as is likely to cause Respondent 2 to commit suicide or to cause any injury to her life — Said ingredients not mentioned either in the FIR or in the charge-sheet and in absence thereof, no case made out — As far as Expln. (b) of S. 498-A is concerned in order to constitute cruelty under the said provision there has to be harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or a case is to be made out to the effect that there was a failure by her or any person related to her to meet such demand — When the allegation made in the FIR and the charge-sheet is examined in the present case in the light of the aforesaid provision, no prima facie case even under the aforesaid provision is made out to attract a case of cruelty — Marriage of Respondent 2 had taken place in 1997 when Rs 5 lakhs was alleged to have been given as dowry and in the FIR filed in 2002 there was no allegation that subsequent thereto any harassment was made by the appellant with a view to coercing her or any person related to her to meet any unlawful demand for any property — Thus,*

(11)(xxvii) Quashment re family/marital/dowry, etc. disputes *(contd.)*

neither Expln. (a) nor Expln. (b) of S. 498-A IPC attracted in the present case — Hence, both the FIR as also the charge-sheet liable to be quashed — High Court failed to appreciate the facts in proper perspective, and erred in rejecting appellant's petition for quashing FIR/charge-sheet — Penal Code, 1860, S. 498-A Explns. (a) & (b) (Paras 27 to 33). *Shakson Belthissor* v. *State of Kerala*, (2009) 14 SCC 466: (2009) 80 AIC 192 (SC).

Bench Strength **2**. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 6-7-2009]

Alpic Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513, followed

Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736: 1976 SCC (Cri) 507; Drugs Inspector v. Dr. B.K. Krishnaiah, (1981) 2 SCC 454: 1981 SCC (Cri) 487; MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288: 1987 SCC (Cri) 82; Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400; S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241: 2002 SCC (Cri) 129; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516: (2009) 1 SCC (Cri) 567, considered and relied on

Chunduru Siva Ram Krishna v. Peddi Ravindra Babu, (2009) 11 SCC 203: (2009) 3 SCC (Cri) 1297; V.V.S. Rama Sharma v. State of U.P., (2009) 7 SCC 234: (2009) 3 SCC (Cri) 356, relied on

[7600] — S. 482 and Ch. XV — Quashing of private complaint — Maliciously instituted proceedings to wreak vengeance on the accused [as per Category 7 in *Bhajan Lal case*, 1992 Supp (1) SCC 335] — Applicability — *Complaint case instituted by the father of the appellant-accused's earlier wife (frustrated with marriage, living separately and divorced) against appellant, his family members, subsequent wife and subsequent in-laws under Ss. 494, 120-B and 109 IPC r/w Ss. 3/4 of Dowry Act — Case instituted in 1994, allegations of dowry torture in 1992 and dowry demand by husband in 1993 — Appellant-accused's subsequent marriage on 2-3-1993 was after the time-limit for filing appeal against ex parte decree of divorce had expired — No specific allegation against other accused (except appellant-accused) though they were impleaded in the private complaint — In spite of service of notice none appeared on behalf of Respondent 1 (complainant) — Category 7 of Bhajan Lal case for quashing of complaint, on facts, held, applicable — Penal Code, 1860, Ss. 494, 120-B and 109 — Dowry Prohibition Act, 1961, Ss. 3 and 4 — Hindu Marriage Act, 1955, S. 15*

M, left her husband *P* and started living in her parental house. On 1-1-1993, an ex parte decreed for dissolution of marriage was passed against *M* on the ground of cruelty and harassment. After the time for filing appeal against the ex parte decree dated 1-1-1993 under Section 28(4) of the Hindu Marriage Act, 1955 (the Marriage Act) expired on 31-1-1993, and no appeal was preferred, *P* married *S* on 2-3-1993. The respondent (*M*'s father), thereafter, on 6-12-1994 filed a private complaint wherein all the appellants (*P*, his family members and in-laws) were arrayed as accused persons for offences punishable under Sections 494, 120-B and 109 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (the Dowry Act). By the impugned order, the High Court rejected the Section 482 CrPC petition of the appellants on the ground that the trial court can be directed to conclude the trial expeditiously and at the time of framing charges, the appellants can raise such points as have been raised in the present dispute.

Allowing the appeal,

Held :

The present case appears to be one where Category 7 of the illustrations given in *Bhajan Lal case*, 1992 Supp (1) SCC 335 is clearly applicable. The parameters for exercise of power under Section 482 CrPC have been laid down by the Supreme Court in several cases. In the complaint filed, the allegation is that the dowry torture was made sometime in 1992. It has not been explained as to why for more than two years no action was taken. Apart from *P* (husband of *M*), his mother, mother's sister, *S* (subsequently married wife), brother-in-law and *S*'s father were impleaded as parties. No role has been specifically ascribed to anybody except the husband and that too of a dowry demand in February 1993 when the complaint was filed on 6-12-1994 i.e. nearly after 22 months. It is to be noted that in spite of service of notice, none appeared on behalf of Respondent 1. The proceedings pending before the CJM, are, therefore, quashed. (Paras 8 to 13). *Priya Vrat Singh* v. *Shyam Ji Sahai*, (2008) 8 SCC 232: (2008) 3 SCC (Cri) 463: (2008) 5 All LJ 673: 2008 Cri LJ 4367.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 5-8-2008]

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36, followed

Raghubir Saran (Dr.) v. State of Bihar, AIR 1964 SC 1; Minu Kumari v. State of Bihar, (2006) 4 SCC 359: (2006) 2 SCC (Cri) 310; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

[7601] — Ss. 482 and 154 — Quashing of FIR — Scope of High Court's jurisdiction — Complaint filed by appellant alleging offences punishable under Ss. 498-A and 406 IPC against respondents — *Complaint registered as FIR — Before commencement of investigation, petition moved under S. 482 by respondent for* *quashing the FIR — High Court on the basis of certain statements made by appellant in a divorce proceeding between her and first respondent finding that the FIR prima facie not disclosing any cognizable offence against the respondents and proceeding to quash the FIR — Held, this was too premature a stage for High Court to give such a finding when even the investigation had not started and investigating agency had no occasion to find out whether there was material to file a charge-sheet or not — Though finding given by civil court is binding on criminal court, but such consideration to finding of civil court cannot be given by High Court entertaining criminal petition for quashing FIR wherein investigation has not even started — Finding of civil court that allegations made by appellant in the divorce case were not established, rendered subsequent to High Court's judgment quashing the FIR not relevant at this stage, though it may be taken note of by investigating agency or court before which charge-sheet is filed* (Paras 5 to 9). *Savita* v. *State of Rajasthan*, (2005) 12 SCC 338.

Bench Strength 2. Coram: *N. Santosh Hegde* and *S.B. Sinha*, JJ. [Date of decision: 18-1-2005]

State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561: 1982 SCC (Cri) 283; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234, distinguished

V.M. Shah v. State of Maharashtra, (1995) 5 SCC 767: 1995 SCC (Cri) 1077, considered

[7602] — Ss. 482 and 154, 211 & 210 — Quashing of FIR for offences under Ss. 498-A and 406 IPC — Stage up to which possible — *Where charge-sheet already filed and charges also framed, held, question of quashing FIR does not arise — Penal Code, 1860, Ss. 498-A and 406* (Para 14). *Manjula Sinha* v. *State of U.P.*, (2007) 12 SCC 503: (2008) 3 SCC (Cri) 271: (2007) 5 All LJ 245.

Bench Strength 3. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 11-7-2007]

[7603] — S. 482 — Quashing of criminal proceedings — Stay when the better option — *FIR lodged by respondent against appellants, husband and sister-in-law, alleging adultery — Appellants thereupon filing complaint cases — High Court quashing the proceedings initiated in the complaint cases and directing that the complainants would be at liberty to approach the court in case finding in the case arising out of FIR goes in their favour — Held, proper course to follow would be to stay the proceedings in the complaint cases, to be taken up after decision in the case arising out of FIR* (Paras 2 and 3). *Kamal Chandra Das* v. *Anjana Das*, (2005) 11 SCC 588.

Bench Strength 2. Coram: *Y.K. Sabharwal* and *P.P. Naolekar*, JJ. [Date of decision: 15-4-2005]

[7604] — S. 482 — Quashing of trial in a complaint alleging harassment by husband and his parents for more dowry — Absence of reasons — Sustainability — *Held, order indefensible since disposed of in casual manner without indicating any basis or reasons for exercising jurisdiction under S. 482 — Order set aside and matter remitted for consideration afresh — Penal Code, 1860, S. 498-A — Dowry Prohibition Act, 1961, Ss. 3 and 4* (Para 14). *Samira Khanum* v. *Mohd. Asfar Towheed*, (2009) 4 SCC 49.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 6-3-2009]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, impliedly relied on

[7605] — S. 482 — Quashing of criminal proceedings — Whether allegations in FIR made out the offence of which cognizance could be taken — Allegations against appellant sister-in-law only relating to causing insult, making derogatory remarks and behaving rudely against informant and not pertaining to dowry demand or entrustment and misappropriation of property belonging to her — *Allegations of abetment of alleged offences, also not made against this appellant — Held, alleged offences under Ss. 498-A and 406 IPC and S. 4, Dowry Prohibition Act on facts not made out from such allegations, hence Magistrate not justified in taking cognizance thereof — Proceedings liable to be quashed — Penal Code, 1860, Ss. 498-A & 406 — Dowry Prohibition Act, 1961, S. 4* (Para 6). *Ramesh* v. *State of T.N.*, (2005) 3 SCC 507: 2005 SCC (Cri) 735: AIR 2005 SC 1989: 2005 Cri LJ 1732.

Bench Strength 2. Coram: *P. Venkatarama Reddi* and *A.K. Mathur*, JJ. [Date of decision: 3-3-2005]

[7606] — Ss. 482, 190, 173(2) and 239 — Quashing of charge-sheet — Factors to be considered — Possibility of discharge under S. 239 — Nature of cases being warrant cases — Relevance — *FIR by appellant wife alleging that her respondent husband married another lady in presence of other accused persons, from which a child was born and that appellant was subjected to cruelty for refusing to consent to her abortion and was driven out from her matrimonial home — Charge-sheet under Ss. 406, 494 and 498-A IPC filed — High Court quashed charge-sheet under Ss. 406 and 494 IPC because of non-fulfilment of ingredients constituting offences under these sections — Sustainability — Held, while considering application for quashing of charge-sheet, allegations made in FIR and materials collected during*

(11)(xxvii) Quashment re family/marital/dowry, etc. disputes *(contd.)*

course of investigation are required to be considered — Truthfulness or otherwise of allegation is not fit to be gone into at this stage as it is always a matter of trial — High Court ought not to have interfered after submission of charge-sheet and even before Magistrate examining as to whether accused persons deserved to be discharged under S. 239 CrPC — When a report is submitted to Magistrate, he is required to be prima facie satisfied that facts disclosed therein constitute an offence — Magistrate is not bound by conclusion of investigating agency in police report i.e. in charge-sheet and it is open to him, after exercise of judicial discretion, to take view that facts disclosed in report do not constitute any offence for taking cognizance — Quashing of Ss. 406 and 494 IPC from charge-sheet, even before exercise of discretion by Magistrate under S. 190 CrPC, undesirable — Moreover, all offences are triable by Magistrate and quashing of charge-sheet under Ss. 406 and 494 IPC had not resulted in exonerating accused persons from facing trial itself — Matter would have been different had offences under Ss. 406 and 494 IPC been triable as a sessions case — Herein, High Court ought to have allowed aforementioned provisions of CrPC their full play — For all these reasons, High Court erred in holding that charge-sheet does not reveal ingredients constituting offences under Ss. 406 and 494 IPC — Hence, impugned judgment set aside — Penal Code, 1860, Ss. 406, 494 and 498-A (Paras 13 to 20). *K. Neelaveni* v. *State*, (2010) 11 SCC 607: AIR 2010 SC 3191: 2010 Cri LJ 2819: (2010) 2 ECrN 541: (2010) 88 AIC 58.

Bench Strength **2**. Coram: *D.K. Jain* and **C.K. Prasad**, JJ. [Date of decision: 22-3-2010]

[7607] — S. 482 — Quashing of criminal proceedings initiated under Ss. 498-A and 406 r/w S. 34 IPC — Propriety of — *Where there were clear allegations of cruelty meted out to the appellant wife on demand of dowry, High Court's order quashing the proceedings by holding that prima facie no case for offence under S. 498-A was made out against the respondent, held, not sustainable — Penal Code, 1860, Ss. 498-A and 406 r/w S. 34* (Paras 4 and 5). *Banhisikha Roy* v. *Somnath Roy*, (2005) 12 SCC 500.

Bench Strength **2**. Coram: *D.M. Dharmadhikari* and *B.N. Srikrishna*, JJ. [Date of decision: 25-7-2005]

[7608] — S. 482 — Quashing of FIR — Complaint lodged by Respondent 2 against her husband and husband's brother (Appellant 1), his father (Appellant 2) and mother — FIR registered for offence under S. 406 IPC — *After investigation, charge-sheet filed, cognizance taken by Magistrate and process for appearance issued — Petitions filed under S. 482 by the appellants for quashing the FIR against them — On facts held, in absence of any allegation to connect Appellant 1 (living in USA) with offence under S. 406 IPC, proceedings against him liable to be quashed — But since allegation against Appellant 2 regarding non-return of certain articles to Respondent 2 had to be gone into at trial, proceedings against him need not be quashed*

There were no allegations, much less of specific nature even to remotely connect the first appellant with the alleged offence under Section 406. It is not the case of the informant that any of her articles were entrusted to him at the time of marriage. There is no dispute that he went back to U.S.A. after a brief stay immediately after the marriage. The alleged act of beating the complainant, which took place beyond the territory of India, even if assumed to be correct, does not make out a case to proceed against the first appellant for an offence under Section 406 IPC. The High Court, in exercise of its jurisdiction under Section 482 CrPC, ought to have quashed the criminal proceedings against the 1st appellant. (Paras 5 and 6)

However, the order of the High Court refusing to quash the criminal proceedings against Appellant 2 need not be disturbed. It was stated in the FIR that certain articles (mentioned therein) belonging to the first respondent are not being returned to her with a dishonest intention. No doubt some documents are being relied upon to establish that the respondent had herself taken her jewellery and other valuable items. But the truth or otherwise of the respective versions should be gone into at the trial. Assuming that there was an omission in giving certain details about the alleged entrustment of movable properties of the informant and the dishonest intentions of the appellant, that by itself, in the circumstances of the case, does not afford a valid ground to quash the proceedings against the second appellant also. (Para 7). *Rishi Anand* v. *Govt. of NCT of Delhi*, (2002) 4 SCC 72: 2002 SCC (Cri) 725: AIR 2002 SC 1531.

Bench Strength **2**. Coram: *D.P. Mohapatra* and **P. Venkatarama Reddi**, JJ. [Date of decision: 20-3-2002]

S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241: 2002 SCC (Cri) 129, relied on

[7609] — S. 482 — Quashment — Matrimonial offences — Quashing of complaint under S. 498-A IPC, against appellants (unmarried brother and married sister of complainant's

husband) who were neither residing with complainant in her matrimonial home nor visited her — *Demand of luxury car, passing of sarcastic remarks (without stating actual wordings), and physical assault alleged against parents-in-law, husband and appellants — Appellant 1 (married sister-in-law of complainant) residing in her own matrimonial home with her husband for more than 7 years, while Appellant 2 was permanent resident of Goregaon, Maharashtra — Appellants never visiting place where alleged occurrence had taken place, and neither living with complainant and her husband at any time — No specific allegation made against appellants in complaint, and none of the witnesses attributing any role to them — Held, their implication was only meant to harass and humiliate husband's relatives — Permitting complainant to pursue complaint would be abuse of process of law — Hence, complaint against appellants quashed — Courts cautioned to scrutinise such vexatious and frivolous complaints with great care and circumspection — Penal Code, 1860, S. 498-A and Ss. 406, 341, 323 & 120-B and Ss. 3 & 4, Dowry Prohibition Act, 1961* (Paras 4, 27, 28, 35 and 38). *Preeti Gupta* v. *State of Jharkhand*, (2010) 7 SCC 667.

Bench Strength **2**. Coram: **Dalveer Bhandari** and *K.S. Radhakrishnan*, JJ. [Date of decision: 13-8-2010]

[7610] — S. 482 — Quashing of FIR for alleged offences punishable under Ss. 498-A and 406 IPC — Factors to be considered — *Perusal of FIR revealing absence of allegation of torture for dowry so as to constitute offence under S. 498-A IPC — But FIR containing allegations relating to offence under S. 406 IPC — If ultimately prosecution is unable to substantiate the plea relating to S. 406 IPC the result would follow — Hence, proceedings so far as relating to offence under S. 498-A IPC only liable to be quashed in exercise of power under S. 482 — But power under S. 482 cannot be exercised in respect of allegations relating to S. 406 IPC — Penal Code, 1860, Ss. 498-A and 406* (Paras 9 and 10). *Manjula Sinha* v. *State of U.P.*, (2007) 12 SCC 503: (2008) 3 SCC (Cri) 271: (2007) 5 All LJ 245.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 11-7-2007]

Minu Kumari v. State of Bihar, (2006) 4 SCC 359, relied on

[7611] — Ss. 482, 177 and 178 — Quashing of proceedings — Ground — Lack of jurisdiction of the Magistrate concerned to deal with the matter — *Complaint filed under Ss. 498-A and 406 IPC and S. 4, Dowry Prohibition Act, 1961 against husband and his relations by the wife at place* **C** *where she came to stay after leaving her husband's house at place* **N** *— All the offences alleged to have taken place at N — Said offences not continuing ones — No part of cause of action arose at place* **C** *— Hence, considering Ss. 177 and 178 CrPC, held, the Magistrate at* **C** *had no jurisdiction to deal with the matter — Proceedings quashed — Complainant given liberty to file complaint in appropriate court — Penal Code, 1860, Ss. 498-A and 406 — Dowry Prohibition Act, 1961, S. 4 — Constitution of India — Art. 136*

Respondent 2 (wife of one of the appellants) filed a complaint in the Court of the Magistrate alleging commission of offences punishable under Sections 498-A and 406 IPC and Section 4 of the Dowry Prohibition Act, 1961. The Magistrate directed the police to investigate the case. After investigation, the police filed the charge-sheet. When the matter stood thus, the appellants filed an application under Section 482 CrPC before the High Court alleging that the Magistrate concerned had no jurisdiction even to entertain the complaint even if the allegations contained therein were accepted in toto as no part of the cause of action arose within the jurisdiction of the court concerned. The complaint itself disclosed that after 15-4-1997, the respondent left the place *N* (where she was residing with her appellant husband) and came to the city *C*. Since all the alleged acts as per the complainant took place at *N*, the courts at *C* did not have the jurisdiction to deal with the matter. On the other hand, Respondent 2 submitted that the offences were continuing in terms of Section 178(*c*) CrPC and, therefore, the court at *C* had jurisdiction to deal with the matter.

Allowing the appeal,

Held :

In the present case, the inevitable conclusion is that no part of cause of action arose in the city *C* and, therefore, the Magistrate concerned had no jurisdiction to deal with the matter. (Para 19). *Y. Abraham Ajith* v. *Inspector of Police*, (2004) 8 SCC 100: 2004 SCC (Cri) 2134: AIR 2004 SC 4286.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 17-8-2004]

[7612] — S. 482 — Quashing of proceedings by High Court — Allegation of mala fides against informant — Effect of — Allegations of cruelty, dowry demand by appellant wife — *On facts, held, allegation of mala fides against informant are of no consequence and cannot by themselves be the basis for quashing the proceedings — Dowry Prohibition Act, 1961, Ss. 3 and 4 — Penal Code, 1860, S. 498-A* (Paras 10, 9 and 6)

(11)(xxvii) Quashment re family/marital/dowry, etc. disputes *(contd.)*

The appellant wife, married Respondent 3, *R* on 1-7-1998, alleging mental and physical torture for dowry demands made a complaint alleging commission of offences punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (the Act). The police registered an FIR. In the suit for divorce filed by the husband, Family Court directed maintenance at the rate of Rs 2000 p.m. and the cost of litigation to be paid to the appellant. The appellant's father-in-law filed Miscellaneous Case No. 12 of 2001 questioning correctness of the maintenance order on the ground that the appellant's husband has no share in the ancestral property and maintenance cannot be paid out of it. Charge-sheet was filed on 12-8-2000. An application for discharge in terms of Section 239 CrPC was filed on 28-8-2001. The prayer was rejected on 7-9-2001 by SDJM. The Sessions Judge dismissed the revision application of the respondents. However, by the impugned order, the High Court quashed the proceedings initiated against Respondents 1 to 7, in purported exercise of power under Section 482 CrPC.

Allowing the appeal, the Supreme Court held as above. *Renu Kumari* v. *Sanjay Kumar*, (2008) 12 SCC 346.

Bench Strength **3**. Coram: **Dr. Arijit Pasayat**, *C.K. Thakker* and *L.S. Panta*, JJ. [Date of decision: 3-3-2008]

State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89: 2002 SCC (Cri) 539; State of M.P. v. Awadh Kishore Gupta, (2004) 1 SCC 691: 2004 SCC (Cri) 353; State of Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272, relied on

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, distinguished

[7613] — S. 482 — Quashment of criminal proceedings on initiation of civil proceedings — Permissibility — *Held, filing of divorce petition in civil court cannot be a ground to quash criminal proceedings under S. 482 as it is well settled that criminal and civil proceedings are separate and independent and pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out of same set of facts — Hindu Marriage Act, 1955, S. 13 — Penal Code, 1860, Ss. 498-A and 406*

The present appeal was preferred against the judgment and order of the High Court whereby the High Court in the exercise of its inherent powers under Section 482 CrPC quashed FIR dated 31-12-2001 lodged at the instance of the appellant. The said FIR was registered by the appellant complainant against the respondent-accused for the alleged offences under Sections 498-A and 406 IPC.

In the facts of the case, the appellant had married Respondent 2 on 25-1-2000. Respondents 1, 3, 4 and 5 were the mother-in-law, brother-in-law, maternal father-in-law and the father-in-law of the appellant respectively. The appellant left her matrimonial home on 25-5-2001 with her father and brother. On 31-7-2001, the husband, Respondent 2, filed a petition before the Family Court praying for a decree of divorce on the ground of mental cruelty. On 31-12-2001, the appellant lodged an FIR against the respondents for the alleged offences under Sections 498-A and 406 IPC. The FIR was challenged by the respondents before the High Court under Section 482 CrPC praying for quashing of the same. While the petition under Section 482 CrPC was pending, a final investigation report was submitted on 13-2-2004 in the High Court.

The High Court by the impugned order quashed the FIR on the basis of the report of the investigating officer submitted before it and concluded that no offence under Sections 498-A and 406 IPC was made out by the appellant against the respondents. The High Court also observed that the FIR must be quashed to avoid undue harassment and mental agony to the respondents, more so when the divorce petition was still pending before the Family Court. Hence the present appeal.

Two questions arose in the present case:

(*i*) Whether the High Court while quashing the FIR in exercise of its inherent powers under Section 482 CrPC was entitled to go beyond the complaint filed by the complainant; and

(*ii*) Whether the High Court was entitled to look into and consider the investigation report submitted by four officers of the rank of Dy. Superintendent of Police, for quashing the FIR, even before the same could be filed before the Magistrate concerned.

Partly allowing the appeal,

Held :

In the facts and circumstances of the case, the High Court was not justified in drawing an adverse inference against the appellant wife for lodging the FIR on 31-12-2001 on the ground that she had left the matrimonial home at least six months before that. This is because the High Court had failed to appreciate that the appellant and her family members were during this period making all possible efforts to enter into a settlement so that Respondent 2, the husband, would take her back to the matrimonial home. If any complaint was made during this period there was every possibility of not entering into any settlement with Respondent 2, the husband. (Para 15)

The complaint was filed only when all efforts to return to the matrimonial home had failed and Respondent 2, the husband, had filed a divorce petition under Section 13 of the Hindu Marriage Act, 1955. (Para 16)

Filing of a divorce petition in a civil court cannot be a ground to quash criminal proceedings under Section 482 CrPC as it is well settled that criminal and civil proceedings are separate and independent and the pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out of the same set of facts. (Para 16)

From a plain reading of the findings arrived at by the High Court while quashing the FIR, it is apparent that the High Court while exercising its inherent powers under Section 482 CrPC has gone beyond the allegations made in the FIR and has acted in excess of its jurisdiction and, therefore, the High Court was not justified in quashing the FIR by going beyond the allegations made in the FIR or by relying on extraneous considerations. (Paras 14 and 16). *Pratibha* v. *Rameshwari Devi*, (2007) 12 SCC 369: (2008) 1 SCC (Cri) 399: (2007) 59 AIC 159 (SC): 2008 Cri LJ 329.

Bench Strength **2**. Coram: *A.K. Mathur* and **Tarun Chatterjee**, JJ. [Date of decision: 17-9-2007]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, followed

State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561: 1982 SCC (Cri) 283; Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370: 1985 SCC (Cri) 180; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692: 1988 SCC (Cri) 234; State of Bihar v. Murad Ali Khan, (1988) 4 SCC 655: 1989 SCC (Cri) 27, relied on

[7614] — Ss. 482 & 125 — Interference with concurrent findings of fact without adverting to evidence and without recording reasons not justified — *Trial court under S. 125 refusing to grant maintenance to respondent wife on the finding that there was no justifiable reason for her separation from her appellant husband and that her father was demanding Rs 30,000 for sending her to her matrimonial house — Findings of fact recorded by trial Magistrate confirmed by revisional court — Petition filed under S. 482 — Treating it as second revision, High Court awarding maintenance @ Rs 500 p.m. with effect from a specified date and @ Rs 1000 p.m. thereafter without considering evidence and without recording any reasons — Held, judgment of High Court perverse and liable to be set aside — High Court, even in exercise of its inherent jurisdiction, not empowered to set aside concurrent findings of fact of courts below without adverting to evidence or recording reasons therefor* (Paras 5 and 6). *Ramkaran* v. *Gyarsi*, (2005) 12 SCC 341.

Bench Strength **2**. Coram: *B.P. Singh* and *Arun Kumar*, JJ. [Date of decision: 24-1-2005]

(xxviii) Quashment re sexual offences

[7615] — S. 482 — Quashing of FIR — Allegation against a large number of accused persons of sexual exploitation under threat, coercion, force and allurement — Quashment set aside — Investigation directed to be reimitiated — *Case registered under Ss. 366-A, 372, 376, 344 IPC and Immoral Traffic Act — High Court not justified in embarking upon an enquiry by sifting evidence and coming to conclusion with regard to the age of the prosecutrix and also recording a finding that no offence of rape had been committed — Uncharitable comments made by the High Court against the prosecutrix deprecated — High Court exceeded its jurisdiction to record a finding that the prosecutrix was a consenting party — Order of the High Court set aside and the investigating agency directed to proceed with the investigation and conclude the same in accordance with law — Constitution of India — Arts. 226, 227 and 136*. *State of Kerala* v. *O.C. Kuttan*, (1999) 2 SCC 651: 1999 SCC (Cri) 304: AIR 1999 SC 1044: 1999 Cri LJ 1623.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *M.B. Shah*, JJ. [Date of decision: 17-2-1999]

State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561: 1982 SCC (Cri) 283; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; State of U.P. v. O.P. Sharma, (1996) 7 SCC 705: 1996 SCC (Cri) 497; Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397: 1997 SCC (Cri) 415, relied on

[7616] — S. 482 — Quashing of criminal proceedings — Sexual offences — *Where on a complaint the Magistrate taking the view that there was sufficient ground for proceeding under Ss. 363, 366, 376, IPC issued process, High Court in a petition under S. 482 filed by the accused was not justified in quashing the complaint*

At the stage when on the statement of complainant and the two witnesses, the Magistrate came to the opinion that there was sufficient ground for proceeding in the complaint and he issued process against the accused-respondents, to judge the sufficiency or otherwise of the ground for proceeding was beyond the power of the High Court so as to quash the proceedings under S. 482, CrPC. The value to be attached to the statement made by the appellant under S. 164, CrPC was to be examined at the enquiry at the pre-charge stage and possibly at the trial, if charge was to be framed. The steps in investigation could also be commented upon likewise at the said two stages. In the facts and circumstances of the case, the High Court was not justified in quashing the proceedings at the initial stage so as to strangulate it at its inception. The accused-respondents have all their rights preserved under law at the stage of the enquiry as also at the trial, if there is one, eventually. Therefore, the High Court's order is set aside and the Magistrate is directed to proceed further in the complaint in accordance with law. *Maninder Kaur* v. *Rajinder Singh*, 1992 Supp (2) SCC 25: 1992 SCC (Cri) 522.

Bench Strength 2. Coram: *M.M. Punchhi* and *K. Ramaswamy*, JJ. [Date of decision: 6-9-1991]

(xxix) Quashment/Interference re corruption offences

[7617] — S. 482 — Investigation — Persons authorised to carry out — Investigation if on facts was not by authorised officer — *Pursuant to an information, case registered under Ss. 13(1)(e) and 13(2), PC Act, 1988 and investigation started by Deputy Superintendent of Police, SPE, but under order of Superintendent of Police, SPE, completed by Inspector (SPE) — The said order containing reasons for entrustment of investigation to the Inspector — Moreover, the time-lag (about two-and-a-half years in this case) between registration of FIR and the said order itself showing application of mind by the Superintendent of Police to the authorisation — In such circumstances, held, High Court erred in concluding that the investigation was not conducted by an officer authorised under S. 17, PC Act — Hence, High Court's order under S. 482 CrPC quashing the investigation and consequent proceedings, set aside — Prevention of Corruption Act, 1988, Ss. 17 second proviso, 13(1)(e) & 13(2)*

After receiving a secret information on 4-7-1992, it was found on verification that the respondent while posted as an officer in the Excise Department had earned moveable and immovable properties allegedly disproportionate to his known sources of income during the check period commencing from 1-1-1982 to 4-8-1992. Resultantly a case under Sections 13(1)(*e*) and 13(2) of the Act was registered against him. The initial investigation was conducted by a Deputy Superintendent of Police, Special Police Establishment, Gwalior and thereafter by an Inspector, SPE, who was stated to have been duly authorised by the Superintendent of Police, SPE, vide Order No. SPE/2766/94 dated 12-12-1994 issued under Section 17 of the Prevention of Corruption Act, 1988. After investigation, sanction was obtained and charge-sheet was filed. Exercising its powers under Section 482 CrPC, the M.P. High Court quashed the investigations and consequent proceedings on the ground that for the offence punishable under Section 13(1)(*e*) of the Act the investigation had not been conducted by an authorised officer in terms of Section 17 of the Act. Similar was the question involved in the connected cases. Allowing the State's appeals,

Held:

Admittedly in the instant cases, even in the absence of the authority of the SP the investigating officer was in law authorised to investigate the offence falling under Section 13 of the Act with the exception of one under sub-section (1)(*e*) thereof. After registration of the FIR the Superintendent of Police is shown to be aware and conscious of the allegations made against the respondents, the FIR registered against them and pending investigations. The reasons for entrustment of investigation to the Inspector can be discerned from the order itself. The appellant State is, therefore, justified in submitting that the Superintendent of Police had applied his mind and passed the order authorising the investigation by an Inspector under the peculiar circumstances of the case. The High Court should not have construed liberally in favour of the accused the provisions of an Act which had been legislated to curb the illegal and corrupt practices of public officers. (Para 14)

The High Court was not right in holding that merely because the order of the Superintendent of Police was in typed pro forma that showed the non-application of mind or could be held to have been passed in a mechanical and casual manner. The order rather clearly indicates the name of the accused, the number of the FIR, the nature of the offence and power of the Superintendent of Police permitting him to authorise a junior officer to investigate. The time between the registration of the FIR and authorisation in terms of the second proviso to Section 17 shows further the application of mind and the circumstances which weighed with the Superintendent of Police to pass the order. (Para 15). *State of M.P.* v. *Ram Singh*, (2000) 5 SCC 88: 2000 SCC (Cri) 886: AIR 2000 SC 870: 2000 Cri LJ 1401.

Bench Strength 2. Coram: *K.T. Thomas* and **R.P. Sethi**, JJ. [Date of decision: 1-2-2000]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, distinguished

[7618] — S. 482 — Delay as ground for quashing FIR/proceedings — FIR lodged under Ss. 13(1)(e) & (2) PC Act — Followed by search 3/4 days later when incriminating evidence found — *S. 482 CrPC petition filed merely a month after lodging of FIR — Interference by High Court on ground of delayed investigations, held on facts, was improper — It is not a case where charge-sheet had* *not been filed or that there was no explanation for the delay — Prevention of Corruption Act, 1988, Ss. 13(1)(e) & (2)*

On the authorisation of Superintendent of Police, an FIR was registered against the respondent on 12-6-2000 in respect of offences punishable under Section 13(1)(*e*) read with Section 13(2) of the PC Act. Search was conducted in the house of the respondent on 15-6-2000/16-6-2000 and certain records and documents relating to the respondent, his son-in-law, his daughter and son were seized. By the impugned order the High Court accepted the Section 482 CrPC petition dated 11-7-2000 filed by the respondent and quashed the proceedings.

Allowing the appeal,

Held :

Interference by the High Court on the ground of delayed investigations cannot be maintained because petition under Section 482 CrPC was filed only after about a month of lodging of FIR and the order of the Superintendent of Police relating to investigation. It is not a case where charge-sheet had not been filed or that there was no explanation for the delay. FIR was lodged on 12-6-2000, house of the respondent was searched on 15-6-2000/16-6-2000 and few days thereafter Section 482 CrPC petition was filed on 11-7-2000. Application seeking permission to substitute additional grounds was filed in the year 2005. It is interesting to note that while the High Court quashed the proceedings because of alleged delayed investigation, it permitted the authorities to take decision to continue the proceedings. (Paras 12 and 9). *Supdt. of Police, Karnataka Lokayukta* v. *B. Srinivas*, (2008) 8 SCC 580: (2008) 3 SCC (Cri) 587: (2008) 69 AIC 49 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 18-8-2008]

[7619] — S. 482 — Quashing of criminal proceedings — No case made out against accused — Criminal complaint alleging collusion and fraud between Special Officer of Board and allottees of developed land given in lieu of compensation — *Disputes arising out of agreement of sale of 20 bighas of land to Society which was refused compensation for lands acquired by Board — No complaint with respect to lands of Respondents 1 and 2 — High Court quashing FIR against Respondents 1 and 2 and Special Officer of Board — Sustainability — Held, no complaint of commission of any offence regarding 13 bighas of land of first respondent, therefore no question of involvement in any offence of cheating or forgery — Quashing of FIR qua Respondents 1 and 2, upheld — But, finding of High Court that Collector/Special Officer was a Judge set aside, quashing of FIR with reference to the Special Officer unwarranted — Penal Code, 1860, Ss. 420, 467, 468 and 471*

One *C* entered into an agreement of sale agreeing to sell 20 bighas of land in Khasra No. 9 in Sukhalpura Village to Shiva Cooperative Housing Society Ltd. Some lands in Sukhalpura Village, including 31 bighas in Khasra No. 9, were acquired for a housing scheme floated by the Rajasthan Housing Board. *C* filed a revenue suit for a declaration that Khasra No. 9 was not government land and that he was one of the owners of the said land and for consequential reliefs which suit was decreed and was affirmed by the Revenue Board. In pursuance of it, the following five persons were shown as owners of Khasra No. 9 in the revenue records, their share being shown in brackets: *C* (15/33), *M* (2/33), *G* (2/33), *KD* (1/33) and *KL* (13/33).

The State Government formulated a scheme enabling the landowners to opt for allotment of developed land equal to 15% of the acquired land in lieu of the compensation for the acquired land.

The landowners/power-of-attorney holders of Khasra No. 9 approached the Board for such allotment. One *KC*, the successor (legatee) of *C* was one of them and he claimed allotment of developed land in lieu of 15 bighas of acquired land. The Society also filed an application before the Board claiming compensation in respect of 20 bighas in Khasra No. 9 on the basis of the agreement of sale which claim was rejected.

The power-of-attorney holders of four owners of Khasra No. 9 (*KC*, *M*, *G* and *KL*) entered into separate agreements with the Housing Board, consenting for allotment of developed land (15% of the extent of the acquired land) in lieu of compensation. In the said agreements, the landowners asserted and declared that their respective shares in the land were not subject to any encumbrance and no dispute or litigation was pending in regard to the same. A settlement award was passed by the Special Officer of the Rajasthan Housing Board recording the agreement to allot 15% developed land in lieu of compensation in respect of 28 bighas 17 biswas in Khasra No. 9 and pattas were issued in regard to such allotted land. Thereafter, the members of the Society filed a complaint before the Board claiming that the Society ought to have received the said 15% developed land in lieu of compensation relating to the 20 bighas of the acquired land. Some members of the Society, through a forum also made a representation to the Chief Minister alleging that the khatedars/power-of-attorney holders of Khasra No. 9 in collusion with the Special Officer had practised

(11)(xxix) Quashment/Interference re corruption offences *(contd.)*

fraud and grabbed the valuable land from the Rajasthan Housing Board. The Chief Minister's office suggested action on such representation in pursuance of which the appellant on behalf of the Board lodged an FIR alleging that the khatedars/power-of-attorney holders of Khasra No. 9 had made false representations to the Board and in collusion with the Special Officer of the Board and office-bearers of the Society had fraudulently obtained allotment pattas.

The first respondent herein who claimed to be the owner of 13 bighas in Khasra No. 9 and Respondent 2 herein who was his power-of-attorney holder filed a petition under Section 482 of the Code for quashing the FIR. The High Court allowed the said petition and quashed the FIR insofar as Respondents 1 and 2 are concerned as also the Special Officer of the Board on the following two grounds:

(*i*) The Land Acquisition Officer, when passing an award under Section 11(2) of the Act functions as a "Judge" as defined in Section 19 of the Penal Code, 1860 ("IPC", for short) and therefore, is entitled to the protection of Section 77 IPC. Therefore making a settlement award by the Special Officer of the Board granting developed land in lieu of compensation to the landowners could not, under any circumstances, give rise to an offence under the Penal Code.

(*ii*) The allegations in the FIR did not constitute an offence of cheating or forgery punishable under Sections 420, 467, 468 and 471 IPC.

Disposing of the appeal in terms below,

Held :

The question whether the Collector/Land Acquisition Officer while making an enquiry and award under the Act, acts in a judicial capacity or not, has been considered in a series of judgments. The well-settled principles are:

(*a*) Any inquiry as to the market value of property and determination of the amount of compensation by the Collector is administrative and not judicial in nature even though the Collector may have the power to summon and enforce the attendance of witnesses and production of documents. In making an award or making a reference or serving a notice, the Collector neither acts in a judicial nor quasi-judicial capacity but purely in an administrative capacity, exercising statutory powers as an agent and representative of the Government/acquiring authority.

(*b*) The award by a Collector is merely an offer of the amount mentioned as compensation on behalf of the Government/acquiring authority to the person(s) interested. It is neither an executable decree, nor binds the owners or persons interested in the acquired property.

(*c*) The Collector does not function as a Judicial Officer who is required to base his decision only on the material placed in the enquiry in the presence of parties, but functions as a valuer who ascertains the market value on material collected from all sources, personal inspection and his own knowledge and experience. (Para 22)

Only Judges (as defined in Section 19 IPC) acting judicially are entitled to the protection under Section 77 IPC. The Collector is neither a Judge as defined under Section 19 nor does he act judicially, when discharging any of the functions under the Act. Therefore he is not entitled to the protection under Section 77 IPC. The decision of the High Court that the FIR is to be quashed as the subject-matter of the complaint related to the action taken by the Collector/Special Officer in his capacity as a "Judge" is opposed to law and therefore, liable to be set aside. (Para 23)

Respondents 1 and 2 approached the High Court pointing out that neither the Society nor the members of the Society at any point of time had made any claim in regard to the 13 bighas in Khasra No. 9 which belonged to the first respondent, that the entire complaint related to 20 bighas agreed to be sold by *C* to the Society, and that as there was no complaint of irregularity or commission of any offence in regard to the 13 bighas of land belonging to the first respondent, there was no question of involvement of the first respondent or his power-of-attorney holder (second respondent) in any offence of cheating or forgery. Even the suit filed by the Society that was said to be pending at the relevant time was against *C* in regard to the 20 bighas in Khasra No. 9 and that no suit or proceeding was pending in regard to the remaining 13 bighas claimed by the first respondent. Only in January 2003, the second respondent and some others were impleaded in the said suit relating to 20 bighas in pursuance of an application filed on 14-11-2002, long after Respondents 1 and 2 had executed the agreement and consent award had been made. The High Court rightly held that the allegations in the FIR, even if accepted as true, did not relate to Respondents 1 and 2 but to others who had claimed to be the owners/the attorney holders in regard to power-of-remaining 20 bighas of land. The High Court was justified in holding that the allegations even if taken at their face value did not prima facie constitute an offence under Sections 420, 467, 468 and 471 IPC by Respondents 1 and 2. (Paras 25 to 27)

The FIR specifically alleged collusion between *KC* and the Special Officer of the Board in regard to 20 bighas of land which was agreed to be sold to the Society by *C*. In fact the writ petition filed by *KC* for quashing the FIR was rejected by the High Court. As the finding of the High Court that the Collector/Special Officer was a Judge has been set aside, the quashing of the FIR with reference to the Special Officer cannot be upheld. The quashing of the FIR with reference to the then Special Officer is set aside. The quashing of FIR as against Respondents 1 and 2 will have no bearing on the FIR insofar as the other accused with reference to the 20 bighas of land are concerned. (Paras 28 and 29). *Surendra Kumar Bhatia* v. *Kanhaiya Lal*, (2009) 12 SCC 184: AIR 2009 SC 1961.

Bench Strength **2**. Coram: **R.V. Raveendran** and *J.M. Panchal*, JJ. [Date of decision: 30-1-2009]

Ezra v. Secy. of State for India in Council, (1904-05) 32 IA 93; Raja Harish Chandra Raj Singh v. Land Acquisition Officer, AIR 1961 SC 1500: (1962) 1 SCR 676; N. Boman Behram v. State of Mysore, (1974) 2 SCC 316; Khorshed Shapoor Chenai v. CED, (1980) 2 SCC 1: 1980 SCC (Tax) 156; Sharda Devi v. State of Bihar, (2003) 3 SCC 128; Kiran Tandon v. Allahabad Development Authority, (2004) 10 SCC 745; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: (2006) 3 SCC (Cri) 188; Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259, relied on

Gokul Krishna Banerji v. Secy. of State, AIR 1932 Pat 134, approved

[7620] — S. 482 — Exercise of power under — When justified — *Bhajan Lal (7)* — Complaint filed against government official as a counterblast to action taken by him in his official capacity — *Facts also showed that complaint was an afterthought to rope in appellant on account of action taken by him against Respondent 2 — Held, this case was of the nature mentioned at Category (7) in* Bhajan Lal case, *1992 Supp (1) SCC 335 — Continuance of proceeding against appellant would amount to abuse of process of law — Criminal proceedings therefore quashed* (Paras 12 and 14). *Anjani Kumar* v. *State of Bihar*, (2008) 5 SCC 248: (2008) 2 SCC (Cri) 582: AIR 2008 SC 1992: (2008) 66 AIC 72 (SC): 2008 Cri LJ 2558.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 24-4-2008]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, applied

R. Balakrishna Pillai v. State of Kerala, (1996) 1 SCC 478: 1996 SCC (Cri) 128; State of H.P. v. M.P. Gupta, (2004) 2 SCC 349: 2004 SCC (Cri) 539; State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104; Rakesh Kumar Mishra v. State of Bihar, (2006) 1 SCC 557: (2006) 1 SCC (Cri) 432, relied on

[7621] — S. 482 — Inherent jurisdiction cannot be exercised if an enactment contains a specific bar — *Prevention of Corruption Act, 1988, S. 19(3)(c)*

Per Variava, J.

Section 19(3)(*c*) Prevention of Corruption Act, 1988 provides:

(*a*) that no court should stay the proceedings under the Act on any ground, and

(*b*) that no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

The latter part of clause (*c*) of Section 19(3) as stated in (*b*) above is identical to Section 397(2) CrPC which deals with the revisional power of the court. If Section 19 was only to deal with revisional powers then the portion set out in (*b*) above would have been sufficient. The legislature has, therefore, by adding the words "no court shall stay the proceedings under this Act on any other ground" clearly indicated that no stay could be granted by use of any power on any ground. This therefore would apply even where a court is exercising inherent jurisdiction under Section 482 CrPC. (Para 14)

Further, Section 482 CrPC starts with the words "Nothing in this Code". Thus the inherent power can be exercised even if there was a contrary provision in the Criminal Procedure Code. Section 482 of the Criminal Procedure Code does not provide that inherent jurisdiction can be exercised notwithstanding any other provision contained in any other enactment. Thus if an enactment contains a specific bar then inherent jurisdiction cannot be exercised to get over that bar. (Para 15)

There is no substance in the submission that Section 19 would not apply to a High Court. Section 5(3) of the said Act shows that the Special Court under the said Act is a Court of Session. Therefore the power of revision and/or the inherent jurisdiction can only be exercised by the High Court. (Para 16)

Since in a large number of cases stays have been granted by the High Courts in matters under the Prevention of Corruption Act, even though there is a specific bar against the grant of any stay the Registrars of all the High Courts are directed to list all cases in which such stay is granted before the Court concerned so that appropriate action can be taken by that Court in the light of this decision. The Registrar of the Supreme Court is directed to send a copy of this order to the Registrars of all the High Courts. (Para 20)

(11)(xxix) Quashment/Interference re corruption offences *(contd.)*

Per Thomas, J. (concurring)

Clause (*b*) of Section 19(3) contains the prohibition against stay of proceedings under this Act, but it is restricted to the sanction aspect alone. The mere fact that yet another prohibition was also tagged with the above does not mean that the legislative ban contained in clause (*c*) is restricted only to a situation when the High Court exercises powers of revision. It would be a misinterpretation of the enactment if a court reads into clause (*c*) of Section 19(3) a power to grant stay in exercise of the inherent powers of the High Court. (Paras 26 and 28)

The prohibition contained in clause (*c*) of Section 19(3) is couched in a language admitting of no exception whatsoever. When Parliament imposed an undiluted ban against granting stay of any proceedings involving an offence under the Prevention of Corruption Act, 1988 on any ground whatsoever, no court shall circumvent the said ban through any means. The reason which prompted Parliament to divest all the courts in India of the power to stay the proceedings in the trial courts involving any such offence, is to foreclose even the possible chance of delaying such trials on account of any party to such proceedings raising any question before the High Court during the pendency of trial proceedings. (Para 22). *Satya Narayan Sharma* v. *State of Rajasthan*, (2001) 8 SCC 607: 2002 SCC (Cri) 39: AIR 2001 SC 2856.

Bench Strength **2**. Coram: *K.T. Thomas* and **S.N. Variava**, JJ. [Date of decision: 25-9-2001]

Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10; Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36; Indra Sawhney v. Union of India, (2000) 1 SCC 168: 2000 SCC (L&S) 1, relied on

ITO v. M.K. Mohd. Kunhi, AIR 1969 SC 430: (1969) 2 SCR 65, distinguished

[7622] — S. 482 — Quashment sought on ground that CBI had no jurisdiction — *Petition filed under S. 482 by respondent for quashing FIR registered by CBI, alleging commission of offences under IPC and Prevention of Corruption Act, 1988, on ground that CBI had no jurisdiction to register the FIR under Delhi Special Police Establishment Act in absence of requisite consent of the State concerned for operation of the Act in the State — High Court accepting the stand of the respondent — Held, High Court was not justified in quashing the proceedings — Contention regarding lack of jurisdiction of CBI to register the FIR not made out — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), Ss. 3, 5 and 6*

Respondent 1 a member of Indian Administrative Service, filed a petition under Section 482 CrPC for quashing the FIR registered by the appellant alleging commission of offences punishable under Sections 120-B, 167, 168, 177-A IPC and Sections 13(2) and 13(1) of the Prevention of Corruption Act, 1988, on the ground that CBI had no jurisdiction to register the FIR under the Delhi Special Police Establishment Act, 1946. With reference to Sections 3, 5 and 6 of the Act, Respondent 1 took the stand that CBI had no jurisdiction to register the case. In substance the stands were:

"Consent necessary by the State concerned for operation of the Act had been withdrawn as is evident from the letter dated 26-6-1999 of the Secretary, Special Officer (Home Department), in response to the letter dated 21-11-1989 written by the Government of India, Department of Personnel and Training, New Delhi. (*b*) Consent of the State Government which was given in 1956 was extended in 1989 after the PC Act was promulgated but subsequently the State Government had not considered it appropriate to accord consent to extend some provisions of the Act to the whole of the State of Rajasthan. (*c*) Though the consent had been given by the State of Rajasthan in 1956 and extended in 1989, same did not relate to any particular officer to act in terms of the Act and, therefore, the FIR as lodged had no validity in the eye of the law."

The High Court accepted the stands of the respondent.

It was submitted on behalf of the appellant that the High Court committed patent errors of law. First, prayer of Respondent 1 could not have been adjudicated in a petition instituted under Section 482 of the Code. Secondly, the High Court lost sight of the fact that the notification issued under Section 5 of the Act had not been rescinded or revoked at any point of time. Further an interdepartmental communication has been treated as a notification to hold that the State Government had not extended the notification. The authority of the person who wrote that letter has not been established. In any event, the same cannot be treated to be one covered under Article 166 of the Constitution. Thirdly, there was no specific order required in respect of each officer as has been held in various decisions of this Court

Allowing the CBI's appeal,

Held :

As regards the stands taken by the respondent, there was no notification revoking the earlier notification. The letter on which great emphasis has been laid by Respondent 1 and highlighted by the High

Court, the authority to write the letter has not been indicated. It has also not been established that the person was authorised to take a decision. In any event, the same does not meet the requirements of Article 166 of the Constitution. The letter is not even conceptually a notification. The High Court was, therefore, not justified in holding that there was a notification rescinding the earlier notification. (Para 13)

The High Court was, therefore, not justified in quashing the proceedings instituted on the basis of the FIR lodged. (Para 14). *CBI* v. *Ravi Shankar Srivastava*, (2006) 7 SCC 188: (2006) 3 SCC (Cri) 233: AIR 2006 SC 2872.

Bench Strength **2**. Coram: **Arijit Pasayat** and *Altamas Kabir*, JJ. [Date of decision: 10-8-2006]

[7623] — S. 482 — Nature of power under — Release of property confiscated under PCA — Whether can be released on deposit of appropriate amount — *Appellants' father convicted by trial court and punished with imprisonment of one year and fine of Rs 20,000 — Certain items of property, including a house, directed to be sold by public auction and sale proceeds to be taken by the State — Father dying during pendency of appeal — However, High Court in due course sustaining the conviction though the sentence of imprisonment stood abated due to death — Legal heirs filing application under S. 482 CrPC for release of confiscated items on account of their sentimental attachment with them and offering to deposit Rs 6 lakhs plus, or such other sum as considered appropriate by court — Application dismissed by High Court on the ground that it had no power under S. 482 CrPC to pass such order — Held, the present value and not the past value of the seized property was relevant — High Court rightly rejected appellants' prayer — Prevention of Corruption Act, 1988, Ss. 16, 13(2) and 13(1)(e) — Prevention of Corruption Act, 1947, S. 5(2) proviso* (Para 7). *N. Naveen Kumar* v. *State of A.P.*, (2008) 9 SCC 800: (2008) 3 SCC (Cri) 880.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *P. Sathasivam*, JJ. [Date of decision: 17-10-2008]

[7624] — S. 482 — Deficiency alleged in authorisation by Superintendent of Police authorising Inspector to investigation — Quashment on basis of — Sustainability — *Quashing of proceedings was improper since impugned order was elaborate with reasons clearly discernible — Besides, High Court failed to take into consideration provisions of S. 19(3), PC Act — Prevention of Corruption Act, 1988, S. 17 r/w Ss. 13(1)(e) & (2) and 19(3)*

On the authorisation of Superintendent of Police, an FIR was registered against the respondent on 12-6-2000 in respect of offences punishable under Section 13(1)(*e*) read with Section 13(2) of the PC Act. Search was conducted in the house of the respondent on 15-6-2000/16-6-2000 and certain records and documents relating to the respondent, his son-in-law, his daughter and son were seized. By the impugned order the High Court accepted the Section 482 CrPC petition dated 11-7-2000 filed by the respondent and quashed the proceedings.

Allowing the appeal,

Held :

The second reason indicated by the High Court to quash the proceedings also has no substance. The question relates to the alleged deficiency in authorisation made by the Superintendent of Police authorising the Inspector to investigate the case. If one looks at the order passed, which formed the subject-matter of challenge in *Ram Singh case*, (2000) 5 SCC 88 it is crystal clear that the order passed in the present case by the Superintendent of Police is more elaborate and the reasons are clearly discernible. Even otherwise, the effect of Section 19(3) of the PC Act relating to prejudice has been completely lost sight of by the High Court. (Paras 13 and 16). *Supdt. of Police, Karnataka Lokayukta* v. *B. Srinivas*, (2008) 8 SCC 580: (2008) 3 SCC (Cri) 587: (2008) 69 AIC 49 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 18-8-2008]

State of M.P. v. *Ram Singh, (2000) 5 SCC 88: 2000 SCC (Cri) 886, relied on*

[7625] — Ss. 482 and 193, 190, 156 & 157 — Quashing of criminal proceedings — Bofors case — Grounds for quashing, restated — Said power, held, to be exercised in a rare case and with great circumspection — *Offences under S. 120-B r/w S. 420 IPC and S. 5(2) r/w S. 5(1)(d) of the Prevention of Corruption Act, 1947 — High Court holding that filing of charge-sheet in court by CBI without placing the same before Central Vigilance Commission (CVC) was violative of the directions issued by the Supreme Court in Vineet Narain case, (1998) 1 SCC 226 and, therefore, an illegality had been committed during the course of investigation — Thus, High Court quashing the cognizance taken by the Special Judge and all consequential proceedings — Held, Magistrate or a court cannot interfere with the investigation or during the course of investigation — Quashing of proceedings by High Court in the instant case, held, was not based on any of the grounds settled by the decisions of Supreme Court in this regard — Further, directions in Vineet Narain, held, do not confer*

(11)(xxix) Quashment/Interference re corruption offences *(contd.)*

any right upon the accused to approach CVC or to challenge the action of CBI in submission of a charge-sheet in court on the ground of some purported irregularity in making a report to CVC regarding the progress of investigation — Hence, High Court's judgment and order, held, liable to be set aside — Constitution of India — Art. 136 — Prevention of Corruption Act, 1947, S. 5(2) r/w S. 5(1)(d) — Penal Code, 1860, S. 120-B r/w S. 420 — Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), S. 4

On 22-10-1999, CBI submitted a charge-sheet under Section 120-B IPC read with Section 420 IPC and Section 5(2) read with Section 5(1)(*d*) of the Prevention of Corruption Act, 1947 against certain accused persons in the Court of Special Judge, Delhi in the famous Bofors case. It was mentioned in the said charge-sheet that investigations concerning the role of three Hinduja brothers and some others were also in progress. The learned Special Judge took cognizance of the offence on 4-11-1999. Thereafter on 9-10-2000 CBI submitted a supplementary charge-sheet against the three Hinduja brothers. On 15-4-2000, accused *P* (one of the Hinduja brothers) moved an application before the Special Judge for dismissing the charge-sheets submitted by CBI and revoking the cognizance taken and the process issued against the accused. The said application was moved on the ground that the cases were never reported to CVC and CVC has neither reviewed the cases nor had considered them fit for continuance of the prosecution and as such there was non-compliance with the directions issued by the Supreme Court in the case of *Vineet Narain*, (1998) 1 SCC 226. The Special Judge rejected the said application. But the High Court allowed the petition filed by *P* (Respondent 1 in the instant appeal) under Section 482 CrPC by quashing the cognizance taken by the learned Special Judge and all consequential proceedings. The High Court proceeded on the ground that there was violation of directions issued in the *Vineet Narain case* as CBI had filed the charge-sheet without placing the same before CVC, and therefore, it held that an illegality had been committed in the course of investigation which entitled the High Court to quash the cognizance taken by the Special Judge and all proceedings of the case. Before the Supreme Court, the appellants contended (*i*) that the High Court had completely misunderstood the judgment made in the case of *Vineet Narain* as the said judgment did not give any kind of a right to an accused to challenge the charge-sheet on account of any alleged non-observance or violation of the directions issued regarding the functioning and responsibility of CVC, and (*ii*) that the entire object to issue the said directions was to insulate CBI from any kind of external influence or pressure so that it may perform its duty as enjoined in the Delhi Special Police Establishment Act. On the other hand, Respondent 1 supported the impugned judgment of the High Court by placing extensive reliance upon the observations made in the *Vineet Narain case*. He also submitted that the evidence sought to be relied upon by CBI was wholly deficient and could under no case establish any charge against accused-Respondent 1. It was further contended that the appellant Union of India had committed contempt of the order passed by the Supreme Court in the *Vineet Narain case* as the directions issued therein have not been complied with, and therefore, the Union of India should not be heard in the instant case.

Allowing the appeals

Held :

Section 482 CrPC saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. The power can therefore be exercised to quash the criminal proceedings. The grounds on which the prosecution initiated the proceedings can also be quashed. (Para 9)

The grounds on which power under Section 482 CrPC can be exercised to quash the criminal proceedings are: (*1*) where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, (2) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused, (*3*) where there is an express legal bar engrafted in any of the provisions of the Code of Criminal Procedure or the Act concerned to the institution and continuance of the proceedings. But this power has to be exercised in a rare case and with great circumspection. (Para 9)

The proceedings in the present case have not been quashed on any one of the abovementioned grounds. The High Court has not examined the nature of the allegations made in the FIR or the evidence by which the prosecution seeks to establish the charge against the accused during the trial. There is not even a whisper in the impugned order of the High Court that the FIR does not disclose a cognizable offence. Similarly, there is no reference to any statutory bar like want of valid sanction etc.

to the taking of the cognizance of the offence. In fact the accused-respondent *P* is not a public servant and consequently no sanction is required from any authority for his prosecution. The only ground on which the High Court has proceeded is that CBI had filed the charge-sheet without placing the same before CVC and therefore an illegality had been committed in the course of investigation which entitled the High Court to quash the cognizance taken by the Special Judge and all proceedings of the case. (Para 9)

The legal position is absolutely clear and also settled by judicial authorities that the court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the first information report till the submission of the report by the officer in charge of the police station in court under Section 173(2) CrPC, this field being exclusively reserved for the investigating agency. (Para 20)

The Supreme Court in *H.N. Rishbud case* has held that if cognizance is in fact taken on a police report initiated by the breach of a mandatory provision relating to investigation, the result of the trial, which follows it, cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice and that an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the court for trial. Hence, even assuming for the sake of argument that CBI committed an error or irregularity in submitting the charge-sheet without the approval of CVC, the cognizance taken by the learned Special Judge on the basis of such a charge-sheet could not be set aside nor could further proceedings in pursuance thereof be quashed. (Para 21)

The directions issued in the case of *Vineet Narain*, (1998) 1 SCC 226 cannot be interpreted in abstract but have to be read and understood in the context of the facts and circumstances leading to the filing of the writ petition therein. The facts which were revealed and were brought to light during the course of hearing in that case showed that CBI had failed to perform its statutory duty and legal obligation of investigating offences and after completing the investigation taking it to its logical conclusion of launching prosecution against all those who were found to have committed offences. The direction issued was never meant to create or confer some kind of additional rights in favour of the accused as was held by the High Court. The accused has absolutely no right to approach CVC for taking any steps to stop CBI from either proceeding against him or from launching prosecution against him by filing a charge-sheet. Further, the directions issued do not confer any kind of a right upon the accused to assail the charge-sheet on the ground that CBI had not reported the progress of investigation to CVC or had not taken some kind of approval or concurrence from it before submission of the charge-sheet in court. The view taken by the High Court that as CBI submitted the charge-sheet without reporting and taking approval or consent from CVC, the same was illegal and no cognizance could be taken thereon is, therefore, wholly erroneous and does not at all follow from the judgment in *Vineet Narain*. (Paras 28, 27 and 22)

The averments made in counter-affidavits, which were filed by CBI and CVC before the High Court, clearly show that the investigation report was sent to CVC by CBI before filing of the first charge-sheet and CVC was also apprised of the developments in the case. The High Court committed serious error in not giving due consideration to the counter-affidavits filed by CBI and CVC and especially to the fact that on account of non-passing of the CVC Bill by the Rajya Sabha and lapsing of the Ordinance, the duties and functions of CVC are to be performed in accordance with the Government of India resolution dated 4-4-1999, which nowhere provided for taking any kind of a concurrence or approval from CVC before submission of the charge-sheet. (Para 32)

That apart, the judgment of the High Court is quite confusing and self-contradictory. There was absolutely no occasion for allowing the petition and quashing the cognizance and further proceedings in the case. (Paras 34 and 35). *Union of India* v. *Prakash P. Hinduja*, (2003) 6 SCC 195: 2003 SCC (Cri) 1314: AIR 2003 SC 2612: 2003 Cri LJ 3117.

Bench Strength **2**. Coram: *S. Rajendra Babu* and **G.P. Mathur**, JJ. [Date of decision: 7-7-2003]

R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239; Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10; Municipal Corpn. of Delhi v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115; Raj Kapoor v. State, (1980) 1 SCC 43: 1980 SCC (Cri) 72; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426; Emperor v. Khwaja Nazir Ahmad, AIR 1945 PC 18: 46 Cri LJ 413; State of W.B. v. S.N. Basak, AIR 1963 SC 447: (1963) 1 Cri LJ 341; Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117: 1968 Cri LJ 97; State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554: 1980 SCC (Cri) 272, relied on

Gokulchand Dwarkadas Morarka v. R., AIR 1948 PC 82: 49 Cri LJ 261; Prabhu Dayal Deorah v. District Magistrate, (1974) 1 SCC 103: 1974 SCC (Cri) 18, distinguished

H.N. Rishbud v. State of Delhi, AIR 1955 SC 196: (1955) 1 SCR 1150: 1955 Cri LJ 526, followed

Vineet Narain v. Union of India, (1998) 1 SCC 226: 1998 SCC (Cri) 307, explained

(11)(xxix) Quashment/Interference re corruption offences *(contd.)*

[7626] — Ss. 482 and 195 — Premature conclusion that bar under S. 195 CrPC attracted — Complaint was wrongly quashed — Limits to — Interference in collateral proceedings not warranted in exercise of High Court's extraordinary powers under Art. 226 — *Appellant filing complaint which registered as FIR with local police alleging harassment, by certain politically influential persons, in the form of numerous and successive false criminal complaints and repeated arrests of appellant and family members — Serious allegations that Judicial Magistrate issuing warrants illegally — Public interest writ petition filed after matter receiving publicity in media — High Court directing Director General of Police to conduct inquiry — Accused persons then filing writ petition before High Court which quashing complaints of appellant and also pending public interest petition — Held, High Court exceeded its extraordinary jurisdiction under Art. 226 when it quashed public interest petition on the finding that the bar under S. 195 CrPC was attracted to the case — On facts, held, High Court's finding was premature and it erred in quashing complaints and inquiry initiated on basis of FIR — Constitution of India — Art. 226*

This case seems to have begun as a result of a business dispute between the appellant-complainant, *M*, and the accused *K*, who was an influential person in political circles. *K* had invested money in stocks and shares, and had sustained losses for which he held the appellant responsible. According to *M*'s complaint to the police, *K* pressurised *M* to compensate him for his losses. When *M* refused to oblige, *K* filed numerous false criminal complaints against *M* and members of his family in several different towns of Gujarat. *K* also obtained warrants of arrest against *M* and his relations, who were in fact arrested and lodged in various jails and police stations. Each time one of these persons was released on bail, he was charged in some other case and promptly re-arrested. These events and in particular the casual and repeated illegal issuance of arrest warrants by the Judicial Magistrate at Dakor Court in District Kheda were reported in local and Bombay newspapers. This publicity led to the filing of a public interest petition before the High Court of Gujarat. The High Court directed the Director General of Police to conduct an inquiry and to submit a report.

It was contended on behalf of *M* that the various reports submitted to the High Court established his innocence and that of his relations; that he and they were being harassed by false and frivolous criminal proceedings. While the public interest petition was pending, the High Court acting on the administrative side suspended the Judicial Magistrate at Dakor Court. At this stage *K* and other accused persons moved the High Court in writ jurisdiction and consequently the High Court quashed not only the complaints by *M* and his relations, but also the pending public interest petition. Allowing the appeals,

Held :

The High Court in exercise of its power under extraordinary jurisdiction cannot interfere with a collateral proceeding initiated by the High Court itself in an application filed in public interest. There cannot be any dispute that the facts revealed a serious scandal in the functioning of some subordinate court in the State of Gujarat and, therefore, the High Court took cognizance of the matter and directed inquiry to be conducted, and on the basis of the said inquiry, it was open for the High Court to issue necessary directions and at that stage the impugned order has emanated. The order in the impugned judgment setting aside the aforesaid public interest petition is erroneous. (Para 4)

So far as the quashing of the complaints and inquiry on the basis of FIR registered by the complainant are concerned, the High Court was not justified in interfering with the same and quashing the proceedings by an elaborate discussion on the merits of the matter and in coming to the conclusion that Section 195 CrPC will be a bar. It was rather premature for the High Court to come to the aforesaid conclusion and on account of the orders passed, the investigation into several serious allegations are being throttled. (Para 5). *Manohar M. Galani* v. *Ashok N. Advani*, (1999) 8 SCC 737: AIR 2000 SC 202.

Bench Strength **2**. Coram: **G.B. Pattanaik** and *R.P. Sethi*, JJ. [Date of decision: 17-11-1999]

[7627] — S. 482 — Proceedings under Prevention of Corruption Act, 1988 — Quashing of — *Sought on the ground that Special Judge trying the case was appointed by State Govt. notification to try the offences under the old Act of 1947 and thus a fresh notification under S. 3 of the 1988 Act was required to enable the appointment of Special Judges for proceeding with the new cases under the 1988 Act — Having regard to the deeming fiction contained in S. 26 of the 1988 Act, held, Special Judge appointed for the purposes of 1947 Act has jurisdiction and is competent to try the offences under the 1988 Act — No fresh notification under the 1988 Act appointing the Special Judges required — Thus, proceedings in question, held,* *could not be quashed on the said ground* (Paras 6, 10 and 11). *Vasant Arjunrao Bhandak* v. *State of Karnataka*, (2003) 1 SCC 448: AIR 2003 SC 161: 2003 Cri LJ 394.

Bench Strength **2**. Coram: **U.C. Banerjee** and *B.N. Agrawal*, JJ. [Date of decision: 12-11-2002]

Nar Bahadur Bhandari v. State of Sikkim, (1998) 5 SCC 39: 1998 SCC (Cri) 1252; Bishambhar Nath Kohli v. State of U.P., AIR 1966 SC 573: (1966) 2 SCR 158, relied on

[7628] — S. 482 — Quashing of criminal proceedings — Delay in filing charge-sheet — Offence of abetting public servant to commit offence under S. 13(2) of Prevention of Corruption Act alleged against two old ladies aged 80 and 81 years — *On facts, criminal prosecution against them quashed — Constitution of India — Art. 136*

The only offence alleged against the two appellant senescent ladies is that they abetted the public servant to commit the offence under Section 13(2) of the PC Act. Firstly, the materials are too insufficient to prove that those two old ladies intentionally abetted the public servant in acquiring assets which are disproportionate to his known sources of income. As such they should not be compelled to embark upon a trial which, in all probabilities, cannot end in conviction against them, even assuming that the octogenarian ladies would be able to survive till the end of the trial. Secondly, the trial is not likely to end within one or two years. Even if the Special Court would strictly adhere to the directions issued by the Supreme Court in *Raj Deo Sharma case*, it is reasonably foreseen that the prosecution would be able to complete the evidence only within the farthest time permitted in *Raj Deo Sharma* in view of the volume of documents and of the evidence to be adduced by the prosecution. It would be unfair and unreasonable to compel the two ladies, who by the advancement of old age would possibly have already crossed into the geriatric stage, to stand the long trial having no reasonable prospect of ultimate conviction against them. Therefore, they are delinked from the array of accused and the criminal prosecution against them is quashed. (Para 22). *Seeta Hemchandra Shashittal* v. *State of Maharashtra*, (2001) 4 SCC 525: 2001 SCC (Cri) 787: AIR 2001 SC 1246: 2001 Cri LJ 1242.

Bench Strength **2**. Coram: **K.T. Thomas** and *R.P. Sethi*, JJ. [Date of decision: 13-2-2001]

Abdul Rehman Antulay v. R. S. Nayak, (1992) 1 SCC 225: 1992 SCC (Cri) 93; Hussainara Khatoon (I) v. Home Secy., State of Bihar, (1980) 1 SCC 81: 1980 SCC (Cri) 23; State of A.P. v. P.V. Pavithran, (1990) 2 SCC 340: 1991 SCC (Cri) 7, relied on

[7629] — Ss. 482 and 173(8) — Quashing of criminal proceedings — Initially case not registered against appellant but subsequently having regard to fresh materials coming to light pursuant to a preliminary inquiry, case registered under S. 13(1)(d) of Prevention of Corruption Act and under S. 120-B IPC against persons including appellant — Registration of case, held on facts, not actuated by mala fides or extraneous considerations — *Fresh facts having come to notice, investigating agency was justified in registering the case — High Court was justified in declining to interfere with the statutory functions of the investigating officer and to quash the criminal proceedings — Constitution of India — Art. 226*

The appellant was the Chief Minister of the State of Kerala for the period 1991-95. Kerala State Civil Supplies Corporation entered into a contract with M/s Power & Energy Pvt. Limited, Singapore for the purchase of import of 15,000 MT of Palmolein. The Comptroller & Auditor General of India (CAG) submitted his report dated 11-2-1994 for the year ending on 31-3-1993. One *V* who was the opposition MLA in the Kerala Assembly raised the allegation of corruption with regard to import of Palmolein in the Assembly. One *K*, Chief Editor of a newspaper filed a petition in the High Court under Art. 226 for the issuance of appropriate direction directing the respondent State to conduct investigation and register appropriate crime against the persons guilty in the matter of import of Palmolein. The writ petition was dismissed. *V* then presented a first information report before the Superintendent of Police, Vigilance (Hqrs.) praying for registering a case for offences under Sections 13(1)(*c*) and (*d*) of the Prevention of Corruption Act and Sections 406, 409, 420, 201, 34 and 120-B IPC against the persons named therein which included the appellant as one of the accused persons. The Superintendent of Police informed that the Vigilance Department was not to initiate inquiry suo motu even when a complaint is made in person or in a signed petition. *V* thereupon filed a writ petition in the High Court praying for issuance of direction to the Deputy Superintendent of Police, Vigilance (Hqrs.) to register a crime case pursuant to the FIR lodged by him and to investigate the same in accordance with law. A Single Judge of the High Court referred to various documents attached with the FIR and found that as the complaint under Section 154 CrPC had not been filed before the officer in charge of the police station, the fifth respondent was not obliged to register a case. The writ petition was therefore, dismissed. The writ appeal filed against the order of the Single Judge was also dismissed by a Division

(11)(xxix) Quashment/Interference re corruption offences *(contd.)*

Bench. The appellant laid down his office as Chief Minister in March 1995 whereafter elections to the State Assembly were held, in which the party and the Front of the appellant lost and the Left Democratic Front Government came into power on 20-5-1996. On 18-6-1996 the Commissioner-Secretary requested the Director of Vigilance, Investigation to submit inquiry report to the Government at the earliest after conducting a preliminary inquiry into the allegations raised in the Legislative Assembly pertaining to the Palmolein deal in which corruption worth crores of rupees had been alleged. The Superintendent of Police, Vigilance conducted a preliminary inquiry up to March 1997 whereafter a criminal case was registered under Section 13(1)(*d*) of the Prevention of Corruption Act and under Section 120-B IPC against 7 persons including the appellant. The appellant filed a criminal miscellaneous case under Section 482 CrPC in the High Court praying therein that all proceedings pursuant to the aforesaid criminal case be quashed. The High Court dismissed the petition on the ground that as fresh matter had come into the notice of the investigating agency, there was no bar for it to register a case and conduct investigation. The present appeal has been filed against the aforesaid order of the High Court. Referring to letter dated 18-6-1996 filed as Annexure R-2 with the counter-affidavit in the Supreme Court, terming it to be actuated by extraneous considerations and assailing the government order dated 12-5-1992 (Annexure R-1) as illegal, the appellant prayed for quashing of the FIR and the subsequent proceedings initiated against him. It is submitted that the source of power for registering the FIR referable to the aforesaid government order being illegal and violative of the mandate of judgment of the Supreme Court in *Vineet Narain* v. *Union of India*, (1998) 1 SCC 226 the appellant cannot be subjected to the harassment of a criminal trial. The impugned FIR is stated to be amounting to overriding the judgments of the High Court and the Supreme Court passed in earlier litigation praying for registration of the FIR against the appellant. The registration of the FIR has been termed to be amounting to contempt of court having been filed without any new material. Political rivalry is alleged to be the prime consideration for registration of the case against the appellant. Dismissing the appeal by the accused,

Held :

After going through the pleadings of the parties and keeping in view the rival submissions, it is clear that the registration of the FIR against the appellant and others cannot be held to be the result of mala fides or actuated by extraneous considerations. The menace of corruption cannot be permitted to be hidden under the carpet of legal technicalities. In such matters probes conducted are required to be determined on facts and in accordance with law. The allegations of mala fides were, admittedly, not the basis for challenging the registration of the FIR in the High Court. If during the conduct of a preliminary inquiry the commission of an offence comes to light on the basis of new materials, the respondent officials were obliged to register a case and present it in a competent court of jurisdiction for holding of trial and adjudication. The government order (Annexure R-1) is not shown to have been used against the appellant in any way. The aforesaid order in fact protects the interests of the officials saving them from unnecessary harassment. Mere apprehension of the order being used against some persons is no ground to hold it illegal or unconstitutional particularly when its legality or constitutionality has not been challenged. Prima facie it does not hamper or interfere with the statutory functions of an investigating officer who has, otherwise, statutory rights to hold and complete the investigation in accordance with the provisions of the Code of Criminal Procedure. The aforesaid government order has not been shown to be in any way illegal or unconstitutional so far as the rights of the appellant are concerned. (Para 8). *K. Karunakaran* v. *State of Kerala*, (2000) 3 SCC 761: 2001 SCC (Cri) 183: AIR 2000 SC 3381: 2000 Cri LJ 2278.
Bench Strength **2**. Coram: *G.B. Pattanaik* and **R.P. Sethi**, JJ. [Date of decision: 29-3-2000]

K. Karunakaran v. State of Kerala, 1997 Cri LJ 3618 (Ker), affirmed

[7630] — S. 482 — Quashing of criminal proceedings — Material collected by investigating agency not gone through by High Court — Offences under Ss. 420, 201 r/w S. 120-B IPC as well as under Ss. 13(1) and 13(2), Prevention of Corruption Act — *Proceedings quashed by High Court on the ground that accused persons have been exonerated of the charges in departmental proceedings conducted for the same cause of action — Held, before quashing the proceedings, High Court ought to have considered the aforesaid material so as to find out if the charges could be framed against the accused on the basis of it — Order passed by High Court set aside — Penal Code, 1860, Ss. 420, 201 r/w S. 120-B — Prevention of Corruption Act, 1988, Ss. 13(1) and 13(2). State of Bihar* v. *Purushottam Singh*, (2002) 10 SCC 333.
Bench Strength **2**. Coram: *M.B. Shah* and *S.N. Variava*, JJ. [Date of decision: 17-11-2000]

[7631] — S. 482 — Quashing of criminal proceedings under — When justified — Held, to be in very rare cases — Complaint (lodged against forest officers) involving mala fides — *Inherent improbabilities in complainant's case — Held, continuance of proceedings in such case would amount to abuse of the process of law — High Court erred in rejecting the petition under S. 482 — Judgment of the High Court set aside — Proceedings quashed*

The respondent filed a complaint against the appellants (six officers of the Orissa State Forest Department) alleging that they had falsely implicated him for offences under the Orissa Forest Act, 1972 and the Wild Life (Protection) Act, 1972. He further alleged that being not content with the said illegal acts, they seriously assaulted him thereby committing offences punishable under Sections 341, 323, 325, 506 and 386 read with Section 34 IPC. Before the Sub-Divisional Judicial Magistrate (SDJM), the appellants took the stand that the complaint was lodged as a counterblast and retaliatory measure because a large quantity of ivory was seized from the complainant and he could not produce any material to justify the possession thereof. According to them, the acts of search, seizure and arrest were done in pursuance of their official duty and they could not be proceeded against without necessary sanction as contemplated under Section 197 CrPC. The SDJM took the view that there was no necessity for sanction under Section 197. Thereafter the appellants preferred a petition under Section 482 CrPC before the High Court. The High Court, after taking the view that Section 197 CrPC had no application to the facts of the case, rejected the said petition.

Before the Supreme Court the appellants contended that in relation to the offences committed by the respondent, he was produced before the Magistrate. While hearing the bail application of the respondent when the SDJM specifically asked the respondent as to whether there was any ill-treatment, he did not make any grievance of any ill-treatment and on the contrary admitted that there was no ill-treatment. The respondent got himself examined by a private doctor after three days of the alleged incident and the complaint was lodged after 13 days. The appellants submitted that the complaint instituted by the respondent was nothing but an abuse of the process of the court and the High Court was not justified in holding that Section 197 CrPC was not applicable.

Allowing the appeal,

Held :

When the background facts of the case are considered, the question regarding applicability of Section 197 CrPC takes a temporary back seat. The respondent was produced before the Magistrate on 28-2-1991. He was specifically asked as to whether there was any ill-treatment. Learned SDJM specifically records that no complaint of any ill-treatment was made. This itself strikes at the credibility of the complaint. Additionally, the doctor who has examined him stated that for the first time on 2-3-1991 he treated the complainant. Though there are several other aspects highlighted in the version indicated in the complaint and the materials on record are there, it is not necessary to go into them because of the inherent improbabilities of the complainant's case and the patent mala fides involved. (Para 20)

It is no doubt true that at the threshold interference by exercise of jurisdiction under Section 482 CrPC has to be in very rare cases, and this case appears to be of that nature. The continuance of the proceeding by way of prosecution in this case would amount to abuse of the process of law. (Paras 20 and 21). *State of Orissa* v. *Ganesh Chandra Jew*, (2004) 8 SCC 40: 2004 SCC (Cri) 2104: AIR 2004 SC 2179: 2004 Cri LJ 2011.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 24-3-2004]

State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, relied on

Kumar Raghavendra Singh v. Ganesh Chandra Jew, (1996) 81 Cut LT 94 (Orissa), reversed

[7632] — S. 482 — Quashing of proceeding initiated under Prevention of Corruption Act in absence of sanction accorded by competent authority — Sanction not accorded by competent authority — Effect — *There being no sanction of competent authority (Managing Director of the Company in instant case), proceeding initiated under the Act, held, was liable to be quashed — Prevention of Corruption Act, 1988, S. 19(1)(c). Manoranjan Prasad Choudhary* v. *State of Bihar*, (2002) 10 SCC 688.

Bench Strength **2**. Coram: *G.B. Pattanaik* and *Y.K. Sabharwal*, JJ. [Date of decision: 6-3-2000]

[7633] — Ss. 482 and 197 — Quashing of criminal proceedings at initial stage — Grounds for — Impugning the sanction required for prosecution — *Where sanction order not ex facie illegal or invalid, held, proceedings cannot be quashed — Non-consideration of relevant documents supporting the accused while granting sanction cannot be a ground for quashing the proceedings — Such aspects can be examined at the stage of trial for invalidating the sanction — Circumstance that during pendency of the proceedings the accused was* *promoted by the State or that he retired thereafter is not relevant — Fact that the complainant is not traceable at the stage of the investigation and filing of challan is also not a relevant circumstance for quashing the prosecution — Prevention of Corruption Act, 1947, S. 6*

In the instant case the sanction order shows that the sanctioning authority was satisfied after complete and conscious scrutiny of the records produced in respect of the allegation against the accused. Now the question whether all the relevant evidence which would have tilted the balance in favour of the accused if it was considered by the sanctioning authority before granting sanction and which was actually left out of consideration could be examined only at the stage of trial when the sanctioning authority comes forward as a prosecution witness to support the sanction order if challenged during the trial. As that stage was not reached the prosecution could not have been quashed at the very inception on the supposition that all relevant documents were not considered by the sanctioning authority while granting the impugned sanction.

The further circumstance that during the pendency of the proceedings before the High Court the respondent was promoted by the State or that he retired thereafter cannot have any impact on the question whether on the evidence available at the stage of investigation and filing of charge-sheet, the prosecution had made out a case for prosecuting the respondent or not.

This is a trap case; the investigating agency has already recorded the statement of the complainant, the sanctioning authority has also considered, amongst others, the statement of the complainant. Consequently it could not be urged that the complainant was not available at the stage of investigation and the subsequent stage of filing the challan against the accused. If at the stage of trial, the complainant is not available to support the case what will be its effect on the fate of the trial is a question which will have to be decided by the trial court on its own merits. Whether the complainant will ultimately support the prosecution case at the stage of trial or not is not a relevant circumstance for deciding whether the proceedings could be quashed under Section 482 CrPC by not permitting the trial to proceed when there is sufficient material collected during investigation including the version of the complainant to implicate the accused and to call upon him to face the trial. *State of M.P.* v. *Krishna Chandra Saksena (Dr.)*, (1996) 11 SCC 439: 1997 SCC (Cri) 35.

Bench Strength **2**. Coram: *Dr. A.S. Anand* and **S.B. Majmudar**, JJ. [Date of decision: 11-10-1996]

(xxx) Quashment re other offences

[7634] — S. 482 — Abetment of suicide — Requirements of — Weight to be given to suicide note — Quashment denied — *Deceased a field officer in the employment of appellant (A-1), who owned a finance firm — A-1 joining as a partner in* **K** *group — Deceased selling 15 plots on behalf of* **K** *group and handing over collected amount to A-1 — A-1 not paying the said amount to* **K** *group and consequently the other partners not registering the plots in favour of the persons who paid the money to the deceased — On demand by deceased to register the plots in favour of the purchasers, A-1 abusing deceased in filthy language and neither registering plots nor returning the amount — Deceased committing suicide — Suicide note clearly stating that he was taking the extreme step because he was unable to bear the pressure from purchasers and mental harassment — Submission by appellant that there was no element of abetment and hence, offence under S. 306 not made out — Held, in view of the suicide note offence under S. 306 clearly proved — High Court rightly rejected the prayer of exercise of power under S. 482 CrPC to quash the proceedings — Penal Code, 1860, S. 306* (Paras 3, 8 and 9). *Didigam Bikshapathi* v. *State of A.P.*, (2008) 2 SCC 403: (2008) 1 SCC (Cri) 434: AIR 2008 SC 527: 2008 Cri LJ 724: (2008) 106 Cut LT 313.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Tarun Chatterjee*, JJ. [Date of decision: 29-11-2007]

Netai Dutta v. State of W.B., (2005) 2 SCC 659: 2005 SCC (Cri) 543, distinguished

[7635] — S. 482 — Abetment of suicide — Proceedings against alleged abetment of suicide initiated without any factual foundation therefor — *Fitness for interference by High Court with, under S. 482 CrPC — Following the reasons given in* Netai Dutta v. State of W.B., *(2005) 2 SCC 659, such proceedings quashed — Penal Code, 1860, Ss. 306 and 107* (Para 3). *Pawan Kumar Bhalotia* v. *State of W.B.*, (2005) 2 SCC 661: 2005 SCC (Cri) 545: AIR 2005 SC 1531: 2005 Cri LJ 1810.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Tarun Chatterjee*, JJ. [Date of decision: 28-2-2005]

Netai Dutta v. State of W.B., (2005) 2 SCC 659, followed

[7636] — Ss. 482, 225 to 247 — Stay of trial — Murder case — Stay when warranted — *Held, stay of trial of such cases is an exception and is not to be granted as a matter of course — Even when granted, the main matter deserves to be disposed of within a reasonable period of time — In the present case, stay continuing for more than two-and-a-half years — High Court directed to dispose of the matter within one month from the date of receipt of the* *copy of the instant order — Penal Code, 1860, S. 302* (Para 10). *Ajay Kumar Sharma* v. *State of U.P.*, (2005) 7 SCC 507: 2005 SCC (Cri) 1702.

Bench Strength **3**. Coram: *Y.K. Sabharwal, B.N. Srikrishna* and *C.K. Thakker*, JJ. [Date of decision: 29-8-2005]

[7637] — S. 482 — Prosecution under S. 306 IPC quashed. *Sanju* v. *State of M.P.*, (2002) 5 SCC 371: 2002 SCC (Cri) 1141: AIR 2002 SC 1998: 2002 Cri LJ 2796.

Bench Strength **2**. Coram: *M.B. Shah* and **H.K. Sema**, JJ. [Date of decision: 1-5-2002]

[7638] — S. 482 — Interference not justified on facts — Scope and ambit of S. 307 IPC, restated — Held, nature of injuries not determinative — *Respondent 2 filing petition under S. 482 CrPC before High Court, questioning framing of charges against him — Ground for challenge, inter alia, was that injuries inflicted on the victim were simple in nature and no injury was found on the vital parts of the body and, therefore, Ss. 307/149 had no application — High Court while accepting this submission, holding that framing of charge under S. 302 or S. 307 r/w S. 149 was an abuse of process of court — Sustainability — Reiterated, an accused charged under S. 307 IPC cannot be acquitted merely because injuries inflicted on the victim were in nature of simple hurt — Determinative question is intention or knowledge, as the case may be, and not the nature of injury — Therefore, held, impugned order of High Court, herein, is clearly unsustainable — Penal Code, 1860, Ss. 307/149* (Paras 4 to 6). *Ratan Singh* v. *State of M.P.*, (2009) 12 SCC 585: (2009) 78 AIC 101 (SC).

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *A.K. Ganguly*, JJ. [Date of decision: 24-4-2009]

State of M.P. v. Saleem, (2005) 5 SCC 554: 2005 SCC (Cri) 1329; State of M.P. v. Imrat, (2008) 11 SCC 523: (2009) 2 SCC (Cri) 558 , relied on

[7639] — S. 482 — Interlocutory order — Ineffectual and/or needless interference by High Court must be avoided — *Terrorist attack on Parliament — Terrorists shot dead — Telephone numbers recovered from them — Communication intercepted thereby, during course of investigation — Prosecution using intercepted communication as evidence — Accused-respondents H, S and N filing Criminal Misc. Appln., appeal under S. 34 POTA r/w S. 482 CrPC and petition under S. 482 CrPC r/w Arts. 226 and 227 respectively to challenge the interlocutory order passed by Special Court which dismissed the applications made by respondents for eschewing/exclusion of evidence relating to intercepted communication — Single Judge of High Court setting aside the interlocutory order of Special Judge — But by that time the evidence had already been recorded and no abuse of process of court could then be prevented — Even ends of justice did not warrant interference at that stage — Matter should have been relegated for statutory appeal after final hearing — So, on facts, there was no miscarriage of justice or palpable illegality which justified interference by the High Court*

On facts, the order dated 11-7-2002 passed by the Special Judge was clearly an interlocutory order. The order of the Special Judge is based on an interpretation of the various provisions of POTA. The Special Judge undoubtedly had authority and jurisdiction to interpret the various provisions of POTA and other laws. The Special Judge had jurisdiction to decide whether the evidence collected by interception could be used for proving a charge under POTA. The Special Judge was acting within the limits of his authority in passing the impugned order. Neither the power under Article 227 nor the power under Section 482 enabled the High Court to correct an error in interpretation even if the High Court felt that the order of the Special Court was erroneous. Even if the High Court did not agree with the correctness of that order, the High Court should have refused to interfere as the order could be corrected in the appeal under Section 34 POTA. To be remembered that by the time the impugned order was passed, the evidence had already been recorded. Thus there was no abuse of process of court which could now be prevented. Even the ends of justice did not require interference at this stage. In fact the ends of justice required that the statutory intent of Section 34 POTA be given effect to. The High Court should have directed the respondents to raise all such points in the statutory appeal, if any required to be filed, under Section 34 POTA. If in the appeal the Division Bench felt that the order was not correct or that it was erroneous it would set aside the order, eschew the evidence and not take the same into consideration. Thus no prejudice was being caused or would be caused to the respondents. Their rights were fully protected as per the provisions of POTA. At this stage there was no miscarriage of justice or palpable illegality which required immediate interference. Thus, even if powers under Article 227 or under Section 482 could have been exercised, this was a case where the High Court should not have exercised those powers. (Paras 30 and 31). *State* v. *Navjot Sandhu*, (2003) 6 SCC 641: 2003 SCC (Cri) 1545: (2003) 104 DLT 794.

Bench Strength **2**. Coram: **S.N. Variava** and *Brijesh Kumar*, JJ. [Date of decision: 9-5-2003]

(11)(xxx) Quashment re other offences *(contd.)*

[7640] — S. 482 — Death by medical negligence — Prosecution for — Wrong diagnosis of child patient — Child succumbing to actual disease later on — Conflicting opinions of the experts, one opining that there was no negligence on the part of the accused while the other opining that there was gross and reckless negligence — Effect of — Quashing of criminal proceedings — Prayer for — *Accused, who professed himself to be a child specialist, treated child of Respondent 2 for tuberculosis — On condition of the child becoming serious, Respondent 2 consulted another doctor who diagnosed the child to be suffering from advanced stage cancer — Child subsequently succumbed to cancer — Considering the two sets of opinions: one in favour of the complainant and another in favour of the accused, held, it could not be said that the materials brought on record by the complainant, even if given face value and taken to be correct in their entirety did not disclose an offence — Which opinion would ultimately prevail was essentially a question to be determined by the trial Judge upon considering the evidence adduced by the parties in their entirety — Hence, refusal by High Court to quash the criminal proceedings against the appellant-accused, held, not liable to be interfered with — Penal Code, 1860 — S. 304-A*

The appellant was running a hospital advertising himself as a specialist in child diseases. On 22-6-2000 Respondent 2 took his seven years old daughter to the appellant for treatment as the child had vomited while in school. The child was admitted in the hospital and blood tests were conducted which disclosed abnormal increase in white blood cells. The appellant diagnosed the disease which the child was suffering from as tuberculosis. The appellant discharged the child and advised her to take the medicine prescribed.

The treatment continued but instead of showing improvement, the child became almost crippled and was not even able to move. She had been taken to the hospital on a large number of occasions but Respondent 2 was on each occasion assured that there was nothing to worry about. Even his request to refer the child to another specialist for having a second opinion was not acceded to.

On 1-10-2000 early in the morning, the child developed high fever. She had rashes all over her body. Her face became swollen. She had been vomiting also. The child was taken to the hospital immediately. The appellant, seeing her condition, became panicky. Another doctor *R* was called. He immediately suggested a "biopsy of bone marrow". The child underwent the said test. *R* informed the second respondent that the girl had been suffering from leukaemia which was in advanced stage and her liver was enlarged. He advised the girl to be admitted in a particular hospital. Considering the advanced stage of leukaemia, the doctor informed the second respondent that chance of survival of the child was bleak. Ultimately, the child died on 10-11-2000.

Thereafter, Respondent 2 filed a consumer complaint before the State Consumer Disputes Redressal Commission. He also filed a private criminal complaint in terms of Section 200 CrPC, which was referred to police station concerned under Section 156(3) CrPC. The police filed a final report. But the complainant preferred a protest petition on the basis whereof cognizance was taken and processes were issued against the appellant by the Magistrate concerned. On the other hand, the Consumer Disputes Redressal Commission found the appellant to be negligent in his performance of professional services to the deceased child and awarded damages of Rs 4,00,000. Against the order passed by the Magistrate issuing summons to the appellant, the appellant preferred a petition under Section 482 CrPC for quashing the proceedings. Hence, the present appeal.

Dismissing the appeal with costs,

Held :

A person should not profess himself to be a child specialist unless he has the requisite expertise. Unless a person has a special skill to treat a child, ordinarily he could not have treated her, not because he was wholly incompetent therefor but because it required a specialised skill keeping in view the nature of the disease the child was suffering from. (Paras 20 and 21)

It may not be a valid argument at least at this stage that the child would have otherwise died having been suffering from leukaemia. The question which has been raised is that if on the face of the first blood report medical opinion other than the diagnosis of cancer was possible, whether it will fall within the ambit of medical negligence, is a matter which requires deeper consideration. For the said purpose, the opinion of the experts will have to be thoroughly examined. Their opinion must be tested. (Para 22)

Keeping in view the facts and circumstances of this case, it cannot be said that the materials brought on record by the complainant, even if given face value and taken to be correct in their entirety do not disclose an offence. It is said so because there are two sets of opinions; one in favour of the complainant and another in favour of the accused. Which opinion would ultimately prevail is essentially a question to be determined by the trial Judge upon considering the evidence adduced by the parties hereto in their entirety. The jurisdiction of the courts, at this stage, is limited as to whether a case of reckless/gross negligence has been made out or not will depend upon the facts of each case. Further, the civil liability of the appellant having been determined, at this stage it may not be relevant to consider the charges of criminal negligence on the part of the appellant on the touchstone of standard of proof required for proving a case of criminal negligence as the same would fall for consideration at the hands of the trial court at an appropriate stage. (Paras 28, 22, 25, 24 and 23). *B. Jagdish* v. *State of A.P.*, (2009) 1 SCC 681.

Bench Strength **2**. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 16-12-2008]

Bolam v. Friern Hospital Management Committee, (1957) 1 WLR 582: (1957) 2 All ER 118, distinguished

[7641] — S. 482 — Quashing of a criminal complaint — Husband filing complaint against Gynaecologist alleging wilful negligence resulting in death of his wife — *Magistrate taking cognizance under S. 304-A IPC — Single Judge however quashing it on the ground that the mere fact of death of a patient in a hospital does not lead to a presumption of negligence — Held, the Single Judge was not justified in quashing the complaint at the threshold when the complainant had no opportunity to adduce evidence before the Magistrate — More so, when culpability of the doctor could be established only on proper analysis of expert evidence* (Paras 1 and 2). *Mohanan* v. *Prabha G. Nair*, (2004) 3 SCC 391: 2004 SCC (Cri) 816: AIR 2004 SC 1719: (2004) 2 KLT 160: (2004) 1 CPJ 21 (SC).

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *B.N. Srikrishna*, JJ. [Date of decision: 4-2-2004]

[7642] — Ss. 482 and 190 — Quashing of criminal proceedings — *Complaint of forcibly taking away movable articles belonging to the husband of the appellant after his death — Police submitting final report — Magistrate taking cognizance of offence under S. 380 IPC after examining the complainant and her witnesses — Held, High Court not justified in quashing the proceedings on ground that the dispute was of a civil nature — Civil dispute regarding partition of immovable property of appellant's husband has nothing to do with complaint about forcible removal of movable articles — Proceedings could not be said to be abuse of process of law — Further held, in the circumstances of the case, complaint filed after submission of final report by police could not be quashed in limine by treating it stale. A.E. Rani* v. *V.S.R. Sarma*, (1995) 1 SCC 627: 1995 SCC (Cri) 262: (1995) 32 ACC 179: 1995 Cr LR (SC) 78.

Bench Strength **2**. Coram: *S.C. Agrawal* and **G.N. Ray**, JJ. [Date of decision: 14-12-1994]

[7643] — S. 482 — Quashing of charge-sheet, on facts, if justified — Medical negligence — Delay on the part of the doctor to attend on the patient — *Held, it may at worst be a case of civil negligence and not one of culpable negligence — That apart death of patient being due to poisoning and there being no allegation against the doctor that he administered poison to the patient no prima facie case of rash or negligent act on the part of the doctor made out — Charge-sheet quashed — Penal Code, 1860, S. 304-A. Rakesh Ranjan Gupta* v. *State of U.P.*, (1999) 1 SCC 188: 1999 SCC (Cri) 76: AIR 1999 SC 2115: 1999 ACJ 807.

Bench Strength **3**. Coram: *M.M. Punchhi, C.J.* and *K.T. Thomas* and *S. Rajendra Babu*, JJ. [Date of decision: 24-7-1998]

[7644] — Ss. 482, 154(3) and 174 — High Court quashing complaint case for offence under S. 306 IPC by appreciating material facts — Permissibility — *Complaint case against wife (Respondent 1) as newly wedded husband committed suicide due to harsh and abusive language of wife uttered in a fit of anger — No suicide note — Though husband committed suicide in his native village, different/doubtful version as to whether wife, after the marriage, had accompanied the husband to his native village or not — Moreover, appellant (father) filed complaint before the SP after about two-and-a-half months of the alleged incident — Though, normally threshold interference should not be made under S. 482 CrPC, the quashing of complaint case, on facts held, was just — Therefore, was not interfered with*

On 29-5-2004, Respondent 1 (wife) married the deceased husband (son of the appellant complainant). On 3-6-2004 (the day after the nuptials), the wife abused the husband regarding his potency and ugliness (dark complexion). On 9-6-2004, the complainant father (the appellant) received a message from police station that the deceased had committed suicide. The appellant (father of the deceased husband), alleging that police did not register a case lodged a complaint on 26-8-2004 against the respondent wife for offence under Section 306 IPC. The High Court by the impugned order quashed the complaint under Sections 482 CrPC.

(11)(xxx) Quashment re other offences *(contd.)*

Dismissing the appeal,

Held :

It is fairly well settled that words uttered in a fit of anger or emotion without any intention cannot be termed as instigation. Additionally, there was no suicide note in the present case. Different versions of death were given. At the earlier stage, during investigation under Section 174 CrPC, the version was that the accused had accompanied the deceased to the native home, but subsequently stand was that the accused did not accompany the deceased because the latter was bad and ugly looking. Admittedly, marriage was an arranged one. If that is so, it is not believable that the deceased and the accused had not met. The alleged grievance of the accused that the deceased was an ugly man could not have been noticed after marriage, for the first time on 3-6-2004. The appellant (father) filed a complaint to the Superintendent of Police after about two-and-a-half months of the alleged incident. Allegation was that the police did not register a complaint. Ultimately, the complaint was filed on 26-8-2004. (Paras 12 and 13)

Though, normally threshold interference should not be made under Section 482 CrPC, in the aforesaid background, this is not a case where any interference is called for with the order of the High Court. (Para 14). *Sonti Rama Krishna* v. *Sonti Shanti Sree*, (2009) 1 SCC 554.

Bench Strength **2**. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 28-11-2008]

[7645] — S. 482 — Quashing of charges — Conspiracy to commit murder — *Main accused, who was alleged to have hatched the conspiracy and who had motive to kill the deceased, already discharged and that matter attaining finality — Respondent implicated in the case on the basis of the alleged conspiracy entered into between him and the main accused — No other material placed before the Court to prove his complicity — No direct evidence that he supplied weapons and rendered assistance to assailants in carrying out the common object of killing the deceased — Held, High Court was fully justified in holding that no purpose would be served in further proceeding with the case against the respondent — Quashing of charges framed against him was therefore justified — Penal Code, 1860, S. 120-B r/w S. 302 and S. 109* (Paras 5 and 6). *CBI* v. *Akhilesh Singh*, (2005) 1 SCC 478: AIR 2005 SC 268: 2005 All LJ 195.

Bench Strength **2**. Coram: **K.G. Balakrishnan** and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 8-12-2004]

Distinguished in State, CBI v. Sashi Balasubramanian, (2006) 13 SCC 252: (2007) 3 SCC (Cri) 337

[7646] — S. 482 — Scope and applicability — *High Court quashing the charge-sheet submitted under various provisions of IPC by applying S. 28 of the Societies Regitration Act, observing that some other allegations prima facie made out an offence under S. 4 of the Societies Registration Act and hence, since provisions of S. 28 were breached, the proceedings were unsustainable — Held, S. 28 provides procedure for trial of offences punishable under the 1860 Societies Registration Act itself and not for offences punishable under the Penal Code — Hence, impugned order set aside and matter remanded to trial court for decision afresh — Penal Code, 1860, Ss. 419, 420, 467 and 468 — Societies Registration Act, 1860, Ss. 28, 4 and 27* (Paras 3, 5 and 6). *Sarvesh Kumar Singh* v. *Jai Govind Mishra*, (2006) 9 SCC 206: (2006) 2 SCC (Cri) 618.

Bench Strength **2**. Coram: *B.P. Singh* and *R.V. Raveendran*, JJ. [Date of decision: 21-11-2005]

[7647] — S. 482 — Conditions for applicability of — Complaint made by Principal Officer, Mercantile Marine Department for initiation of inquiry under S. 363, MSA, 1958 against Master of a foreign ship which had sunk in high seas causing loss of lives — *Held, prima facie the complaint does not satisfy the essential requisites of S. 363 — Hence should have been quashed by the High Court S. 482, CrPC — Merchant Shipping Act, 1958, S. 363(1)*

The appellant was Master of a Panamanian ship registered in Panama. The ship had sunk in high seas beyond the territorial waters of India causing loss of several human lives. The Principal Officer, Mercantile Marine Department, Madras, on receipt of information about the shipping casualty, filed a complaint in Court of Metropolitan Magistrate, Madras against the appellant for initiation of inquiry proceedings under S. 363 of the Merchant Shipping Act complaining about the negligence of the appellant while he was the Master of the ship and that at that time he was residing in Madras; further that the shipping casualty had occurred due to sheer negligence and gross incompetence on the part of the appellant in commanding the ship and the crew, resulting in loss of the ship, the cargo and lives of the sailors. The complaint accordingly said that the Magistrate's Court under S. 363 had got powers to make inquiry into the charges of incompetence or of misconduct of the appellant therein and that the inquiry might be commenced in accordance with the provisions of the Act so as to cancel the certificate of competency of the Master, namely the appellant, which had been granted by the Central Government; and that cancellation might be recommended under the Act after holding the aforesaid inquiry. The appellant, on receipt of a notice stating that the inquiry proceedings were instituted against him, filed a Cri MP under S. 482 CrPC in the High Court which was dismissed. Before the Supreme Court three questions arose for decision: whether the complaint made by the Principal Officer under S. 363 would be maintainable; whether the Act would at all be applicable in the facts and circumstances of the case; and if the Act was applicable whether Part XII of the Act would apply. Allowing the appeal,

Held :

One of the requisites of S. 363 is that the Central Government must have reason to believe that there are grounds for charging any master etc. with incompetency or misconduct; and such reason to believe must have been arrived at otherwise than in the course of a formal investigation into the shipping casualty and it is the Central Government who may transmit the statement of a case to a court having jurisdiction under S. 361. The complaint in this case neither mentions that the Central Government had such reason to believe, nor mentions that it was a transmission of the statement of a case to the court by the Central Government, nor mentions that the reason to believe had been found otherwise than in the course of a formal investigation into the shipping casualty. Thus, prima facie the complaint does not disclose the ingredients required under S. 363. (Paras 26 and 29). *Captain Subash Kumar* v. *Principal Officer, Mercantile Marine Department*, (1991) 2 SCC 449: AIR 1991 SC 1632: (1991) 1 Crimes 830: 1991 Cri LJ 2000.

Bench Strength **2**. Coram: **K.N. Saikia** and *M.M. Punchhi*, JJ. [Date of decision: 22-2-1991]

[7648] — S. 482 — Abuse of process of law — Landlord after losing his case in civil courts implicating the tenant in frivolous criminal prosecution — *Such action in the circumstances held, amounts to abuse of process of law which must be prevented by High Court in exercise of its power under S. 482*

Chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court. Complainant herein is an advocate. He lost in both the courts in the rent control proceedings and has now rushed to the criminal court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background is an abuse of the process of law and the High Court should not have glossed over this important fact while declining to exercise its power under S. 482, CrPC. *Chandrapal Singh* v. *Maharaj Singh*, (1982) 1 SCC 466: 1982 SCC (Cri) 249: AIR 1982 SC 1238: 1982 Cri LJ 1731: 1982 ALJ 507.

Bench Strength **3**. Coram: *S. Murtaza Fazal Ali*, **D.A. Desai** and *A. Varadarajan*, JJ. [Date of decision: 15-1-1982]

[7649] — S. 482 — Complaint alleging kidnapping of minor girl by her own father lodged by girl's maternal grandfather with whom she was living in view of strained relations between the girl's parents — *Magistrate directing the father of the girl to hand over the child to police for restoration of her custody to the complainant otherwise police would register a case against him and proceed to declare him a proclaimed offender — Petition filed under S. 482 by the father — Held, High Court justified in quashing the order of the Magistrate on the finding that the father, being the natural guardian of the child, could not be charged with the offence of kidnapping. Chandrakala Menon (Mrs)* v. *Vipin Menon (Capt.)*, (1993) 2 SCC 6: 1993 SCC (Cri) 485: (1993) 1 Crimes 556: (1993) 1 BLJR 536.

Bench Strength **2**. Coram: *Kuldip Singh* and *B.P. Jeevan Reddy*, JJ. [Date of decision: 14-1-1993]

[7650] — S. 482 — High Courts power under to quash criminal proceedings — Case initiated without any factual foundation, held, fit one for exercise of the said power — Abetment of suicide — Essential ingredient of, held, is abetment — *Employee of a company transferred but not joining and after remaining absent for 2 long years submitting resignation expressing grievance against stagnation in pay and unsatisfactory working conditions — Subsequently, his dead body found and on the basis of a suicide note recovered from the dead body, police registering a case against appellant — No allegation in the suicide note against the appellant, of causing any harm to the deceased or delaying his pay — Except referring to the name of the appellant at some places, the suicide note not making any allegation against the appellant to have committed any wilful act or omission or intentionally aiding or instigating the deceased in committing suicide — Even no allegation by the complainant of any harassment of the deceased by the appellant — In such circumstances, proceedings under S. 306 IPC against the appellant, held, were without any factual foundation and leading towards sheer harassment to the accused without any fruitful result — Hence, the case, held, was fit for the exercise of High Court's extraordinary power under S. 482 CrPC to quash the criminal proceedings — Penal Code, 1860, Ss. 306 and 107*

(11)(xxx) Quashment re other offences *(contd.)*

One *P* was an employee of a company. On 11-9-1999 he was transferred to another worksite but did not join. Two years later, he sent a letter of resignation expressing his grievance against stagnancy of salary and unfortunate circumstances. The Company accepted his resignation. On 16-2-2001, his dead body was found near the railway lines. Subsequently, on the basis of a suicide note allegedly recovered from the dead body, the brother of the deceased lodged a complaint with the police and consequently, a case under Section 306 IPC was registered against the appellant and some others. The suicide note indicated that the appellant herein and one *PC* had engaged him in several wrongdoings and that he had reported certain incidents to them. He also expressed dissatisfaction at the working conditions in the office and at the worksites. The appellant filed a petition under Section 482 CrPC for quashment of the said criminal proceedings but the High Court rejected that petition. The appellant then filed the present appeal by special leave.

Allowing the appeal,

Held :

There is absolutely no averment in the alleged suicide note that the present appellant had caused any harm to him or was in any way responsible for delay in paying salary to the deceased. Although the deceased was very much dissatisfied with the working conditions at the workplace but he remained absent for two years and the suicide took place still later. It cannot be said that the present appellant had in any way instigated the deceased to commit suicide or he was responsible for the suicide of *P.* An offence under Section 306 IPC would stand only if there is an abetment for the commission of the crime within the meaning of Section 107 thereof. (Para 5)

In the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incidence whereby the appellant herein is alleged to have committed any wilful act or omission or intentionally aided or instigated the deceased in committing the act of suicide. (Para 6)

Moreover, the case registered against the appellant is without any factual foundation. The contents of the alleged suicide note do not in any way make out the offence against the appellant. The prosecution initiated against the appellant would only result in sheer harassment to the appellant without any fruitful result. Therefore, the present case is a fit one where the extraordinary power under Section 482. The criminal proceedings initiated against the appellant is therefore quashed. (Para 7). *Netai Dutta* v. *State of W.B.*, (2005) 2 SCC 659: 2005 SCC (Cri) 543: AIR 2005 SC 1775: 2005 Cri LJ 1737.

Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Tarun Chatterjee*, JJ. [Date of decision: 28-2-2005]

Distinguished in Didigam Bikshapathi v. State of A.P., (2008) 2 SCC 403

[7651] — S. 482 — High Court refusing to quash proceedings for offence of criminal trespass under S. 448, IPC — *On meticulous examination of the record, as well as statements under S. 161, CrPC, held, there was no material connecting the appellant with the offence of criminal trespass — Allegations vague and an afterthought — Charged quashed but not to affect proceedings against other accused under Ss. 448 and 380, IPC — Penal Code, 1860, S. 448 — Constitution of India — Art. 136. Bhaskar Chattoraj* v. *State of W.B.*, 1991 Supp (2) SCC 574: 1991 SCC (Cri) 1077: AIR 1991 SC 317: 1991 Cri LJ 451.

Bench Strength **3**. Coram: **S. Ratnavel Pandian**, *M. Fathima Beevi* and *K. Jayachandra Reddy*, JJ. [Date of decision: 14-11-1990]

[7652] — S. 482 — Presumption must be drawn that holder of the cheque received the cheque of the nature referred to in S. 138, NI Act for the discharge of any debt or other liability unless the contrary is proved — *Held, therefore High Court not justified in quashing complaints at initial stage of proceedings — Negotiable Instruments Act, 1881, Ss. 139 and 138. Maruti Udyog Ltd.* v. *Narender*, (1999) 1 SCC 113.

Bench Strength **2**. Coram: *M.K. Mukherjee* and *S.S.M. Quadri*, JJ. [Date of decision: 24-7-1998]

[7653] — S. 482 — Quashing of the complaint by High Court maintained by Supreme Court though for different reasons. *State of Punjab* v. *National Organic Chemical Industries Ltd.*, (1996) 11 SCC 613.

Bench Strength **2**. Coram: *K. Ramaswamy* and *S.P. Kurdukar*, JJ. [Date of decision: 25-10-1996]

[7654] — S. 482 — Requirements for attraction of — On facts, complaint for offence under S. 304-A, Penal Code, quashed

It is settled position in law that the inherent power of the High Court under Section 482 CrPC for quashing criminal proceedings can be invoked only in cases where on the face of the complaint or the papers accompanying the same no offence is made out for proceeding with the trial. The test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out, the High Court will be justified in quashing the proceedings. (Para 8)

After examining all the medical papers accompanying the complaint, it is found that no case of recklessness or gross negligence has been made out against the doctor to compel him to face trial for offence under Section 304-A IPC and the criminal proceedings pending against the present doctor who is the accused and appellant are quashed. (Para 28). *Suresh Gupta (Dr.)* v. *Govt. of NCT of Delhi*, (2004) 6 SCC 422: 2004 SCC (Cri) 1785: AIR 2004 SC 4091: (2004) 3 KLT 14: (2004) 112 DLT 866.

Bench Strength **2**. Coram: *Y.K. Sabharwal* and **D.M. Dharmadhikari**, JJ. [Date of decision: 4-8-2004]

Municipal Corpn. of Delhi v. Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115: AIR 1983 SC 67; Drugs Inspector v. Dr. B.K. Krishnaiah, (1981) 2 SCC 454: 1981 SCC (Cri) 487: AIR 1981 SC 1164, relied on

See also Jacob Mathew v. State of Punjab, (2005) 6 SCC 1

(xxxi) Multiple/Successive petitions under/ Restoration/Review, etc.

[7655] — S. 482 — Application for quashing FIR filed before the High Court dismissed for default of appearance — Second application also dismissed on ground that there was no scope for entertaining second application — *Held, High Court erred in dismissing the application without considering the contentions of the applicant — Matter remitted back to the High Court for deciding it afresh after hearing the parties. Krishna Narain Lal* v. *State of Bihar*, (1999) 9 SCC 247: 1999 SCC (Cri) 1155: AIR 2000 SC 3612.

Bench Strength **2**. Coram: *G.T. Nanavati* and *S.N. Phukan*, JJ. [Date of decision: 26-3-1999]

[7656] — Ss. 482 and 362 — Fresh petition on subsequent development — Sustainability and manner in which to be disposed of — *High Court against the statutory prescription of S. 362, CrPC had reopened a disposed of S. 482 petition and passed the impugned order — Supreme Court set aside the impugned order on technical grounds rather than on merits — Fresh petition under S. 482 for similar relief, held, is permissible if any subsequent development had taken place after the disposal of original S. 482 petition by High Court*

The High Court was not justified in handing over the investigation of the case from the State police authorities to CBI because the respondents had not filed any independent application for the same on certain events which had occurred after the final order was passed by the High Court disposing of the earlier criminal petition under Section 482 CrPC. (Para 26)

A prayer could be made by the respondents before the High Court for transferring the investigation from the State police authorities to CBI by filing a fresh petition under Section 482 CrPC in view of subsequent events that had taken place after the final order disposing of the earlier criminal petition was passed. If a fresh criminal petition under Section 482 CrPC is filed by the respondents for transferring the investigation from the State police authorities to CBI after bringing in certain subsequent events that had taken place after the disposal of the original criminal petition, if there be any, it would be open for the High Court to entertain such application if it is warranted and decide the same in accordance with law. (Paras 26 and 27). *State* v. *K.V. Rajendran*, (2008) 8 SCC 673: (2008) 3 SCC (Cri) 600: (2008) 230 ELT 577.

Bench Strength **2**. Coram: **Tarun Chatterjee** and *P. Sathasivam*, JJ. [Date of decision: 2-9-2008]

[7657] — S. 482 — Quashing of criminal proceedings — Second petition filed therefor, after the dismissal of first one — *Complainant heard in first petition — Second petition allowed by High Court without being informed of earlier order and without affording an opportunity to complainant for being heard or being made a party thereto — Second petition not based on anything which developed subsequent to the date of dismissal of first petition, but only on the facts which subsisted prior to that date — Therefore, held, the subsequent order of the High Court cannot stand though it was passed without being informed of the prior order — Hence, order passed in second petition quashed. R. Annapurna* v. *Ramadugu Anantha Krishna Sastry*, (2002) 10 SCC 401.

Bench Strength **2**. Coram: *K.T. Thomas* and *R.P. Sethi*, JJ. [Date of decision: 9-8-2000]

[7658] — S. 482 — Quashing of proceeding — Second application under S. 482 — Maintainability of — Res judicata if applicable — No case made out against accused — *First application under S. 482 was permitted to be withdrawn with liberty to avail remedies if any available to the petitioner in law — Held, High Court was not denuded from exercising its inherent jurisdiction on being petitioned again — Principles of res judicata were not attracted — Further, the question as to maintainability was not raised before the High Court — It was too late to contend that application under S. 482 was not maintainable where not only the merit of the matter had been gone into by the High Court and the Supreme Court but also the questions in the petition had been referred to a larger Bench for obtaining an authoritative pronouncement*

The submission that the second application under Section 482 CrPC was not maintainable. Such a question had not been raised before the High Court. Even otherwise, the High Court was not denuded from exercising its inherent jurisdiction in a matter of this nature. The principles of res judicata are not attracted. (Para 28)

In its previous order (in proceedings under Section 482 CrPC), the High Court gave liberty to Respondent 1 (accused) to agitate the matter once again. Respondent 1 merely took recourse thereto. (Para 29)

(11)(xxxi) Multiple/Successive petitions under/ Restoration/Review, etc. *(contd.)*

In this case, not only the merit of the matter had been gone into by the High Court as also by the Supreme Court, the questions raised in the petition had been referred to a larger Bench for obtaining an authoritative pronouncement. It is, therefore, too late in the day for the appellant to contend that the application under Section 482 CrPC was not maintainable. (Para 31). *S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla*, (2007) 4 SCC 70: (2007) 2 SCC (Cri) 192: (2007) 4 Mah LJ 452: (2007) 3 KLT 672: (2007) 3 MPLJ 275: (2007) 136 Comp Cas 268.

Bench Strength **2**. Coram: **S.B. Sinha** and *Markandey Katju*, JJ. [Date of decision: 20-2-2007]

Supdt. and Remembrancer of Legal Affairs v. Mohan Singh, (1975) 3 SCC 706: 1975 SCC (Cri) 156, relied on

Simrikhia v. Dolley Mukherjee, (1990) 2 SCC 437: 1990 SCC (Cri) 327, distinguished

Rajinder Prasad v. Bashir, (2001) 8 SCC 522: 2002 SCC (Cri) 28, considered, explained and distinguished

[7659] — S. 482 — Restoration petition — Date of hearing of — Hearing with the petition on merits — Permissibility — *Petition under, restored after dismissal for default of appearance — Direction for hearing and disposal of such petition on merits on the very day it was restored, held, quite permissible — Hearing on merits need not necessarily be adjourned to some later date — CPC, 1908, Or. 9 Rr. 4 and 8*

Appearance of a party or his advocate and prayer for recalling an order of dismissal for default may be a good ground for restoring the matter but it cannot be said to be a good ground for restoration of the matter for hearing in future. In other words, a matter may be restored for hearing and not for adjournment. Therefore, it is not possible to hold that the Court could not have insisted on the advocate to argue the matter on merits after the order of dismissal for default was recalled and restoration was ordered. (Paras 21 and 20). *Madhumilan Syntex Ltd.* v. *Union of India*, (2007) 11 SCC 297: (2008) 1 SCC (Cri) 143: AIR 2007 SC 1481: (2007) 210 ELT 484: (2007) 290 ITR 199.

Bench Strength **2**. Coram: **C.K. Thakker** and *P.K. Balasubramanyan*, JJ. [Date of decision: 23-3-2007]

[7660] — S. 482 — Review of order of High Court under — *Once an application under S. 482 stood disposed of, held, High Court cannot review that order in the garb of modifying the same — More so, in absence of allegation of abuse of the process of the court or manifest injustice caused to a party. State of U.P.* v. *Surendra Kumar*, (2005) 9 SCC 161.

Bench Strength **2**. Coram: **B.P. Singh** and *Arun Kumar*, JJ. [Date of decision: 16-12-2004]

(xxxii) Practice and procedure re disposal of quashment application

[7661] — S. 482 — Accused seeking quashing of complaint placing additional material before HC — No reply filed by complainant — *Held, High Court erred in relying on this fact for concluding abuse of process of court — On facts also sufficient opportunity for reply was not afforded to the complainant. Chand Dhawan (Smt)* v. *Jawahar Lal*, (1992) 3 SCC 317: 1992 SCC (Cri) 636: AIR 1992 SC 1379: 1992 Cri LJ 1956.

Bench Strength **2**. Coram: *S. Ratnavel Pandian* and **M. Fathima Beevi**, JJ. [Date of decision: 28-4-1992]

[7662] — S. 482 — Annexures to the petitions under — Cannot be termed as evidence without being tested and proved — Hence, should not be acted upon by High Court (Para 13). *State of M.P.* v. *Awadh Kishore Gupta*, (2004) 1 SCC 691: 2004 SCC (Cri) 353: AIR 2004 SC 517: 2004 Cri LJ 598.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 18-11-2003]

Chand Dhawan v. Jawahar Lal, (1992) 3 SCC 317: 1992 SCC (Cri) 636, relied on

[7663] — S. 482 — High Court quashing criminal proceedings by placing reliance on an overruled decision cited by accused's counsel — *None of the counsel bringing to the notice of the High Court that the decision relied on had been overruled — High Court's judgment set aside — Matter remitted for decision afresh in accordance with law — Constitution of India — Art. 136* (Para 6). *State of Orissa* v. *Nalinikanta Muduli*, (2004) 7 SCC 19: 2004 SCC (Cri) 1861: AIR 2004 SC 4272.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 12-8-2004]

[7664] — S. 482 — Parties — Impleading court as a party to proceedings — No allegation of bias against Presiding Officer — *Court cannot be equated with the Tribunal exercising quasi-judicial powers — Court's name from the array of the parties struck out — Constitution of India — Arts. 226 and 227. Pepsi Foods Ltd.* v. *Special Judicial Magistrate*, (1998) 5 SCC 749: 1998 SCC (Cri) 1400: AIR 1998 SC 128: 1998 Cri LJ 1.

Bench Strength **2**. Coram: *Sujata V. Manohar* and **D.P. Wadhwa**, JJ. [Date of decision: 4-11-1998]

[7665] — S. 482 — Petitions by co-accused — Need for disposal of petition of each co-accused on merits — *Petitions filed under, by appellant, dismissed by High Court not on merits but merely because petition under S. 482 filed by the co-accused against the same order had already been dismissed by it — Held, High Court should dispose of the petitions on its own merits after hear-*

ing both the parties (Paras 3 and 4). *Vasudev Dani* v. *Purushottam Das Khandelwal*, (2004) 13 SCC 506.
Bench Strength **2**. Coram: *Shivaraj V. Patil* and *B.N. Srikrishna*, JJ. [Date of decision: 17-12-2004]

[7666] — S. 482 — Quashing of criminal proceedings pending in trial court without hearing parties basing on point neither raised in application nor argued, held, improper — *Case remitted for fresh decision — If High Court considers that respondent enjoys some kind of immunity from prosecution it should give opportunity of hearing to parties and allow them to adduce evidence in form of affidavit and counter-affidavit in support of their case — Expression of opinion on merits of case by High Court not proper. P.M. Nalini* v. *K.M. Mathew*, 1990 Supp SCC 683: 1991 SCC (Cri) 221.
Bench Strength **2**. Coram: *A.P. Sen* and *L.M. Sharma*, JJ. [Date of decision: 26-4-1988]

[7667] — S. 482 — Quashing of criminal proceedings without notice to original complainant — Held, unsustainable — *Penal Code, 1860, Ss. 420 and 120-B*

It is uncontroverted that proceedings under Section 156(3) CrPC for offences under Sections 420/120-B IPC against the respondent-accused had been quashed under Section 482 CrPC without notice to the appellant, who was the original complainant. The impugned order was, therefore, set aside and remitted back to the High Court for a fresh decision in accordance with law. (Para 4). *Mosiruddin Munshi* v. *Mohd. Siraj*, (2008) 8 SCC 434: (2008) 3 SCC (Cri) 525: (2008) 67 AIC 192 (SC).
Bench Strength **2**. Coram: *Tarun Chatterjee* and **H.S. Bedi**, JJ. [Date of decision: 9-5-2008]

[7668] — S. 482 — Quashing of proceedings on a ground not raised in petition, held, improper — Again, if any defence on facts had been made then the same being a disputed question of fact it could not be made a ground for quashing the proceedings — *Negotiable Instruments Act, 1881, S. 138* (Paras 4 and 5). *M. Gurunathan* v. *R. Amutha*, (2005) 13 SCC 58: (2006) 1 SCC (Cri) 786.
Bench Strength **2**. Coram: *Y.K. Sabharwal* and *P.P. Naolekar*, JJ. [Date of decision: 7-2-2005]

[7669] — S. 482 — Several accused — Quashing of criminal complaint by High Court in respect of those accused who had not approached it — Held, not justified

On the basis of the allegations made in the complaint and the statements given by the witnesses, the Special Judge issued summons to sixteen accused. The first accused *S* filed Crl. Misc. Case No. 1862 of 1985 under Section 482 CrPC. The third accused *M* filed a criminal revision petition. The High Court quashed the entire complaint by passing a common order.

Held :

Since *S* is no more, the Supreme Court is not concerned with the order passed in Crl. Misc. Case No. 1862 of 1985 so far as it relates to him. As regards the other accused persons, it is pertinent to say that they had not challenged the proceedings pursuant to the complaint. If these accused persons were really aggrieved by the issuance of summons against them, they should have approached the High Court and challenged the same in appropriate proceedings. The learned Single Judge was not justified in quashing the entire complaint. (Para 6). *Rajmata Vijaya Raje Scindia* v. *State of M.P.*, (2003) 12 SCC 429.
Bench Strength **2**. Coram: *K.G. Balakrishnan* and *Dr. Ar. Lakshmanan*, JJ. [Date of decision: 28-10-2003]

[7670] — Ss. 482, 190, 301, 302 & 225 — Petition by accused for quashing criminal proceedings — Held, complainant, at whose behest the proceedings were initiated, must on his request be permitted by the court to be heard before the proceedings are quashed — *Fact of cognizance having been taken is no bar to complainant's continued participation in the criminal proceedings initiated by him — Constitution of India — Art. 226*

The appellant filed a complaint before the police alleging that Respondents 2 and 3 committed offences of criminal breach of trust and cheating. The police, after investigation, filed a charge-sheet against the respondents for offences under Sections 420, 406 and 120-B IPC and the Magistrate's Court issued process to the respondents requiring them to appear before it. At that stage the respondents filed the present petition before the High Court praying for quashing the suit criminal proceedings pending. In the writ petition the appellant was not made a party and therefore a petition was filed in the High Court for impleading the appellant as a party. The appellant urged that the criminal proceedings were initiated at his behest and hence he too may be heard before the criminal proceedings are to be quashed. A Single Judge of the High Court rejected the petition filed by the appellant taking the view "that the right of the complainant to be heard ceases once cognizance is taken and he cannot thereafter continue to participate in the proceedings as if he were the aggrieved party who must have his say in proceedings".

(11)(xxxii) Practice and procedure re disposal of quashment application *(contd.)*

Allowing the appeal,

Held :

The Single Judge has done wrong to the appellant when he closed the door of the High Court before him by saying that the High Court is going to consider whether the criminal proceedings initiated at his behest should be quashed completely and that the complainant would not be heard at all even if he wants to be heard. (Para 15)

In this case the accused approached the High Court for quashing the criminal proceedings initiated by the appellant. It may not be that the complainant should have been made a party by the accused himself in the petition for quashing the criminal proceedings, as the accused has no such obligation when the case was charge-sheeted by the police. It is predominantly the concern of the State to continue the prosecution. But when the complainant wishes to be heard when the criminal proceedings are sought to be quashed, it would be a negation of justice to him if he is foreclosed from being heard even after he makes a request to the court in that behalf. (Para 8)

The scheme envisaged in the Code of Criminal Procedure indicates that a person who is aggrieved by the offence committed is not altogether wiped out from the scenario of the trial merely because the investigation was taken over by the police and the charge-sheet was laid by them. Even the fact that the court had taken cognizance of the offence is not sufficient to debar him from reaching the court for ventilating his grievance. Even in the Sessions Court, where the Public Prosecutor is the only authority empowered to conduct the prosecution as per Section 225 of the Code, a private person who is aggrieved by the offence involved in the case is not altogether debarred from participating in the trial. This can be discerned from Section 301(2) of the Code. Further, when the trial is before a Magistrate's Court the scope of any other private person intending to participate in the conduct of the prosecution is still wider. This can be noticed from Section 302 of the Code. The genesis in almost all such cases is the grievance of one or more individual that they were wronged by the accused by committing offences against them. (Paras 9, 11 and 12). *J.K. International* v. *State (Govt. of NCT of Delhi)*, (2001) 3 SCC 462: 2001 SCC (Cri) 547: AIR 2001 SC 1142: 2001 Cri LJ 1264: (2001) 90 DLT 157.

Bench Strength 3. Coram: **K.T. Thomas**, *R.P. Sethi* and *B.N. Agrawal*, JJ. [Date of decision: 23-2-2001]

Thakur Ram v. State of Bihar, AIR 1966 SC 911: 1966 Cri LJ 700, distinguished

Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537: 1985 SCC (Cri) 267, relied on

[7671] — Ss. 482 & 154 — High Court in exercise of its inherent powers cannot quash an FIR just after it was filed, without notice to the complainant. *Kurukshetra University* v. *State of Haryana*, (1977) 4 SCC 451: 1977 SCC (Cri) 613: AIR 1977 SC 2229: 1977 Cri LJ 1900.

Bench Strength 3. Coram: **Y.V. Chandrachud**, *P.K. Goswami* and *P.N. Shinghal*, JJ. [Date of decision: 22-3-1977]

[7672] — S. 482 — Quashment without hearing complainant, based on surmises and conjectures — Impermissibility — *High Court by impugned judgment quashing order passed by Judicial Magistrate taking cognizance of offence punishable under S. 406 IPC and consequent summons issued against Respondents 2 and 3 taking the view that the case might have been filed by the complainant in order to pressurise the petitioners before the High Court not to proceed with the case which was lodged under Ss. 304-B, 201/34 IPC r/w Ss. 3 and 4 of the Dowry Act against the complainant and others — Held, conclusions of High Court seem to have been based on presumptions and surmises as no material in regard thereto had been placed and in any event the stage for deciding that question had not arisen — Moreover, High Court passed the impugned order without issuing notice to the complainant — It was not a case where the complainant was not required to be heard, more so, because the proceedings were initiated on the basis of the complaint filed by him — Impugned order set aside and parties directed to appear before High Court without any further notice* (Paras 2, 3, 6, 7 and 8). *Baikunth Singh* v. *State of Bihar*, (2008) 14 SCC 766.

Bench Strength 2. Coram: **Dr. Arijit Pasayat** and *Dr. M.K. Sharma*, JJ. [Date of decision: 15-12-2008]

— S. 483 *See* Ss. 156(3) & 320 and 482 & 483

See also Ss. 397(3), 401, 482 and 483

See also Ss. 482 and 483

[7673] — S. 483 — Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrate — *Held, apart from exercising its supervisory jurisdiction under Arts. 227 and 235 of the Constitution, High Court has duty to exercise continuous superintendence over Courts of Judicial Magistrate — On facts held, when the order passed by Magistrate which was wholly without jurisdiction was brought to notice of High Court, it could have interfered therewith even suo motu — Constitution of India, Arts. 227 and 235* (Para 12). *Dharmeshbhai Vasudevbhai* v. *State of Gujarat*, (2009) 6 SCC 576.

Bench Strength 2. Coram: **S.B. Sinha** and *Cyriac Joseph*, JJ. [Date of decision: 5-5-2009]

[7674] — S. 484 — Trial pending immediately before the commencement of the new case governed by the old Code and not the new Code

Section 484 of the new Code clearly provides that where a trial is pending immediately before the commencement of the new Code, it shall be proceeded with in accordance with the provisions of the old Code as if the new Code were not in force. *State of Karnataka* v. *K.H. Annegowda*, (1977) 1 SCC 417: 1977 SCC (Cri) 106: AIR 1977 SC 357: 1977 Cri LJ 220: (1977) 2 SCR 350.

Bench Strength 2. Coram: **P.N. Bhagwati** and *A.C. Gupta*, JJ. [Date of decision: 8-12-1976]

[7675] — Ss. 484 and 397(3) — Where prosecution launched under the old Code and accused failed to challenge maintainability of second revision filed and heard after coming into force of the new Code by invoking S. 397(3) and instead throughout participated in revision proceedings under the old Code, held, he cannot later claim benefit under S. 397(3) — *Acquiescence*

Since in this case the prosecution was launched under the old Code, since the appellant has not challenged the maintainability of the second revision filed and heard after the commencement of the new Code before the High Court claiming advantage of S. 397(3) of the new Code and since he participated in the revision proceedings throughout under the old Code, only the provisions of the old Code have to be applied as per S. 484 of the new Code. Therefore the contention that the order of the Magistrate rejecting the application of the prosecution under S. 540 is not a revisable order under S. 397(1) as it being an interlocutory order and even if it is not so, the second revision by the same party — i.e. Union of India is not entertainable in view of the statutory bar under S. 397(3) of the new Code as the Union of India has already availed the revision under S. 397(2) before the Sessions Judge cannot prevail. Having failed in the revision the appellant has no justification to raise this point before this Court, especially when the proceedings under the old Code are saved by S. 484 of the new Code. (Para 34). *Mohanlal Shamji Soni* v. *Union of India*, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595: AIR 1991 SC 1346: (1991) 2 GLH 11.

Bench Strength 2. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 22-2-1991]

[7676] — Ss. 484(2)(a) and 399(3) — Revision application filed under S. 435 of the Code of 1898 — Held, is covered by the word "application" in cl. (a) of S. 484(2) of the new Code and hence requires to be disposed of under the old Code — *Word "application" synonymous with the word "petition"*

The word "application" in the saving provision contained in cl. (*a*) of sub-section (2) of S. 484 immediately follows the term "appeal". It therefore takes some colour from the collocation of words in which it occurs. It is synonymous with the term "petition" which means a written statement of material facts, requesting the court to grant the relief or remedy based on those facts. It is a peculiar mode of seeking redress recognised by law. Thus considered, there can be no doubt that the word "application" as used in cl. (*a*) of S. 484 of the Code of 1973 will take in a revision application made under S. 435 of the old Code. *P. Philip* v. *Director of Enforcement*, (1976) 2 SCC 174: 1976 SCC (Cri) 241: AIR 1976 SC 1185: 1976 Cri LJ 920.

Bench Strength 2. Coram: **R.S. Sarkaria** and *N.L. Untwalia*, JJ. [Date of decision: 3-3-1976]

[7677] — S. 484(2)(a) proviso — Committal proceedings wrongfully quashed by High Court when new Code came into force — *Committing Magistrate under the new Code only to see whether the case is exclusively triable by the Court of Session in view of the allegations made. Supdt. and Remembrancer of Legal Affairs* v. *Ashutosh Ghosh*, (1979) 4 SCC 381: 1979 SCC (Cri) 991: AIR 1979 SC 1195.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 16-1-1979]

[7678] — S. 484(2)(a) proviso — High Court setting aside order of discharge and directing commitment for trial under S. 409, Indian Penal Code (Criminal breach of trust) — *Held, order of the High Court did not revive the committal proceedings and therefore did not attract the 1973 Code by virtue of proviso to S. 484 — The High Court did not order any fresh enquiry in terms of S. 437, Criminal Procedure Code, 1898 but straightaway committed him to Sessions. M.R. Dhawan* v. *Delhi Admn.*, (1978) 2 SCC 184: 1978 SCC (Cri) 186: AIR 1978 SC 1011: 1978 Cri LJ 769.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 13-3-1978]

— S. 484(2)(b) *See also* Ss. 428 & 484(2)(b)

[7679] — S. 484(2)(b) — Unlike S. 24 GCA, 1897 there are no words in S. 484(2)(b), CrPC, 1973 limiting its application to orders made and sentences passed which are not inconsistent with the provisions re-enacted — *General Clauses Act, 1897, S. 24. Jagir Singh* v. *Ranbir Singh*, (1979) 1 SCC 560: 1979 SCC (Cri) 348: AIR 1979 SC 381: 1979 Cri LJ 318: (1979) 16 ACC 74.

Bench Strength 2. Coram: *Jaswant Singh* and **O. Chinnappa Reddy**, JJ. [Date of decision: 8-11-1978]

[7680] — Ss. 484(2)(b), 125 and 127 — Scope of — "Corresponding provisions of the new Code", and S. 484(2)(b) held, does not mean identical

provisions — *S. 125, CrPC, 1973, corresponds to S. 488, Criminal Procedure Code, 1898, despite the disentitlement of maintenance under the new provision to a major child who does not suffer from any infirmity — General Clauses Act, 1897, S. 24, distinguished — Judicial orders and sentences, as against statutory instruments, which have attained finality, held, do not have to answer the test of being consistent with the provisions of the new Code — Order under S. 488, Criminal Procedure Code, 1898 would therefore continue after the coming into force of Criminal Procedure Code, 1973 subject however to change or cancellation under S. 127, Criminal Procedure Code, 1973 because of change in the circumstances*

Whenever an Act is repealed and re-enacted there are bound to be changes and modifications. To say that a modified provision dealing with the same subject-matter in substantially the same manner as the original provision is not a corresponding provision would be to practically nullify the effect of a "Repeal and Savings" provision like S. 484(2)(*b*) of the new Code. Also, unlike S. 24 of the General Clauses Act, 1897, there are no words in S. 484(2)(*b*) limiting its application to orders made and sentences passed which are not inconsistent with the provisions of the new Code.

Hence, S. 125 of the new Code corresponds to S. 488 of the old Code notwithstanding the fact that under the new Code a child who has attained majority and who does not suffer from any infirmity is not entitled to be maintained by the father. Once an order under S. 488, Criminal Procedure Code, 1898, is deemed to be under S. 125, Criminal Procedure Code, 1973 it will also be subject to S. 127 of the new Code. The change in the law in respect of maintenance, as much as other factual change of circumstances, are circumstances to be considered under S. 127

But statutory instruments, though deemed to be made under the corresponding provisions of the new Code, will have their vires tested like other statutory instruments made under the new Code.

Howsoever, in the case of judicial orders made and sentences passed, such orders and sentences which have attained finality and which created rights in parties do not have to answer the test of being consistent with the provisions of the new Code. *Jagir Singh* v. *Ranbir Singh*, (1979) 1 SCC 560: 1979 SCC (Cri) 348: AIR 1979 SC 381: 1979 Cri LJ 318: (1979) 16 ACC 74.

Bench Strength **2**. Coram: *Jaswant Singh* and **O. Chinnappa Reddy**, JJ. [Date of decision: 8-11-1978]

— Sch. I *See* Ss. 26(a)(ii) & (iii) and Sch. I
See also Ss. 209 and 26 and Sch. I
See also Ss. 436, 2, 81 and Sch. I

[7681] — Sch. I and S. 354(3) — Proportionality of punishment — Maximum and minimum prescriptions in Sch. I — Utility and implications — Wide discretions available to courts with regard to quantum of punishment under — *Therefore, courts, held, have wide discretion to award punishments commensurate with aggravating and mitigating circumstances vis-à-vis an accused in each case*

With regard to the quantum of punishment to be awarded to persons found guilty of offences dealt with in IPC, CrPC confers a wide discretion by prescribing the maximum punishment and in some cases both the maximum as well as the minimum punishment for the offence. Though no general guidelines are laid down, punishment should be commensurate with the gravity of the offence having regard to the aggravating and mitigating circumstances vis-à-vis an accused in each case. In such situation, the obligation of the court in making the choice of death sentence for the person who is found guilty of murder becomes more onerous indeed. (Para 15)

Section 354(3) CrPC enjoins that in the case of sentence of death, special reasons for such sentence shall be stated. To kill is to be cruel and therefore, all murders are cruel, yet such cruelty may vary in its degree of culpability and it is only when culpability assumes the proportion of extreme depravity that special reasons can legitimately be said to exist. (Para 16)

There can be several considerations for identifying the "rarest of rare" cases awarding death penalty. For a case to be regarded in the rarest of rare category, fact situation has to be exceptional. Life imprisonment should be the rule and death sentence an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment. Unless the nature of the crime and the circumstances of the offender reveal that: (1) the accused is found to be an ardent criminal and a menace to the society or (2) the culpability of the accused has assumed depravity or (3) the crime is committed in an organised manner and is gruesome, cold-blooded, heinous and atrocious or (4) innocent and unarmed persons are attacked and murdered without any provocation, the court should not ordinarily impose the extreme punishment of death. (Paras 13, 14 and 17 to 20). *State of Punjab* v. *Manjit Singh*, (2009) 14 SCC 31: AIR 2009 SC 2888: (2009) 79 AIC 9 (SC).

Bench Strength **2**. Coram: **Dr. M.K. Sharma** and *Dr. B.S. Chauhan*, JJ. [Date of decision: 28-5-2009]

Ronny v. State of Maharashtra, (1998) 3 SCC 625: 1998 SCC (Cri) 859; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681; Allauddin Mian v. State of Bihar, (1989) 3 SCC 5: 1989 SCC (Cri) 490, relied on

— Sch. I Pt. II *See* Ss. 438 & 439 and Sch. I Pt. II

— Sch. II Form 45 *See* S. 441 and Sch. II Form 45

CRIMINAL PROCEDURE CODE, 1898

[7682] — Generally

Code is complete and that makes it different from a statute. *Joseph Peter* v. *State of Goa, Daman and Diu*, (1977) 3 SCC 280: 1977 SCC (Cri) 486: AIR 1977 SC 1812: 1977 Cri LJ 1449.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *Jaswant Singh*, JJ. [Date of decision: 4-5-1977]

[7683] — Generally — Object of — Further the ends of justice and not to frustrate them

The Code is a Code of Procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice.

If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is 'substantial' compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based.

Now here, as in all procedural laws, certain things are regarded as vital. Disregard of a provision of that nature is fatal to the trial and at once invalidates the conviction. Others are not vital and whatever the irregularity they can be cured; and in that event the conviction must stand unless the Court is satisfied that there was prejudice. Some of these matters are dealt with by the Code and wherever that is the case full effect must be given to its provisions.

The Code has carefully classified certain kinds of error and expressly indicates how they are to be dealt with. In every such case the Court is bound to give effect to the express commands of the Legislature; there is no scope for further speculation. The only class of case in which the Courts are free to reach a decision is that for which no express provision is made. *Willie (William) Slaney* v. *State of M.P.*, AIR 1956 SC 116: (1955) 2 SCR 1140: 1956 Cri LJ 291.

Bench Strength 5. Coram: *S.R. Das*[1], **Vivian Bose**[1], *B. Jagannadhadas*[2], **Syed Jafer Imam**[3] and **N. Chandrasekhara Aiyar**[2], JJ. [Date of decision: 31-10-1955]

[7684] — Generally — Object of — Provisions of the Code disregarded — Conviction to be set aside if the principles of natural justice violated *— No interference necessary, if no prejudice caused*

Expect where there is something so vital as to cut at the root of jurisdiction or so abhorrent to what one might term natural justice, the matter resolves itself to a question of prejudice. Some violations of the Code will be so obvious that they will speak for themselves as, for example, a refusal to give the accused a hearing, a refusal to allow him to defend himself, a refusal to explain the nature of the charge to him and so forth.

These go to the foundations of natural justice and would be struck down as illegal forthwith. It hardly matters whether this is because prejudice is then patent or because it is so abhorrent to well-established notions of natural justice that a trial of that kind is only a mockery of a trial and not of the kind envisaged by the laws of our land, because either way they would be struck down at once.

Other violations will not be so obvious and it may be possible to show that having regard to all that occurred no prejudice was occasioned or that there was no reasonable probability of prejudice. In still another class of case, the matter may be so near the border line that very slight evidence of a reasonable possibility of prejudice would swing the balance in favour of the accused.

The real question is not whether a matter is expressed positively or is stated in negative terms but whether disregard of a particular provision amounts to 'substantial' denial of a trial as contemplated by the Code and understood by the comprehensive expression "natural justice". *Willie (William) Slaney* v. *State of M.P.*, AIR 1956 SC 116: (1955) 2 SCR 1140: 1956 Cri LJ 291.

Bench Strength 5. Coram: *S.R. Das*[1], **Vivian Bose**[1], *B. Jagannadhadas*[2], **Syed Jafer Imam**[3] and **N. Chandrasekhara Aiyar**[2], JJ. [Date of decision: 31-10-1955]

[7685] — Only spirit of the Code applicable in some areas — Not discriminatory — Rules for administration of justice and police in Naga Hills Districts, 1937 — *Constitution of India, Art. 14*

Regional differences do not necessarily connote discrimination and laws may be designed for effective justice in different ways in different parts of India if people are not similarly circumstanced. These backward tracts are not found suitable for the application of the Criminal Procedure Code in all its rigour and technicality, and to say that they shall be governed not by the technical rules of the Code but by the substance of such rules is not to discriminate this area against the rest of India.

The exigency of the situation clearly demands that the Criminal Procedure Code should not apply in this area. It is not discrimination to administer different laws in different areas. The Presidency Towns have got special procedures which do not obtain in other areas. We have known of trial by jury in one part of India for an offence which was not so triable in another. Similarly, what is an offence in one part of India is not an offence in another.

Article 371-A of the Constitution itself contemplates a different treatment of these tracts and the differences are justified by the vast differences between the needs of social conditions in Nagaland and the various stages of development of different parts. *State of Nagaland* v. *Ratan Singh*, AIR 1967 SC 212, 224: (1966) 3 SCR 830, 852: 1967 Cri LJ 265.

Bench Strength **4**. Coram: *P.B. Gajendragadkar, C.J.* and *K.N. Wanchoo*, **M. Hidayatullah** and *S.M. Sikri*, JJ. [Date of decision: 9-3-1966]

[7686] — Generally — Nature and scope

Is in the nature of extra-territorial legislation. *Rao Shiv Bahadur Singh* v. *State of V.P.*, AIR 1953 SC 394: 1953 SCR 1188: 1953 Cri LJ 1480.

Bench Strength **5**. Coram: *Patanjali Sastri, C.J.* and *B.K. Mukherjea, Vivian Bose, Ghulam Hasan* and **B. Jagannadhadas**, JJ. [Date of decision: 22-5-1953]

[7687] — Generally — Provisions for search in the Code

In the Criminal Procedure Code there are four groups of sections regulating the searches authorised under it. Sections 47, 48, 51 and 52 appear in Ch. V of the Code which provides for the arrest, escape and retaking of persons. The second group consists of Ss. 100, 101, 102 and 103 of Ch. VII of the Code. Section 153 forms the third group and it falls under Ch. XIII of the Code. The fourth group of sections appears in Ch. XIV which provides for searches by a police officer during the investigation of a cognizable offence. *State of Rajasthan* v. *Rehman*, AIR 1960 SC 210, 212: (1960) 1 SCR 991: 1960 Cri LJ 286.

Bench Strength **2**. Coram: *P.B. Gajendragadkar* and **K. Subba Rao**, JJ. [Date of decision: 14-10-1959]

[7688] — Generally — Trade mark — Commission of offence relating to — Procedure — Applicability of CrPC — *Complaint under Ss. 78 & 79, Trade Marks Act*

Merely because sub-section (1) of S. 89 refers to the manner of taking cognizance in respect of offence under the section specified therein, it does not preclude cognizance of other offences specified in Ch. X from being taken under the procedure prescribed by the Criminal Procedure Code. It is apparent that offences under Ss. 78 and 79 are punishable with imprisonment of two years or with three years if they fall under the respective provisos to the said section. In cases where an offence is punishable with imprisonment of one year and upwards but less than 3 years, under Ch. XXIII of Sch. II it is non-cognizable and is a summons case, triable as already stated under S. 89(2) by the Sessions Judge, Presidency Magistrate or a Magistrate of the 1st Class. In such cases under S. 155 of the Criminal Procedure Code when an information is given to an officer incharge of the Police Station of the commission of a non-cognizable offence, he has to enter the substance of the information in a book to be kept for the purpose and refer the informant to the Magistrate, but he cannot under sub-section (2) investigate such a case without the order of a Magistrate. On receiving such an order any police officer may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an Officer in charge of Police Station may exercise in a cognizable case. On receipt of a report from the police in compliance with such orders, the Magistrate may if the report discloses the commission of an offence try the accused by the procedure prescribed under S. 251-A of the Criminal Procedure Code. *State of U.P.* v. *Ram Nath*, (1972) 1 SCC 130: 1972 SCC (Cri) 74: AIR 1972 SC 232: 1972 Cri LJ 52.

Bench Strength **2**. Coram: **P. Jaganmohan Reddy** and *D.G. Palekar*, JJ. [Date of decision: 24-11-1971]

[7689] — S. 1 — Applicability to Assam and Manipur — *Constitution of India, Sch. VI*

The Criminal Procedure Code is not applicable to certain areas by reason of Sch. VI to the Constitution. Only the spirit of the Code applies. *Saptawna* v. *State of Assam*, (1972) 4 SCC (N) 45: 1971 SCC (Cri) 247: AIR 1971 SC 813: 1971 Cri LJ 679.

Bench Strength **3**. Coram: *S.M. Sikri, C.J.* and *P. Jaganmohan Reddy* and *I.D. Dua*, JJ. [Date of decision: 5-2-1971]

[7690] — S. 1(2) — Scope — Special jurisdiction excluded — Not applicable to matters of contempt

Section 1(2) CrPC excludes special jurisdiction from its scope and the power of a High Court to institute proceedings for contempt and punish where necessary is a special jurisdiction in all courts of Record. Therefore the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. *Sukhdev Singh* v. *Teja Singh*, AIR 1954 SC 186: 1954 SCR 454: 1954 Cri LJ 460.

Bench Strength **3**. Coram: *B.K. Mukherjea*, **Vivian Bose** and *N.H. Bhagwati*, JJ. [Date of decision: 25-11-1953]

[7691] — S. 1(2) — Extent and applicability — *Not applicable in Nagaland in view of rules for the Administration of Justice and Appeals in Naga Hills District, 1937 — Only spirit of the Code applicable*

Under the Rules for the Administration of Justice and Appeals in Naga Hills Districts, 1937, since the Code is not in force in Nagaland, the procedure to be followed is according to the spirit of the Code and not strictly according to the terms of its provisions. *Mowu* v. *Supdt., Special Jail*, (1971) 3 SCC 936: 1972 SCC (Cri) 184: 1971 CAR 66 (SC).

Bench Strength **5**. Coram: *M. Hidayatullah, C.J.* and **J.M. Shelat**, *G.K. Mitter*, *C.A. Vaidialingam* and *A.N. Ray*, JJ. [Date of decision: 14-12-1970]

[7692] — S. 1(2) — Specific provision to the contrary — S. 10(2) CrPC is one such provision. *Central Talkies Ltd.* v. *Dwarka Prasad*, AIR 1961 SC 606: (1961) 3 SCR 495: (1961) 1 Cri LJ 740.

Bench Strength **3**. Coram: *J.L. Kapur*, **M. Hidayatullah** and *J.C. Shah*, JJ. [Date of decision: 16-1-1961]

— S. 1(2)(a) *See also* Ss. 162 and 1(2)(a)

[7693] — S. 1(2)(a) — Bombay Police Act, 1951 replacing Bombay City Police Act, 1902 repealing S. 1(2)(a) of Criminal Procedure Code — *In Bombay City S. 162 CrPC will not apply to the statements recorded during the investigation conducted up to the repeal and will apply to the investigations conducted after the repeal — Bombay Police Act, 1951 (22 of 1951), S. 167(2). Ramkishan Mithanlal Sharma* v. *State of Bombay*, AIR 1955 SC 104: (1955) 1 SCR 903: 1955 Cri LJ 196.

Bench Strength **3**. Coram: **N.H. Bhagwati**[1], **B. Jagannadhadas**[2] and *T.L. Venkatarama Aiyar*[1], JJ. [Date of decision: 22-10-1954]

[7694] — S. 1(2)(a) — Application of Code to Bombay

It may be noted that under S. 1(2)(*a*) of the Criminal Procedure Code the Code did not apply to the police in the towns of Calcutta and Bombay. On the 11th June, 1951 the State Legislature passed the Bombay Police Act 22 of 1951. Section 167(3) repealed S. 1(2)(*a*) of the Criminal Procedure Code so far as the police in the town of Bombay were concerned with the result that when this Act came into operation with effect from the 1-8-1951 the Bombay City Police were also governed by the provisions of Criminal Procedure Code. *Ramkishan Mithanlal Sharma* v. *State of Bombay*, AIR 1955 SC 104, 110: (1955) 1 SCR 903: 1955 Cri LJ 196.

Bench Strength **3**. Coram: **N.H. Bhagwati**[1], **B. Jagannadhadas**[2] and *T.L. Venkatarama Aiyar*[1], JJ. [Date of decision: 22-10-1954]

— S. 4(1) *See also* Ss. 156, 157 and 4(1)

[7695] — Ss. 4(1) and 162 — "Investigation" — Steps taken for trapping of bribe-taker by Inspector after recording of complaint, held, investigation — *Statement made by accused to Inspector at the time of raid to be excluded — Prevention of Corruption Act, 1947 — Conduct of accused however relevant under S. 8, Evidence Act, 1872 — CrPC, 1973, Ss. 2(h) and 162. Maha Singh* v. *State (Delhi Admn.)*, (1976) 1 SCC 644: 1976 SCC (Cri) 135: AIR 1976 SC 449: (1976) 3 SCR 119: 1976 Cri LJ 346.

Bench Strength **2**. Coram: **P.K. Goswami** and *P.N. Shinghal*, JJ. [Date of decision: 8-1-1976]

[7696] — S. 4(1)(f) — "Case"

The word 'case' is not defined by the Code but its meaning is well-understood in legal circles. In criminal jurisdiction it means ordinarily a proceeding for the prosecution of a person alleged to have committed an offence. In other contexts the word may represent other kinds of proceedings but in the context of the sub-section it must mean a proceeding which at the end results either in discharge, conviction or acquittal of an accused person. *Bhimappa Basappa Bhu Sannavar* v. *Laxman Shivarayappa Samagouda*, (1970) 1 SCC 665: 1970 SCC (Cri) 263: AIR 1970 SC 1153: 1970 Cri LJ 1132.

Bench Strength **3**. Coram: **M. Hidayatullah, C.J.** and *A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 11-3-1970]

[7697] — Ss. 4(1)(f) and 496 — Specific class of officers mentioned in S. 6(1) of the Bombay Prevention of Gambling Act, being competent also to personally arrest without warrant for offences under Ss. 4 and 5 of that Act, held, are

"police officers" and those offences are "cognizable" within the meaning of S. 4(1)(f) of the Code — *Such offences being bailable, held, persons arrested must be enlarged on bail by virtue of S. 496 of the Code and any administrative instruction having a contrary direction would be bad — CrPC, 1973, Ss. 2(c) and 436 — Bombay Prevention of Gambling Act, 1887 (4 of 1887), Ss. 4, 5 and 6. State of Gujarat* v. *Lal Singh Kishan Singh*, (1981) 2 SCC 75: 1981 SCC (Cri) 330: AIR 1981 SC 368: (1981) 22 GLR 450.

Bench Strength 2. Coram: **R.S. Sarkaria** and *R.S. Pathak*, JJ. [Date of decision: 12-8-1980]

Union of India v. I.C. Lala, (1973) 2 SCC 72: 1973 SCC (Cri) 738, applied

[7698] — S. 4(1)(h) — Scope of — Complaint, what is — *Cognizance of case by Magistrate on the basis of report by police under Ch. XIV of the Code of Criminal Procedure — Investigation on the basis of information given by postal authority — Whether such cognizance can be said to be upon complaint made by order of or under authority from the Director General or Postmaster General — Post Office Act, 1898, Ss. 72, 57 and 73*

The expression 'complaint' is not defined in the Act but the 'complaint' contemplated under S. 57 is one that initiates the prosecution on the basis of which the accused if found guilty is punishable with imprisonment for a term which may extend to two years and also with a fine. That being so the expression complaint in S. 73 cannot be equated to mere information or accusation. The context in which that expression is used in S. 72 indicates that it is a formal document indicting an officer of the Postal Department for a criminal offence. The purpose behind S. 72 is that officials of the Postal Department should not be harassed with frivolous prosecutions and that before any of the prosecutions contemplated by S. 72 is launched, the authorities mentioned in that section should have examined the appropriateness of launching a prosecution and either file a complaint themselves or authorise the filing of such a complaint. Such a requirement will not be satisfied if the concerned authorities merely ask the police to investigate into the case and take appropriate action. An information laid before the police or even a sanction granted for a prosecution by the police would not meet the requirements of S. 72. If the Legislature contemplated that a mere information to the police by the appropriate authorities is sufficient then there was no need to enact S. 72. Further if all that was required was to obtain the sanction of the concerned authorities then the Legislature would have enacted a provision similar to S. 197 CrPC. The fact that the Legislature did not choose to adopt either of the two courses mentioned above is a clear indication of the fact that the mandate of S. 72 is that there should be a formal complaint as contemplated by S. 4(1)*(h)* CrPC. If the word 'Complaint' in S. 72 of the Act is to be understood as defined under S. 4(1)*(h)* of the CrPC then there was admittedly no 'complaint' against the appellant which means that the Learned Magistrate was incompetent to take cognizance of the case. From that it follows that the trial of the case was an invalid one and that the appellant was convicted without the authority of law. *Bholanath Amritlal Purohit* v. *State of Gujarat*, (1970) 2 SCC 414: 1970 SCC (Cri) 469: AIR 1971 SC 194: 1971 Cri LJ 258.

Bench Strength 3. Coram: *S.M. Sikri*, **K.S. Hegde** and *I.D. Dua*, JJ. [Date of decision: 14-8-1970]

[7699] — Ss. 4(1)(h) and 190 — 'Complaint'

The word 'complaint' has been defined in S. 4(1)*(h)* and means an allegation made orally or in writing to a Magistrate, with a view to his taking action, under the Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police officer. The word 'complaint' has a wide meaning since it includes even an oral allegation. It may, therefore, be assumed that no form is prescribed which the complaint must take. It may only be said that there must be an allegation which prima facie discloses the commission of an offence with the necessary facts for the Magistrate to take action. Section 190(1)*(a)* makes it necessary that the alleged facts must disclose the commission of an offence. *Bhimappa Basappa Bhu Sannavar* v. *Laxman Shivarayappa Samagouda*, (1970) 1 SCC 665: 1970 SCC (Cri) 263: AIR 1970 SC 1153: 1970 Cri LJ 1132.

Bench Strength 3. Coram: **M. Hidayatullah, C.J.** and *A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 11-3-1970]

— S. 4(1)(i) *See* Ss. 377 and 4(1)(i)

[7700] — S. 4(1)(l) — Laying a trap is part of investigation. *Sailendranath Bose* v. *State of Bihar*, AIR 1968 SC 1292: (1968) 3 SCR 563: 1968 Cri LJ 1484: (1969) 1 LLJ 549.

Bench Strength 2. Coram: *G.K. Mitter* and **K.S. Hegde**, JJ. [Date of decision: 26-3-1968]

[7701] — S. 4(1)(o) — "Offence" — Meaning of — Accused firing a single shot two persons with the intention of causing their death — *Held, only one offence is at committed and not two. Bhagat Singh* v. *State*, AIR 1952 SC 45: 1952 SCR 371: 1952 Cri LJ 323, 324.

Bench Strength 3. Coram: **Fazl Ali**, *M.C. Mahajan* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 19-12-1951]

[7702] — S. 4(1)(o) — "Offence" and "prosecution of offence" — Distinction

There is an essential distinction between an offence and the prosecution for an offence. The former forms part of the substantive law and the latter of procedural law. An offence is an aggregate of acts or omissions punishable by law while prosecution signified the procedure for obtaining an adjudication of court in respect of such acts or omissions. *Kapur Chand Pokhraj* v. *State of Bombay*, AIR 1958 SC 993, 997: 1958 Cri LJ 1558: (1958) 9 STC 455: 1959 SCR 250.

Bench Strength **3**. Coram: *B.P. Sinha*, *Syed Jafer Imam* and **K. Subba Rao**, JJ. [Date of decision: 24-3-1958]

[7703] — Ss. 4(1)(t) and 492 — 'Public Prosecutor' — *Additional Government Advocate notified as Public Prosecutor for the High Court — Can deal with 'appeals against acquittal' in High Court when designated to take up 'cases'*

Reading S. 4(1)(*t*) CrPC, which defines "Public Prosecutor" together with S. 492 CrPC, under which the State Government is empowered to appoint Public Prosecutors, the Additional Government Advocate when appointed as a Public Prosecutor for the High Court in respect of the cases arising in the State of M.P. must be held to be a Public Prosecutor lawfully empowered to present the appeals in the High Court against orders of acquittal. *Mansoor* v. *State of M.P.*, (1971) 2 SCC 369: 1971 SCC (Cri) 541: AIR 1971 SC 1977: 1971 Cri LJ 1445.

Bench Strength **2**. Coram: **I.D. Dua** and *V. Bhargava*, JJ. [Date of decision: 6-5-1971]

[7704] — S. 5 — Scope — "Otherwise dealt with" — Meaning of — *Inquiries in connection with disciplinary proceedings against Government servant — Need not be held in accordance with the provisions of CrPC*

"Otherwise dealt with" occurring in S. 5 CrPC refers to such dealing with offences as is provided for in the provisions of the Code apart from the provisions for investigation, enquiry or trial. The use of these words in S. 5 does not justify a conclusion that inquiries in connection with disciplinary proceedings on the basis of offences alleged to have been committed by the Government servant must also be held in accordance with the provisions of the Code of Criminal Procedure. *R.P. Kapur* v. *S. Pratap Singh Kairon*, AIR 1964 SC 295: (1964) 4 SCR 224: (1964) 1 Cri LJ 224, 27.

Bench Strength **7**. Coram: *S.K. Das, A.C.J.*[1] and *P.B. Gajendragadkar*[1], **A.K. Sarkar**[2], *K.N. Wanchoo*[3], **M. Hidayatullah**[1], *K.C. Das Gupta*[3] and **N. Rajagopala Ayyangar**[3], JJ. [Date of decision: 2-8-1963]

[7705] — S. 5 — "Otherwise dealt with"

It was contended that the expression 'dealt with' must mean something which is not included in investigation, inquiry or trial. This does not necessarily follow from the provisions of this section. The word 'otherwise' points to the fact that the expression 'dealt with' is all comprehensive, and that investigation, inquiry and trial were some aspects of 'dealing with' the offences. *Delhi Admn.* v. *Ram Singh*, AIR 1962 SC 63, 67: (1962) 2 SCR 694: (1962) 1 Cri LJ 106.

Bench Strength **3**. Coram: *K. Subba Rao*[1], **Raghubar Dayal**[1] and **J.R. Mudholkar**[2], JJ. [Date of decision: 3-5-1961]

[7706] — S. 5 — "Any other law" — Words do not cover contempt of a kind punishable summarily by High Courts

Contempt is a special subject and the jurisdiction is conferred by a special set of laws peculiar to Courts of Record. It is clear that the words "any other law" in S. 5 of the Criminal Procedure Code do not cover contempt of a kind punishable summarily by the High Courts. *Sukhdev Singh* v. *Teja Singh*, AIR 1954 SC 186: 1954 SCR 454: 1954 Cri LJ 460.

Bench Strength **3**. Coram: *B.K. Mukherjea*, **Vivian Bose** and *N.H. Bhagwati*, JJ. [Date of decision: 25-11-1953]

[7707] — S. 5(1) — Nature

It appears from S. 5(1) of the Code of Criminal Procedure that the provisions of the said Code relating to the place of trial assume the existence of substantive liability under the Indian Penal Code or under any other law. *Mobarik Ali Ahmed* v. *State of Bombay*, AIR 1957 SC 857, 867: 1958 SCR 328: 1957 Cri LJ 1346.

Bench Strength **3**. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 6-9-1957]

[7708] — S. 5(2) — Offences under S. 5 — Applicability and effect of Criminal Procedure Code in such cases — *Words "notwithstanding anything contained in the Code of Criminal Procedure" — Meaning of — S. 5-A may be related with S. 5(2) CrPC — Prevention of Corruption Act, 1947, Ss. 5-A & 5*

Section 5-A of the Prevention of Corruption Act should be related to the provision in S. 5(2), which limits the application of the provisions of that Code to be subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. The only change which S. 5-A of the Prevention of Corruption Act makes is with regard to officers competent to investigate and arrest without warrant; in all other respects the Code of Criminal Procedure applies and, therefore, there is no doubt that all offences mentioned in S. 5-A of the Prevention of Corruption Act are cognizable offences.

The words "notwithstanding anything contained in the Code of Criminal Procedure" found at the beginning of S. 5-A(1) merely carve out a limited exemption from the Code of Criminal Procedure insofar as they limit the class of persons who are competent to investigate into offences mentioned in the section and to arrest without a warrant. It does not mean that the whole of the Code of Criminal Procedure, including Sch. II thereof, is made inapplicable. *Union of India* v. *Maj. I.C. Lala*, (1973) 2 SCC 72: 1973 SCC (Cri) 738: AIR 1973 SC 2204: (1973) 3 SCR 818: 1973 Cri LJ 1190.

Bench Strength **3**. Coram: **A. Alagiriswami**, *I.D. Dua* and *C.A. Vaidialingam*, JJ. [Date of decision: 29-3-1973]

[7709] — S. 5(2) — Applicability of Code where no procedure provided under the special law — U.P. Panchayat Raj Act

To the extent that no valid machinery is set up under the U.P. Panchayat Raj Act for the trial of any particular case the jurisdiction of the ordinary criminal court under S. 5 CrPC, cannot be held to have been excluded. Exclusion of jurisdiction of a court of general jurisdiction, can be brought about by the setting up of a court of limited jurisdiction, in respect of the limited field, only if the vesting and the exercise of that limited jurisdiction is clear and operative. Where, as in this case, there is no adequate machinery for the exercise of this jurisdiction in a specific case one cannot hold that the exercise of jurisdiction in respect of such a case by the Court of general jurisdiction is illegal. *Bhim Sen* v. *State of U.P.*, AIR 1955 SC 435, 438: (1955) 1 SCR 1444: 1955 Cri LJ 1010.

Bench Strength **3**. Coram: *Vivian Bose*, **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 15-3-1955]

[7710] — S. 5(2) — Foreign Exchange Regulation Act, 1947 — Ss. 19(A) and 19(3) — Provision for investigation — Applicability of Code

Magistrate can exercise his powers under the Code with respect to property seized under S. 19(3).

As regards S. 19(A), the Act is a special Act and it provides under S. 19-A for the necessary investigation into the alleged suspected commission of an offence under the Act, by the Director of Enforcement. The provisions of the Code of Criminal Procedure therefore will not apply to such investigations by him, assuming that the expression 'investigation' includes the retaining of the documents for the purposes of the investigation. *Nilratan Sircar* v. *Lakshmi Narayan Ram Niwas*, AIR 1965 SC 1, 5: (1964) 7 SCR 724: (1965) 1 Cri LJ 100.

Bench Strength **2**. Coram: *M. Hidayatullah* and **Raghubar Dayal**, JJ. [Date of decision: 14-4-1964]

— S. 6 *See* Ss. 195(1)(b), (2) and 6
See also Ss. 439(2) and 6

[7711] — Ss. 6, 10 and 12 — Magistrates — Do not possess inherent powers — *Hence cannot review or recall any order passed by them — Magistrate therefore erred in recalling the order made under S. 203 dismissing the complaint on ground of triviality. Bindeshwari Prasad Singh* v. *Kali Singh*, (1977) 1 SCC 57: 1977 SCC (Cri) 33: AIR 1977 SC 2432: 1978 Cri LJ 187.

Bench Strength **2**. Coram: *P.N. Bhagwati* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 5-8-1976]

— S. 8(2) *See* Ss. 337 and 8(2)

[7712] — S. 9 — Additional Sessions Judge and post of Civil Judge — Applicability of Arts. 233 and 236 of the Constitution

It makes no difference whether a person is first appointed as a Civil Judge and then as an Additional Sessions Judge or whether he is appointed both as a Civil Judge and an Additional Sessions Judge at the same time. When such an appointment is made the appointee exercises both the powers of a Civil Judge and those of an Additional Sessions Judge. From such a combination of powers in the same person it does not follow that he is not an Additional Sessions Judge or that he is a Civil Judge and, therefore, does not fall under the definition of a 'District Judge' in Art. 236(*a*). Since such a post falls under that definition it would be Art. 233 and the Rajasthan Higher Judicial Service Rules which would apply to him and not Art. 234 or the Rajasthan Judicial Service Rules, 1955. *Prem Nath* v. *State of Rajasthan*, AIR 1967 SC 1599, 1604: (1967) 3 SCR 6: (1967) 2 ITJ 502: 1967 Cri LJ 1569.

Bench Strength **5**. Coram: *K. Subba Rao, C.J.* and *J.C. Shah*, **J.M. Shelat**, *V. Bhargava* and *G.K. Mitter*, JJ. [Date of decision: 15-3-1967]

— S. 10 *See also* Ss. 6, 10 and 12

[7713] — S. 10 — ADM exercising powers of DM under S. 29 of Defence of India Act, 1962

The question was whether the Additional District Magistrate, Gurdaspur who had been invested with all the powers of the District Magistrate under S. 10(2) of the Code of Criminal Procedure could make an order under S. 29(1) of the Defence of India Act, 1962, requisitioning a shop the respondent belonging to which was in occupation of the appellant as a tenant.

Held :

The Additional District Magistrate who is invested with the powers of a District Magistrate does not thereby attain the status of a District Magistrate as there can be only one person in the district who can be a District Magistrate and the Government when it conferred the power on the District Magistrate conferred it on the officer actually holding the office of the District Magistrate and no one else. *Hari Chand Aggarwal* v. *Batala Engineering Co. Ltd.*, AIR 1969 SC 483, 487: (1969) 2 SCR 201: 1969 Cri LJ 803.

Bench Strength **3**. Coram: *J.C. Shah*, *V. Ramaswami* and **A.N. Grover**, JJ. [Date of decision: 24-9-1968]

[7714] — S. 10 — District Magistrate — Designation of

Unless a person has been appointed under S. 10(1) of the Code he cannot be called a District Magistrate and that an Additional District Magistrate is below the rank of a District Magistrate. *Hari Chand Aggarwal* v. *Batala Engineering Co. Ltd.*, AIR 1969 SC 483, 487: (1969) 2 SCR 201: 1969 Cri LJ 803.

Bench Strength **3**. Coram: *J.C. Shah*, *V. Ramaswami* and **A.N. Grover**, JJ. [Date of decision: 24-9-1968]

[7715] — S. 10 — Object of appointing ADMs

The object of appointing an Additional District Magistrate is to relieve the District Magistrate of some of his duties and that he is subordinate to the District Magistrate to the extent specified in sub-section (3) of S. 10. *Hari Chand Aggarwal* v. *Batala Engineering Co. Ltd.*, AIR 1969 SC 483, 485: (1969) 2 SCR 201: 1969 Cri LJ 803.

Bench Strength **3**. Coram: *J.C. Shah*, *V. Ramaswami* and **A.N. Grover**, JJ. [Date of decision: 24-9-1968]

[7716] — S. 10 — Scheme of — ADMs & DM — Distinction

The Scheme of S. 10 of the Code leaves no room for doubt that the District Magistrate and the Additional District Magistrate are two different and distinct authorities and even though the latter may be empowered under sub-section (2) to exercise all or any of the powers of a District Magistrate but by no stretch of reasoning can an Additional District Magistrate be called the District Magistrate which are the words employed in sub-section (1) of S. 10. *Hari Chand Aggarwal* v. *Batala Engineering Co. Ltd.*, AIR 1969 SC 483, 485: (1969) 2 SCR 201: 1969 Cri LJ 803.

Bench Strength **3**. Coram: *J.C. Shah*, *V. Ramaswami* and **A.N. Grover**, JJ. [Date of decision: 24-9-1968]

See also (1961) 3 SCR 495: AIR 1961 SC 606

[7717] — S. 10 — Transfer of certain pending cases — Applicability of the section — *Case transferred to Session Court before the Act came into force and pending before Assistant Sessions Judge when the Act came into force — Had he jurisdiction to try case*

Under S. 10 of this Act all cases pending before the Court of a Magistrate were transferred to the Court of a Special Judge. Section 10 did not purport to transfer cases, pending in the court of Sessions at the commencement of the Act, to the Court of the Special Judge. *Din Dayal Sharma* v. *State of U.P.*, AIR 1959 SC 831, 832: 1959 Supp (2) SCR 776: 1959 Cri LJ 1120.

Bench Strength **2**. Coram: **Syed Jafer Imam** and *J.L. Kapur*, JJ. [Date of decision: 23-4-1959]

[7718] — Ss. 10 and 517 — Security bond — Procedure and form — *Sessions Judge directing the furnishing of bond to the satisfaction of the District Magistrate — Additional District Magistrate can accept the bond — Indemnity bond can be used — In the absence of direction that the bond be taken in the name of any particular court, it can be taken in the name of State Government*

There is nothing in the words of S. 517 of the Criminal procedure Code, which excluded the use of an indemnity bond. The Sessions Judge did not order that the bond should be taken in the name of any particular court. A bond in the name of the Government of West Bengal substantially (if not wholly) complied with the order of the Sessions Judge. The contention that only the District Magistrate could accept the bond ignores the powers of the Additional District Magistrate under the Code of Criminal Procedure. The practice of courts in Bengal is also against the proposition because such bonds are usually considered for acceptance by Additional District Magistrate. *Debabrata Bandhopadhyaya* v. *State of W.B.*, AIR 1969 SC 189: (1969) 1 SCR 304: 1969 Cri LJ 401.

Bench Strength **3**. Coram: **M. Hidayatullah**, **C.J.** and *V. Ramaswami* and *C.A. Vaidialingam*, JJ. [Date of decision: 2-7-1968]

[7719] — S. 10(1) — Notification under — No order of State Government appointing an officer as District Magistrate. *Ajaib Singh* v. *Gurbachan Singh*, AIR 1965 SC 1619: (1965) 2 SCR 845: (1965) 2 Cri LJ 553.

Bench Strength **5**. Coram: *K. Subba Rao*, **K.N. Wanchoo**, *M. Hidayatullah*, *J.C. Shah* and *S.M. Sikri*, JJ. [Date of decision: 2-2-1965]

— S. 10(2) *See also* Ss. 337(1), 10(2), 529 and Sch. III, Part V, Entry 7(a)

[7720] — S. 10(2) — Notification under S. 40, 1962 Act empowering DM to exercise powers under S. 29 — ADM empowered under S. 10(2) CrPC, 1898 incompetent to requisition property — Defence of India Act, 1962, Ss. 40 and 29. *Hari Chand Aggarwal* v. *Batala Engineering Co. Ltd.*, AIR 1969 SC 483, 487: (1969) 2 SCR 201, 207: 1969 Cri LJ 803.

Bench Strength 3. Coram: *J.C. Shah, V. Ramaswami* and **A.N. Grover**, JJ. [Date of decision: 24-9-1968]

[7721] — Ss. 10(2) and 11 — No officer below the rank of DM to exercise power of detention — *ADM invested with power of DM under S. 10(2) CrPC 1898 — Exercise of DM's powers under S. 11, CrPC on temporary vacancy — Held, he is not a DM in law or of equal rank — Detention order invalid — Defence of India Act, 1962, Ss. 3(2)(15)(i) & 40(2) & Rr. 30(1) & 30-A. Ajaib Singh* v. *Gurbachan Singh*, AIR 1965 SC 1619, 1622: (1965) 2 SCR 845, 849: (1965) 2 Cri LJ 553.

Bench Strength 5. Coram: *K. Subba Rao*, **K.N. Wanchoo**, *M. Hidayatullah, J.C. Shah* and *S.M. Sikri*, JJ. [Date of decision: 2-2-1965]

— S. 11 *See* Ss. 10(2) and 11

— S. 12 *See* Ss. 6, 10 and 12

[7722] — Ss. 12(1) and (2) — Magistrate of first class — *Prevention of Corruption Act, 1947, S. 5-A*

Ordinarily, Magistrates of the first class may have defined areas within the meaning of S. 12(1) of the Code of Criminal Procedure but in cases governed by S. 5-A of the Prevention of Corruption Act Magistrates of the first class will exercise jurisdiction throughout the district irrespective of defined areas of their jurisdiction within that district by reason of S. 12(2) of the Code of Criminal Procedure. *Union of India* v. *B.N. Ananti Padmanabiah*, (1971) 3 SCC 278: 1971 SCC (Cri) 535: AIR 1971 SC 1836: 1971 Cri LJ 1287.

Bench Strength 3. Coram: *S.M. Sikri, C.J.* and *C.A. Vaidialingam* and **A.N. Ray**, JJ. [Date of decision: 22-4-1971]

— S. 12(2) *See* Ss. 12(1) and (2)

— S. 14 *See also* Ss. 197(2) and 14

[7723] — S. 14 — Constitutionality of section — *Whether violates Art. 14*

Where the Special Magistrate under S. 14 CrPC has to try the case entirely under the discrimination of the kind contemplated in *Anwar Ali Sarkar case*, 1952 SCR 284 and the other cases authority under such circumstances cannot be said to be discriminatory as such, and is therefore not hit by Art. 14 of the Constitution. *M.K. Gopalan* v. *State of M.P.*, AIR 1954 SC 362: (1955) 1 SCR 168: 1954 Cri LJ 1012.

Bench Strength 5. Coram: *B.K. Mukherjea, S.R. Das, N.H. Bhagwati*, **B. Jagannadhadas** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 5-4-1954]

[7724] — S. 14 (as amended by Bombay Act 23 of 1951) — *Held valid as S. 14 had been held valid — Constitution of India, Art. 14*

There is substantially no difference between the powers conferrable by S. 14 of the Code as originally enacted and S. 14 as amended by Bombay Act 23 of 1951. Therefore S. 14 of the Code of Criminal Procedure, as amended, cannot be regarded as infringing Art. 14 of the Constitution. No discrimination practised by a notification. *Jagannath Sonu Parker* v. *State of Maharashtra*, AIR 1963 SC 728, 731: 1963 Supp (1) SCR 573: (1963) 1 Cri LJ 639.

Bench Strength 5. Coram: *B.P. Sinha, C.J.* and *P.B. Gajendragadkar, K.N. Wanchoo, K.C. Das Gupta* and **J.C. Shah**, JJ. [Date of decision: 11-10-1962]

[7725] — S. 14 (as amended by Bombay Act 23 of 1951) — Notification issued appointing a Special Judicial Magistrate having jurisdiction over the area when a conspiracy to smuggle gold is alleged to have been hatched — *Notification not discriminatory and not hit by Art. 14 of the Constitution. Jagannath Sonu Parker* v. *State of Maharashtra*, AIR 1963 SC 728: 1963 Supp (1) SCR 573: (1963) 1 Cri LJ 639, 42.

Bench Strength 5. Coram: *B.P. Sinha, C.J.* and *P.B. Gajendragadkar, K.N. Wanchoo, K.C. Das Gupta* and **J.C. Shah**, JJ. [Date of decision: 11-10-1962]

[7726] — Ss. 14, 197(1) and 197(2) — Object of S. 197(2) and policy behind it — *Powers under S. 197(2) not exercised — Interference from*

Section 197(2) is not inspired by any policy of protection of the concerned public servant, as S. 197(1) is.

The power under S. 197(2) is to be vested in the appropriate Government for being exercised, on grounds of convenience, or the complexity or gravity of the case or other relevant considerations. It cannot be said that it is for the very Government which sanctioned the prosecution under S. 197(1) to specify the Court before which the trial is to be held and no other, and that consequently, in a case to which S. 197(1) applies, the exercise of any power under S. 14 is excluded. If in a particular case power under S. 197(2) is not exercised it cannot be taken that the appropriate Government did not feel called upon to allot the case to any special court, and that, therefore, such allotment by another Government under S. 14 would affect or nullify the power of the appropriate Government under S. 197(2). The power under S. 197(2) to specify a court for trial in such cases being a permissive power there can be no such implication arising from the non-exercise of the power. *M.K. Gopalan* v. *State of M.P.*, AIR 1954 SC 362: (1955) 1 SCR 168: 1954 Cri LJ 1012.

Bench Strength **5**. Coram: *B.K. Mukherjea*, *S.R. Das*, *N.H. Bhagwati*, **B. Jagannadhadas** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 5-4-1954]

[7727] — Ss. 14(1) and 197(2) — Respective scopes of sections — Distinction between

The one relates to the "Court" and the other to the "person". Under sub-section (2) of S. 197, the sanctioning Government may specify a court for the trial of the case but is not bound to do so. When it does not choose to specify the Court, the trial is subject to the operation of the other provisions of the Code. But even when it chooses to exercise the power of specifying the Court before which the trial is to be held, such specification of the Court does not touch the question as to who is the person to function in such court before which the trial is to take place. That is a matter still left to be exercised by the Provincial Government of the area where the trial is to take place. The words "Court" is sub-section (2) of S. 197 and "person" in sub-section (1) of S. 14 are not interchangeable. *M.K. Gopalan* v. *State of M.P.*, AIR 1954 SC 362: (1955) 1 SCR 168: 1954 Cri LJ 1012.

Bench Strength **5**. Coram: *B.K. Mukherjea*, *S.R. Das*, *N.H. Bhagwati*, **B. Jagannadhadas** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 5-4-1954]

[7728] — S. 18 — Presidency Magistrate — Jurisdiction — *Prevention of Corruption Act, 1947, S. 5-A*

The words "Presidency Magistrate or a Magistrate of the first class, as the case may be" in S. 5-A of the Prevention of Corruption Act indicate that a Presidency Magistrate refers to the Presidency town where he exercises jurisdiction and similarly a Magistrate of the first class refer to a Magistrate of the first class of a district exercising power in that district. A Magistrate does not exercise jurisdiction throughout the length and breadth of India for purposes of Code of Criminal Procedure or of Prevention of Corruption Act. The Code of Criminal Procedure defines the territorial jurisdiction of Magistrate.

It is appropriate that Magistrates in Presidency towns or districts will order investigation of cases within their respective jurisdictions. The effect of S. 5-A of the Prevention of Corruption Act is that it is a special Act which confers powers on Presidency Magistrates exercisable throughout the Presidency town and Magistrates of the first class throughout the districts where they exercise powers under the Code of Criminal Procedure. *Union of India* v. *B.N. Ananti Padmanabiah*, (1971) 3 SCC 278: 1971 SCC (Cri) 535: AIR 1971 SC 1836: 1971 Cri LJ 1287.

Bench Strength **3**. Coram: *S.M. Sikri, C.J.* and *C.A. Vaidialingam* and **A.N. Ray**, JJ. [Date of decision: 22-4-1971]

[7729] — Ss. 28 and 30 — Relative scope

The provisions of S. 28 and second schedule must give way to the provisions of S. 30. *Budhan Choudhry* v. *State of Bihar*, AIR 1955 SC 191: (1955) 1 SCR 1045: 1955 ALJ 309: 1955 Cri LJ 374, 376, 37.

Bench Strength **7**. Coram: *M.C. Mahajan, C.J.* and *B.K. Mukherjea*, **S.R. Das**, *Vivian Bose*, *N.H. Bhagwati*, *B. Jagannadhadas* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 2-12-1954]

— S. 29 *See also* Ss. 530(p) and 29

[7730] — Ss. 29 and 30(2) — Offence under 1948 U.P. Act tried by a Magistrate First Class — Trial is void in view of S. 29/S. 30(2) CrPC, 1898 — *U.P. Private Forests Act, 1948 (6 of 1949), S. 15(2)*

Section 29 CrPC says that offences under any other law shall be tried by that court which that law mentions and it is only when no court is mentioned that the eighth column of the Second Schedule is applicable. Here sub-section (2) of S. 15 mentions the courts by which offences under S. 15(1) are triable and S. 29(1) excludes the application of the second part of the Second Schedule. The words of sub-section (1) of S. 29 are peremptory. There is no escape from them. They say that 'subject to the other provisions of the Code' any offence under any other law shall be tried by the Court when such court is mentioned in that law. A case under S. 15(1), therefore, is triable only by the two courts named therein, namely, magistrate of the second and the third classes and not by any other magistrate. What S. 15(2) does is to prescribe a particular court and in the view of the words of S. 29(1) no other court can try offences under S. 15(1) even though the powers of those courts may be superior to those of magistrates of the second and the third class. If the Second Schedule itself, which prescribed the courts for the trial of offences under laws other than the Penal Code, is excluded, the Third Schedule cannot bring about the same result indirectly. The provisions of the Third Schedule must therefore be taken to define general powers and not to create jurisdiction to try offences which the Second Schedule does.

In view of the clear words of S. 29(1) CrPC the trial for offences under S. 15(1), Private Forests Act should have been in a court designated in S. 15(2) and as the trial was before a Magistrate not so designated the proceedings were void under S. 530(*p*) of the Code of Criminal Procedure. *State of U.P.* v. *Sabir Ali*, AIR 1964 SC 1673: (1964) 7 SCR 435: (1964) 2 Cri LJ 606.

Bench Strength 2. Coram: **M. Hidayatullah** and *N. Rajagopala Ayyangar*, JJ. [Date of decision: 24-3-1964]

[7731] — S. 29(1) — Nature — Peremptory in nature

The words of sub-section (1) of S. 29 are peremptory. There is no escape from them. *State of U.P.* v. *Sabir Ali*, AIR 1964 SC 1673, 1674: (1964) 7 SCR 435: (1964) 2 Cri LJ 606.

Bench Strength 2. Coram: **M. Hidayatullah** and *N. Rajagopala Ayyangar*, JJ. [Date of decision: 24-3-1964]

— S. 30 *See also* Ss. 28 and 30

[7732] — S. 30 — Scope

The effect of the State Government investing the District Magistrate or any Magistrate of the first class with power under S. 30 is to bring into being an additional court in which all offences not punishable with death become triable. In other words, the effect of the exercise of authority by the State Government under S. 30 is, as it were, to add in the 8th column of the second schedule the Magistrate so empowered as a court before whom all offences not punishable with death will also be triable. *Budhan Choudhry* v. *State of Bihar*, AIR 1955 SC 191: (1955) 1 SCR 1045: 1955 ALJ 309: 1955 Cri LJ 374, 376, 37.

Bench Strength 7. Coram: *M.C. Mahajan, C.J.* and *B.K. Mukherjea*, **S.R. Das**, *Vivian Bose*, *N.H. Bhagwati*, *B. Jagannadhadas* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 2-12-1954]

[7733] — S. 30 — Is not inconsistent with Art. 14 of the Constitution

Section 30 empowers the State Government in certain areas to invest the District Magistrate or any Magistrate of the first class with power to try as a Magistrate all offences not punishable with death. There is an obvious classification on which this section is based, namely, that such power may be conferred on Special Magistrates in certain localities only and in respect of some offence only, namely, all offences other than those punishable with death.

The section only authorises the State Government to invest certain Magistrates with power to try all offences not punishable with death and this authority the State can exercise only in the specified places. If the State invests any Magistrate with powers under S. 30 anybody who commits any offence not punishable with death and triable by a Court of Sessions under S. 28, read with the second schedule is also liable to be tried by Magistrate under S. 30. The risk of such liability falls alike upon all persons committing such an offence. Therefore, there is no discrimination in the section itself.

Section 30 CrPC, does not infringe the fundamental rights under Art. 14 of the Constitution. *Budhan Choudhry* v. *State of Bihar*, AIR 1955 SC 191: (1955) 1 SCR 1045: 1955 ALJ 309: 1955 Cri LJ 374, 376, 378.

Bench Strength 7. Coram: *M.C. Mahajan, C.J.* and *B.K. Mukherjea*, **S.R. Das**, *Vivian Bose*, *N.H. Bhagwati*, *B. Jagannadhadas* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 2-12-1954]

— S. 30(2) *See* Ss. 29 and 30(2)

[7734] — S. 33 — Imprisonment in default of fine — Power of the Magistrate — *Sentence of one year's rigorous imprisonment in default of payment of fine — Propriety — Penal Code, 1860 (45 of 1860) — S. 65*

Section 33 of the Criminal Procedure Code of 1898 would override S. 65, Indian Penal Code, or, to be more accurate, apply more specifically to Magistrates.

While a Magistrate's powers are specifically limited by S. 33, Criminal Procedure Code, they must also be so exercised as not to contravene S. 65, Indian Penal Code.

As the sentence of one year's rigorous imprisonment in default of payment of fine passed by the Munsif Magistrate was in excess of his powers, appeal is allowed to the extent that the sentence of one year's rigorous imprisonment awarded in default of payment of fine is reduced to six months' rigorous imprisonment. It would have been better if this obvious illegality and excess of power could have been corrected by the High Court when the matter was brought to its notice by means of an application under S. 561-A, Criminal Procedure Code. *Chhajulal* v. *State of Rajasthan*, (1972) 3 SCC 411: 1972 SCC (Cri) 561: AIR 1972 SC 1809: 1972 Cri LJ 1184.

Bench Strength 2. Coram: *A.N. Grover* and **M.H. Beg**, JJ. [Date of decision: 17-3-1972]

[7735] — Ss. 33 and 288 — Evidence of eyewitness recorded in FIR but not in Sessions Court as by that time he was dead — *Held, his evidence in committal Court as prosecution witness cannot be treated as evidence under S. 288 — It can be treated as evidence under S. 33. Tarlok Singh* v. *State of Punjab*, (1973) 2 SCC 458: 1973 SCC (Cri) 872: AIR 1974 SC 1797: 1974 Cri LJ 1265.

Bench Strength 3. Coram: **P. Jaganmohan Reddy**, *H.R. Khanna* and *A. Alagiriswami*, JJ. [Date of decision: 30-7-1973]

[7736] — S. 35 — Sentence of person convicted for more than one offence subject to S. 71 IPC. *Nafe Singh* v. *State of Haryana*, (1971) 3 SCC 934: 1972 SCC (Cri) 182.

Bench Strength **2**. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 16-3-1970]

[7737] — S. 35 — Scope — Passing of separate sentences

Section 35 permits the passing of separate sentences for different offences and for them to run consecutively, unless the Court directs that they shall run concurrently. This, however, is subject to the provisions of S. 71, Penal Code.

It is clear from these provisions that where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences. *Puranmal Agarwalla* v. *State of Orissa*, AIR 1958 SC 935, 936: 1959 SCR 1162: 1958 Cri LJ 1432.

Bench Strength **2**. Coram: *B.P. Sinha* and **Syed Jafer Imam**, JJ. [Date of decision: 19-8-1958]

[7738] — Ss. 36 to 39 — Scope — Appointment of Civil Judge as ADM

Ss. 36 to 39 cannot apply to the case of a Civil Judge appointed also as an Additional Sessions Judge, for these sections contemplate vesting of additional powers on District Magistrates, Sub-Divisional Magistrates and Magistrates of the first, second and third class. Therefore, the power to appoint a Civil Judge as an Additional Sessions Judge is to be found not in Ss. 36 to 39 but in S. 9. *Prem Nath* v. *State of Rajasthan*, AIR 1967 SC 1599, 1604: (1967) 3 SCR 186: (1967) 2 ITJ 502: 1967 Cri LJ 1569.

Bench Strength **5**. Coram: *K. Subba Rao, C.J.* and *J.C. Shah*, **J.M. Shelat**, *V. Bhargava* and *G.K. Mitter*, JJ. [Date of decision: 15-3-1967]

— Ss. 37 to 39 *See* Ss. 36 to 39

[7739] — S. 39(2) — Prescribed Authority — Jurisdictional competence of — U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — S. 3(e) — Appointment and qualification of Prescribed Authority — Nature of experience required under S. 3(e) — *Tehsildar deriving powers of First Class Magistrate under General Notification dated February 6, 1968 (published in official gazette dated February 17, 1968) promoted and posted as Additional City Magistrate II, Kanpur in February 1974 till August 1974 and again posted as such in May 1975 till August 26, 1975 — By notification dated September 9, 1974 Additional City Magistrate II, Kanpur designated as Prescribed Authority under the Act — Order of release passed by him under S. 21 of the Act on August 19, 1975 in favour of respondent-landlord, held, not without jurisdiction, hence valid — Prescribed Authority duly qualified and his appointment valid — Deputy Secretary's note restricting powers of First Class Magistrate conferred on the Tehsildars to ensure maintenance of law and order only cannot override the General Notification — De facto doctrine also attracted — Appointment as Prescribed Authority not open to question by the tenant in collateral proceeding — Rent Control and Eviction — Jurisdiction. Beopar Sahayak (P) Ltd.* v. *Vishwa Nath*, (1987) 3 SCC 693: 1987 SCC (Cri) 641: AIR 1987 SC 2111: 1987 ALJ 1434.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 15-7-1987]

Beopar Sahayak (P) Ltd. v. Vishwa Nath, 1977 All WC 607, affirmed

[7740] — S. 46 — Person "in custody" making confession — "Custody" when starts — *Possibility of giving information without appearing before investigating officer — Evidence Act, 1872, Ss. 27, 24, 25 & 26*

Per majority (Subba Rao, J. contra)

When a person not in custody approaches a police officer investigating an offence and offers to give information leading to discovery of a fact, having a bearing on the charge which may be made against him he may appropriately be deemed to have surrendered himself to the police. Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody: submission to the custody by word or action by a person is sufficient. A person directly giving to a police officer by word of mouth information which may be used as evidence against him, may be deemed to have submitted himself to the "custody" of the police officer within the meaning of S. 27 of the Indian Evidence Act.

Exceptional cases may certainly be imagined in which a person may give information without presenting himself before a police officer who is investigating an offence. For instance, he may write a letter and give such information or may send a telephonic or other message to the police officer. Though the possibility cannot be ruled out; but such an occurrence would indeed be rare. There is no such instance amongst decided cases. *State of U.P.* v. *Deoman Upadhyaya*, AIR 1960 SC 1125: (1961) 1 SCR 14: 1960 Cri LJ 1504.

Bench Strength 5. Coram: *S.K. Das*[1], *J.L. Kapur*[1], **K. Subba Rao**[2], **M. Hidayatullah**[3] and **J.C. Shah**[1], JJ. [Date of decision: 6-5-1960]

The conflict as to when custody begins was not resolved when it next presented itself in Aghnoo Nagesia v. State of Bihar, AIR 1966 SC 119, 125 (Para 21): 1966 Cri LJ 100 and the court resorted to the concept of constructive custody

[7741] — S. 46 — Illegality of arrest not to affect conviction

Even if arrest of the accused in India for the purpose of a trial in respect of a fresh offence is considered not to be justified, this by itself cannot vitiate the conviction following upon his trial. *Mobarik Ali Ahmed* v. *State of Bombay*, AIR 1957 SC 857, 866: 1958 SCR 328: 1957 Cri LJ 1346.

Bench Strength 3. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 6-9-1957]

[7742] — S. 46(3) — Applicability — Installation of high-voltage live wire on jail walls which would cause death to a prisoner attempting to escape by scaling jail walls — *Held, S. 46 is not attracted*

The installation of the high-voltage wire does not offend against the command of S. 46(3) even on the assumption that the sub-section covers the re-arrest of a prisoner who has escaped from lawful custody. The installation of the system does not by itself cause the death of the prisoner. It is a preventive measure intended to act as a deterrent and can cause death only if a prisoner courts death by scaling the wall while attempting to escape from lawful custody. In that sense, even a high wall without the electrical device would be open to the exception that a prisoner falling from a height, while attempting to escape by scaling the wall, may meet with his death. S. 46(3) is, therefore, not contravened and the grievance that the mechanism involves a total negation of the safeguards afforded by criminal law is without any substance. *D. Bhuvan Mohan Patnaik* v. *State of A.P.*, (1975) 3 SCC 185: 1974 SCC (Cri) 803: AIR 1974 SC 2092: 1974 Cri LR (SC) 605: 1975 Cri LJ 556.

Bench Strength 3. Coram: *H.R. Khanna*, **Y.V. Chandrachud** and *P.K. Goswami*, JJ. [Date of decision: 9-9-1974]

— **S. 51** *See* Ss. 103 and 51

[7743] — S. 52 — Decency in search — Not an extraordinary circumstance that some of the men accompanying the raid should have seen seizure of the article from the person of the accused woman. *Kamalabai Jethamal* v. *State of Maharashtra*, AIR 1962 SC 1189: 1962 Supp (2) SCR 632: (1962) 2 Cri LJ 273: 64 Bom LR 517.

Bench Strength 2. Coram: **J.L. Kapur** and *Raghubar Dayal*, JJ. [Date of decision: 18-1-1962]

— **S. 56(a)** *See* Ss. 144 and 56(a)

— **S. 61** *See also* Ss. 155, 61, 94, 167, 164 and 202

[7744] — S. 61 — Undertrial prisoner

It is not necessary that the undertrial should be produced on each occasion before a Magistrate for remand.

An undertrial prisoner need not be arrested separately for every criminal case pending against him. The subsequent lawful detention is not vitiated by the earlier illegal detention. *Saptawna* v. *State of Assam*, (1972) 4 SCC (N) 45: 1971 SCC (Cri) 247: AIR 1971 SC 813: 1971 Cri LJ 679.

Bench Strength 3. Coram: *S.M. Sikri, C.J.* and *P.Jaganmohan Reddy* and *I.D. Dua*, JJ. [Date of decision: 5-2-1971]

[7745] — Ss. 75 to 86 — Arrest and Supply of Grounds of Arrest — *CPC, 1908, Or. 38 R. 1, S. 55 read with Or. 21 R. 38 — Sea Customs Act, 1878 — Ss. 173, 174 — Forest Act, 1927 — S. 64 — Constitution of India, Art. 22(1) & (2)*

Broadly speaking, arrests may be classified into two categories, namely, arrests under warrants issued by a Court and arrests otherwise than under such warrants.

The warrant quite clearly has to state that the person to be arrested stands charged with a certain offence.

As in the case of a warrant of arrest issued by a Court under the Code of Criminal Procedure, a warrant of arrest issued by a Court under the Code of Civil Procedure quite plainly discloses the reason for the arrest in that it sets out an accusation of default, apprehended or actual, and that the person to be arrested is made acquainted with the reasons for his arrest before he is actually arrested.

The reason in each case of arrest without a warrant is that the person arrested is accused of having committed or reasonably suspected to have committed or of being about to commit or of being likely to commit some offence or misconduct.

As in the cases of arrest without warrant under the Code of Criminal Procedure, an arrest without warrant under the Sea Customs Act and Forest Act also proceeds upon an accusation that the person arrested is reasonably suspected of having committed an offence and there is no provision for communicating to the person arrested the grounds for his arrest. *State of Punjab* v. *Ajaib Singh*, AIR 1953 SC 10, 14, 15: 1953 SCR 254, 264: (1953) 1 MLJ 108: 1953 ALJ 49: ILR 1953 Punj 121.

Bench Strength 5. Coram: *Patanjali Sastri, C.J.* and *B.K. Mukherjea*, **S.R. Das**, *Vivian Bose* and *Ghulam Hasan*, JJ. [Date of decision: 10-11-1952]

[7746] — S. 75(1) — Detention order — Compliance of section

Section 75(1) has been clearly complied with inasmuch as the detention order is in writing and has been signed by the detaining authority. *Mohd. Maqbool Damnoo* v. *State of J&K*, (1972) 1 SCC 536: 1972 SCC (Cri) 304: AIR 1972 SC 963: 1972 Cri LJ 597.

Bench Strength 5. Coram: **S.M. Sikri, C.J.** and *J.M. Shelat, I.D. Dua, H.R. Khanna* and *G.K. Mitter*, JJ. [Date of decision: 5-1-1972]

— Ss. 76 to 86 *See* Ss. 75 to 86

[7747] — Ss. 87 and 88 — Applicability to person alleged to have committed contempt — Applicability of S. 88(7)

The provisions of Ss. 87 and 88 would not be available to securing the presence of a person who is alleged to have committed contempt.

As no attachment could legally be made under S. 88, Criminal Procedure Code, in any proceeding for contempt, the provisions of S. 88(7) of the Code of Criminal Procedure, under which the property under attachment shall be at the disposal of the State Government, if the proclaimed person does not appear within the time prescribed in the proclamation cannot come into operation. *V.G. Peterson* v. *O.V. Forbes*, AIR 1963 SC 692, 697: 1963 Supp (1) SCR 40: (1963) 1 Cri LJ 633: (1963) 2 MLJ (SC) 69.

Bench Strength 3. Coram: *J.L. Kapur*, **K.C. Das Gupta** and *Raghubar Dayal*, JJ. [Date of decision: 13-9-1962]

[7748] — Ss. 87 and 88 — Abscondence after crime — Accused surrendering only after initiation of proceedings under Ss. 87 and 88 CrPC, 1898 — *Abscondence not explained by accused — Evidence of abscondence accepted as adequate and satisfactory by trial court and High Court, held, lent further credence to the prosecution case.* *Gurnek Singh* v. *State of Punjab*, 1988 Supp SCC 807: 1989 SCC (Cri) 10: AIR 1988 SC 2249.

Bench Strength 2. Coram: **M.P. Thakkar** and *B.C. Ray*, JJ. [Date of decision: 27-9-1988]

[7749] — Ss. 87 and 88 — Preventive detention — Maintenance of Internal Security Act, 1971, S. 3 — *Gap of about ten months between order of detention and arrest — Failure to resort to Ss. 87 and 88 CrPC — Effect*

Section 3 of the Act does not contemplate the authorities empowered to make orders of detention to function as courts. Ss. 87 and 88 CrPC, are provisions which can be availed of by a court. In terms, therefore, these sections may not be attracted. Even assuming it is permissible to resort to such procedure the mere omission to do so cannot render the order of detention either illegal or mala fide and cannot lead to the inference that there was no real and genuine apprehension that the petitioner was likely to act in a manner prejudicial to the maintenance of public order. *Indradeo Mahato* v. *State of W.B.*, (1973) 4 SCC 4: 1973 SCC (Cri) 645: AIR 1973 SC 1062: 1973 Cri LJ 862.

Bench Strength 3. Coram: *A. Alagiriswami*, **I.D. Dua** and *C.A. Vaidialingam*, JJ. [Date of decision: 13-2-1973]

— S. 88 *See* Ss. 87 and 88

— S. 94 *See also* Ss. 155, 61, 94, 167, 164 and 202

[7750] — S. 94 — Confidentiality of income tax proceedings — Whether extends to documents produced by third parties — Whether applies to requisition by criminal courts — *IT Act, 1922, S. 54(1) — IT Act, 1961, S. 137(1) (Pre 1967) — Penal Code, 1860, Ss. 381 and 385*

(*i*) There is no distinction between documents filed by an assessee and by a third party. The prohibition under S. 54 applies to both.

(*ii*) The non obstante clause cannot restrict the embargo placed on the court under S. 54 of the Income Tax Act: the said clause only operates to make it clear that the said general ban prevails notwithstanding anything to the contrary in the Evidence Act, 1872. That apart, S. 54 of the Income Tax Act contains in effect an unconditional prohibition against a public servant producing any such document, and that prohibition does not exclude any criminal process from its operation. *CIT* v. *Laxmichand Narayandas*, AIR 1962 SC 1121: (1962) 2 Cri LJ 254: (1962) 44 ITR 548, 550.

Bench Strength 3. Coram: *S.K. Das*, **K. Subba Rao** and *Raghubar Dayal*, JJ. [Date of decision: 13-12-1961]

[7751] — Ss. 94 and 439 — Summoning of documents — High Court interfering with exercise of discretion by trial court — Propriety

The High Court was not justified in interfering with the discretion of the learned Magistrate. Whether a particular document should be summoned or not is essentially in the discretion of the trial court.

Except for very good reasons, the High Court should not interfere with the discretion conferred on the trial courts in the matter of summoning documents. Such interferences would unnecessarily impede the progress of cases and result in waste of public money and time. *Asstt. Collector of Customs* v. *L.R. Melwani*, AIR 1970 SC 962, 967: (1969) 2 SCR 438: (1970) 72 Bom LR 782: 1970 Cri LJ 885.

Bench Strength **5**. Coram: *J.C. Shah, V. Ramaswami, G.K. Mitter*, **K.S. Hegde** and *A.N. Grover*, JJ. [Date of decision: 16-10-1968]

[7752] — S. 94 — Income Tax Act, 1922, S. 54 — Held, overrides S. 94

Under S. 54(1) of the Indian Income Tax Act, 1922, no Court shall be entitled to require the appellant to produce before it the said documents as they formed part of the record of an assessment proceeding taken before the relevant income tax authority notwithstanding S. 94 CrPC. *CIT* v. *Laxmichand Narayandas*, AIR 1962 SC 1121, 1122: (1962) 2 Cri LJ 254: (1962) 44 ITR 548.

Bench Strength **3**. Coram: *S.K. Das*, **K. Subba Rao** and *Raghubar Dayal*, JJ. [Date of decision: 13-12-1961]

[7753] — S. 94 — Party summoned to produce document disclaiming possession — *Party not a witness in the proceedings — Held, such party cannot be forced to appear in court, made to state on oath and be subjected to cross-examination by the court or counsel — CrPC, 1973, S. 91. Parmeshwari Devi* v. *State*, (1977) 1 SCC 169: 1977 SCC (Cri) 74: AIR 1977 SC 403: (1977) 2 SCR 160.

Bench Strength **3**. Coram: *P.N. Bhagwati, A.C. Gupta* and **P.N. Shinghal**, JJ. [Date of decision: 23-11-1976]

[7754] — S. 94 — Summons to produce something — *Magistrate sending letter of request to the Jailor requiring accused to disclose where he left his jeep — Magistrate's conduct is unusual — The investigating officer should have tried to find this out on interrogating the accused. Raghav Prapanna Tripathi* v. *State of U.P.*, AIR 1963 SC 74: (1963) 3 SCR 239: (1963) 1 Cri LJ 70.

Bench Strength **5**. Coram: *S.K. Das*[1], **J.L. Kapur**[2], *A.K. Sarkar*[1], *M. Hidayatullah*[2] and **Raghubar Dayal**[1], JJ. [Date of decision: 4-5-1962]

[7755] — Ss. 94 and 96 — Search and seizure of documents from accused — Not violative of Art. 20(3)

Notwithstanding the assumptions that S. 94 CrPC, is applicable to the accused and that there is an element of compulsion implicit in the process contemplated by S. 94. Sections 94 and 96(1) CrPC, cannot be read as importing any statutory recognition of a theory that search and seizure of documents is compelled production thereof.

It is to be noticed that S. 96(1) has three alternatives and that the requirement of previous notice or summons and the non-compliance with it or the likelihood of such non-compliance is prescribed only for the first alternative and not for the second or the third. A "general search" and a "search for a document or a thing not known to be in possession of any particular person" are not conditioned by any such requirement. Indeed in cases covered by the second alternative such a requirement cannot even be contemplated as possible. It would therefore, follow on the theory propounded, that some at least of the searches within the scope of the second and third alternatives in S. 96(1) would fall outside the constitutional protection of Art. 20(3) — an anomalous distinction for which no justification can be found on principle.

There is no basis in the Indian law for the assumption that a search or seizure of a thing or document is in itself to be treated as compelled production of the same. The two are essentially different matters. A notice to produce is addressed to the party concerned and his production in compliance therewith constitutes a testimonial act by him within the meaning of Art. 20(3) as above explained. But a search warrant is addressed to an officer of the Government, generally a police officer. Neither the search nor the seizure are acts of the occupier of the searched premises. They are acts of another to which he is obliged to submit and are, therefore, not his testimonial acts in any sense.

A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution-makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it into a totally different fundamental right, by some process of strained construction. Nor is it legitimate to assume that the constitutional protection under Art. 20(3) would be defeated by the statutory provisions for searches.

Issue of a search warrant is normally the judicial function of the Magistrate. When such judicial function is interposed between the individual and the officer's authority for search, no circumvention thereby of the fundamental right is to be assumed. In the present set up, of the Magistracy in this country, it is not infrequently that the exercise of this judicial function is liable to serious error. But the existence of scope for such occasional error is no ground to assume circumvention or the constitutional guarantee.

Held :

In the case that searches which were made in pursuance of warrants issued under S. 96, CrPC could not be challenged as illegal as violating Art. 20(3) of the Constitution. *M.P. Sharma* v. *Satish Chandra*, AIR 1954 SC 300: 1954 SCR 1077: (1954) 1 MLJ 680: 1954 Cri LJ 865: 56 Punj LR 366.

Bench Strength **8**. Coram: *M.C. Mahajan, C.J.* and *B.K. Mukherjea, S.R. Das, Vivian Bose, Ghulam Hasan, N.H. Bhagwati*, **B. Jagannadhadas** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 15-3-1954]

[7756] — Ss. 94 and 173(4) — Relative scope — Private complaint

It is impermissible to read into S. 94, Criminal Procedure Code, the requirements of S. 173(4), Criminal Procedure Code. The High Court was not justified, in indirectly applying to cases instituted on private complaints the requirements of S. 173(4), Criminal Procedure Code. *Asstt. Collector of Customs* v. *L.R. Melwani*, AIR 1970 SC 962, 967: (1969) 2 SCR 438: (1970) 72 Bom LR 782: 1970 Cri LJ 885.

Bench Strength **5**. Coram: *J.C. Shah, V. Ramaswami, G.K. Mitter*, **K.S. Hegde** and *A.N. Grover*, JJ. [Date of decision: 16-10-1968]

[7757] — S. 94(1) — Scope

Section 94(1) does not empower a Magistrate to direct the prosecution to give copies of any documents to an accused person. That much appears to be plain from the language of that section. *Asstt. Collector of Customs* v. *L.R. Melwani*, AIR 1970 SC 962, 967: (1969) 2 SCR 438: (1970) 72 Bom LR 782: 1970 Cri LJ 885.

Bench Strength **5**. Coram: *J.C. Shah, V. Ramaswami, G.K. Mitter*, **K.S. Hegde** and *A.N. Grover*, JJ. [Date of decision: 16-10-1968]

[7758] — S. 94(1) — Summons for production of document — Does not apply to accused — No summons under the section can be issued to an accused

Per Sikri, J. (for majority)

The Indian Legislature was aware of the above fundamental canon of criminal jurisprudence because in various sections of the Criminal Procedure Code it gives effect to it. Therefore the Legislature if it minded to make S. 94 applicable to an accused person would have said so in specific words. It is true that the words of S. 94 are wide enough to include an accused person but it is well recognised that in some cases a limitation may be put on the construction of the wide terms of a statute.

If S. 94 is construed to include an accused person, the construction is likely to lead to grave hardship for the accused and make investigation unfair to him.

The language of S. 94 is general, and prima facie apt to include an accused person. But there are indications that the Legislature did not intend to include an accused person. The words 'attend and produce' are rather inapt to cover the case of an accused person. It would be an odd procedure for a Court to issue a summon to an accused person present in Court 'to attend and produce', a document. It would be still more odd for a police officer to issue a written order to an accused person in his custody to attend and produce a document.

The contention that the 'person' referred to in the latter part of S. 94(1) is broad enough to include an accused person does not take into account the fact that the person in the latter part must be identical with the person who can be directed to produce the thing or document, and if the production of the thing or document cannot be ordered against an accused person having regard to the general scheme of the Code and the basic concept of Criminal Law, the generality of the words "the person" is of no significance.

Section 94 on its true construction, does not apply to an accused person.

Per Shah, J. (dissenting)

Failure to comply with an order under S. 94 of the Code of Criminal Procedure may undoubtedly expose a person to penal action under S. 485 of the Code, and he may be prosecuted under S. 175 of the Indian Penal Code. Refusal to produce a document or thing on the ground that the protection guaranteed by Art. 20(3) would since the enactment of the Constitution be infringed thereby would be a reasonable excuse for non-production within the meaning of S. 485 of the Code of Criminal Procedure, and an order which is in violation of Art. 20(3) requiring the person to produce a document would not be regarded as lawful within the meaning of S. 195 of the Indian Penal Code. But, apart from the protection conferred by Art. 20(3), there is no reservation which has to be implied in the application of S. 94(1).

Whether in a given case the guarantee of protection against testimonial compulsion under Art. 20(3) is infringed by an order of a Court acting in exercise of power conferred by S. 94(1) must depend upon the nature of the document ordered to be produced. If by summoning a person who is accused before the Court to produce documents or things he is compelled to be a witness against himself, the summons and all proceedings taken thereon by order of the Court will be void. It needs, however, to be affirmed that the protection against what is called testimonial compulsion under Art. 20(3) is against proceedings in Court: it does not apply to orders which may be made by a police officer in the course of investigation. The Court cannot, therefore, be called upon to consider whether the action of a police officer calling upon a person charged with the commission of an offence to produce a document or thing in his possession infringes the guarantee under Art. 20(3) of the Constitution. *State of Gujarat* v. *Shyamlal Mohanlal Choksi*, AIR 1965 SC 1251: (1965) 2 SCR 457: (1965) 2 Cri LJ 256.

Bench Strength 5. Coram: *P.B. Gajendragadkar, C.J.*[2] and *M. Hidayatullah*[2], **J.C. Shah**[1], **S.M. Sikri**[2] and *R.S. Bachawat*[2], JJ. [Date of decision: 14-12-1964]

— S. 96 *See also* Ss. 94 and 96

[7759] — S. 96 — Power to remove obstruction or resistance to search

Where a power is conferred or a duty imposed by statute or otherwise, and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions, it is reasonable to hold that it carries with it the power of doing all such acts or employing such means as are reasonably necessary for such execution.

If in the exercise of the power or the performance of the official duty, improper or unlawful obstruction or resistance is encountered, there must be the right to use reasonable means to remove the obstruction or overcome the resistance. This accords with common sense and does not seem contrary to any principle of law. *Matajog Dobey* v. *H.C. Bhari*, AIR 1956 SC 44, 50: (1955) 2 SCR 925: (1955) 28 ITR 941: 1956 Cri LJ 140.

Bench Strength 5. Coram: *S.R. Das, Vivian Bose, B. Jagannadhadas, Syed Jafer Imam* and **N. Chandrasekhara Aiyar**, JJ. [Date of decision: 31-10-1955]

[7760] — S. 96 — Sea Customs Act, 1878, S. 172 — Relative scope

Section 172 of the Sea Customs Act by its second paragraph brings into operation the provisions of the Criminal Procedure Code, and, therefore, the Magistrate's jurisdiction is both under S. 172 of the Sea Customs Act and the Criminal Procedure Code. There can be no doubt also that unlike S. 96, the Magistrate is to be guided by the belief of the Customs authorities, though he may prevent undue harassment in cases, where it can be seen that the belief is not entertained by the Customs Officer or his action is mala fide. The Magistrate is certainly entitled to satisfy himself about the belief of the Customs Officer, but is not required to make up his own mind independently of that belief.

A condition, therefore, in the warrant that the goods or documents should be produced before the Magistrate must be complied with, and once the goods or documents have been produced before the Magistrate, it is for him to decide, in the circumstances of each case, whether he would make them over to the Customs authorities or not. *Mohd. Serajuddin* v. *R.C. Misra*, AIR 1962 SC 759, 762-763: 1962 Supp (1) SCR 545: (1962) 1 Cri LJ 692.

Bench Strength 3. Coram: *J.L. Kapur*, **M. Hidayatullah** and *J.C. Shah*, JJ. [Date of decision: 24-11-1961]

[7761] — Ss. 96, 98 and Sch. V, Form 8 — Foreign Exchange Regulation Act, 1947, S. 19(3) — Applicability in view of S. 19(3). *Nilratan Sircar* v. *Lakshmi Narayan Ram Niwas*, AIR 1965 SC 1: (1964) 7 SCR 724: (1965) 1 Cri LJ 100.

Bench Strength 2. Coram: *M. Hidayatullah* and **Raghubar Dayal**, JJ. [Date of decision: 14-4-1964]

[7762] — S. 96(1) — Constitutionality of — Issue of search warrant under — *Not violative of Art. 19(1)(f)*

A search by itself is not a restriction on the right to hold and enjoy property. No doubt a seizure and carrying away is a restriction of the possession and enjoyment of the property seized. This, however, is only temporary and for the limited purpose of investigation. A search and seizure is, therefore, only a temporary interference with the right to hold the premises searched and the articles seized. Statutory regulation in this behalf is a necessary and reasonable restriction and cannot 'per se' be considered to be unconstitutional. The damage, if any, caused by such temporary interference if found to be in excess of legal authority is a matter for redress in other proceedings. No question of violation of Art. 19(1)(*f*) is involved where search warrants purporting to be under the first alternative of S. 96(1) of the CrPC are issued. *M.P. Sharma* v. *Satish Chandra*, AIR 1954 SC 300: 1954 SCR 1077: (1954) 1 MLJ 680: 1954 Cri LJ 865: 56 Punj LR 366.

Bench Strength 8. Coram: *M.C. Mahajan, C.J.* and *B.K. Mukherjea, S.R. Das, Vivian Bose, Ghulam Hasan, N.H. Bhagwati*, **B. Jagannadhadas** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 15-3-1954]

— **S. 98** *See* Ss. 96, 98 and Sch. V, Form 8

— **S. 99-A** *See also* Ss. 99-D and 99-A

[7763] — **S. 99-A — Order under for confiscation of book violative of S. 295-A, IPC — Grounds to be expressly stated, otherwise the order would violate Art. 19(1)(a)** — *Constitution of India Art. 19(1)(a)*. *State of U.P.* v. *Lalai Singh Yadav*, (1976) 4 SCC 213: 1976 SCC (Cri) 556: AIR 1977 SC 202: 1977 Cri LJ 186: (1976) 1 SCR 616.

Bench Strength **3**. Coram: *P.N. Bhagwati*, **V.R. Krishna Iyer** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 16-9-1976]

[7764] — **Ss. 99-D and 99-A — Scope and meaning — Expression "matter of such a nature as is referred to in sub-section (1) of S. 99-A" — Meaning of** — *Means only those matters on which the order of forfeiture under S. 99-A was based — Does not mean any matter of that nature which High Court thought*

Per Sarkar, J. (for majority)

The words "matter of such a nature as is referred to in sub-section (1) of S. 99-A" appearing in S. 99-D mean only those on which the order of forfeiture was based, that is, those which for the reasons stated by it, the Government thought were punishable under one or more Ss. 124-A, 153-A and 295-A, Penal Code, mentioned by it.

Under S. 99-D it is the duty of the High Court to set aside an order of forfeiture if it is not satisfied that the grounds on which the Government formed its opinion that the books contained matters the publication of which would be punishable under any one or more of Ss. 124-A, 153-A or 295-A of the Penal Code could justify that opinion. It is not its duty to do more and to find for itself whether the book contained any such matter whatsoever.

Where the Government in its order under S. 99-A, CrPC, did not state the grounds of its opinion the High Court must set aside the order under S. 99-D, for it cannot then be satisfied that the grounds given by the Government justified the order. No one can be satisfied about a thing which he does not know.

Per Das Gupta, J. (dissenting)

The duty cast by S. 99-D on the Judges of the High Court is not to see whether in a particular case the grounds stated by the Government for forming its opinion are correct, but to see whether the opinion formed was correct. To perform this duty the one and the only way is to examine the document which in the Government's opinion contains the matter complained of.

The contention that the High Court is not in a position to perform this duty under S. 99-D satisfactorily in the absence of a statement by the Government of the grounds of its opinion is not sound. *Harnam Das* v. *State of U.P.*, AIR 1961 SC 1662: (1962) 2 SCR 487: (1962) 1 MLJ (SC) 112: ILR (1961) 2 All 437: (1962) 1 AWR (SC) 112.

Bench Strength **5**. Coram: *P.B. Gajendragadkar*, **A.K. Sarkar**[1], *K.N. Wanchoo*, **K.C. Das Gupta**[2] and *N. Rajagopala Ayyangar*, JJ. [Date of decision: 27-4-1961]

— **S. 101** *See also* Ss. 101 to 103

[7765] — **S. 101 — Compromise in proceedings under — Whether bar to suit in Civil Court — Civil Procedure Code, 1908, Or. 1 R. 8**

The compromise was not arrived at in a suit fought in representative capacity but was filed in a proceeding under S. 107, Code of Criminal Procedure. The signatories declared inter alia that "neither we, the Musalmans nor we the Hindus can at any time in future create any disturbance towards each other's religion and will deal with each other as before. We will not create any disturbance in any function of either party and will not create breach of peace with each other amongst ourselves.... There is no apprehension of breach of peace as we the Hindus and Musalmans have amicably settled the matter nor will there occur any breach of peace in future. So we both parties having settled the matter amicably, hereby submit this petition and pray that the case be disposed of in terms of this compromise petition". It is signed by a number of persons but there is no indication that they represented the two communities. It may be that these persons, who signed the compromise, were important persons in the communities and it may be that both the communities should act according to the compromise effected by the so-called important persons. But in law it does not debar the parties from asserting their legal rights in a civil court. *Shaikh Piru Bux* v. *Kalandi Pati*, AIR 1970 SC 1885: (1969) 2 SCR 563.

Bench Strength **2**. Coram: **S.M. Sikri** and *R.S. Bachawat*, JJ. [Date of decision: 29-10-1968]

[7766] — **Ss. 101 to 103 — Applicability** — *Foreign Exchange Regulation Act, 1947*

The provisions relating to searches under the Code which apply to searches under sub-section (3) of S. 19 are the provisions relating to the conduct of searches and that these provisions are Ss. 101, 102 and 103 of the Code. *Nilratan Sircar* v. *Lakshmi Narayan Ram Niwas*, AIR 1965 SC 1, 4: (1964) 7 SCR 724: (1965) 1 Cri LJ 100.

Bench Strength **2**. Coram: *M. Hidayatullah* and **Raghubar Dayal**, JJ. [Date of decision: 14-4-1964]

— **S. 102** *See* Ss. 101 to 103

— **S. 103** *See also* Ss. 101 to 103

[7767] — S. 103 — Evidence of witnesses — *Panchnama not being of the same locality is a mere irregularity not affecting legality of the proceedings. As to recovery of opium*

The fact that outsiders attested the Panchnama contrary to S. 103, CrPC was only an irregularity not affecting the legality of the proceedings. There is no reason to disbelieve high-placed officers who were present at the raid and the recovery. *Tej Bahadur Singh* v. *State of U.P.*, (1970) 3 SCC 779.

Bench Strength **3**. Coram: *M. Hidayatullah, C.J.* and *G.K. Mitter* and **A.N. Grover**, JJ. [Date of decision: 27-4-1970]

[7768] — S. 103 — Formalities in search — Personal search of searching officer and witnesses

One of the formalities that has to be observed is that the searching officer should give his personal search to the witnesses before entering the premises to be searched and should similarly search the witnesses also in the presence of one another. *State of Bihar* v. *Kapil Singh*, AIR 1969 SC 53, 58: (1968) 3 SCR 810: 1969 Cri LJ 279.

Bench Strength **3**. Coram: *S.M. Sikri, J.M. Shelat* and **V. Bhargava**, JJ. [Date of decision: 18-4-1968]

[7769] — S. 103 — Preparation of list by person conducting the search — List not completed due to obstruction — *Whether amounts to non-compliance — Whether copy of list should be given then and there*

Where the Police Inspector prepared a seizure memo in which the details of currency notes were written but he was prevented from completing it by the obstruction, it cannot be said to amount to non-compliance with the provisions of S. 103, Code of Criminal Procedure.

Section 103 does not say that the copy should be given then and there, though ordinarily that would be implied. It could be given soon after the search so long as there was no opportunity to raise any suspicion or doubt as to the authenticity of articles seized. *Shyam Lal Sharma* v. *State of M.P.*, (1972) 1 SCC 764: 1972 SCC (Cri) 470: AIR 1972 SC 886: (1972) 3 SCR 422: 1972 Cri LJ 638: 1973 ALJ 366.

Bench Strength **2**. Coram: **P. Jaganmohan Reddy** and *H.R. Khanna*, JJ. [Date of decision: 9-2-1972]

[7770] — S. 103 — Prevention of Food Adulteration Act, 1954, S. 10(7)

The provisions of S. 10(7) of the Act are akin to those under S. 103 of the Code when the premises of a citizen are searched by the police. *Babu Lal Hargovindas* v. *State of Gujarat*, (1971) 1 SCC 767: 1971 SCC (Cri) 337: AIR 1971 SC 1277: 1971 Cri LJ 1075.

Bench Strength **3**. Coram: *G.K. Mitter, K.S. Hegde* and **P. Jaganmohan Reddy**, JJ. [Date of decision: 18-3-1971]

[7771] — S. 103 — Recovery witness

A recovery witness who has been joining in the police raids for the last fifteen years cannot be treated as an independent witness. *Hazara Singh* v. *State of Punjab*, (1971) 1 SCC 529: 1971 SCC (Cri) 237.

Bench Strength **2**. Coram: *K.S. Hegde* and **A.N. Grover**, JJ. [Date of decision: 4-2-1971]

[7772] — S. 103 — Search — Not in accordance with the section — Witnesses not of the locality — Effect — *Search is not invalidated — It only affects the weight of evidence*

In respect of the search of the room occupied by the appellant and the recovery of the bloodstained shirt and bloodstained pants aforesaid it was necessary to have at least two search witnesses as required by S. 103. Assuming that the two rickshaw-wallahs who actually witnessed the search as found by the Courts below were not respectable inhabitants of the locality, that circumstance would not invalidate the search.

It would only affect the weight of the evidence in support of the search and the recovery. Hence at the highest the irregularity in the search and the recovery in so far as the terms of S. 103 had not been fully complied with would not affect the legality of the proceedings. It only affected the weight of evidence which is a matter for Courts of facts and the Supreme Court would not ordinarily go behind the findings of fact concurrently arrived at by the Courts below. *Sunder Singh* v. *State of U.P.*, AIR 1956 SC 411: 1956 Cri LJ 801, 802.

Bench Strength **3**. Coram: *N.H. Bhagwati, T.L. Venkatarama Aiyar* and **B.P. Sinha**, JJ. [Date of decision: 3-11-1955]

[7773] — S. 103 — Search of a motor car — If a place — *S. 103 CrPC, is not applicable — Necessity of witnesses of locality — Otherwise recommended*

In view of S. 117 of Bombay Prohibition Act and S. 103, CrPC, it is obligatory on a police officer about to make a search to call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search. But where the search is to be made of a motor car stopped on a road Ss. 102 and 103, Code of Criminal Procedure, will not apply as motor car is not a place within the meaning of the sections; nor is there any thing in the Act by which the motor car would be so regarded for purposes of a search. The provisions relating to searches contained in S. 103 of the Code of Criminal Procedure have therefore no application and in making a search of a motor vehicle, it was not obligatory upon the police officer to comply with the requirements thereof. But since it is a healthy practice it should be followed. *Bhagwanbhai Dulabhai Jadhav* v. *State of Maharashtra*, (1963) 3 SCR 386: (1963) 2 Cri LJ 694: 1963 Mah LJ 134.

Bench Strength **3**. Coram: *B.P. Sinha, C.J.* and *K.N. Wanchoo* and **J.C. Shah**, JJ. [Date of decision: 24-7-1962]

[7774] — S. 103 — Shoes seized from the accused while he is in police custody — Provisions of S. 103 do not apply

Section 103 would not apply to the seizure of the shoes which were being worn by the accused at the time he was with the investigating police officer. The section applies when a search is to be made of a place. It does not apply to the search of a person. In this case the Sub-Inspector saw the accused putting on the pair of shoes and he seized them. There is no question of search either of a place or of a person.

Hence it was not necessary strictly in accordance with the provisions of S. 103 of the Code that there should have been two independent search witnesses. But the Sub-Inspector out of abundant caution asked those two rickshaw-wallahs to be present as they were the persons not easily available. *Sunder Singh* v. *State of U.P.*, AIR 1956 SC 411: 1956 Cri LJ 801, 802.

Bench Strength **3**. Coram: *N.H. Bhagwati, T.L. Venkatarama Aiyar* and **B.P. Sinha**, JJ. [Date of decision: 3-11-1955]

[7775] — Ss. 103 and 51 — Search of offender — *Search memo signed only by policemen accompanying the Head Constable and not by any independent witnesses though present — Matter not free from doubt — CrPC, 1973, Ss. 100 and 51. Bhagwan Singh* v. *State of Rajasthan*, (1976) 1 SCC 15: 1975 SCC (Cri) 737: AIR 1976 SC 985: 1976 Cri LJ 713.

Bench Strength **3**. Coram: *Y.V. Chandrachud*, **P.N. Bhagwati** and *R.S. Sarkaria*, JJ. [Date of decision: 14-8-1975]

[7776] — Ss. 103 and 165 — Search in contravention of the sections — Resistance to — *Owner of the premises can resist on illegal search — Court also to examine the search evidence carefully — Seizure of articles not vitiated even when search is illegal*

Even assuming that the search was illegal, the seizure of the articles is not vitiated. It may be that where the provisions of Ss. 103 and 165, Code of Criminal Procedure, are contravened the search could be resisted by the person whose premises are sought to be searched. It may also be that because of the illegality of the search the Court may be inclined to examine carefully the evidence regarding the seizure. But beyond these two consequences no further consequence ensues. *Radha Kishan* v. *State of U.P.*, AIR 1963 SC 822: 1963 Supp (1) SCR 408: 1963 Cri LJ 809: (1963) 2 LLJ 667.

Bench Strength **3**. Coram: *Syed Jafer Imam, N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 27-9-1962]

[7777] — Ss. 103 and 165(4) — Applicability to search under S. 17 of Bihar Sales Tax Act, 1947 — Held, not applicable. *Sheonath Prasad* v. *State of Bihar*, AIR 1968 SC 1517: (1969) 1 SCR 150: (1968) 22 STC 488: 1969 Cri LJ 37.

Bench Strength **2**. Coram: *S.M. Sikri* and **R.S. Bachawat**, JJ. [Date of decision: 30-4-1968]

— S. 105(2) *See* Ss. 165(1) and 105(2)

— Ch. VIII *See also* Ss. 106 to 126-A, Ch. VIII

[7778] — Ch. VIII (Ss. 106 to 124) — Detenu's liability to be tried under CrPC — Government not debarred from taking action under an Act providing for preventive detention — *Nature of detention under CrPC and MISA — Respective fields of jurisdiction — MISA, 1971, S. 3 — Criminal prosecution against detenu — Pendency of and liability to criminal prosecution against detenu. Borjahan Gorey* v. *State of W.B.*, (1972) 2 SCC 550: 1972 SCC (Cri) 888: AIR 1972 SC 2256: (1973) 1 SCR 751.

Bench Strength **3**. Coram: *J.M. Shelat*, **I.D. Dua** and *H.R. Khanna*, JJ. [Date of decision: 1-8-1972]

[7779] — Ch. VIII (Ss. 106 to 126-A) — Detention based on subjective satisfaction on grounds of suspicion — Different from judicial trial for offences and judicial orders for prevention of offences — Unsuccessful judicial trial not bar to a detention order — *Detention order cannot be challenged on ground that criminal trial or proceedings under Ch. VIII CrPC could be initiated against the detenu — MISA, 1971, S. 3 — Criminal prosecution against detenu — Pendency of and liability to criminal prosecution against detenu. Mohd. Subrati* v. *State of W.B.*, (1973) 3 SCC 250: 1973 SCC (Cri) 245: AIR 1973 SC 207: (1973) 2 SCR 990: 1974 Cri LJ 397.

Bench Strength **3**. Coram: *A. Alagiriswami*, **I.D. Dua** and *C.A. Vaidialingam*, JJ. [Date of decision: 14-11-1972]

[7780] — Ch. VIII (Ss. 106 to 126-A) — Detention order not mala fide merely because objectionable activities covered thereby also attract provisions of Ch. VIII CrPC — Preventive Detention — Detention order — Mala fide order

If the grounds are relevant and germane to the object of the detaining Act then merely because the objectionable activities covered thereby also attract the provisions of Ch. VIII CrPC, the preventive detention cannot for that reason alone be considered to be mala fide provided the authority concerned is satisfied of the necessity of the detention as contemplated by the Act. *Masood Alam* v. *Union of India*, (1973) 1 SCC 551: 1973 SCC (Cri) 435: AIR 1973 SC 897: (1973) 3 SCR 268: 1973 Cri LR (SC) 173: 1973 Cri LJ 627.

Bench Strength **3**. Coram: *A. Alagiriswami*, **I.D. Dua** and *C.A. Vaidialingam*, JJ. [Date of decision: 11-1-1973]

[7781] — Ss. 106 to 126-A, Ch. VIII — Whether constitutional — *Nature and scope of preventive detention whether different under CrPC and Constitution of India, Art. 22*

Whether S. 144 and Chapter VIII of the Code can be said to be in the interests of public order in so far as the right of freedom of speech and expression, rights of assembly and formation of associations and unions are concerned, and in the interests of general public in so far as they curtail freedom of movement throughout the territory of India.

The constitutionality of Chapter VIII of the Code is also upheld. Division A (S. 106) is aimed at persons whose past conduct has proved dangerous to the public and is intended to secure public tranquillity and peace. Division B (Ss. 107-110 and Ss. 112-119) is also intra vires. As to S. 117, sub-section (*i*) contemplates an immediate enquiry into the truth of the information. It is pending the completion of the enquiry that an interim bond can be asked for. As the liberty of the subject is involved and the person is being proceeded with on information and suspicion it is necessary to put a strict construction of power of the Magistrate. It is therefore necessary that some enquiry should be made before an interim bond is demanded. Division of Chapter VIII (119-126-A) is quite intra vires.

The power under Chapter VIII CrPC, is to be distinguished from the powered detention by executive action under Art. 22. Although the order to execute a bond issued before an offence is committed has the appearance of an administrative order, in reality it is judicial in character. Reasons are therefore to be stated by the Magistrate when he passes the order. *Madhu Limaye* v. *Sub-Divisional Magistrate*, (1970) 3 SCC 746: AIR 1971 SC 2486.

Bench Strength **7**. Coram: **M. Hidayatullah, C.J.** and *J.M. Shelat, V. Bhargava, G.K. Mitter, C.A. Vaidialingam, A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 28-10-1970]

— S. 107 *See* Ch. VIII (Ss. 106 to 124)
See also Ss. 106 to 126-A, Ch. VIII
See also Ss. 144 and 107
See also Ss. 151, 107 and 117(3)

[7782] — S. 107 — Proceedings under — Nature of

A proceeding under S. 107 CrPC, is not a trial. *State of A.P.* v. *Kokkiliagada Meerayya*, (1969) 1 SCC 161: AIR 1970 SC 771: 1970 Cri LJ 759.

Bench Strength **2**. Coram: **J.C. Shah** and *A.N. Grover*, JJ. [Date of decision: 28-11-1968]

[7783] — S. 107 — Dispute between two communities — Agreement between leaders of the communities — *Not binding on the whole community*

No party in a proceeding under S. 107, Criminal Procedure Code, could represent the whole community to which he belongs.

The compromise was not binding on the Hindu community. The compromise was not arrived at in a suit fought in a representative capacity but was filed in a proceeding under S. 107, Criminal Procedure Code. The signatories declared inter alia that "neither we, the Musalmans nor we the Hindus can at any time in future create any disturbance towards each other's religion and will deal with each other as before. We will not create any disturbance in any function of either party and will not create breach of peace with each other amongst ourselves. There is no apprehension of breach of peace as we the Hindus and the Musalmans have amicably settled the matter nor will there occur any breach of peace in future. So we both parties having settled the matter amicably, hereby submit this petition and pray that the case be disposed of in terms of this compromise petition". It is signed by a number of persons but there is no indication that they represented the two communities. It may be that these persons, who signed the compromise, were important persons in the communities and it may be that both the communities should act according to the compromise effected by the so-called important persons. But in law it does not debar the parties from asserting their legal rights in a civil court. *Shaikh Piru Bux* v. *Kalandi Pati*, AIR 1970 SC 1885: (1969) 2 SCR 563.

Bench Strength **2**. Coram: **S.M. Sikri** and *R.S. Bachawat*, JJ. [Date of decision: 29-10-1968]

[7784] — S. 107 — Object of — Subsequent events — Period of one year to keep peace expiring before judgment

It is wrong to contend that once the period for which bond was ordered to be executed has expired, the order becomes nugatory and the proceedings under S. 107 of the Code of Criminal Procedure must be dropped. The proceedings under S. 107 of the Code can continue despite the fact that the period for which the bond was required to be executed has expired.

The court however is not precluded from taking into account the subsequent events. If the material on record discloses that though there was a danger of breach of peace at one time, because of the happening of a subsequent event the danger of breach of peace has disappeared, the court can drop the proceedings and discharge the person proceeded against. The court may draw the inference that there is no apprehension of the breach of peace if a very long period has elapsed during the course of which nothing untoward has happened. *Ram Narain Singh* v. *State of Bihar*, (1972) 2 SCC 532: 1972 SCC (Cri) 870: AIR 1972 SC 2225: 1972 Cri LJ 1444: (1972) 9 ACC 195.

Bench Strength **2**. Coram: *I.D. Dua* and **H.R. Khanna**, JJ. [Date of decision: 28-7-1972]

[7785] — **Ss. 107, 112, 117 and 118 — Surety bonds — Did not amount to furnishing bail but were directed for keeping the peace**. *Govinder Singh Verma* v. *Bachubhai T. Pestonji*, (1972) 4 SCC 643: AIR 1972 SC 528: 1972 Cri LJ 316.

Bench Strength **2**. Coram: **A.N. Ray** and *D.G. Palekar*, JJ. [Date of decision: 21-10-1971]

[7786] — **Ss. 107 and 117(3) proviso — Scope and interpretation** — *Interim bonds can be directed in a case under S. 107, CrPC, as well — Proviso to S. 117(3) is no bar to it*

Section 117(3) of the Code of Criminal Procedure confers power on the Magistrate to direct the person in respect of whom order under S. 112 of the Code of Criminal Procedure has been made to execute a bond for keeping the peace. Where the respondent lodged a complaint under S. 107, Code of Criminal Procedure, the Magistrate examined the appellants and the Sub-Inspector and passed an order under S. 112 of the Code of Criminal Procedure requiring each of the appellants to show cause why he should not be asked to furnish a surety and a personal bond for maintaining the peace. The order of the Magistrate directing the appellant to execute bonds for keeping the peace were valid orders. *Govinder Singh Verma* v. *Bachubhai T. Pestonji*, (1972) 4 SCC 643: AIR 1972 SC 528: 1972 Cri LJ 316.

Bench Strength **2**. Coram: **A.N. Ray** and *D.G. Palekar*, JJ. [Date of decision: 21-10-1971]

— **Ss. 108 to 116** *See* Ch. VIII (Ss. 106 to 124)
See also Ss. 106 to 126-A, Ch. VIII
— **S. 112** *See* 107, 112, 117 and 118

[7787] — **S. 116(c) — Interpretation of — Provisions other than those of Ss. 4(w), 207-A, 251-A, or 260 of CrPC as amended by the Act would apply to pending proceedings**

The words of cl. *(c)* and the words of the rest of S. 116 would mean this that the provisions of Ss. 4*(w)*, 207-A, 251-A or 260 of the Code as amended shall not apply or affect any enquiry or trial before a Magistrate where the recording of evidence has started prior to the date of the commencement of the amending Act and every such enquiry should be continued and disposed of as if these sections had not been enacted. Except as to this and except as to the provisions mentioned in sub-clauses *(a)*, *(b)* and *(d)* the other provisions of the amended Code would be applicable to such proceedings which is also in accordance with the general principles applicable to amendments in procedural law. *Anant Gopal Sheorey* v. *State of Bombay*, AIR 1958 SC 915: 1959 SCR 919: 1958 Cri LJ 1429, 30.

Bench Strength **3**. Coram: *B.P. Sinha*, *Syed Jafer Imam* and **J.L. Kapur**, JJ. [Date of decision: 22-5-1958]

— **S. 117** *See* Ch. VIII (Ss. 106 to 124)
See also Ss. 106 to 126-A, Ch. VIII
See also Ss. 107, 112, 117 and 118
— **S. 117(3)** *See* Ss. 151, 107 and 117(3)
— **S. 117(3) proviso** *See* Ss. 107 and 117(3) proviso
— **S. 118** *See* Ch. VIII (Ss. 106 to 124)
See also Ss. 106 to 126-A, Ch. VIII
See also Ss. 107, 112, 117 and 118
— **Ss. 119 to 124** *See* Ch. VIII (Ss. 106 to 124)
See also Ss. 106 to 126-A, Ch. VIII
— **S. 125** *See* Ss. 106 to 126-A, Ch. VIII
— **S. 126-A** *See* Ss. 106 to 126-A, Ch. VIII

[7788] — **Ch. IX (Ss. 127 to 132) — Police officer — Reserve Police Officer appointed under Bombay SRPF Act, 1951 is not a police officer within the meaning of S. 25, Evidence Act, 1872** — *Hence a confession made to him is not inadmissible in evidence — He is officer-in-charge of a police station only for the purpose of maintaining public order and tranquillity and not for the purpose of investigation under Ch. XII of the CrPC, 1973 — Bombay State Reserve Police Force Act, 1951 (38 of 1951), Ss. 2(h), 10, 11 and 19 — Bombay Police Act, 1951 (22 of 1951) — CrPC, 1973, Chs. X and XII — Evidence Act, 1872, S. 25. State of Gujarat* v. *Anirudhsing*, (1997) 6 SCC 514: 1997 SCC (Cri) 946: AIR 1997 SC 2780: 1997 Cri LJ 3397.

Bench Strength **2**. Coram: *K. Ramaswamy* and *D.P. Wadhwa*, JJ. [Date of decision: 10-7-1997]

Balkishan A. Devidayal v. State of Maharashtra, (1980) 4 SCC 600: 1981 SCC (Cri) 62; Ramesh Chandra Mehta v. State of W.B., AIR 1970 SC 940: (1969) 2 SCR 461; K.I. Pavunny v. Asstt. Collector (HQ), Central Excise Collectorate, (1997) 3 SCC 721: 1997 SCC (Cri) 444; Raj Kumar Karwal v. Union of India, (1990) 2 SCC 409: 1990 SCC (Cri) 330, followed

Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899, distinguished

[7789] — Ss. 127, 128 and 132 — Sanction for prosecution of a police officer under S. 132 — Complaint not indicating that the police officer while committing the offence acted or purported to act under Ss. 127 and 128, CrPC — *Prosecution is competent without sanction*

When a complaint is made to a criminal court against any police officer and made allegations indicating that the police officer had acted or purported to act under Ss. 127 and 128 of the Code and in so doing committed some offence complained of the Court will not entertain the complaint unless it appears that the State Government had sanctioned the prosecution of that police officer. If the allegations in the complaint do not indicate such facts, the Court can have no ground for looking to the sanction of the Government and in the absence of such a sanction for refusing to entertain the complaint. It must proceed with the complaint in the same manner as it would have done in connection with complaints against any other person. The occasion for the Court to consider whether the complaint could be filed without the sanction of the Government would be when at any later stage of the proceedings it appears to the Court that the action of the police officer complained of appears to come within the provisions of Ss. 127 and 128 of the Act. This can be either when the accused appears before the Court and makes such a suggestion or when evidence or circumstances prima facie show it. The mere suggestion of the accused will not, however, be sufficient for the Court to hold that sanction was necessary. The Court can consider the necessity of sanction only when from the evidence recorded in the proceedings of the circumstances of the case it be possible to hold either definitely that the alleged criminal conduct was committed or was probably committed in connection with action under Ss. 127 and 128 of the Code. The Court has no means to hold in the circumstances alleged that the prosecution of the accused was in connection with such action as the complaint did not disclose the necessary circumstances indicating the fact and the bare word of the accused cannot be accepted to hold otherwise. Just as a complainant is likely to omit mentioning the facts which would necessitate the sanction of Government before he can prosecute the accused, the accused too is likely to make such allegations which may lead to the rejection of the complaint for want of sanction. The jurisdiction of the Court to proceed with the complaint emanates from the allegations made in the complaint and not from what is alleged by the accused or what is finally established in the case as a result of the evidence recorded. *Nagraj* v. *State of Mysore*, AIR 1964 SC 269: (1964) 3 SCR 671: (1964) 1 Cri LJ 161, 66.

Bench Strength 3. Coram: *K. Subba Rao*, **Raghubar Dayal** and *J.R. Mudholkar*, JJ. [Date of decision: 8-5-1963]

See also Ch. IX (Ss. 127 to 132)

— S. 128 *See* Ss. 127, 128 and 132

— Ss. 129 to 131 *See* Ch. IX (Ss. 127 to 132)

[7790] — S. 131 — English cases — Have persuasive value only. *Bondada Gajapathi Rao* v. *State of A.P.*, AIR 1964 SC 1645, 1647: (1964) 7 SCR 251: (1964) 2 Cri LJ 598.

Bench Strength 3. Coram: **A.K. Sarkar**[1], **M. Hidayatullah**[2] and **J.R. Mudholkar**[3], JJ. [Date of decision: 16-3-1964]

— S. 132 *See* Ss. 127, 128 and 132

See also Ch. IX (Ss. 127 to 132)

[7791] — S. 132 — Sanction for prosecution of a police officer — *Procedure to be followed when necessity of sanction proved during proceedings — Court at liberty to reject the complaint*

If S. 132 applies, the complaint could not have been instituted without the sanction of the Government and the proceedings on a complaint so instituted would be void, the Court having no jurisdiction to take those proceedings. When the proceedings be void, the Court is not competent to pass any order except an order that the proceedings be dropped and the complaint is rejected. *Nagraj* v. *State of Mysore*, AIR 1964 SC 269: (1964) 3 SCR 671: (1964) 1 Cri LJ 161, 166.

Bench Strength 3. Coram: *K. Subba Rao*, **Raghubar Dayal** and *J.R. Mudholkar*, JJ. [Date of decision: 8-5-1963]

[7792] — S. 132 — Sanction for prosecution of a police officer — S. 79, Penal Code, 1860 — *On proof of necessity of sanction the offence is not covered by S. 79, Penal Code — Offence nevertheless remains an offence*

Section 79 IPC, deals with circumstances which, when proved, make acts complained of not an offence. The circumstances to be established to get the protection of S. 132, Code of Criminal Procedure and not circumstances which make the acts complained of no offence, but are circumstances which require the sanction of the Government in the taking of cognizance of a complaint with respect to the offences alleged to have been committed by the accused. If the circumstances to be established for seeking the protection of S. 132 of the Code were to make the alleged conduct no offence, there could be no question of a prosecution with the sanction of the State Government. *Nagraj* v. *State of Mysore*, AIR 1964 SC 269: (1964) 3 SCR 671: (1964) 1 Cri LJ 161, 166.

Bench Strength **3**. Coram: *K. Subba Rao*, **Raghubar Dayal** and *J.R. Mudholkar*, JJ. [Date of decision: 8-5-1963]

[7793] — S. 132 — Sanction for prosecution of police officer — Police Officer committed offences under Ss. 307 and 326 IPC — Some others also committed in a cross case in connection with the same transaction — *Necessity of sanction for prosecution of the police officer not prima facie established by the committal officer in the cross case*

The commitment of the other accused is on the basis of the case in which they are accused and cannot be legally taken into consideration to decide the question raised in the case against the police officer. The question whether sanction under S. 132, Code of Criminal Procedure, is necessary is to be decided on the evidence in the latter case and not on the basis of the evidence and inferences drawn in the other case. The contention that the mere fact that some of the persons alleged to have framed part of unlawful assembly were prosecuted by the State and have also been committed by the Magistrate to the Sessions Court for trial prima facie establishes that the police officer's contention about the necessity of sanction under S. 132 of the Code has no force. *Nagraj* v. *State of Mysore*, AIR 1964 SC 269: (1964) 3 SCR 671: (1964) 1 Cri LJ 161.

Bench Strength **3**. Coram: *K. Subba Rao*, **Raghubar Dayal** and *J.R. Mudholkar*, JJ. [Date of decision: 8-5-1963]

[7794] — S. 132 — Sanction of prosecution of a police officer — Facts necessary to prove the necessity of sanction detailed

To get benefit of S. 132, Code of Criminal Procedure, and to put off a clear decision on the question whether his conduct amounts to an offence or not, the appellant has to show *(i)* that there was an unlawful assembly or an assembly of five or more persons likely to cause a disturbance of the public peace; *(ii)* that such an assembly was commanded to disperse; *(iii)* that either the assembly did not disperse on such command or, if no command had been given, its conduct had shown a determination not to disperse; and *(iv)* that in the circumstances he had used force against the members of such assembly. He has to establish these facts just in the same manner as an accused has to establish any other exception he pleads in defence of his conduct in a criminal case. It is sufficiently well-settled that it is for the prosecution to prove the offence in the sense that the offence was committed in the circumstances in which no recourse to an exception could be taken and, therefore, if the accused establishes such circumstances which either conclusively establish to the satisfaction of the Court or make the Court believe them to be probable that the case comes within the exception that would be sufficient compliance on the part of the accused with respect to his proving the exception to prove which the onus was on him. In the present case, therefore, the accused has to show to the Court that the alleged offences were committed during the performance of his duties in the circumstances narrated above. On his so showing, it would be the duty of the Court to hold that the complaint could not have been entertained without the sanction of the Government under S. 132 of the Code. *Nagraj* v. *State of Mysore*, AIR 1964 SC 269: (1964) 3 SCR 671: (1964) 1 Cri LJ 161, 66.

Bench Strength **3**. Coram: *K. Subba Rao*, **Raghubar Dayal** and *J.R. Mudholkar*, JJ. [Date of decision: 8-5-1963]

[7795] — S. 133 — Magistrate can compel municipality to make drains and improve sewerage affecting the health and convenience of the residents — *Financial stringency of the municipal body, held, is no defence — Order to abate the nuisance by affirmative action on a time-bound basis, held, justified — Tort action also possible — CrPC, 1973, S. 133*

Section 133, CrPC, permits enforcement of civic rights under the municipal law where neglect has led to a public nuisance. The section permits affirmative action to abate the nuisance on a time-bound basis by issuing specific directives.

Judicial discretion, when facts for its exercise are present, has a mandatory import. Section 133, CrPC is categoric although reads discretionary. So when the Magistrate has before him information and evidence, which disclose the existence of a public nuisance and, on the materials placed, he considers that such unlawful obstruction or nuisance should be removed from any public place which may be lawfully used by the public, he shall act under S. 133, CrPC and order removal of such nuisance within a time to be fixed in the order. Failure to comply with the direction will be visited with a punishment contemplated by S. 188, IPC. The offence is aggravated if the disobedience tends to cause danger to human health or safety.

Providing drainage system in a working condition sufficient to meet the needs of the people, cannot be evaded by the municipality on ground of financial inability. Such a plea has no juridical basis.

The Magistrate must estimate the cost of the scheme, fix reasonable time-limits for its execution and even oversee the actual execution of the scheme.

In the present case, while upholding the Magistrate's order under S. 133, the Supreme Court tailored the Magistrate's directions to make it workable by giving certain pragmatic directions to the municipal council in this regard. *Municipal Council, Ratlam* v. *Vardichan*, (1980) 4 SCC 162: 1980 SCC (Cri) 933: AIR 1980 SC 1622: 1980 Cri LJ 1075: (1980) 6 ALR 601.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *O. Chinnappa Reddy*, JJ. [Date of decision: 29-7-1980]

[7796] — S. 133(1) — Public nuisances — Scope — *Trade of auctioning vegetable carried in a private house near vegetable market — Inconvenience caused to the people as a result of parking of carts and noise — There is no "unlawful obstruction" or "conduct of trade injurious to the health or physical comfort of the community" — Cases not covered by 1st or 2nd clause of S. 133 — Action under S. 133 is illegal*

Appellants carry on the trade of auctioning vegetable, which are brought in carts which are parked on the public road outside the building where the auctioning takes place in Subzimandi area. Some amount of inconvenience is caused to the people who pass by the public road because of the carts which necessarily come near the house. Dispute is whether action under S. 133, Code of Criminal Procedure, can be taken against the persons carrying on the business.

Two out of several clauses of S. 133(1) concerned with the circumstances covering the facts of the case the first and second clauses are. The first clause can have no application because unlawful obstruction, if any, is certainly not caused by the people who carry on the trade of auctioning. If the obstruction caused by keeping the carts on the roads can be considered to be "unlawful obstruction" within the meaning of clause one (no opinion expressed on this panel) action can be taken against the persons causing such obstruction. The obvious difficulty in the way of that is that the persons who bring the carts are not the same from day to day. The appellants cannot be considered to have caused obstruction merely because the appellants carry on auctioning in connection with which the carts are brought.

Second clause of S. 133(1) is also not applicable because auctioning trade is not injurious to the health or physical comfort of the community. The noise caused in the course of business is a necessary concomitant of buying and selling large quantities and it will be unreasonable to think that merely because some noise is caused which people preferring perfect peace may not like, this is injurious to the physical comfort or health of the community. The conduct of trades of this nature and indeed of other trades in localities of the city where such trades are usually carried on, is bound to produce some discomfort, though at the same time perhaps in the good of the community in other respects.

The slight discomfort that may be caused to some people passing by the road or living in the neighbourhood cannot ordinarily be considered to be such as to justify action under S. 133 of Code of Criminal Procedure. *Ram Autar* v. *State of U.P.*, AIR 1962 SC 1794: (1963) 3 SCR 9: (1963) 1 Cri LJ 14.

Bench Strength 3. Coram: *J.L. Kapur*, **K.C. Das Gupta** and *Raghubar Dayal*, JJ. [Date of decision: 3-5-1962]

[7797] — Ss. 133(1) and 138 — Removal of nuisance — Construction of chimney and oven by a bakery-owner — *Magistrate's enquiry report showing that the chimney, besides being an encroachment upon public place, was emitting smoke on G.T. Road affecting health of the people and the oven could cause conflagration — Held, where health, safety and convenience of the public at large are involved, the safer course would be to accept the view of the Magistrate who himself had seen the hazard — Magistrate's order to demolish those constructions, held, proper — But he could not direct in his final order to cease carrying on the bakery trade at the particular site. Gobind Singh* v. *Shanti Sarup*, (1979) 2 SCC 267: 1979 SCC (Cri) 444: AIR 1979 SC 143: 1979 Cri LJ 59.

Bench Strength 3. Coram: **Y.V. Chandrachud, C.J.** and *R.S. Sarkaria* and *O. Chinnappa Reddy*, JJ. [Date of decision: 15-9-1978]

— S. 138 *See* Ss. 133(1) and 138

— S. 144 *See also* Ss. 435 & 439 and 144

[7798] — S. 144 — Maintenance of law and order being the function of DM, Supreme Court at the instance of petitioner claiming rights under Arts. 25 and 26 cannot interfere with such function of DM — *Rights under Arts. 25 and 26 not absolute — DM expected to take measures well in* *advance in consonance with S. 144 CrPC — Writ petition not maintainable — Constitution of India, Arts. 32, 25 and 26. Ishtiaq Hussain Farooqui* v. *State of U.P.*, 1986 Supp SCC 531: 1987 SCC (Cri) 157: AIR 1988 SC 93.

Bench Strength **2**. Coram: *A.P. Sen* and *B.C. Ray*, JJ. [Date of decision: 29-9-1986]

Gulam Abbas v. State of U.P., (1982) 1 SCC 71: 1982 SCC (Cri) 82, relied on

[7799] — S. 144 — Constitutionality — *Whether constitutional — Nature and scope of preventive detention whether different under CrPC and Constitution of India, Art. 22*

Whether S. 144 and Chapter VIII of the Code can be said to be in the interest of public order in so far as the right of freedom of speech and expression, rights of assembly and formation of associations and unions are concerned, and in the interests of general public in so far as they curtail freedom of movement throughout the territory of India.

The gist of the action under S. 144 is the urgency of the situation, its efficacy in the likelihood of being able to prevent some harmful occurrences. There is no general proposition that an order under S. 144 cannot be passed without taking evidence. The areas of the two kinds of detention, one by Magistrates under the Code of Criminal Procedure and another under laws for preventive detention under Art. 22 of the Constitution are entirely different and therefore there is good classification.

The keynote of the power is to free society from menace of serious disturbances of grave character. Section 144 is directed against those who attempt to prevent the exercise of legal right by others, or imperil public safety and health. So the matter must fall within the restrictions which the Constitution itself visualises as permissible in the interest of public order or in the interests of the general public. This Court is satisfied that there are sufficient safeguards available to person affected by the order under S. 144 and the restrictions are reasonable. The section is not unconstitutional if properly applied and the fact that it may be abused is no ground for striking down. The remedy then is to question the exercise of the power as being outside the grant of the law. *Madhu Limaye* v. *Sub-Divisional Magistrate*, (1970) 3 SCC 746: AIR 1971 SC 2486.

Bench Strength **7**. Coram: **M. Hidayatullah, C.J.** and *J.M. Shelat, V. Bhargava, G.K. Mitter, C.A. Vaidialingam, A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 28-10-1970]

[7800] — S. 144 — Constitutionality — *Whether Arts. 19(1)(a), (b), (c) and (d) contravened*

That the provisions of the Code, properly understood, are not in excess of the limits laid down in the Constitution for restricting the freedoms guaranteed by Arts. 19(1)(*a*), (*b*), (*c*) and (*d*).

The accepted fiction in the First Amendment is to make the Constitution be read with the new clause and no other, and a law restricting the freedoms in the interests of public order (among others) or in the interests of the general public must be held to save, not as a result of amendment, but because of these available restrictions operating from the inception of the Constitution. *Madhu Limaye* v. *Sub-Divisional Magistrate*, (1970) 3 SCC 746: AIR 1971 SC 2486.

Bench Strength **7**. Coram: **M. Hidayatullah, C.J.** and *J.M. Shelat, V. Bhargava, G.K. Mitter, C.A. Vaidialingam, A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 28-10-1970]

[7801] — S. 144 — Scope and validity — Order making an exception in respect of funeral and religious processions — *The Magistrate could nevertheless grant permission for going out in procession or for assembling for other purposes — Omission to make the exemption clause more comprehensive does not vitiate the order on the ground of placing unreasonable restrictions on fundamental rights of citizens*

So far as the customary, religious or funeral processions are concerned, the exemption has been granted in the order itself that if anyone wanted to take out a procession for some other purpose which was lawful it was open to them under S. 144, sub-section (4) to apply for an alteration of the order and obtain a special exemption. Mere omission of the District Magistrate to make the exemption clause of the order more comprehensive would not vitiate the order on the ground that it places unreasonable restrictions on certain fundamental rights of citizens. *Babulal Parate* v. *State of Maharashtra*, AIR 1961 SC 884: (1961) 3 SCR 423: (1961) 2 Cri LJ 16, 22.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.* and *S.K. Das, A.K. Sarkar, N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 12-1-1961]

[7802] — S. 144 — Scope and validity — Order prohibiting "provocative slogans", but not defining the term — *The part of the order is not vague and not unconstitutional on this ground*

The expression "provocative slogans" used in the order has necessarily to be understood in the context in which it has been used in the order and, therefore, it cannot be regarded as vague. The order is, therefore, not unconstitutional for not giving any definition of the word "provocative slogans". *Babulal Parate* v. *State of Maharashtra*, AIR 1961 SC 884: (1961) 3 SCR 423: (1961) 2 Cri LJ 16, 22.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.* and *S.K. Das, A.K. Sarkar, N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 12-1-1961]

[7803] — S. 144 — Scope and validity — Order promulgated because of the serious turn which an industrial dispute had taken — *Nothing to suggest that member of public likely to indulge in activities prejudicial to public order — Order nevertheless directed against the entire public — The order is not unconstitutional*

It is true that there is no suggestion that the general public was involved in the industrial dispute. It is also true that by operation of the order the movements of the members of the public would be restricted in particular areas. But it would be extremely difficult for those who are in charge of law and order to differentiate between members of the public and members of the two textile unions and, therefore, the only practical way in which the particular activities referred to in the order could be restrained or restricted would be by making those restrictions applicable to the public generally.

If, therefore, any members of the public unconnected with the two textile unions wanted to exercise these rights it was open to them to move the District Magistrate and apply for a modification of the order by granting them an exemption from the restrictions placed by the order. The order under S. 144, Code of Criminal Procedure, is, therefore, not unconstitutional on the ground that it is directed against the entire public though, in the order, the Magistrate has stated clearly that it was promulgated because of the serious turn which an industrial dispute had taken and there was nothing to suggest that members of public were likely to indulge in activities prejudicial to public order. *Babulal Parate* v. *State of Maharashtra*, AIR 1961 SC 884: (1961) 3 SCR 423: (1961) 2 Cri LJ 16, 22.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.* and *S.K. Das, A.K. Sarkar, N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 12-1-1961]

[7804] — S. 144 — Show cause under S. 144(5) — *Right conferred by cl.(5) is not illusory on the ground that Magistrate will be a judge of his own decision — Remedy of judicial review of the order under the section is also as a whole not illusory*

The right conferred on the aggrieved person to challenge an order under S. 144(1) by S. 144(5) is not illusory on the ground that the Magistrate would be a judge with regard to his own decision. Again although no appeal has been provided in the Code against the Magistrate's order under S. 144, the High Court has power under S. 435, read with S. 439 of the Code to entertain an application for the revision of such an order. The validity of the order under S. 144, Code of Criminal Procedure, can also be challenged when prosecution under S. 188, Indian Penal Code, for infringing an order under S. 144, Code of Criminal Procedure, is launched. The contention that the remedy of judicial review is illusory cannot therefore be accepted. *Babulal Parate* v. *State of Maharashtra*, AIR 1961 SC 884: (1961) 3 SCR 423: (1961) 2 Cri LJ 16, 22.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.* and *S.K. Das, A.K. Sarkar, N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 12-1-1961]

[7805] — S. 144 — Validity — Conferral of wide powers on Magistrate — Does not amount to infringement of Arts. 19(1)(a) and (b) — *Does not place unreasonable restrictions on fundamental rights — Section is not ultra vires on this ground*

The provisions of S. 144 are attracted only in an emergency. The maintenance of law and order being the duty and function of the executive department of the State it is inevitable that the question of formation of an opinion as to whether there is an emergency or not must necessarily rest, in the first instance, with those persons through whom the executive exercises its functions and discharges its duties. It would be impracticable and even impossible to expect the State Government itself to exercise those duties and functions in each and every case. The provisions of the section, therefore, which commit the power in this regard to a magistrate belonging to any of the classes referred to therein cannot be regarded as unreasonable. The satisfaction of the magistrate as to the necessity of promulgating an order under S. 144 is not made entirely subjective by the section. The magistrate is, though in appropriate cases empowered, to make an order under S. 144 ex parte, the law requires that he should, where possible, serve a notice on the person or persons against whom the order is directed before passing that order. Sub-section (4) then provides that any magistrate either on his own motion or on the application of any person aggrieved, rescind or alter any order made under the section. Thus even when an ex parte order is made the person or persons affected thereby have a right to challenge the order of the magistrate. Sub-section (5) provides that where such a challenge is made, the magistrate shall give an early opportunity to the person concerned of appearing before him and showing cause against the order. The decision of the magistrate in such a proceeding would undoubtedly be a judicial one inasmuch as it will have been arrived at after hearing the party affected by the order. Since, the proceeding before the magistrate would be a judicial one, he will have to set aside the order unless he comes to the conclusion that the grounds on which it rests are in law sufficient to warrant it. Further, since the propriety of the order is open to challenge it cannot be said that by reason of the wide amplitude of the power which S. 144 confers on certain magistrates it places unreasonable restrictions on certain fundamental rights. The conferral of such wide powers on the magistrate does not therefore amount to an infringement of the rights guaranteed under Arts. 19(1)(*a*) and (*b*) of the Constitution. *Babulal Parate* v. *State of Maharashtra*, AIR 1961 SC 884: (1961) 3 SCR 423: (1961) 2 Cri LJ 16, 22.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.* and *S.K. Das, A.K. Sarkar, N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 12-1-1961]

[7806] — S. 144 — Validity of order — *Land grab movement — Whether lawful — Action against petitioner premature — Overt act is not necessary to justify arrest — Reasonable apprehension of the breach of peace is enough*

The order is perfectly valid. The petitioner and his political party believed that as Government had failed to implement its own land laws as to end economic inequality, it became the duty of the citizens to force their implementation by the land grab movement.

Interim relief was granted by this Court by limiting his movements to the Union Territory of Delhi as the action against him appeared premature inasmuch as he had cancelled his meeting in Lucknow and was to only speak at a Press Conference with no possibility of any breach of the peace. But the evidence of posters and the documents indicating a widespread movement of defiance as to the land laws, and the petitioner's own admission as to his overt act relating to the Birla Farm, are enough to justify the promulgation of the order under S. 144, CrPC

No overt act is necessary to justify the arrest for breach of the order under S. 144. All that is required is a reasonable apprehension of breach of peace and the necessity to prevent it.

The petitioner could be remanded but as the Magistrate himself did not extend it and the petitioner has been released, the petition is infructuous and be dismissed. *S.A. Dange* v. *State of U.P.*, (1970) 3 SCC 218: 1971 SCC (Cri) 36.

Bench Strength **5**. Coram: **M. Hidayatullah, C.J.** and *J.M. Shelat, G.K. Mitter, C.A. Vaidialingam* and *A.N. Ray*, JJ. [Date of decision: 28-10-1970]

[7807] — S. 144 — Validity on the ground of possible abuse of powers by the Magistrate — *There are factors in the section for conditioning the exercise of wide powers — The section cannot be declared ultra vires merely because a Magistrate may possibly abuse his powers*

Though the power conferred by S. 144 on a Magistrate appears to be wide, it can be exercised only in an emergency and for the purpose of preventing obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity or a riot, or "an affray". These factors condition the exercise of the power and it would consequently be wrong to regard that power as being unlimited or untrammelled. Further, it should be borne in mind that no one has a right to cause "obstruction, annoyance or injury etc.", to anyone. Since the judgment has to be of a magistrate as to whether in the particular circumstances of a case an order, in exercise of these powers, should be made or not, Supreme Court is entitled to assume that the powers will be exercised legitimately and honestly. The section cannot be struck down on the ground that the Magistrate may possibly abuse his powers. *Babulal Parate* v. *State of Maharashtra*, AIR 1961 SC 884: (1961) 3 SCR 423: (1961) 2 Cri LJ 16, 22.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.* and *S.K. Das, A.K. Sarkar, N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 12-1-1961]

[7808] — Ss. 144 and 56(a) — Constitutional validity of S. 144 — *Validity of the order under S. 144 — Whether sustainable — Land Grab Movement by overt acts — S. 188, IPC — Whether infringed — Whether order vitiated by vagueness or generality or excess of jurisdiction — Reasonableness of the order*

The impugned order is not wide or vague. The petitioners were out to defy the order under S. 144, prohibiting any agitation as to Land Grab Movement. There was sufficient publication of the order. A general order alone was feasible when the movement is organised by Samyukta Socialist Party and the Communist Party of India. Individuals as members of the party have enough notice of the prohibitory order.

The contention that the application of the order being general there was an excess in the exercise of jurisdiction is rejected.

The District Magistrate had ample materials on which he issued the impugned prohibitory order. The gist of the information given in the Preamble to the order are based on facts. The various clauses in the order carry out the purpose of the Preamble with the minimum of interruption of the life of the community. There are reasonable exclusions and the operation of the order is limited to those whose actions are apprehended to cause the mischief, S. 144 is intended to prevent. Therefore the preventive action against the petitioner was justified. *R.K. Garg* v. *Supdt., Distt. Jail*, (1970) 3 SCC 227: 1971 SCC (Cri) 45.

Bench Strength 5. Coram: **M. Hidayatullah, C.J.** and *J.M. Shelat, G.K. Mitter, C.A. Vaidialingam* and *A.N. Ray*, JJ. [Date of decision: 28-10-1970]

[7809] — Ss. 144 and 107 — Action under — Arrest without warrant under S. 151 — *Petitioner refusing to give bail remanded to custody by Magistrate — Notice under S. 112 read and without any enquiry interim bond called for — Whether valid — Constitutionality of S. 144 and Ch. VIII upheld by Supreme Court — On facts without enquiry or examining any witness whether Magistrate can act under S. 117(3), CrPC — Detention held illegal and petitioners declared free as they were already free as remand was not extended by the Magistrate*

Section 117(3) presumes that unless the person is bound over, he would be able to perpetrate that act, which causes an apprehension of breach of peace. It is not necessary to take a bond from a person who is already in detention and is not released. *Madhu Limaye* v. *Ved Murti*, (1970) 3 SCC 739: AIR 1971 SC 2481: 1971 Cri LJ 1715.

Bench Strength 5. Coram: *M. Hidayatullah, C.J.* and *J.M. Shelat, G.K. Mitter, C.A. Vaidialingam* and *A.N. Ray*, JJ. [Date of decision: 28-10-1970]

[7810] — S. 144(1) — Powers of the Magistrate to pass an order are not arbitrary

It is true that there is no express mention anywhere in S. 144, Code of Criminal Procedure, that the order of the Magistrate should be preceded by an enquiry. But the section should be construed as a whole. The latter part of sub-section (1) of S. 144 specifically mentions that the order of the magistrate should set out the material facts of the case. It would not be possible for the magistrate to set out the facts unless he makes an enquiry or unless he is satisfied about the facts from personal knowledge or on a report made to him which he prima facie accepts as correct. Clearly, therefore, the section does not confer an arbitrary power on the magistrate in the matter of making an order. *Babulal Parate* v. *State of Maharashtra*, AIR 1961 SC 884: (1961) 3 SCR 423: (1961) 2 Cri LJ 16, 22.

Bench Strength 5. Coram: *B.P. Sinha, C.J.* and *S.K. Das, A.K. Sarkar, N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 12-1-1961]

[7811] — S. 144(6), Pt. II — *Constitutional validity — Restriction on fundamental right — Test of reasonableness — Constitution of India, Arts. 19(1)(b), (c) and (d)*

Per Shelat, Vaidialingam, Hegde and Ray, JJ.

From a plain reading of S. 144(6), Criminal Procedure Code, it is clear that the power conferred on the State Government is an independent power and it is an executive power. It is not expected to be exercised judicially. It is open to be exercised arbitrarily. The directions given in the exercise of that power need not be of a temporary nature. The ambit of that power is very large and it is uncontrolled.

It is not possible to formulate an effective test which would enable the Court to pronounce any particular restriction to be reasonable or unreasonable *per se*. All the attendant circumstances must be taken into consideration and one cannot dissociate the actual contents of the restrictions from the manner of their imposition or the mode of putting them into practice. In other words in order to be a reasonable restriction, the same must not be arbitrary or excessive and the procedure and the manner of imposition of the restriction must also be fair and just. Any restriction which is opposed to the fundamental principles of liberty and justice cannot be considered reasonable.

One of the important tests to find out whether a restriction is reasonable is to see whether the aggrieved party has a right of representation against the restriction imposed or proposed to be imposed. No person can be deprived of his liberty without being afforded an opportunity to be heard in defence and that opportunity must be adequate, fair and reasonable. Further the courts have to see whether the restriction is in excess of the requirement or whether it is imposed in an arbitrary manner.

Now adverting to the restriction impugned in this case, the power to impose the same is conferred on the executive Government and not to any judicial authority. There is no provision to make representation by the aggrieved party against the direction given by the Government; no appeal or revision is provided against that direction and the order made need not be of temporary nature. Hence we agree with the High Court that the impugned provision is violative of Arts. 19(1)(*b*), (*c*) and (*d*) and is not saved by Arts. 19(3), (4) or (5).

Per Shah, J.

In adjudging the reasonableness of the restrictions imposed by the exercise of power on the fundamental rights of the citizen, absence of a provision for judicial review and of machinery for obtaining an order recalling or amending the order made in exercise of that power have to be given due weight: *Virendra* v. *State of Punjab*, 1958 SCR 308. But as already pointed out the State Government has to make an order not on any subjective satisfaction. The order is liable to recession or alteration under sub-section (4). Validity of an order made by a Magistrate is open to challenge on appropriate grounds even after it is extended by the direction of the State Government in a proceeding before the High Court, for the jurisdiction of the High Court to examine the validity of the order of the Magistrate is not affected by the extension of the duration of the order by the direction of the executive. Again under sub-section (4) of S. 144 a proceeding for withdrawal of modification of the order may be initiated even after the State has by direction extended its duration.

The duty of maintaining law and order ordinarily lies on the executive, but since the making of an order under S. 144 involves serious infringement of the rights of the citizens exercise of the power is conditioned by a judicial evaluation of the circumstances which necessitate it. Whether the order remains operative for its normal duration, or is extended by direction of the executive, the magisterial verdict lends sustenance to it. Apprehension that the executive may abuse the power to extend the duration will not, in my judgment, justify the Court in holding that the extension shifts the source of authority of the order, or vitiates the magisterial evaluation. I cannot accept the abstract standard that every statute in the execution of which fundamental rights of citizens may be infringed will be adjudged unreasonable, if within its framework the statute does not provide machinery for judicial scrutiny or for rescission of the action taken. Nor can I accept the plea that absence of machinery in the Code for approaching the High Court for redress against the direction of the State, and absence of express provision for moving the State for rescission or alteration of the duration constitutes a test of unreasonableness. Reasonableness of a statutory provision cannot be determined by the application of a set formula. It must be determined on a review of the procedural and substantive provisions of the statute keeping in mind the nature of the right intended to be infringed, underlying purpose of the restriction contemplated to be imposed, gravity of the evil intended to be remedied thereby, object intended to be achieved by the imposition of restriction, and other relevant circumstances. *State of Bihar* v. *Kamla Kant Misra*, (1969) 3 SCC 337: AIR 1971 SC 1667.

Bench Strength **5**. Coram: **J.C. Shah**[2], *J.M. Shelat, C.A. Vaidialingam*, **K.S. Hegde**[1] and *A.N. Ray*, JJ. [Date of decision: 29-10-1969]

— S. 145 *See also* Ss. 148 and 145

[7812] — S. 145 — Possession of receiver in proceedings under S. 145 CrPC — Limitation — *Held, the same should be excluded under Limitation Act, 1963, Art. 64. Ittyavira Mathai* v. *Varkey Varkey*, AIR 1964 SC 907: (1964) 1 SCR 495: 1963 Ker LJ 952: (1963) 2 Ker LR 277: 1963 Ker LT 1133.

Bench Strength **4**. Coram: *Syed Jafer Imam, K. Subba Rao, Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 15-1-1963]

[7813] — S. 145 — Property attached by Magistrate under — Suit for declaration of title to such property without asking for possession, held, competent — *Specific Relief Act, 1963, S. 34 — Specific Relief Act, 1877, S. 42*

In a suit for declaration of title to property filed when it stands attached under S. 145 of the Code, it is not necessary to ask for the further relief of delivery of possession. The fact, if it be so, that in the case of such an attachment, the magistrate holds possession on behalf of the party whom he ultimately finds to have been in possession is, irrelevant. Where the defendant is not in possession and not in a position to deliver possession to the plaintiff, it is not necessary for the plaintiff in a suit for a declaration of title to property to claim possession.

Now it is obvious that in the present case, the respondents were not in possession after the attachment and were not in a position to deliver possession to the appellants. The magistrate was in possession, for whomsoever, it does not matter, and he was not of course a party to the suit. The further relief contemplated by the proviso to S. 42 of the Specific Relief Act is relief against the defendant only. It was not necessary to ask for possession when property was in custodia legis. There is no doubt that property under attachment under S. 145 of the Code is in custodia legis. *Deo Kuer* v. *Sheo Prasad Singh*, AIR 1966 SC 359: (1965) 3 SCR 655: 1966 Mah LJ 120: (1966) 1 MLJ (SC) 12.

Bench Strength **3**. Coram: **A.K. Sarkar**, *M. Hidayatullah* and *Raghubar Dayal*, JJ. [Date of decision: 8-4-1965]

Dukhan Ram v. Ram Nanda Singh, AIR 1961 Pat 425, overruled

Sunder Singh Mallah Singh Sanatan Dharam High School Trust v. Managing Committee. Sunder Singh Mallah Singh Rajput High School, 65 Ind App 106: AIR 1938 PC 73; K. Sundaresa Iyer v. Sarvajana Sowkiabi Virdhi Nidhi Ltd., ILR 1939 Mad 986: AIR 1939 Mad 853, approved

[7814] — S. 145 — Affidavits sworn or affirmed before magistrates not in seisin of the case inadmissible in evidence under that section

An affidavit under S. 145 is not of a formal character because it is meant to prove or disprove the competing claims of the parties as respects the facts of actual possession of the subject of dispute. There is thus no provision in the Code specifying the courts or persons before whom the affidavits referred to in S. 145 have to be sworn and affirmed. This has therefore to be done according to the general provisions relating to affidavits.

It is an essential characteristic of an affidavit that it should be made on oath or affirmation before a person having authority to administer the oath or affirmation.

Now it is clear from the provisions of S. 4*(a)* of the Oaths Act, 1873 that all courts and persons having by law or consent of parties authority to receive evidence are authorised to administer oaths and affirmations, but they can do so only where they are otherwise acting "in the discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law". So the court or person mentioned in clause *(a)* of S. 4 of the Oaths Act can administer oath or affirmation to the deponent in an affidavit only if the court or person is acting in the "discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law".

In the present cases, the magistrates concerned with the proceeding under S. 145 of the Code were discharging the duties imposed and exercising the powers conferred by the Code, and they alone could administer the oaths and affirmations to the persons who made the affidavits, and not the magistrates who were not discharging any such duty or exercising any such power. As the affidavits in the present cases were admittedly not sworn or affirmed before magistrates who were dealing with the disputes under S. 145 of the Code, they were not proper affidavits and did not constitute evidence for purpose of S. 145. *Chhotan Prasad Singh* v. *Hari Dusadh*, (1977) 1 SCC 102: 1977 SCC (Cri) 35: AIR 1977 SC 407: 1977 Cri LJ 249: (1977) 2 SCR 174.

Bench Strength 3. Coram: *P.N. Bhagwati, A.C. Gupta* and **P.N. Shinghal**, JJ. [Date of decision: 24-11-1976]

[7815] — S. 145 — Attachment of property — Effect of temporary injunction — *Property attached by SDM — Temporary injunction obtained by party for stay of proceedings — SDM disregarding injunction and appointing receiver — High Court upholding the order — Supreme Court remitting case to SDM*

This case must go back to the Sub-Divisional Magistrate for decision of the proceedings before him. Those proceedings commenced as far back as 1967 and the question whether there is or there is not any apprehensions of breach of peace will certainly have to be decided in the light of the happenings in the Civil Court. In the meantime there is no reason to set aside the order of the High Court. It will be open to the Sub-Divisional Magistrate to consider whether the receiver should be continued or not, but in any event, he shall not disturb the possession of the appellant so long as the temporary injunction is outstanding and pending the decision of the proceedings under S. 145 of the Code of Criminal Procedure with a view to handing over the possession to the other side. *Sajjan Singh* v. *Sajjan Singh*, 1969 SCD 1066: 1970 UJ (SC) 75: 1970 SC Cr R 393.

Bench Strength 2. Coram: **M. Hidayatullah**, **C.J.** and *A.N. Grover*, J. [Date of decision: 10-10-1969]

[7816] — S. 145 — Benefit of order made under — Held, extends only to those in the proceedings

The benefit of the order made under S. 145, Code of Criminal Procedure, could only be taken by the persons in whose favour that order was made and that it could not operate for the benefit of all the 846 fishermen represented by the eighteen defendants or in favour of all fishermen who would come to reside in these nine villages in times to come.

There is no evidence whatsoever to show that besides the twelve persons mentioned as second party in proceedings u/s. 145, Code of Criminal Procedure who else was represented by them and, therefore, the benefit of that order can only be given to those defendants who are represented by those twelve persons. *Raja Braja Sundar Deb* v. *Moni Behara*, AIR 1951 SC 247, 252: 1951 SCR 431: ILR 30 Pat 871: 17 Cut LT 252.

Bench Strength 3. Coram: **M.C. Mahajan**, *B.K. Mukherjea* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 27-3-1951]

[7817] — S. 145 — Fishery — Dispute regarding — Held, covered. *Raja Braja Sundar Deb* v. *Moni Behara*, AIR 1951 SC 247: 1951 SCR 431: ILR 30 Pat 871: 17 Cut LT 252.

Bench Strength 3. Coram: **M.C. Mahajan**, *B.K. Mukherjea* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 27-3-1951]

[7818] — S. 145 — Magistrate referring question to civil court — Does not confer his criminal jurisdiction on civil court

No doubt, the Magistrate, while discharging his function under the Code of Criminal Procedure under S. 145(1), would be exercising his criminal jurisdiction because that is the only kind of jurisdiction which the Code confers upon the Magistrates but when the Magistrate refers the question to a civil court he does not confer a part of his criminal jurisdiction upon the civil Court. There is no provision under which he can clothe a court or a tribunal which is not specified in the Criminal Procedure Code with criminal jurisdiction. *Ram Chandra Aggarwal* v. *State of U.P.*, AIR 1966 SC 1888, 1890: 1966 Supp SCR 393: 1966 All Cri R 397: 1966 Cri LJ 1514: 1966 ALJ 1122.

Bench Strength **2**. Coram: **J.R. Mudholkar** and *V. Ramaswami*, JJ. [Date of decision: 5-5-1966]

[7819] — S. 145 — Object and meaning — Continuance of breach of peace at the time of passing of preliminary order not necessary

The object of S. 145, no doubt is to prevent breach of peace and for that end to provide a speedy remedy by bringing the parties before the court and ascertaining who of them was in actual possession and to maintain status quo until their rights are determined by a competent court. The section requires that the Magistrate must be satisfied before initiating proceedings that a dispute regarding an immovable property exists and that such dispute is likely to cause breach of peace. But once he is satisfied of these two conditions, the section requires him to pass a preliminary order under sub-section (1) and thereafter to make an enquiry under sub-section (4) and pass a final order under sub-section (6). It is not necessary that at the time of passing the final order the apprehension of breach of peace should continue or exist. *R.H. Bhutani* v. *Mani J. Desai*, AIR 1968 SC 1444: (1969) 1 SCR 80: 1969 Cri LJ 13, 17, 18.

Bench Strength **3**. Coram: *S.M. Sikri*, **J.M. Shelat** and *V. Bhargava*, JJ. [Date of decision: 23-4-1968]

[7820] — S. 145 — Proceedings under taken up where title disputed — Order under declaring actual possession later set aside — Held, such circumstance could not deprive a party of the benefit of his possession and of the dispossession of the other party under a statutory provision. *Gurucharan Singh* v. *Kamla Singh*, (1976) 2 SCC 152: AIR 1977 SC 5: (1976) 1 SCR 739.

Bench Strength **3**. Coram: **V.R. Krishna Iyer**, *A.C. Gupta* and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 9-9-1975]

[7821] — S. 145 — Property attached and placed in the custody of SDO — *Plaintiff unable to make good his claim to the title — Concurrent finding — Supreme Court not interfering and directing state trust board to take over. Dhyan Singh* v. *Chandradip Singh*, CA No. 139 of 1966

Bench Strength **3**. Coram: *S.M. Sikri*, **R.S. Bachawat** and *K.S. Hegde*, JJ. [Date of decision: 16-1-1969]

[7822] — S. 145 — Removal of property while in custody of person appointed by court — *Held, dishonest removal — Property in possession of superdar appointed by court — Accused harvesting crop without his permission*

The crops in a legal sense must be deemed to be in the possession of the Court through Superdar, though ultimately the Court has held that the land was in the possession of the appellants, but so long as the land was in the possession of the Court through a person appointed to manage it and to plant the crop thereon, without the consent of the person in possession the crops could not be removed and if they were removed, prima facie it would be regarded as dishonest removal. *Hukum Singh* v. *State of U.P.*, CrA No. 28 of 1968.

Bench Strength **3**. Coram: **Shah**, *Ramaswami* and *Grover*, JJ. [Date of decision: 26-11-1968]

[7823] — S. 145 — Scope — Person out of possession obtaining an order under S. 145 in his favour — *Taking possession by virtue of the order — The possession cannot be under the provisions of Criminal Procedure Code*

Section 145 of the said Code does not confer on a Magistrate any power to make an order directing the delivery of possession to a person who is not in possession on the date of the preliminary order made by him under S. 145(1) of the Code. Under S. 145(1) of the Code, his jurisdiction is confined only to decide whether any and which of the parties was on the date of the preliminary order in possession of the land in dispute. The order only declares the actual possession of a party on a specified date and does not purport to give possession or authorise any party to take possession. Even in the case of any party who has been forcibly and wrongfully dispossessed within two months next before the date of the preliminary order, the Magistrate is only authorised to treat that party who is dispossessed as if he had been in possession on such date. If that be the legal position, the appellants could not have taken possession of the disputed lands by virtue of an order made under the provisions of S. 145 of the Code of Criminal Procedure. They were either in possession or not in possession of the said lands on the specified date, and, if they were not in possession on that date, their subsequent taking possession thereof could not have been under the provisions of the Code of Criminal Procedure. *Bhinka* v. *Charan Singh*, AIR 1959 SC 960: 1959 Supp (2) SCR 798: 1959 Cri LJ 1223, 1229.

Bench Strength **3**. Coram: *S.K. Das*, *A.K. Sarkar* and **K. Subba Rao**, JJ. [Date of decision: 24-4-1959]

[7824] — S. 145 — Scope of order under — *Order is irrespective of the rights of parties — Subsequent order of civil court displaces the order under the section*

Under S. 145(6) of the Code, a Magistrate is authorised to issue an order declaring a party to be entitled to possession of a land until evicted therefrom in due course of law. The Magistrate does not purport to decide a party's title or right to possession of the land but expressly reserves that question to be decided in due course of law. The foundation of his jurisdiction is on apprehension of the breach of the peace, and, with that object, he makes a temporary order irrespective of the rights of the parties, which will have to be agitated and disposed of in the manner provided by law. The life of the said order is coterminous with the passing of a decree by a Civil Court and the moment a Civil Court makes an order of eviction, it displaces the order of the Criminal Court. *Bhinka* v. *Charan Singh*, AIR 1959 SC 960: 1959 Supp (2) SCR 798: 1959 Cri LJ 1223, 1229.

Bench Strength **3**. Coram: *S.K. Das*, *A.K. Sarkar* and **K. Subba Rao**, JJ. [Date of decision: 24-4-1959]

[7825] — S. 145 — Order in defendant's favour — Burden of proof is thrown on the plaintiff. *Bhinka* v. *Charan Singh*, AIR 1959 SC 960: 1959 Supp (2) SCR 798: 1959 Cri LJ 1223, 1229.

Bench Strength **3**. Coram: *S.K. Das*, *A.K. Sarkar* and **K. Subba Rao**, JJ. [Date of decision: 24-4-1959]

[7826] — S. 145(1) — Proceedings under, on private party's complaint — Calling of a police report is not necessary — *Magistrate can initiate proceedings in the absence of a police report*

The proposition that the Magistrate before proceeding under S. 145(1) must, as a rule, call for a police report where he is moved by a private party or that the absence of a police report is a sure indication of the absence of possibility of breach of peace, is not warranted by the clear language of the section which permits the Magistrate to initiate proceedings either on the police report or "on other information". The words "other information" are wide enough to include an application by a private party. The jurisdiction under S. 145 being, no doubt, of an emergency nature, the Magistrate must act with caution but that does not mean that where on an application by one of the parties to the dispute he is satisfied that the requirements of the section are existent, he cannot initiate proceedings without a police report. *R.H. Bhutani* v. *Mani J. Desai*, AIR 1968 SC 1444: (1969) 1 SCR 80: 1969 Cri LJ 13, 17, 18.

Bench Strength **3**. Coram: *S.M. Sikri*, **J.M. Shelat** and *V. Bhargava*, JJ. [Date of decision: 23-4-1968]

[7827] — Ss. 145(1) and 439 — "Other information"

The words "other information" in S. 145(1) include an application by the party dispossessed. *R.H. Bhutani* v. *Mani J. Desai*, AIR 1968 SC 1444: (1969) 1 SCR 80: 1969 Cri LJ 13, 17, 18.

Bench Strength **3**. Coram: *S.M. Sikri*, **J.M. Shelat** and *V. Bhargava*, JJ. [Date of decision: 23-4-1968]

[7828] — Ss. 145(1) and 439 — Scope of S. 145(1) — Material for the satisfaction of Magistrate to initiate proceedings under S. 145 — *Sufficiency of — High Court not to go into the question in the exercise of its revisional powers*

The satisfaction under sub-section (1) is of the Magistrate. The question whether on the materials before him, he should initiate proceedings or not is, therefore, is his discretion which, no doubt, has to be exercised in accordance with the well recognised rules of law in that behalf. No hard and fast rule can, therefore, be laid down as to the sufficiency of material for his satisfaction. The language of the sub-section is clear and unambiguous that he can arrive at his satisfaction both from the police report or "from other information" which must include an application by the party dispossessed. The High Court, in the exercise of its revisional jurisdiction, would not go into the question of sufficiency of material which has satisfied the Magistrate. *R.H. Bhutani* v. *Mani J. Desai*, AIR 1968 SC 1444: (1969) 1 SCR 80: 1969 Cri LJ 13, 17, 18.

Bench Strength **3**. Coram: *S.M. Sikri*, **J.M. Shelat** and *V. Bhargava*, JJ. [Date of decision: 23-4-1968]

[7829] — Ss. 145(4), 2nd proviso and (6) — Scope and interpretation — *"Dispossessed" — Appellant forcibly dispossessed — He can move the Magistrate under S. 145 within two months — Magistrate finding that the respondent, in de facto possession, obtained possession by forcibly and wrongfully dispossessing the appellant within 2 months next preceding the date of Magistrate's order — He can restore possession to the appellant*

The Magistrate has first to decide who is in actual possession at the date of his preliminary order. If, however, the party in de facto possession is found to have obtained possession by forcibly and wrongfully dispossessing the other party within two months next preceding the date of his order, the Magistrate can treat the dispossessed party as if he was in possession on such date, restore possession to him and prohibit the dispossessor from interfering with that possession until eviction of that person in due course of law. The proviso is founded on the principle that forcible and wrongful dispossession is not to be recognised under the criminal law. So that it is not possible to say that such an act of dispossession was completed before the date of the order. The word "dispossessed" in the second proviso means to be out of possession, removed from the premises, ousted, ejected or excluded. Even where a person has a right to possession but taking the law into his hands makes a forcible entry otherwise than in due course of law, it would be a case of both forcible and wrongful dispossession. Sub-sec. (6) of S. 145 in such a case permits the Magistrate to direct restoration of possession with the legal effect that is valid until eviction in due course of law. The second proviso to sub-section (4) and sub-section (6) contemplate not a fugitive act of trespass or interference with the possession of the applicant, the dispossession there referred to is one that amounts to a completed act of forcible and wrongful driving out a party from his possession.

It is thus fairly clear that the fact that dispossession of the appellant was a completed act and the appellant had filed a criminal complaint and the police had taken action thereunder do not mean that the Magistrate could not proceed under S. 145 and give directions permissible under sub-section (6). *R.H. Bhutani* v. *Mani J. Desai*, AIR 1968 SC 1444: (1969) 1 SCR 80: 1969 Cri LJ 13, 17, 18.

Bench Strength **3**. Coram: *S.M. Sikri*, **J.M. Shelat** and *V. Bhargava*, JJ. [Date of decision: 23-4-1968]

— S. 145(6) *See* Ss. 145(4), 2nd proviso and (6)

[7830] — S. 146(1) — Scope — Whether S. 24(1)(b) CPC, available with respect to a proceeding arising out of a reference under S. 146(1) CrPC — *CPC, 1908, S. 24*

Section 24 plainly speaks of "other proceeding pending in any court subordinate to it" and not only to the civil proceeding pending before a subordinate Court. Earlier decisions would warrant the application of the provisions of the Code of Civil Procedure generally to a proceeding before a civil court arising out of a reference to it by a Magistrate under S. 146(1) of the Code of Criminal Procedure.

The expression "proceeding" used in this section is not a term of art which has acquired a definite meaning. What its meaning is when it occurs in a particular statute or a provision of a statute will have to be ascertained by looking at the relevant statute. Looking to the context in which the word has been used in S. 24(1)(*d*) of the Code of Civil Procedure it would appear to us to be something going on in a Court in relation to the adjudication of a dispute other than a suit or an appeal. Bearing in mind that the term "proceeding" indicates something in which business is conducted according to a prescribed mode it would be only right to give it, as used in the aforesaid provision, a comprehensive meaning so as to include within it all matters coming up for judicial adjudication and not to confine it to a civil proceeding alone. If indeed the term "proceeding" in S. 24 is not confined to a civil proceeding there is no need whatsoever of taking the aid of S. 141 CPC. *Ram Chandra Aggarwal* v. *State of U.P.*, AIR 1966 SC 1888: 1966 Supp SCR 393: 1966 All Cri R 397: 1966 Cri LJ 1514: 1966 ALJ 1122.

Bench Strength **2**. Coram: **J.R. Mudholkar** and *V. Ramaswami*, JJ. [Date of decision: 5-5-1966]

[7831] — S. 146(1) — Reference by Magistrate to civil court — *Held, provisions of CPC applicable. Ram Chandra Aggarwal* v. *State of U.P.*, AIR 1966 SC 1888, 1890: 1966 Supp SCR 393: 1966 All Cri R 397: 1966 Cri LJ 1514: 1966 ALJ 1122.

Bench Strength **2**. Coram: **J.R. Mudholkar** and *V. Ramaswami*, JJ. [Date of decision: 5-5-1966]

[7832] — S. 146(1) — Reference under is not to persona designata — *Is to a constituted court*

The power is not to refer the matter to the presiding Judge of a particular civil court but to a court. When a special or local law provides for an adjudication to be made by a constituted court — that is, by a court not created by a special or local law but to an existing court — it in fact enlarges the ordinary jurisdiction of such a court. Thus where a special or local statute refers to a constituted court as a court and does not refer to the presiding officer of that court the reference cannot be said to be to a persona designata. *Ram Chandra Aggarwal* v. *State of U.P.*, AIR 1966 SC 1888: 1966 Supp SCR 393: 1966 All Cri R 397: 1966 Cri LJ 1514: 1966 ALJ 1122.

Bench Strength **2**. Coram: **J.R. Mudholkar** and *V. Ramaswami*, JJ. [Date of decision: 5-5-1966]

[7833] — S. 146(1-B) — Finding of civil court on reference by Magistrate under S. 146(1-B) CrPC 1898, can be interfered with by High Court under Art. 227 — *Constitution of India, Art. 227. Chandrasekhar Singh* v. *Siya Ram Singh*, (1979) 3 SCC 118: 1979 SCC (Cri) 666: AIR 1979 SC 1: 1979 Cri LJ 13: (1979) 16 ACC 13.

Bench Strength **3**. Coram: *Jaswant Singh*, **P.S. Kailasam** and *A.D. Koshal*, JJ. [Date of decision: 26-9-1978]

[7834] — Ss. 146(1-B) and (1-D), 435 and 439 — Finding of Civil Court on reference by the Magistrate, held, is final and cannot be challenged by way of appeal, review or revision — *Nor can the order of Magistrate in conformity with the decision of the Civil Court, held, be challenged under Ss. 435 and 439 — However, the High Court can interfere under Art. 227*

Section 146, Criminal Procedure Code, 1898, does not affect the power of the High Court under Art. 227. But that power is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

On facts, the High Court was not right in taking the view that the Civil Court had in deciding the question of possession ignored the affidavits filed by both parties. *Chandrasekhar Singh* v. *Siya Ram Singh*, (1979) 3 SCC 118: 1979 SCC (Cri) 666: AIR 1979 SC 1: 1979 Cri LJ 13: (1979) 16 ACC 13. Bench Strength **3**. Coram: *Jaswant Singh*, **P.S. Kailasam** and *A.D. Koshal*, JJ. [Date of decision: 26-9-1978]

— S. 146(1-D) *See* Ss. 146(1-B) and (1-D), 435 and 439

[7835] — Ss. 148 and 145 — Scope of — Expressions "taking" and "retaining" — Meaning of — Possession by virtue of order of Magistrate under S. 145, CrPC is not "possession in accordance with law for the time being in force" — *U.P. Tenancy Act, 1939 (17 of 1939), S. 180*

Material part of S. 180 reads:

"(1) A person taking or retaining possession of a plot of land without the consent of the person entitled to admit him to occupy such plot and otherwise than in accordance with the provisions of the law for the time being in force, shall be liable to ejectment under this section on the suit of the person so entitled, and also to pay damages which may extend to four times the annual rental value calculated in accordance with the sanctioned rates applicable to hereditary tenants.

* * *

Explanation II. — A tenant entitled to sublet a plot of land in accordance with the provisions of the law for the time being in force may maintain a suit under this section against the person taking or retaining possession of such plot otherwise than in the circumstances for which provision is made in S. 183.

(2) If no suit is brought under this section, or if a decree obtained under this section is not executed, the person in possession shall become a hereditary tenant of such plot, or if such person is a co-sharer, he shall become a khudkasht-holder, on the expiry of the period of limitation prescribed for such suit or for the execution of such decree, as the case may be."

Under S. 180 of the Act, a person entitled to admit another to a plot of land can file a suit in a revenue court to eject him. The latter can defend the suit only on two grounds, namely, (1) that he has taken possession or retained possession of the said plot with the consent of the former; and (2) that he took possession or retained possession in accordance with the provisions of law for the time being in force. If no suit was brought against the occupier or if the decree obtained against him was not executed, he would become a hereditary tenant after the period of limitation prescribed in the Fourth Schedule to the Act.

The dichotomy between taking and retaining indicates that they are mutually exclusive and apply to two different situations. The word "taking" applies to a person taking possession of a land otherwise than in accordance with the provisions of the law, while the word "retaining" to a person taking possession in accordance with the provisions of the law but subsequently retaining the same illegally. So construed, the appellants' possession of the lands being illegal from the inception, they could not be described as persons retaining possession of the said lands in accordance with the provisions of any law for the time being in force, so as to be outside the scope of S. 180 of the Act.

Can it be said that the possession by virtue of an order of a Magistrate under the provisions of S. 145 of the Code of Criminal Procedure is one in accordance with the provisions of the law for the time being in force? It appears to us that the words "possession in accordance with the law for the time being in force" in the context can only mean possession with title. The suit contemplated by the section is one by a landlord against a person who has no right to possession.

Unless the person sought to be evicted has title or right to possession, it cannot be said that his possession is in accordance with the provisions of the law for the time being in force.

Under S. 145(6) of the Code, a Magistrate is authorised to issue an order declaring a party to be entitled to possession of a land until evicted therefrom in due course of law. The Magistrate does not purport to decide a party's title or right to possession of the land, but expressly reserves that question to be decided in due course of law. The foundation of his jurisdiction is on apprehension of that breach of the peace, and, with that object, he makes a temporary order irrespective of the rights of the parties, will have to be agitated and disposed of in the manner provided by law. The life of the said order is coterminous with the passions of a decree by a civil court and the moment a civil court makes an order of eviction, it displaces the order of the criminal court. A provisional order of a Magistrate in regard to possession irrespective of the rights of the parties cannot enable a person to resist the suit under S. 180 of the Act. *Bhinka* v. *Charan Singh*, AIR 1959 SC 960: 1959 Supp (2) SCR 798: 1959 Cri LJ 1223.

Bench Strength **3**. Coram: *S.K. Das*, *A.K. Sarkar* and **K. Subba Rao**, JJ. [Date of decision: 24-4-1959]

— S. 149 *See* Ss. 535, 537 and 149

[7836] — Ss. 151, 107 and 117(3) — *Land Grab Movement — Whether arrest and remand is legal as there was no production before Magistrate — Effect of doctor's certificate on non-production — Legality of detention at the time of the return whether germane but not at the time of the institution of the proceedings — Whether Art. 22(1) or (2) of the Constitution violated*

There is nothing in law which requires personal presence of an accused before the Magistrate because that is only a rule of caution for Magistrate before granting remand at the instance of the police.

The various warrants issued by the Magistrate also refer to the fact that the petitioner was being remanded to jail custody for offences under Ss. 143 and 447 IPC, which were the subject of the two cases. The contention that he was not informed of the grounds for his arrest cannot be accepted. There has been no violation of Art. 22(1) of the Constitution.

In habeas corpus proceedings the Court is to have regard to the legality or otherwise of the detention of a person at the time of the return and not with reference to the institution of proceedings.

The legality of the petitioner's detention cannot be considered to be illegal because he was kept in detention under proper orders of remand as an undertrial prisoner. *Pranab Chatterjee* v. *State of Bihar*, (1970) 3 SCC 926: 1971 SCC (Cri) 170.

Bench Strength **2**. Coram: *J.M. Shelat* and **C.A. Vaidialingam**, JJ. [Date of decision: 13-10-1970]

[7837] — Ch. XIV (Ss. 154 to 176) — Enquiry under — *Held, not investigation within S. 162 CrPC — Railway Property (Unlawful Possession) Act, 1966, S. 8(1)*

An officer conducting an enquiry under S. 8(1) of the Act does not possess all the attributes of an officer-in-charge of a police station investigating a case under Chapter XIV of the Code. He possesses but a part of those attributes limited to the purpose of holding the enquiry.

The enquiry conducted by an officer of the Railway Protection Force under S. 8(1) of the Act cannot be deemed to be an investigation for the purposes of S. 162, Code of Criminal Procedure. The scheme of the Act is in important respects different from the schemes of the Code and there is intrinsic evidence in the Act to show that the provisions of the Code cannot proprio vigore apply to enquiries under S. 8(1) of the Act. *State of U.P.* v. *Durga Prasad*, (1975) 3 SCC 210: 1974 SCC (Cri) 828: AIR 1974 SC 2136: (1975) 1 SCR 881: 1974 Cri LJ 1465.

Bench Strength **2**. Coram: *H.R. Khanna* and **Y.V. Chandrachud**, JJ. [Date of decision: 23-8-1974]

[7838] — Ch. XIV (Ss. 154 to 176) — Investigation under — Provision of S. 162 mandatory — Applies during inquest under S. 174 — *CrPC, 1973, Ch. XII (Ss. 154 to 176) — Ss. 162 and 174*

While it is true that the receipt and registration of an FIR is not the sine qua non to the setting in motion of the machinery of criminal investigation, the investigating officer must follow the procedure laid down in Part V, Chapter XIV.

Even a statement of a witness recorded by the investigator during the inquest under S. 174 would be within the inhibition of S. 162. Behind this provision is a wholesome rule of public policy that witnesses at the trial should be free to tell the truth, unhampered by anything they might have been made to say to the police. *Razik Ram* v. *Jaswant Singh Chouhan*, (1975) 4 SCC 769: AIR 1975 SC 667.

Bench Strength **2**. Coram: *A. Alagiriswami* and **R.S. Sarkaria**, JJ. [Date of decision: 11-2-1975]

[7839] — S. 154 — Nature and scope

The receipt and recording of information report by the police is not a condition precedent to the setting in motion of a criminal investigation. Nor does the statute provide that such information report can be made by an eyewitness. First information report under S. 154 is not even considered a substantive piece of evidence. It can only be used to corroborate or contradict the informant's evidence in court. But this information when recorded is the basis of the case set up by the informant. It is very useful if recorded before there is time and opportunity to embellish or before the informant's memory fades. Undue or unreasonable delay in lodging the FIR, therefore, inevitably gives rise to suspicion which puts the Court on guard to look for a possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version. No duration of time in the abstract can be fixed as reasonable for giving information of a crime to the police, the question of reasonable time being a matter for determination by the Court in each case. Mere delay in lodging the First information report with the police is, therefore, not necessarily, as a matter of law, fatal to the prosecution. The effect of delay in doing so in the light of the plausibility of the explanation forthcoming for such delay accordingly must fall for consideration on all the facts and circumstances of a given case. *Apren Joseph* v. *State of Kerala*, (1973) 3 SCC 114: 1973 SCC (Cri) 195: AIR 1973 SC 1: 1973 Cri LJ 185: (1973) 2 SCR 16.

Bench Strength **3**. Coram: *J.M. Shelat*[1], *Actg. C.J.* and **I.D. Dua**[1] and **H.R. Khanna**[2], JJ. [Date of decision: 1-9-1972]

[7840] — S. 154 — FIR — Nature and scope — *Not conclusive on the question whether one or several trials to be held. Chandra Bhal* v. *State of U.P.*, (1971) 3 SCC 983: 1972 SCC (Cri) 290.

Bench Strength **2**. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 19-2-1970]

[7841] — S. 154 — FIR — Delay in despatch of FIR to authorities under Police Rule — *Effect*

Unless there is evidence on record to fix the responsibility for the delay on the police alone, a late receipt by the authorities of the FIR is not of any consequence. It is also possible that the FIR was sent to the residence of the Magistrate in time but the latter took note of it only after the holidays. *Om Parkash* v. *State of Delhi*, (1971) 3 SCC 413: 1971 SCC (Cri) 661: AIR 1974 SC 1983: 1974 Cri LJ 1383.

Bench Strength **2**. Coram: *C.A. Vaidialingam* and **A.N. Ray**, JJ. [Date of decision: 16-2-1971]

[7842] — S. 154 — Delay in lodging FIR — *Occurrence taking place at 7 p.m. — Statement of injured persons recorded in hospital at 2.15 p.m. on the following day — Statement thereafter sent to police station situated at a distance of about ten miles from place of occurrence wherein a formal FIR was then prepared — No explanation given as to why others, who witnessed the occurrence, did not go to police station to make a report while the injured persons were hospitalised and were not in a position to move — Held, lodging of FIR inordinately delayed. State of Punjab* v. *Sucha Singh*, (1974) 3 SCC 484: 1973 SCC (Cri) 1079: AIR 1974 SC 343: 1974 Cri LJ 364.

Bench Strength **2**. Coram: **H.R. Khanna** and *A. Alagiriswami*, JJ. [Date of decision: 3-9-1973]

[7843] — S. 154 — FIR — Delay in filing — When is adequately explained — *Assault leading to murder made at a place 12 miles from the police station — Victims not dying at once and the informant tending them — Informant covering the distance to police station partly on foot and partly on lorry — FIR having been filed 6 hours after the incident — Held, report was promptly filed. Dalip Singh* v. *State of Punjab*, AIR 1953 SC 364: 1954 SCR 145: 1953 Cri LJ 1465, 1468.

Bench Strength **3**. Coram: *M.C. Mahajan*, **Vivian Bose** and *B. Jagannadhadas*, JJ. [Date of decision: 15-5-1953]

[7844] — S. 154 — FIR — Delay in lodging — *Occurrence taking place at 1 a.m. — FIR lodged at 10 a.m. — Distance of police station six miles — Effect*

When there was no enmity between the informent and the accused, there is no question of the former delaying deliberately the filing of the FIR to involve the accused falsely. *Saktu* v. *State of U.P.*, (1973) 1 SCC 202: 1973 SCC (Cri) 307: AIR 1973 SC 760: 1973 Cri LJ 599.

Bench Strength **3**. Coram: *J.M. Shelat*, **Y.V. Chandrachud** and *I.D. Dua*, JJ. [Date of decision: 27-10-1972]

[7845] — S. 154 — FIR — Delay in lodging FIR — *Extent of reliance on eyewitness*

Mahadeo, the brother of the deceased dictated a report of the incident which was written down by prosecution witness Raja Ram. It was then given to one Kallu to be taken to the police station. Kallu, for some reason or the other, did not proceed straight to the police station, and went off for his own work and, realising that he had committed this mistake, he may have turned hostile to the prosecution. The absence of the explanation for the delay committed by Kallu, under these circumstances, cannot be considered to be a ground for disbelieving the eyewitnesses. *Angnoo* v. *State of U.P.*, (1970) 3 SCC 208: 1971 SCC (Cri) 26: AIR 1971 SC 296: 1971 Cri LJ 285.

Bench Strength **2**. Coram: **V. Bhargava** and *I.D. Dua*, JJ. [Date of decision: 11-9-1970]

[7846] — S. 154 — FIR — Delay in lodging report — *Understandable reasons — No effect. Jadunath Singh* v. *State of U.P.*, (1971) 3 SCC 577: 1971 SCC (Cri) 726: AIR 1972 SC 116: 1972 Cri LJ 29.

Bench Strength **3**. Coram: *S.M. Sikri, C.J.* and **G.K. Mitter** and *P. Jaganmohan Reddy*, JJ. [Date of decision: 12-8-1971]

[7847] — S. 154 — FIR — Delay in lodging report — Deliberation and consultation for implicating innocents with guilty ones — *Whether court should distinguish between persons involved*

Where delayed lodging of first information report indicates that the deliberation and consultation for implication of some innocent persons with guilty ones is possible, making distinction between persons involved in the report will not be unreasonable. *Garib Singh* v. *State of Punjab*, (1972) 3 SCC 418: 1972 SCC (Cri) 568: AIR 1973 SC 460: 1972 Cri LJ 1286.

Bench Strength **2**. Coram: *A.N. Grover* and **M.H. Beg**, JJ. [Date of decision: 22-3-1972]

[7848] — S. 154 — FIR — Delay in lodging report — Explanation for — Serious injury causing delay — *Whether courts should give importance to delay*

The delay in lodging the first information report, although suspicious, could be satisfactorily explained by the facts of the serious injury that made it difficult for recording the statement for several days afterwards. In such circumstances courts should not give undue importance to the delay. *Garib Singh* v. *State of Punjab*, (1972) 3 SCC 418: 1972 SCC (Cri) 568: AIR 1973 SC 460: 1972 Cri LJ 1286.

Bench Strength **2**. Coram: *A.N. Grover* and **M.H. Beg**, JJ. [Date of decision: 22-3-1972]

[7849] — S. 154 — FIR — Delay in lodging report in the absence of surety as to cause of death — *Delay understandable*. *State of U.P.* v. *Samman Dass*, (1972) 3 SCC 201: 1972 SCC (Cri) 275: AIR 1972 SC 677: 1972 Cri LJ 487: 1973 ALJ 489.

Bench Strength **2**. Coram: *J.M. Shelat* and **H.R. Khanna**, JJ. [Date of decision: 11-1-1972]

[7850] — S. 154 — FIR — Delay in recording — Whether means delay in lodging the report — Inference as to false story being cooked up

It is not time of recording the FIR which will determine whether the report has been lodged with delay but the time at which the police came to know of the facts which will determine whether the informant had time to concoct the story and falsely implicate the enemies of the informant. *Atmaduddin* v. *State of U.P.*, (1973) 4 SCC 35: 1973 SCC (Cri) 676: AIR 1974 SC 1901: 1974 Cri LJ 1300.

Bench Strength **3**. Coram: *A. Alagiriswami*, *I.D. Dua* and **C.A. Vaidialingam**, JJ. [Date of decision: 13-11-1972]

[7851] — S. 154 — FIR — Delay of 19 hours in filing — *Names of the assailants and eyewitness not mentioned. Does not indicate clever and well planned deceit, but rustic simplicity — Omission is not of much consequence*. *Pandurang* v. *State of Hyderabad*, AIR 1955 SC 216: (1955) 1 SCR 1083: 1955 Cri LJ 572, 578.

Bench Strength **3**. Coram: *B.K. Mukherjea*, *S.R. Das* and **Vivian Bose**, JJ. [Date of decision: 3-12-1954]

[7852] — S. 154 — FIR — Discrepancy — *Omission of certain facts in FIR — Delay in FIR*

Where FIR is lodged by a person who is not an eyewitness, omissions in the FIR are not material. Delay in the report on behalf of the more seriously injured persons is natural and the fact that the party of the accused reported the matter to the police earlier will not affect the prosecution case. *Bankey Lal* v. *State of U.P.*, (1971) 3 SCC 184: 1971 SCC (Cri) 253: AIR 1971 SC 2233: 1971 Cri LJ 1540.

Bench Strength **2**. Coram: **K.S. Hegde** and *A.N. Grover*, JJ. [Date of decision: 4-2-1971]

[7853] — S. 154 — FIR — Importance of — Delay in lodging first information report — *Whether safe to rely on*

First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the report can hardly be overestimated from the standpoint of the accused.

The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eyewitnesses present at the scene of occurrence.

Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay the report not only gets benefits of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or connected story as a result of deliberation and consultation.

It is therefore essential that the delay in the lodging of the first information report should be satisfactorily explained.

In the present case there was delay of more than 20 hours in lodging the FIR though the police station was only at a distance of two miles. Hence the circumstances would raise considerable doubt regarding the veracity of the case and it is not safe to base conviction upon it. *Thulia Kali* v. *State of T.N.*, (1972) 3 SCC 393: 1972 SCC (Cri) 543: AIR 1973 SC 501: (1972) 3 SCR 622: 1972 Cri LJ 1296: (1974) 1 MLJ 32.

Bench Strength **2**. Coram: **H.R. Khanna** and *G.K. Mitter*, JJ. [Date of decision: 25-2-1972]

[7854] — S. 154 — FIR — Value and purpose of — Need not be made by eyewitness — Delay in lodging report — *Excuse of fear by eyewitness to a* *gruesome murder — If any standard of behaviour possible — Explanation of delay — Test, if any. Apren Joseph* v. *State of Kerala*, (1973) 3 SCC 114: 1973 SCC (Cri) 195: AIR 1973 SC 1: 1973 Cri LJ 185: (1973) 2 SCR 16.

Bench Strength **3**. Coram: *J.M. Shelat, Actg. C.J.*[1] and **I.D. Dua**[1] and **H.R. Khanna**[2], JJ. [Date of decision: 1-9-1972]

[7855] — S. 154 — Delay in filing FIR — Inference — Study of factual situation — Prompt filing whether guarantees veracity of the report — *CrPC, 1973 — S. 154*

It is true that witnesses cannot be called upon to explain every hour's delay and a commonsense view has to be taken in ascertaining whether the First Information Report was lodged after an undue delay so as to afford enough scope for manipulating evidence. Whether the delay is so long as to throw a cloud of suspicion on the prosecution case must depend upon a variety of factors which would vary from case to case. Even a long delay in filing report of an occurrence can be condoned if the witnesses on whose evidence the prosecution relies have no motive for implicating the accused. On the other hand, prompt filing of the report is not an unmistakable guarantee of the truthfulness version of the prosecution. *Ram Jag* v. *State of U.P.*, (1974) 4 SCC 201: AIR 1974 SC 606.

Bench Strength **2**. Coram: *M.H. Beg* and **Y.V. Chandrachud**, JJ. [Date of decision: 21-12-1973]

[7856] — S. 154 — Early report more reliable

When the first information report was given very soon after the occurrence, the possibility of putting up a false version is remote. *Kahan Singh* v. *State of Haryana*, (1971) 3 SCC 226: 1971 SCC (Cri) 426: AIR 1971 SC 983: 1971 Cri LJ 806.

Bench Strength **3**. Coram: *G.K. Mitter*, **K.S. Hegde** and *P. Jaganmohan Reddy*, JJ. [Date of decision: 24-2-1971]

[7857] — S. 154 — FIR — Absence of name of witness — FIR mentioning the names of only some — *Effect*

Where about 20 persons were travelling by the bus and though almost all of them were looted but the first information report contained the names of some of them only, the fact that the person who successfully identified the miscreants was not included in the first information report cannot justify the inference that he was not travelling by the bus. *Bharat Singh* v. *State of U.P.*, (1973) 3 SCC 896: 1973 SCC (Cri) 574: AIR 1972 SC 2478: 1972 Cri LJ 1705.

Bench Strength **3**. Coram: *J.M. Shelat, S.N. Dwivedi* and **Y.V. Chandrachud**, JJ. [Date of decision: 15-9-1972]

[7858] — S. 154 — FIR — By a person not an eyewitness — *Direct evidence of eyewitnesses — Eyewitness account to be preferred*

Where first information report regarding an occurrence was based upon the particulars furnished by another person direct evidence furnished by the eyewitnesses particularly when their names find mention in the first information report will be given credence. *Veeramuthu* v. *State of Madras*, (1971) 3 SCC 427: 1971 SCC (Cri) 675.

Bench Strength **2**. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 24-2-1971]

[7859] — S. 154 — FIR — By an accused — Use of — Confessional first statement inadmissible

Section 154 of the Code of Criminal Procedure provides for the recording of the first information. The information report as such is not substantive evidence. It may be used to corroborate the informant under S. 157 of the Evidence Act or to contradict him under S. 145 of the Act, if the information is called as a witness. If the first information is given by the accused himself, the fact of his giving the information is admissible against him as evidence of his conduct under S. 8 of the Evidence Act. If the information is a non-confessional statement, it is admissible against the accused as an admission under S. 21 of the Evidence Act and is relevant.

But a confessional first information report to a Police Officer cannot be used against the accused in view of S. 25 of the Evidence Act. *Aghnoo Nagesia* v. *State of Bihar*, AIR 1966 SC 119: (1966) 1 SCR 134: 1966 Cri LJ 100, 103-106.

Bench Strength **3**. Coram: *K. Subba Rao, Raghubar Dayal* and **R.S. Bachawat**, JJ. [Date of decision: 4-5-1965]

[7860] — S. 154 — FIR — Cannot be used to discredit, witnesses. *Tahsildar Singh* v. *State of U.P.*, AIR 1959 SC 1012: 1959 Supp (2) SCR 875: 1959 Cri LJ 1231, 37, 39.

Bench Strength **6**. Coram: *B.P. Sinha*[1], *Syed Jafer Imam*[2], *J.L. Kapur*[1], *A.K. Sarkar*[1], **K. Subba Rao**[1] and **M. Hidayatullah**[2], JJ. [Date of decision: 5-5-1959]

[7861] — S. 154 — FIR — Contents of FIR at variance with eyewitness' account — Value of FIR

The first information report is never treated as a substantive piece of evidence. It can only be used for corroborating or contradicting its maker when he appears in court as a witness. Its value must always depend on the facts and circumstances of a given case. The FIR can only discredit the testimony of the maker thereof. It can by no means be utilised for contradicting or discrediting the other witnesses who obviously could not have any desire to spare the real culprit and to falsely implicate an innocent person. Prosecution case cannot be thrown out on the mere ground that in the first information report an altogether different version was given by the informant. *Dharma Rama Bhagare* v. *State of Maharashtra*, (1973) 1 SCC 537: 1973 SCC (Cri) 421: AIR 1973 SC 476: 1973 Cri LJ 680.

Bench Strength 3. Coram: *A. Alagiriswami*, **I.D. Dua** and *C.A. Vaidialingam*, JJ. [Date of decision: 13-12-1973]

[7862] — S. 154 — FIR — Cryptic and anonymous telephone message not specifying cognisable offence — *Whether constitutes First Information Report*

The cryptic and anonymous oral message which did not in terms clearly specify the cognisable offence cannot be treated as First Information Report. The mere fact that this information was the first in point of time does not by itself clothe it with the character of First Information Report. The question whether or not the particular document constitutes the First Information Report has, broadly speaking, to be determined on the relevant facts and circumstances of each case. *Tapinder Singh* v. *State of Punjab*, (1970) 2 SCC 113: 1970 SCC (Cri) 328: AIR 1970 SC 1566: 1970 Cri LJ 1415.

Bench Strength 2. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 7-5-1970]

[7863] — S. 154 — FIR — Difference in the description of height of the accused and actual height — *Whether a serious infirmity justifying interference*

Held, where full description of the accused had been given by the complainant and the complainant has ample opportunity to see him, and it was not the case of the accused either before the trial Court or the High Court that the accused does not answer the description to be found in the First Information Report, the mere difference in the description and actual height of the accused does not matter. At any rate it was open to the accused to invite the attention of the trial Court and when he did not do so, the error or infirmity pointed out is not such as to justify interference by the Supreme Court. *Bhopat Singh Kishan Singh* v. *State of Maharashtra*, (1972) 3 SCC 367: 1972 SCC (Cri) 537: AIR 1973 SC 446: 1973 Cri LJ 343.

Bench Strength 2. Coram: **A.N. Grover** and *M.H. Beg*, JJ. [Date of decision: 16-3-1972]

[7864] — S. 154 — FIR — Discrepancy — *Conclusion as to subsequent events — Conviction set aside. Sadaram* v. *State of M.P.*, (1971) 3 SCC 443: 1971 SCC (Cri) 691: AIR 1974 SC 2294: 1975 Cri LJ 23.

Bench Strength 2. Coram: **G.K. Mitter** and *A.N. Grover*, JJ. [Date of decision: 4-3-1971]

[7865] — S. 154 — FIR — Discrepancy — *Omission in FIR and S. 161 CrPC*

When a particular fact deposed to by witnesses does not find mention both in the FIR and in statements recorded under S. 161, CrPC, it is an improvement and it cannot be considered. *Yudhishtir* v. *State of M.P.*, (1971) 3 SCC 436: 1971 SCC (Cri) 684.

Bench Strength 2. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 19-2-1971]

[7866] — S. 154 — FIR — Discrepancy — *Omission in report that attacks were in three different places — Omission not significant. Bankey Lal* v. *State of U.P.*, (1971) 3 SCC 184: 1971 SCC (Cri) 253: AIR 1971 SC 2233: 1971 Cri LJ 1540.

Bench Strength 2. Coram: **K.S. Hegde** and *A.N. Grover*, JJ. [Date of decision: 4-2-1971]

[7867] — S. 154 — FIR — Essentials of — *Given by the person on the basis of information by an eye-witness — Omission as to fact about accused carrying bhalas etc. — Omission has no significance*

So far as the omission in the First Information Report is concerned, it must be remembered that the information was not given by any one of those who had witnessed the occurrence. It was given by a relative of the deceased on the basis of the information given by PW 6. Hence that omission has no significance. *Awadhi Yadav* v. *State of Bihar*, (1971) 3 SCC 116: AIR 1971 SC 69: 1971 Cri LJ 23.

Bench Strength 2. Coram: **K.S. Hegde** and *I.D. Dua*, JJ. [Date of decision: 17-8-1970]

[7868] — S. 154 — FIR — Filed promptly — Importance

A great deal of importance should not be attached to the promptness with which the first information was lodged. The brother of the deceased was an Advocate and the informant was his clerk. They could certainly have quickly thought out what version to give. It is true that the importance of a first information report made promptly cannot be minimised. The object of S. 154, Criminal Procedure Code, is to obtain early information of the alleged criminal activity, to record the circumstances before there is time for them to be embellished or forgotten. *Tarachand* v. *State of Haryana*, (1971) 2 SCC 579: 1971 SCC (Cri) 593: AIR 1971 SC 1891: 1971 Cri LJ 1411.

Bench Strength 2. Coram: *K.S. Hegde* and **A.N. Grover**, JJ. [Date of decision: 21-7-1971]

[7869] — S. 154 — FIR — Information to the police based on talk in the village and informant himself not an eyewitness to the occurrence — *Power of authorities to wait for more authentic or reliable information for taking appropriate action. Duraipandi Thevar* v. *State of T.N.*, (1973) 3 SCC 680: 1973 SCC (Cri) 486: AIR 1973 SC 659: 1973 Cri LJ 602.

Bench Strength 3. Coram: *A. Alagiriswami*, **I.D. Dua** and *C.A. Vaidialingam*, JJ. [Date of decision: 24-11-1972]

[7870] — S. 154 — FIR — Nature of — Admissibility

The report is not a confession of the appellant. It is not a statement made to a police officer during the course of investigation. Section 25 of the Evidence Act and S. 162 of the Code of Criminal Procedure do not bar its admissibility. *Faddi* v. *State of M.P.*, AIR 1964 SC 1850, 1853: (1964) 6 SCR 312: (1964) 2 Cri LJ 744.

Bench Strength 2. Coram: *M. Hidayatullah* and **Raghubar Dayal**, JJ. [Date of decision: 24-1-1964]

[7871] — S. 154 — FIR — Nature of — Use of FIR in contradicting and discrediting witness under Evidence Act, 1872 (1 of 1872), S. 145 — *Whether informant need be an eyewitness*

In the first place it may be noticed that FIR is not a substantial piece of evidence. It is an information of a cognizable offence given under S. 154 of the Criminal Procedure Code and if there is any statement made therein it can only be used for the purposes of contradicting and discrediting a witness under S. 145 of the Evidence Act. In the second place the statement given by the informant need not necessarily be an eyewitness account of what he has actually seen. There were others who had gone along with him who could have furnished him with information as to what transpired insofar as it was in their knowledge. *Nanhku Singh* v. *State of Bihar*, (1972) 3 SCC 590: AIR 1973 SC 491: 1972 Cri LJ 1204.

Bench Strength 2. Coram: **P. Jaganmohan Reddy** and *K.K. Mathew*, JJ. [Date of decision: 21-4-1972]

[7872] — S. 154 — FIR — Non-mention of names — *Effect*

Absence of names of accused persons in the first information report is not necessarily fatal. The person lodging the first information report may not be in such a frame of mind as to discuss the names of the culprits before he leaves for the police station. Non-mention of names of culprits may on the other hand inspire confidence that the informant was not out to implicate his enemies. *Liyakat Mian* v. *State of Bihar*, (1973) 4 SCC 39: 1973 SCC (Cri) 680: AIR 1973 SC 807: 1973 Cri LJ 584.

Bench Strength 3. Coram: *A. Alagiriswami*, **I.D. Dua** and *C.A. Vaidialingam*, JJ. [Date of decision: 21-12-1972]

[7873] — S. 154 — FIR — Non-mention of weapon

Where the informant is neither an eyewitness himself nor is his report based on the information given by an eyewitness, non-mention of the weapon in the first information report is of no consequence. *Shivaji Genu Mohite* v. *State of Maharashtra*, (1973) 3 SCC 219: 1973 SCC (Cri) 214: AIR 1973 SC 55: 1973 Cri LJ 159.

Bench Strength 3. Coram: **J.M. Shelat**, *S.N. Dwivedi* and *Y.V. Chandrachud*, JJ. [Date of decision: 20-9-1972]

[7874] — S. 154 — FIR — Object and value of FIR explained — *FIR not a substantive evidence — Can be used for corroborating or contradicting witnesses — Evidence Act, 1872, Ss. 145 & 157. Sk. Hasib* v. *State of Bihar*, (1972) 4 SCC 773: AIR 1972 SC 283: 1972 Cri LJ 233.

Bench Strength 3. Coram: *J.M. Shelat*, **I.D. Dua** and *S.C. Roy*, JJ. [Date of decision: 23-8-1971]

[7875] — S. 154 — FIR — Prompt — Inference

Held, where soon after the occurrence first information report is lodged at the police station, it is difficult to believe that a false story can be cooked up. *Nanhey* v. *State of U.P.*, (1973) 3 SCC 317: 1973 SCC (Cri) 266: AIR 1973 SC 224: 1973 Cri LJ 273.

Bench Strength 3. Coram: *J.M. Shelat*, *A. Alagiriswami* and **I.D. Dua**, JJ. [Date of decision: 6-11-1972]

[7876] — S. 154 — FIR — Prompt — Report lodged within half an hour of the incident by the victim after traversing 12 miles — *Held, report reliable. Sat Kumar* v. *State of Haryana*, (1974) 3 SCC 643: 1974 SCC (Cri) 173: AIR 1974 SC 294: 1974 Cri LJ 345.

Bench Strength 2. Coram: *P. Jaganmohan Reddy* and **P.K. Goswami**, JJ. [Date of decision: 23-11-1973]

[7877] — S. 154 — FIR — Recording of

It was argued that the first information report was not properly recorded in the prescribed form but was written down on a piece of paper and it was copied into the register for first information reports.

But several first information reports are recorded on plain pieces of paper and then transcribed into the first information report register. In fact if a written report is brought, it is verbatim copied into the first information report register.

So FIR, not improper. *Narayan Nathu Naik* v. *State of Maharashtra*, (1970) 2 SCC 101: 1970 SCC (Cri) 316: AIR 1971 SC 1656.

Bench Strength 2. Coram: **M. Hidayatullah, C.J.** and *A.N. Grover*, J. [Date of decision: 25-3-1970]

[7878] — S. 154 — FIR — Telegram given immediately after the murder not mentioning the names of the assailants — *Omission a great circumstance in favour of the accused. Wilayat Khan* v. *State of U.P.*, AIR 1953 SC 122: 1953 Cri LJ 662, 663-64.

Bench Strength 3. Coram: *Fazl Ali, M.C. Mahajan* and **N. Chandrasekhara Aiyar**, JJ. [Date of decision: 25-5-1951]

[7879] — S. 154 — FIR — Use of — FIR is not a substantive piece of evidence and can only be used to corroborate the statement of the maker or to contradict it — Cannot be used as evidence against the maker if the maker becomes an accused nor to corroborate or contradict other witnesses. *Nisar Ali* v. *State of U.P.*, AIR 1957 SC 366: 1957 SCR 657: 1957 Cri LJ 550, 52.

Bench Strength 3. Coram: *N.H. Bhagwati, B.P. Sinha* and **J.L. Kapur**, JJ. [Date of decision: 14-2-1957]

[7880] — S. 154 — FIR — Witness deposing that he disclosed an important event to the informant before he lodged FIR — That information not finding place in FIR — Reliance not to be placed on the statement

The witness *P* deposed that he saw the accused offering sweets to the deceased girl, and that he informed the father of the girl about this before he lodged the FIR. This information was not mentioned in the FIR.

Had something relating to the deceased transpired in the presence of *P* on the morning of the day of occurrence and had he mentioned about it to the informant before he lodged the FIR, the same fact must have found a prominent mention in the FIR. The fact that there was no reference to *P* in the FIR shows that not much weight can be attached to the evidence of . *Rahim Beg* v. *State of U.P.*, (1972) 3 SCC 759: 1972 SCC (Cri) 827: AIR 1973 SC 343: 1972 Cri LJ 1260.

Bench Strength 2. Coram: *J.M. Shelat* and **H.R. Khanna**, JJ. [Date of decision: 20-4-1972]

[7881] — S. 154 — FIR as substantive evidence

The First Information Report has not been used as substantive evidence in the case at all by the High Court but has been used only to corroborate the statements of the eyewitnesses. It is not possible to accept the suggestion that because this report was not as full as it could have been, it should be ignored altogether. *Prandas* v. *State*, AIR 1954 SC 36: 1954 Cri LJ 331.

Bench Strength 6. Coram: *Harilal J. Kania, C.J.* and **Fazl Ali**, *Patanjali Sastri, M.C. Mahajan, B.K. Mukherjea* and *S.R. Das*, JJ. [Date of decision: 14-3-1950]

[7882] — S. 154 — FIR by accused used by prosecution to furnish motive

Where the prosecution alleged one motive for the occurrence, Court cannot find a different motive for the occurrence from the FIR lodged by the accused when the latter has denied the lodging of that report. Moreover the case of the prosecution regarding the circumstances under which the first accused sustained an injury was totally different from what is stated in the alleged report lodged by the accused. This amounts to reconstruction by the Court of a story against the accused. *Sahaj Ram* v. *State of U.P.*, (1973) 1 SCC 490: 1973 SCC (Cri) 410: AIR 1973 SC 618: 1973 Cri LJ 618.

Bench Strength 3. Coram: *A. Alagiriswami, I.D. Dua* and **C.A. Vaidialingam**, JJ. [Date of decision: 17-11-1972]

[7883] — S. 154 — Non-mention of the name of accused — *Effect*

Non-mention of the name of the accused person in the first information report is not necessarily fatal to the prosecution if there is other evidence to prove by other convincing corroborative evidence the presence of the accused at the time of the incident. *Bharvad Bhikha Valu* v. *State of Gujarat*, (1972) 4 SCC (N) 48: 1971 SCC (Cri) 500: AIR 1971 SC 1064: 1971 Cri LJ 927.

Bench Strength 2. Coram: *C.A. Vaidialingam* and *A.N. Ray*, JJ. [Date of decision: 3-3-1971]

[7884] — S. 154 — Telephonic message that a person was lying injured without indicating that some offence was committed cannot be treated as FIR. *Sakharam* v. *State of Maharashtra*, (1969) 3 SCC 730.

Bench Strength 3. Coram: *J.M. Shelat*, **V. Bhargava** and *C.A. Vaidialingam*, JJ. [Date of decision: 22-4-1969]

[7885] — Ss. 154, 156, 439 and 561-A — Investigation into cognizable offence — No case pending in any court — *Statutory power of police to investigate in a non-cognizable offence cannot be interfered with by the High Court under S. 439 or 561-A*

Section 154, CrPC deals with information in cognizable offences and S. 156 with investigation into such offences and under these sections the police has the statutory right to investigate into the circumstances of any alleged cognizable offence without authority from a magistrate and this statutory power of the police to investigate cannot be interfered with by the exercise of powers under S. 439 or under the inherent power of the Court under S. 561 of the Criminal Procedure Code. *State of W.B.* v. *S.N. Basak*, AIR 1963 SC 447: (1963) 2 SCR 52: (1963) 1 Cri LJ 341.

Bench Strength 3. Coram: **J.L. Kapur**, *K.C. Das Gupta* and *Raghubar Dayal*, JJ. [Date of decision: 12-4-1962]

[7886] — Ss. 154 and 156(3) — Power of police officer acting under — Whether police officer investigates on behalf of Magistrate — Whether sanction from judicial authority required — *Magistrate applying his mind only for ordering investigation under S. 156(3) or issuing warrant for purposes of investigation — Whether Magistrate can be said to have taken cognizance of offence*

The police officer acting under S. 156(3) is not a delegate of the Chief Presidency Magistrate and the investigation by him is not an investigation by or on behalf of the Magistrate. The police authorities have under Ss. 154 and 156 of the Code a statutory right to investigate into a cognizable offence without requiring any sanction from a judicial authority and even the High Court has no inherent power under S. 561-A of the Code to interfere with the exercise of that statutory power. *Nirmaljit Singh Hoon* v. *State of W.B.*, (1973) 3 SCC 753: 1973 SCC (Cri) 521: AIR 1972 SC 2639.

Bench Strength 3. Coram: **J.M. Shelat**[1], *I.D. Dua*[1] and **H.R. Khanna**[1&2], JJ. [Date of decision: 6-9-1972]

[7887] — Ss. 154 and 297 — FIR — Scope — Is not substantive evidence — *Can be used only to corroborate or contradict the evidence of the informant — Judge cannot place such a report before the Jury as substantive evidence*

The first information report is the information recorded under S. 154 of the CrPC. It is an information given to a police officer relating to the commission of an offence. It is also an information given by an informant on which the investigation is commenced. It must be distinguished from information received after the commencement of the investigation which is covered by Ss. 161 and 162 of the CrPC. It is well settled that the First Information Report is not substantive evidence, but can only be used to corroborate or contradict the evidence of the information given in court or to impeach his credit. It follows that a Judge cannot place such a report before the jury as substantive evidence, but can only refer to that portion of it which had been used for one or other of the aforesaid purposes. *State of Bombay* v. *Rusy Mistry*, AIR 1960 SC 391: 1960 Cri LJ 532.

Bench Strength 3. Coram: *S.R. Das, C.J.* and *P.B. Gajendragadkar* and **K. Subba Rao**, JJ. [Date of decision: 24-9-1959]

— S. 155 *See also* Ch. XIV (Ss. 154 to 176)

[7888] — S. 155 — Procedure to be followed in investigation under

Under S. 155 the officer in charge of a police station has the power of making a search in any place for the seizure of anything believed to be necessary for the purpose of the investigation. The search has to be conducted by such officer in person. A subordinate officer may be deputed by him for the purpose only for reasons to be recorded in writing if he is unable to conduct the search in person and there is no other competent officer available. The investigating officer has also the power to arrest the person or persons suspected of the commission of the offence under S. 54 of the Code. A police officer making an investigation is enjoined to enter his proceedings in a diary from day-to-day. Where such investigation cannot be completed within the period of 24 hours and the accused is in custody he is enjoined also to send a copy of the entries in the diary to the Magistrate concerned.

It is important to notice that where the investigation is conducted not by the officer in charge of the police station but by a subordinate officer such subordinate officer is to report the result of the investigation to the officer in charge of the police station. If upon the completion of the investigation it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody, on his executing a bond. *H.N. Rishbud* v. *State of Delhi*, AIR 1955 SC 196, 201: (1955) 1 SCR 1150: 1955 Cri LJ 526.

Bench Strength 3. Coram: *B.K. Mukherjea*, *Vivian Bose* and **B. Jagannadhadas**, JJ. [Date of decision: 14-12-1954]

[7889] — Ss. 155, 61, 94, 167, 164 and 202 — Nature of Magistrate's function

Under all these sections the Magistrate exercises discretionary functions in respect of which the initiative is that of the executive but the responsibility is his. His discretion in such matter has necessarily to be exercised with reference to such material as is by then available and is not a *prima facie* judicial determination of any specific issue. The Magistrate's functions in these matters are not only supplementary, at a higher level, to those of the executive but are intended to prevent abuse. *State of Bihar* v. *Ram Naresh Pandey*, AIR 1957 SC 389, 393: 1957 SCR 279: 1957 Cri LJ 567.

Bench Strength 3. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 31-1-1957]

[7890] — Ss. 155 and 156 — Investigation of cognizable and non-cognizable offences

For the purposes of investigation offences are divided into two categories 'cognizable' and 'non-cognizable'. When information of the commission of a cognizable offence is received or such commission is suspected, the appropriate police officer has the authority to enter on the investigation of the same (unless it appears to him that there is no sufficient ground). But where the information relates to a non-cognizable offence, he shall not investigate it without the order of a competent Magistrate.

Thus, it may be seen that according to the scheme of the Code, investigation is a normal preliminary to an accused being put up for trial for a cognizable offence. *H.N. Rishbud* v. *State of Delhi*, AIR 1955 SC 196, 200: (1955) 1 SCR 1150: 1955 Cri LJ 526.

Bench Strength **3**. Coram: *B.K. Mukherjea*, *Vivian Bose* and **B. Jagannadhadas**, JJ. [Date of decision: 14-12-1954]

[7891] — Ss. 155 and 156 — Irregularity of the investigation not to vitiate trial unless there be miscarriage of justice

If cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. An illegality committed in the course of investigation does not affect the competence and the jurisdiction of the court for trial. *H.N. Rishbud* v. *State of Delhi*, AIR 1955 SC 196, 204: (1955) 1 SCR 1150: 1955 Cri LJ 526.

Bench Strength **3**. Coram: *B.K. Mukherjea*, *Vivian Bose* and **B. Jagannadhadas**, JJ. [Date of decision: 14-12-1954]

[7892] — Ss. 155 and 156 — Steps in investigation

Under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of *(a)* the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit; *(b)* the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under S. 173. *H.N. Rishbud* v. *State of Delhi*, AIR 1955 SC 196, 201: (1955) 1 SCR 1150: 1955 Cri LJ 526.

Bench Strength **3**. Coram: *B.K. Mukherjea*, *Vivian Bose* and **B. Jagannadhadas**, JJ. [Date of decision: 14-12-1954]

[7893] — S. 155(3) — Permission to investigate non-cognizable offence — Magistrate permitting issue of search warrant under S. 19(3), Foreign Exchange Regulation Act and permitting to investigate

The Inspector under S. 19(3) of the Foreign Exchange Regulation Act applied to the Magistrate for issuing a search warrant and permission to investigate the offence which was a non-conducting offence. The Magistrate issued the search warrant for the purposes of conducting investigation of the case and permitted investigation.

Inspector's application definitely stated that he was asking for permission to investigate a non-cognizable offence under S. 155, CrPC. The order of the Magistrate directing the issue of search warrant and the word "permitted" contained therein mean that he granted the sanction for investigation as asked for. Under S. 155(3) of the Code of police officer being permitted to investigate a non-cognizable offence may exercise the same powers in respect of the investigation as an officer in charge of a police station may exercise in a cognizable offence except that he has no power to arrest without warrant. It is therefore clear that on the date of giving permission and issuing search warrant (16-9-1952) the Magistrate had not taken cognizance of the case. *Narayandas Bhagwandas Madhavdas* v. *State of W.B.*, AIR 1959 SC 1118: (1960) 1 SCR 93: 1959 Cri LJ 1368, 73.

Bench Strength **2**. Coram: **Syed Jafer Imam** and *J.L. Kapur*, JJ. [Date of decision: 7-5-1959]

See also Ch. XIV (Ss. 154 to 176)

— S. 156 *See* Ss. 154, 156, 439 and 561-A

See also Ss. 155 and 156

See also Ss. 173, 156 and 190

See also Ss. 537, 156 and 157

[7894] — S. 156 — Investigation conducted by Head Constable — Validity of

The contention that S. 156, CrPC was not complied with has no merit. When the FIR was received, no sub-inspector was present in the police station. Head Constable was the officer incharge of the station at that time. Hence the law permitted him to investigate the case. *Pati Ram* v. *State of U.P.*, (1970) 3 SCC 703.

Bench Strength 2. Coram: *V. Bhargava* and **K.S. Hegde**, JJ. [Date of decision: 24-9-1969]

[7895] — S. 156 — Magistrate ordering investigation not same as taking cognizance of the offence

When on a petition of complaint being filed before him a Magistrate applies his mind for proceeding under the various provisions of Chapter XVI of the Code of Criminal Procedure, he must be held to have taken cognizance of the offences mentioned in the complaint. When however he applies his mind not for such purpose but for purposes of ordering investigation under S. 156(3) or issues a search warrant for the purpose of investigation he cannot be said to have taken cognizance of any offence. *Jamuna Singh* v. *Bhadai Shah*, AIR 1964 SC 1541, 1544: (1964) 5 SCR 37: (1964) 2 Cri LJ 468.

Bench Strength 3. Coram: *B.P. Sinha, C.J.* and *M. Hidayatullah* and **K.C. Das Gupta**, JJ. [Date of decision: 4-10-1963]

[7896] — Ss. 156, 157 and 4(1) — Investigation — Scope — Receipt of information not condition precedent for investigation — *Vague information or rumour will not constitute 'information' within the meaning of S. 154 or basis for investigation*

Though ordinarily investigation is undertaken on information received by police officer, the receipt of information is not a condition precedent for investigation. Section 157 prescribes the procedure in the matter of such an investigation which can be initiated either on information or otherwise. It is clear from the said provisions that an officer in charge of a police station can start investigation either on information or otherwise a vague information or an irresponsible rumour would not in itself constitute information within the meaning of S. 154 of the Code or the basis for an investigation under S. 157 thereof. *State of U.P.* v. *Bhagwant Kishore Joshi*, AIR 1964 SC 221: (1964) 3 SCR 71: (1964) 1 Cri LJ 140: (1964) 1 LLJ 60.

Bench Strength 3. Coram: **K. Subba Rao**[1], *Raghubar Dayal*[1] and **J.R. Mudholkar**[2], JJ. [Date of decision: 17-4-1963]

[7897] — Ss. 156, 439 and 561-A — Investigation — No interference by Magistrate or High Court permissible

The police has the statutory right to investigate into the circumstances of any alleged cognizable offence without authority from a Magistrate and this statutory power of the police to investigate cannot be interfered with by the exercise of power under S. 439 or under the inherent power of the Court under S. 561-A of the Criminal Procedure Code. *State of W.B.* v. *S.N. Basak*, AIR 1963 SC 447, 448: (1963) 2 SCR 52: (1963) 1 Cri LJ 341.

Bench Strength 3. Coram: **J.L. Kapur**, *K.C. Das Gupta* and *Raghubar Dayal*, JJ. [Date of decision: 12-4-1962]

[7898] — Ss. 156 and 157 — Duty of investigating officer to present true version of the incident

The duty of the investigating officers is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth. *Jamuna Chaudhary* v. *State of Bihar*, (1974) 3 SCC 774: 1974 SCC (Cri) 250: AIR 1974 SC 1822: (1974) 2 SCR 609: 1974 Cri LJ 890.

Bench Strength 2. Coram: **M.H. Beg** and *Y.V. Chandrachud*, JJ. [Date of decision: 7-12-1973]

[7899] — Ss. 156 and 159 — Power of Magistrate under S. 159 — Power of the Magistrate to stop police investigation started under S. 156 — *Constitution of India — Article 226*

In sub-section (3) of S. 156, the only power given to the Magistrate, who can take cognizance of an offence under S. 190, is to order an investigation; there is no mention of any power to stop an investigation by the police. The scheme of these sections, thus, clearly is that the power of the police to investigate any cognizable offence is uncontrolled by the Magistrate, and it is only in cases where the police decide not to investigate the case that the Magistrate can intervene and either direct an investigation, or, in the alternative himself proceed or depute a Magistrate subordinate to him to proceed to enquire into the case. The power of the police to investigate has been made independent of any control by the Magistrate.

Section 159 was really intended to give a limited power to the Magistrate to ensure that the police investigate all cognizable offences and do not refuse to do so by abusing the right granted for certain limited cases of not proceeding with the investigation of the offence.

Though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Art. 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers. The fact that the Code does not contain any other provision giving power to a Magistrate to stop investigation by the police cannot be a ground for holding that such a power must be read in S. 159 of the Code.

On the face of it, the first alternative of directing an investigation cannot arise in a case where the report itself shows that investigation by the police is going on in accordance with S. 156. Without the use of the expression "if he thinks fit", the second alternative could have been held to be independent of the first; but the use of this expression makes it plain that the power conferred by the second clause of this section is only an alternative to the power given by the first clause and can, therefore, be exercised only in those cases in which the first clause is applicable. *S.N. Sharma* v. *Bipen Kumar Tiwari*, (1970) 1 SCC 653: 1970 SCC (Cri) 258: AIR 1970 SC 786: (1970) 2 MLJ 81 (SC): 1970 ALJ 1348: 1970 Cri LJ 764.

Bench Strength 3. Coram: *S.M. Sikri*, **V. Bhargava** and *C.A. Vaidialingam*, JJ. [Date of decision: 10-3-1970]

[7900] — Ss. 156 and 165 — Illegal investigation by police — Whether illegal investigation justifies obstruction of public servant from discharging his duties after search and seizure is over

The Supreme Court has not finally decided whether a search already made in contravention of the provisions of S. 165, CrPC, makes it illegal or void or merely provides a justification for an obstruction to the search when it is intended or in the process of its being conducted. *Shyam Lal Sharma* v. *State of M.P.*, (1972) 1 SCC 764: 1972 SCC (Cri) 470: AIR 1972 SC 886: (1972) 3 SCR 422: 1972 Cri LJ 638: 1973 ALJ 366.

Bench Strength 2. Coram: **P. Jaganmohan Reddy** and *H.R. Khanna*, JJ. [Date of decision: 9-2-1972]

[7901] — S. 156(2) — Scope

What sub-section (2) of S. 156, CrPC cures is investigation by an officer not empowered under that section i.e. with reference to sub-sections (1) and (3) thereof. Sub-section (1) of S. 156 is a provision empowering an officer in charge of a police station to investigate a cognizable case without the order of a Magistrate and delimiting his power to the investigation of such cases within a certain local jurisdiction.

It is the violation of this provision that is cured under sub-section (2). Obviously sub-section (2) of S. 156 cannot cure the violation of any other specific statutory provision prohibiting investigation by an officer of a lower rank than a Deputy Superintendent of Police unless specifically authorised. But apart from the implication of the language of S. 156(2), it is not permissible to read the emphatic negative language of sub-section (4) of S. 5 of the Prevention of Corruption Act or of the proviso to S. 3 of the Act, as being merely in the nature of an amendment of or a proviso to sub-section (1) of S. 156, CrPC. *H.N. Rishbud* v. *State of Delhi*, AIR 1955 SC 196, 203: (1955) 1 SCR 1150: 1955 Cri LJ 526.

Bench Strength 3. Coram: *B.K. Mukherjea*, *Vivian Bose* and **B. Jagannadhadas**, JJ. [Date of decision: 14-12-1954]

— S. 156(3) *See* Ss. 154 and 156(3)

See also Ss. 173, 156(3) and 190(1)(c)

See also Ss. 190, 202 and 156(3)

See also Ss. 200, 202 and 156(3)

See also Ss. 417(3), 200, 202, 156(3) and 173

[7902] — S. 156(3) — Further investigation

If the Magistrate feels, after considering the final report, that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and direct the police to make further investigation under S. 156(3). *Abhinandan Jha* v. *Dinesh Mishra*, AIR 1968 SC 117, 122: (1967) 3 SCR 668: 1968 Cri LJ 97.

Bench Strength 2. Coram: *M. Hidayatullah* and **C.A. Vaidialingam**, JJ. [Date of decision: 17-4-1967]

[7903] — Ss. 156(3) and 190(1)(c) — Powers of Magistrate under

The Magistrate exercises judicial functions in dealing with the report submitted by the police.

It is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of enquiry. *R.N. Chatterji* v. *Havildar Kuer Singh*, (1970) 1 SCC 496: 1970 SCC (Cri) 218: 1970 ALJ 1301.

Bench Strength 2. Coram: **A.N. Ray** and *I.D. Dua*, JJ. [Date of decision: 19-2-1970]

[7904] — Ss. 156(3) and 190(1)(c) — Scope of — Submission of final report by the police — Power of Magistrate to direct the police to submit a charge-sheet after final report

The provisions of the Criminal Procedure Code do not empower the Magistrate to ask the police to submit a charge-sheet. If, however, the Magistrate is of opinion that the report submitted by the police requires further investigation the Magistrate may order investigation under S. 156(3) of the Criminal

Procedure Code. Directing a further investigation is entirely different from asking the police to submit a charge-sheet. Furthermore, S. 190(1)(*c*) of the Criminal Procedure Code empowers the Magistrate to take cognizance of an offence notwithstanding a contrary opinion of the police.

These provisions in the Criminal Procedure Code, indicate two broad features: first, the formation of an opinion in an investigation is left to the police; and secondly, the Magistrate exercises judicial functions in dealing with the report submitted by the police.

It was for the police to form their opinion and the final step in the investigation was to be taken only by the police and no other authority. As to the powers of the Magistrate he cannot call upon the police to submit a charge-sheet when they have sent a report, that there is no case for sending up the accused for trial because that would be dictating to the police to form opinion in accordance with that of the Magistrate. Such a course is not desirable. That is why the Magistrate can call for a further investigation. *R.N. Chatterji* v. *Havildar Kuer Singh*, (1970) 1 SCC 496: 1970 SCC (Cri) 218: 1970 ALJ 1301.

Bench Strength 2. Coram: **A.N. Ray** and *I.D. Dua*, JJ. [Date of decision: 19-2-1970]

— S. 157 *See* Ch. XIV (Ss. 154 to 176)
See also Ss. 156 and 157
See also Ss. 156, 157 and 4(1)
See also Ss. 162 and 157
See also Ss. 537, 156 and 157

[7905] — S. 157 — Scope

Section 157, CrPC requires such report to be sent forthwith by the police officer concerned to a magistrate empowered to take cognizance of such offence. This is really designed to keep the magistrate informed of the investigation of such cognizable offence so as to be able to control the investigation and if necessary to give appropriate direction under S. 159.

So where FIR was actually recorded without delay and the investigation started on the basis of that FIR and there is no other infirmity brought to notice, then, however improper or objectionable the delayed receipt of the report by the magistrate concerned, it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable. It is not the appellant's case that they have been prejudiced by this delay. *Pala Singh* v. *State of Punjab*, (1972) 2 SCC 640: 1973 SCC (Cri) 55: AIR 1972 SC 2679: 1973 Cri LJ 59.

Bench Strength 3. Coram: *J.M. Shelat*, **I.D. Dua** and *H.R. Khanna*, JJ. [Date of decision: 23-8-1972]

[7906] — S. 157 — Investigation — Police Officer investigating on the basis of clear and precise information — *Act amounts to investigation of offence*

Per Subba Rao, J. (for majority)

Where the information received was clear and precise and the Sub-Inspector, on the basis of the said information, went to the spot to investigate into the truth of the allegations and indeed took some of the crucial steps to detect the crime, the Sub-Inspector of the police made investigation of the offence before obtaining the requisite permission of the Magistrate.

Per Mudholkar, J.

The main object of investigation being to bring home the offence to the offender the essential part of the duties of an Investigating Officer in this connection is, apart from arresting the offender, to collect all material necessary for establishing the acquisition against the offender. Merely making some preliminary enquiries upon receipt of information from an anonymous source or a source of doubtful reliability for checking up the correctness of the information does not amount to collection of evidence and so cannot be regarded as investigation. *State of U.P.* v. *Bhagwant Kishore Joshi*, AIR 1964 SC 221: (1964) 3 SCR 71: (1964) 1 Cri LJ 140: (1964) 1 LLJ 60.

Bench Strength 3. Coram: **K. Subba Rao**[1], *Raghubar Dayal*[1] and **J.R. Mudholkar**[2], JJ. [Date of decision: 17-4-1963]

[7907] — S. 157 — Investigation on "information" or "otherwise"

Though ordinarily investigation is undertaken on information received by a police officer, the receipt of information is not a condition precedent for investigation. Section 157 prescribes the procedure in the matter of such an investigation which can be initiated either on information or otherwise. It is clear from the said provisions that an officer in charge of a police station can start investigation either on information or otherwise. *State of U.P.* v. *Bhagwant Kishore Joshi*, AIR 1964 SC 221, 223: (1964) 3 SCR 71: (1964) 1 Cri LJ 140: (1964) 1 LLJ 60.

Bench Strength 3. Coram: **K. Subba Rao**[1], *Raghubar Dayal*[1] and **J.R. Mudholkar**[2], JJ. [Date of decision: 17-4-1963]

[7908] — S. 157 — Same witnesses at enquiries — Solitary witness

There was no injunction against the same set of witness being present at the successive enquiries if nothing could be urged against them.

The evidence relating to recoveries is not similar to that contemplated under S. 103 of the Criminal Procedure Code where searches are required to be made in the presence of two or more inhabitants of the locality in which the place to be searched is situate. In an investigation under S. 157 the recoveries could be proved even by the solitary evidence of the Investigating Officer if his evidence could otherwise be believed. *H.P. Admn.* v. *Om Prakash*, (1972) 1 SCC 249: 1972 SCC (Cri) 88: AIR 1972 SC 975: (1972) 2 MLJ 16 (SC): 1972 Cri LJ 606.

Bench Strength 2. Coram: **P. Jaganmohan Reddy** and *D.G. Palekar*, JJ. [Date of decision: 7-12-1971]

[7909] — **Ss. 157 and 161 — Investigation — Serious discrepancies in the conduct of investigation, preparation of panchnama and in the notings in the General Diary** — *Considerable delay in removing the dead body and in examining the witness — No reasonable explanation offered — Contravention of para 44 of U.P. Police Act in not making a note in the General Diary of witnesses examined on the day of occurrence — Such lapses in the investigation, held, fatal to the prosecution case. Subhash* v. *State of U.P.*, (1976) 3 SCC 629: 1976 SCC (Cri) 483: AIR 1976 SC 1924: 1976 Cri LJ 1521: 1977 MLJ (Cri) 129.

Bench Strength 3. Coram: **Y.V. Chandrachud**, *R.S. Sarkaria* and *P.N. Shinghal*, JJ. [Date of decision: 6-5-1976]

[7910] — **Ss. 157 and 162 — Statement of I.O. in inquest report is not hit by S. 162 and is primary and direct evidence admissible in the case.** *Rameshwar Dayal* v. *State of U.P.*, (1978) 2 SCC 518: 1978 SCC (Cri) 311: AIR 1978 SC 1558: 1978 ALJ 1011: (1978) 15 ACC 276.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 15-2-1978]

— S. 158 *See* Ch. XIV (Ss. 154 to 176)

— S. 159 *See* Ch. XIV (Ss. 154 to 176)

See also Ss. 156 and 159

[7911] — **S. 159 — Investigation — Should be fair and cautious** — *Investigating Officer should rule out possibility of fabrication and his conduct should dispel suspicion — Blood-smeared weapon of murder must be sent to the Chemical Examiner — Reasons for opinion of experts should be elicited. Mahmood* v. *State of U.P.*, (1976) 1 SCC 542: 1976 SCC (Cri) 72: AIR 1976 SC 69: 1976 Cri LJ 10.

Bench Strength 2. Coram: **R.S. Sarkaria** and *A.C. Gupta*, JJ. [Date of decision: 1-10-1975]

— S. 160 *See also* Ch. XIV (Ss. 154 to 176)

[7912] — **Ss. 160, 161(1), (2) and (3), 163(1) and S. 174(4) — Procedure under** — *Use of copies or statements furnished under, S. 174(4) — Investigation by Vigilance and Anti-Corruption Department — Validity of — Application of the provisions of CrPC — Prevention of Corruption Act, 1947, S. 5*

The enquiry officer must not act under any preconceived idea of guilt of the person whose conduct was being enquired into or pursue the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measure which are of doubtful validity or sanction.

The Code of Criminal Procedure is an enactment designed inter alia to ensure a fair investigation of the allegations against a person charged with criminal misconduct.

The office of the Directorate of Vigilance and Anti-Corruption Department, Madras, became a police station for the purpose of Criminal Procedure Code under sub-clause (*s*) of sub-section (1) of S. 4 of the Code by the notification.

There was no warrant for the Vigilance and Anti-Corruption Department to disregard the provisions of Ss. 162 and 163, CrPC. *P. Sirajuddin* v. *State of Madras*, (1970) 1 SCC 595: 1970 SCC (Cri) 240: AIR 1971 SC 520: 1971 Cri LJ 523.

Bench Strength 2. Coram: *J.M. Shelat* and **G.K. Mitter**, JJ. [Date of decision: 9-3-1970]

[7913] — **Ss. 160 and 161 — Use of force and inducement not permitted**

By no stretch of imagination can it be said that the provisions of section authorise the officer examining a person to beat him or to confine him for the purpose of inducing him to make a particular statement. The provisions of S. 163 emphasise the fact that S. 161 of the Code of Criminal Procedure does not authorise the police officers to beat or to confine a person with a view to induce him to make a statement. *State of A.P.* v. *N. Venugopal*, AIR 1964 SC 33, 38: (1964) 3 SCR 742: (1964) 1 Cri LJ 16: (1965) 2 MLJ (SC) 87.

Bench Strength 3. Coram: *P.B. Gajendragadkar*, *K.N. Wanchoo* and **K.C. Das Gupta**, JJ. [Date of decision: 9-5-1963]

[7914] — **S. 160 proviso — Police officer summoning a woman and a boy aged thirteen years** — *Held, appellant-police officer infringed provisions of the section. Raja Ram* v. *State of Haryana*, (1971) 3 SCC 945: 1972 SCC (Cri) 193.

Bench Strength 3. Coram: **M. Hidayatullah, C.J.** and *A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 26-3-1970]

— **S. 161** *See* Ch. XIV (Ss. 154 to 176)
See also Ss. 157 and 161
See also Ss. 160 and 161

[7915] — S. 161 — Statement made during investigation of cross-case inadmissible in present case — *CrPC, 1973, S. 161. Gajendra Singh* v. *State of U.P.*, (1975) 4 SCC 241: 1975 SCC (Cri) 499: AIR 1975 SC 1703: 1975 Cri LJ 1494.

Bench Strength **2**. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 25-4-1975]

[7916] — S. 161 — Practice of allowing public prosecutor to explain omissions or contradictions in disposition of witness with reference to his statement under S. 161, Criminal Procedure Code — *Held, such concession for proof of contradictions or omissions lacks support of law. Muthu Naicker* v. *State of T.N.*, (1978) 4 SCC 385: 1979 SCC (Cri) 14: AIR 1978 SC 1647: 1978 Cri LJ 1713: (1979) 1 MLJ 10 (SC).

Bench Strength **2**. Coram: *P.N. Shinghal* and **D.A. Desai**, JJ. [Date of decision: 10-8-1978]

[7917] — S. 161 — Contradiction with previous statement of a witness — Omission amounting to contradiction — *Witnesses in statements under S. 161, CrPC, attributing clear intention to the accused to commit murder — In Sessions Court the witness stating that the accused was insane — Previous statements are contradictions under S. 162 CrPC and can be used to contradict no witness — Evidence Act, 1872, S. 145*

The witnesses in their statement before the police attributed a clear intention to the accused to commit murder, but before the court they stated that the accused was insane and, therefore, he committed the murder. In the circumstances it was necessarily implied in the previous statements of the witnesses before the police that the accused was not insane at the time he committed the murder. In this view the previous statements of the witnesses before the police can be used to contradict their version in the court.

Where the witnesses in their statements under S. 161, CrPC stated that the accused came out of the room with a blood-stained knife in his hand and admitted that he had murdered his wife; but in the witness-box they said that when the accused came out of the room he was behaving like a mad man, the statement in the two statements were contradictions within the meaning of S. 162 CrPC. *Dahyabhai Chhaganbhai Thakkar* v. *State of Gujarat*, AIR 1964 SC 1563: (1964) 7 SCR 361: (1964) 2 Cri LJ 472.

Bench Strength **3**. Coram: **K. Subba Rao**, *K.C. Das Gupta* and *Raghubar Dayal*, JJ. [Date of decision: 19-3-1964]

[7918] — S. 161 — Investigation — Delay in examining witnesses by the investigating officer

Much reliance cannot be placed on the evidence of a witness when for no justifiable reason he was not examined by the investigating officer for a number of days particularly when the witness is found to be telling falsehood on material aspects of the case and tries to conform to the evidence of other witnesses. *Balakrushna Swain* v. *State of Orissa*, (1971) 3 SCC 192: 1971 SCC (Cri) 313: AIR 1971 SC 804: 1971 Cri LJ 670.

Bench Strength **2**. Coram: *S.M. Sikri, C.J.* and **P. Jaganmohan Reddy**, J. [Date of decision: 9-2-1971]

[7919] — S. 161 — Particular fact not mentioned

When a particular fact deposed to by witnesses does not find mention both in the FIR and in statements recorded under S. 161, CrPC, it is an improvement and it cannot be considered. *Yudhishtir* v. *State of M.P.*, (1971) 3 SCC 436: 1971 SCC (Cri) 684.

Bench Strength **2**. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 19-2-1971]

[7920] — S. 161 — Police Officer — Duty — Caution to Police Officers while dealing with even untruthful complainants, and their witnesses

Police Officers, who are expected to act as guardians of law and order so as to protect the persons and properties and honour of ordinary citizens, cannot be permitted to take the law in their own hands and go about threatening even untruthful complainants and their witnesses with the object of stifling prosecutions. It is the function of Courts of law to pronounce on the veracity of witnesses before them. Even if the police comes to the conclusion that a complainant and his witnesses are utterly untruthful they have no business to threaten them so that witnesses may not give evidence in Court. It is for Courts to punish perjury which is shown to have been committed. The action of the police officers, with the object they had in view, was quite indefensible. *Waryam Singh* v. *Sadhu Ram*, (1972) 1 SCC 796: 1972 SCC (Cri) 477: AIR 1972 SC 905: 1972 Cri LJ 635.

Bench Strength **4**. Coram: *A.N. Grover, A.N. Ray, D.G. Palekar* and **M.H. Beg**, JJ. [Date of decision: 14-2-1972]

[7921] — Ss. 161, 207-A and 537 — Statements of witnesses recorded by a police officer during the course of investigation made available to the accused at a late stage of the trial — *Held, no prejudice was caused to the accused. Gurbachan Singh* v. *State of Punjab*, AIR 1957 SC 623: 1957 Cri LJ 1009, 1012.

Bench Strength **3**. Coram: *B. Jagannadhadas, Syed Jafer Imam* and **P. Govinda Menon**, JJ. [Date of decision: 24-4-1957]

[7922] — Ss. 161 and 162 — Act done or intended to be done under Police Act or any other law — *Beating or confining a person for inducing him to make a particular statement — Not covered — T.N. District Police Act, 1859 (24 of 1859), S. 53*

By no stretch of imagination can it be said that the provisions of S. 161 authorise the officer examining a person to beat him or to confine him for the purpose of inducing him to make a particular statement. The provisions of S. 163 emphasise the facts that S. 161 of the Code of Criminal Procedure does not authorise the police officers to beat or to confine a person with a view to induce him to make a statement. *State of A.P.* v. *N. Venugopal*, AIR 1964 SC 33: (1964) 3 SCR 742: (1964) 1 Cri LJ 16: (1965) 2 MLJ (SC) 87.

Bench Strength 3. Coram: *P.B. Gajendragadkar*, *K.N. Wanchoo* and **K.C. Das Gupta**, JJ. [Date of decision: 9-5-1963]

[7923] — Ss. 161 and 162 — Document not FIR being a subsequent report to police — It is hit by Ss. 161 & 162, CrPC and can be used only to contradict the maker — *Judge committed misdirection in reading the parties of the document to the jury*

If a report subsequently made to the police is not the first information report, it was by Ss. 161 and 162 of the CrPC and cannot be relied upon except to the extent permitted by the proviso to S. 162 of the CrPC i.e. to contradict the maker of the complaint with respect to any particular statement therein. In that view also the judge clearly misdirected himself in reading the so called relevant portions of the document to the jury. *State of Bombay* v. *Rusy Mistry*, AIR 1960 SC 391: 1960 Cri LJ 532.

Bench Strength 3. Coram: *S.R. Das, C.J.* and *P.B. Gajendragadkar* and **K. Subba Rao**, JJ. [Date of decision: 24-9-1959]

[7924] — Ss. 161 and 162 — Statement recorded by the investigating officer — *High Court holding that the record of the statement made by the Investigating Officer was not honest — Nevertheless it acquitted all the accused not named in these statements even though the witnesses held as reliable named there in the court — High Court was not justified in rejecting reliable testimony on the basis of the record condemned by it as unreliable*

The High Court held that the 4 eyewitnesses were on the whole reliable and that the record of their statements made by the investigating officer was not honest and faithful. It fell into the error of acquitting all those accused persons, appellants before it, whose names did not find a place in the record made by that police officer. In other words it rejected reliable testimony with reference to that very record which it had condemned as unreliable. In so far as the High Court misled itself into relying upon the record made by the sub-Inspector of Police to discard the evidence given in the Court it fell into a serious error. *Mathurala Adi Reddy* v. *State of Hyderabad*, AIR 1956 SC 177: 1956 Cri LJ 341.

Bench Strength 3. Coram: *Vivian Bose*, **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 7-10-1955]

[7925] — Ss. 161 and 162 — Statements recorded during an illegal investigation of case — Applicability of Ss. 161 & 162 — *Investigation conducted by Dy. S.P. in a case which could be investigated by Superintendent of Police alone in view of the provisions of Bombay State Commr. of Police Act, 1959 — Superintendent of Police later investigating the case under the orders of the Court and recording fresh evidence — Statements recorded by Dy. S.P. covered by Ss. 161 and 162 CrPC although the investigation was illegal.* *Bhanuprasad Hariprasad Dave* v. *State of Gujarat*, AIR 1968 SC 1323: (1969) 1 SCR 22: (1970) 1 LLJ 643: 1968 Cri LJ 1505.

Bench Strength 3. Coram: *G.K. Mitter*, *C.A. Vaidialingam* and **K.S. Hegde**, JJ. [Date of decision: 19-4-1968]

[7926] — Ss. 161 and 162 — Telephone conversation between two private persons — *Statement not to the police officer. R.M. Malkani* v. *State of Maharashtra*, (1973) 1 SCC 471: 1973 SCC (Cri) 399: AIR 1973 SC 157: (1973) 2 SCR 417: 1973 Cri LJ 228.

Bench Strength 2. Coram: **A.N. Ray** and *I.D. Dua*, JJ. [Date of decision: 22-9-1972]

[7927] — Ss. 161 and 163 — Use of force prohibited

The provisions of Ss. 161 and 163 of the Criminal Procedure Code emphasise the fact that a police officer is prohibited from beating or confining persons with a view to induce them to make statements. *State of Maharashtra* v. *Narhar Rao*, AIR 1966 SC 1783, 1787: (1966) 3 SCR 880: 1966 Cri LJ 1495.

Bench Strength 3. Coram: *K. Subba Rao*, **V. Ramaswami** and *J.M. Shelat*, JJ. [Date of decision: 14-3-1966]

[7928] — Ss. 161 and 173 — Statement under S. 161 and other documents under S. 173 not furnished to the accused — *Held, most valuable statutory right denied — Accused by exercise of such right could have tested the veracity of evidence* *led by prosecution — Denial of the right gains significance in view of lapse of time. State of U.P.* v. *Kapil Deo Shukla*, (1972) 3 SCC 504: 1972 SCC (Cri) 597: AIR 1973 SC 494: 1972 Cri LJ 1214.

Bench Strength **2**. Coram: **J.M. Shelat** and *H.R. Khanna*, JJ. [Date of decision: 30-3-1972]

— Ss. 161(1) to (3) *See* Ss. 160, 161(1), (2) and (3), 163(1) and 174(4)

[7929] — S. 161(3) — Investigating Officer recording a joint statement of several witnesses *— Their statements made in court are nevertheless admissible although there was contravention of S. 161(3)*

The investigating officer stated that he recorded joint statement of three witnesses in respect of common things and made a separate record about the identification and weapons.

Held, the recording of a joint statement of three witnesses is clearly in contravention of S. 161(3) and must be disapproved. Section 161(3) does not say that the statement of witnesses made in court would be inadmissible in case S. 163(3) is contravened while the Investigating Officer recorded their statements. Seeing that the police are not bound to make a record of the statements of the witnesses in which case there is admittedly no bar to the reception of their testimony, it would be anomalous to hold that there evidence is inadmissible because the statements were reduced to writing but not in the manner provided in the section.

The Evidence Act contains the elaborate provisions as to who are competent witnesses and on what matters their evidence is inadmissible on these provisions the three witnesses are neither incompetent nor is the evidence as to the incidents to which they deposed inadmissible. *Tilkeshwar Singh* v. *State of Bihar*, AIR 1956 SC 238: (1955) 2 SCR 1043: 1956 Cri LJ 441, 443.

Bench Strength **3**. Coram: *Vivian Bose*, **T.L. Venkatarama Aiyar** and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 8-12-1955]

[7930] — S. 161(3) — Statements of witnesses recorded by the police Investigating Officer recording identical statement of several witnesses *— Procedure is not irregular and no inference that the witnesses were adherents of the police can be drawn*

There is no special rule or direction provided in the Code of Criminal Procedure affording guidance for police officers in recording statements of witnesses and usually what is done is that when a succeeding witness gives practically an identical story as to what a previous witness has stated, it is a matter of common knowledge that the words used by the police officer would be similar or identical. No inference can therefore be drawn that the witnesses were adherents of the police. *Gurbachan Singh* v. *State of Punjab*, AIR 1957 SC 623: 1957 Cri LJ 1009, 1012.

Bench Strength **3**. Coram: *B. Jagannadhadas*, *Syed Jafer Imam* and **P. Govinda Menon**, JJ. [Date of decision: 24-4-1957]

— S. 162 *See* Ss. 4(1) and 162

See also Ch. XIV (Ss. 154 to 176)

See also Ss. 157 and 162

See also Ss. 161 and 162

[7931] — S. 162 — Scope

Under the present S. 162, Criminal Procedure Code, the prosecution is entitled, with the permission of the Court, to contradict a witness in the manner provided by S. 145, Indian Evidence Act, provided his statement made to the police officer in the course of investigations has been reduced into writing. It seems to us that in this particular case what the prosecution did was to confront the witness with his previous statement by reading the whole of it. It may be that the proper way would have been to read only those parts of the statement which the prosecution wanted to use for the purpose of contradicting him. But this procedural defect would not make the statement of the witness inadmissible in evidence. No prejudice seems to have been caused to the accused by the adoption of such procedure because the witness mostly denied having made those parts of the statement which were later specifically put to him in the form of questions. *Ram Chandra* v. *State of Maharashtra, Cri. A. No. 127 of 1966*

Bench Strength **3**. Coram: **Sikri**, *Shelat* and *Hegde*, JJ. [Date of decision: 27-11-1967]

[7932] — S. 162 — Scope — Admissibility of the statements made to a draftsman making a site plan *— Draftsman making a site plan — Witnesses pointing out to him the places where the assailants and the deceased stood — Evidence is admissible*

Per majority

It is not unusual to have a plan drawn up by a draftsman and this is not done to evade the provisions of S. 162 of the Criminal Procedure Code.

If the draftsman is asked to prepare a sketch map of the place of the occurrence, and if after ascertaining from the witnesses where exactly the assailant and the victim stood at the time of the commission of the offence and the draftsman measures the distance between the two places thus shown to him and puts it down on the plan, and further, if the witnesses corroborate his statement that they showed him the places, it is somewhat difficult to see how this is not legal evidence and why it is inadmissible.

Nor is the evidence hearsay because: (1) the eyewitnesses have been called and they say that they showed the different spots to the draftsman, and (2) in so far as the distance is concerned the draftsman himself measured them as he swears in the witness-box that the distances shown in the sketch are correct.

Per Jagannadhadas and Sinha, JJ (dissenting)

It appears that the pointing out of the distances to the draftsman was in the very presence of the police officer and that it was incidental to the pointing out of the distance to the investigating officer on the spot, in the course of the investigation. The evidence of the draftsman taken with what he has noted on the map can only be treated as evidence of prior statements, as to distance, of the eyewitnesses, in the course of investigation by the police and is, therefore, inadmissible in the case either as substantive or as corroboration evidence, amplifying the evidence given by the eyewitnesses. *Santa Singh* v. *State of Punjab*, AIR 1956 SC 526: 1956 Cri LJ 930, 32-34.

Bench Strength 5. Coram: *Vivian Bose*, **B. Jagannadhadas**[2], *B.P. Sinha*, *Syed Jafer Imam* and **N. Chandrasekhara Aiyar**[1], JJ. [Date of decision: 2-2-1956]

[7933] — S. 162 — Scope — Investigating Officer receiving an anonymous letter in the handwriting of the accused — *Letter not barred under S. 162 — Statement sought to be excluded from evidence must be ascribable to the enquiry conducted by the investigating officer*

Section 162 of the Criminal Procedure Code only bars proof of statement made to an investigating officer during the course of investigation. Section 162 does not say that every statement made during the period of investigation is barred from being proved in evidence. For a statement to come within the purview of S. 162, it must not merely be made during the period of investigation but also in the course of investigation. The two things, that is, "the period of investigation" and "course of investigation" are not synonymous. Section 162 is aimed at statements recorded by a police officer while investigating into an offence. This is clear from the opening words of S. 162. They speak only of statements made to a police officer during the course of investigation. This implies that the statement sought to be excluded from evidence must be ascribable to the enquiry conducted by the investigating officer and not one which is de hors the enquiry. Therefore, an anonymous letter from an accused recovered by the investigating officer will not fall within the ambit of such statement. *Baleshwar Rai* v. *State of Bihar*, (1963) 2 SCR 433: (1964) 1 Cri LJ 564.

Bench Strength 3. Coram: *K.C. Das Gupta*, **J.R. Mudholkar** and *T.L. Venkatarama Ayyar*, JJ. [Date of decision: 26-4-1962]

[7934] — S. 162 — Scope — Statement recorded by the Investigating Officer — Is not substantive evidence — *Police record perfunctory and dishonest — The statement of the witnesses given in court should be considered keeping in view that their statement recorded under S. 161 CrPC is tainted record and has no great value*

Ordinarily accused persons are entitled to challenge the testimony of witnesses examined in court with reference to the statements said to have been made by them before the investigating police officer. Statements made by prosecution witnesses before the investigating police officer being the earliest statements made by them with reference to the facts of the occurrence are valuable material for testing the veracity of the witnesses examined in court, with particular reference to those statements which happen to be at variance with their earlier statements; but the statements made during police investigation are not substantive evidence.

Hence the record made by a police investigating officer has to be considered by the Court only with a view to weighing the evidence actually adduced in court. If the police record becomes suspect or unreliable, as in the present case, on the ground that it was deliberately perfunctory or dishonest, it loses much of its value and the Court in judging the case of a particular accused has to weigh the evidence given against him in court keeping in view the fact that the earlier statements of witnesses as recorded by the police is tainted record and has not as great a value as it otherwise would have in weighing all the material on the record as against each individual accused. *Mathurala Adi Reddy* v. *State of Hyderabad*, AIR 1956 SC 177: 1956 Cri LJ 341.

Bench Strength 3. Coram: *Vivian Bose*, **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 7-10-1955]

[7935] — S. 162 — Scope — Statement in writing to be used for contradicting the witness — *Evidence Act, 1872, S. 145*

Per majority

Section 145 of the Evidence Act is in two parts: the first part enables the accused to cross-examine a witness as to previous statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the cross-examination assumed the shape of contradiction: in other words, both parts deal with cross-examination; the first part with cross-examination other than by way of contradiction, and the second with cross-examination by way of contradiction only.

The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to S. 162 of the Code of Criminal Procedure only enables the accused to make use of such statement contradict a witness in the manner provided by S. 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of S. 145 of the Evidence Act. It would be possible to invoke the second part of S. 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real. The second part of S. 145 of the Evidence Act clearly indicates the simple procedure to be followed.

The contradiction, under the section, should be between what a witness asserted in the witness-box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually made before him.

In such a case the question could not be put at all: only questions to contradict can be put. *Tahsildar Singh* v. *State of U.P.*, AIR 1959 SC 1012, 1021: 1959 Supp (2) SCR 875: 1959 Cri LJ 1231.

Bench Strength **6**. Coram: *B.P. Sinha*[1], *Syed Jafer Imam*[2], *J.L. Kapur*[1], *A.K. Sarkar*[1], **K. Subba Rao**[1] and **M. Hidayatullah**[2], JJ. [Date of decision: 5-5-1959]

[7936] — S. 162 — Scope — Trap laid in a case under S. 165-A IPC — Conversation between the accused and the officer to whom bribe offered tape recorded — *Public officers present in another room — This fact not in accused's knowledge — Evidence of conversation not barred by S. 162*

The appellant and *S* the officer, to whom the appellant offered the bribe spoke to each other, but neither made a statement to the Police Officer. Appellant did not even know that the police officers were present in the adjoining room. The police officers set the stage for the drama in which the actors were *S.* and the appellant. The officers hid themselves in the inner room and took no part in the drama. Neither of them can be regarded as having made a statement to a police officer as contemplated by S. 162. *Yusufalli Esmail Nagree* v. *State of Maharashtra*, AIR 1968 SC 147: (1967) 3 SCR 720: 1968 Cri LJ 103, 05, 06.

Bench Strength **3**. Coram: *M. Hidayatullah*, **R.S. Bachawat** and *C.A. Vaidialingam*, JJ. [Date of decision: 19-4-1967]

[7937] — S. 162 — Retracted confession made by accused to the witness of doubtful character — *Corroboration needed — Evidence Act, 1872, Ss. 24 and 21*

A retracted confession which is not too good to be treated as sufficient in itself to fasten the guilt, requires satisfactory reinforcement. *Ediga Anamma* v. *State of A.P.*, (1974) 4 SCC 443: 1974 SCC (Cri) 479: AIR 1974 SC 799: 1974 Cri LJ 683: (1974) 3 SCR 329.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *R.S. Sarkaria*, JJ. [Date of decision: 11-2-1974]

[7938] — S. 162 — FIR lodged by the person who was later tried as an accused — Is not confession — *Is admissible in evidence and admissibility not barred by S. 25, Evidence Act or S. 162 CrPC — Admission of an accused can be proved against him — Evidence Act, 1872, S. 25*

The FIR lodged by the person who was later tried as an accused of the offence of murder is not his confession. It is not a statement made to a police officer during the course of investigation. Section 25 of the Evidence Act and S. 162 of the Code of Criminal Procedure do not bar its admissibility. The report is an admission by the accused of certain facts which have a bearing on the question to be determined by the Court viz. how and by whom the murder of *G* was committed, or whether the appellant's statement in Court denying the correctness of certain statements of the prosecution witnesses is correct or not. *Faddi* v. *State of M.P.*, AIR 1964 SC 1850: (1964) 6 SCR 312: (1964) 2 Cri LJ 744.

Bench Strength **2**. Coram: *M. Hidayatullah* and **Raghubar Dayal**, JJ. [Date of decision: 24-1-1964]

[7939] — S. 162 — "Police officer" — Who is — Test — RPF Officer — *Officer of RPF making inquiry under S. 8(1) of Railway Property (Unlawful Possession) Act, 1966 (29 of 1966), held, not a "police officer" within the meaning of S. 25 of Evidence Act or S. 162 CrPC — Position of customs or excise officer also not different in this regard — Hence confessional or incriminating statement recorded by such officer under S. 9 of 1966 Act in the course of the inquiry cannot be excluded from evidence — Inquiry under S. 8(1) of 1966 Act distinct in material aspects from investigation under Chapter XIV of the Code — Evidence Act, 1872, S. 25*

The primary test to determine whether an officer under a special Act is a "police officer" for the purpose of S. 25, Evidence Act is whether that officer has been invested with *all* the powers exercisable by an officer in charge of a police station under Chap. XIV of the Criminal Procedure Code, 1898, qua investigation of offences under that Act, including the power to initiate prosecution by submitting a report (charge-sheet) under S. 173 of the Code. It is not enough to show that he exercises some or even many of the powers of a police officer conducting an investigation under the Code.

The ratio of the Supreme Court's earlier decisions laying down the above test cannot be said to be inapplicable to the present case merely because they related to a customs officer or an excise officer, and not to an officer of the RPF. The factual premises on which the ratio of *Badku Joti Savant* rests were substantially analogous to those of the instant case. That is to say, the powers of arrest, inquiry and investigation conferred on the Central Excise Officers under the Central Excises and Salt Act 1 of 1944 (which was under consideration in that case) are very similar to those with which an officer of the RPF is invested under the 1966 Act. The relevant provisions in Ss. 13, 18, 19 and 21 of the Central Act 1 of 1944, substantially correspond to the provisions in Ss. 6, 7, 8, etc. of the 1966 Act.

Applying the above test to the present case, it is clear that an officer of the RPF conducting an enquiry under S. 8(1) of the 1966 Act has not been invested with *all* the powers of an officer in charge of a police station making an investigation under Chapter XIV of the Code. *Balkishan A. Devidayal* v. *State of Maharashtra*, (1980) 4 SCC 600: 1981 SCC (Cri) 62: AIR 1981 SC 379: 1980 Cri LJ 1424: (1980) 17 ACC 300.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *O. Chinnappa Reddy*, JJ. [Date of decision: 31-7-1980]

Badku Joti Savant v. State of Mysore, (1966) 3 SCR 698: AIR 1966 SC 1746: 1966 Cri LJ 1353, applied

[7940] — S. 162 — Scope of each section and interrelationship — "Person accused of an offence" — Meaning of — *Evidence Act, 1872, Ss. 27, 24, 25 & 26*

Per majority

The ban which is partial under S. 24 and complete under S. 25 applies equally whether or not the person against whom evidence is sought to be led in a criminal trial was at the time of making the confession in custody. For the ban to be effective the person need not have been accused of an offence when he made the confession.

Section 27 of the Indian Evidence Act is one of a group of sections relating to the relevancy of certain forms of admissions made by persons accused of offences.

The expression, "accused person" in S. 24 and the expression "a person accused of the offence" have the same connotation, and describe the person against whom evidence is sought to be led in a criminal proceeding.

The Privy Council in *Narayan Swami* v. *Emperor*, 66 IA 66: 40 Cri LJ 364: AIR 1939 PC 47 has stated: "Section 25 covers a confession made to a police officer before any investigation has begun or otherwise not in the course of an investigation." The adjectival clause "accused of any offence" is therefore descriptive of the person against whom a confessional statement made by him is declared not provable, and does not predicate a condition of that person at the time of making the statement for the applicability of the ban. Section 26 of the Indian Evidence Act by its first paragraph provides: "No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against a person accused of any offence." By this section, a confession made by a person who is in custody is declared not provable unless it is made in the immediate presence of a Magistrate. Whereas S. 25 prohibits proof of a confession made by a person to a police officer whether or not at the time of making the confession, he was in custody, S. 26 prohibits proof of a confession by a person in custody made to any person unless the confession is made in the immediate presence of a Magistrate. Section 27 which is in the form of a proviso states: "Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

Therefore the expression, "accused of any offence" in S. 27, as in S. 25, is also descriptive of the person concerned i.e. against a person who is accused of an offence, S. 27 renders provable certain statements made by him while he was in the custody of a police officer.

Section 27 is founded on the principle that even though the evidence relating to confessional or other statements made by a person, whilst he is in the custody of a police officer, is tainted and therefore inadmissible if the truth of the information given by him is assured by the discovery of a fact, it may be presumed to be untainted and is therefore declared provable in so far as it distinctly relates to the fact thereby discovered. Even though S. 27 is in the form of a proviso to S. 26, the two sections do not necessarily deal with evidence of the same character. The ban imposed by S. 26 is against the proof of confessional statements. Section 27 is concerned with the proof of information whether it amounts to a confession or not, which leads to discovery of facts. By S. 27, even if a fact is deposed to as discovered in consequence of information received, only that much of the information is admissible as distinctly relates to the fact discovered. By S. 26, a confession made in the presence of a Magistrate is made provable in its entirety.

Section 162 of the CrPC also enacts a rule of evidence. This section among other things, prohibits, but not so as to affect the admissibility of information to the extent permissible under S. 27 of the Evidence Act, use of statements by any person to a police officer in the course of an investigation under Ch. XIV of the Code, in any enquiry or trial in which such person is charged for any offence, under investigation at the time when the statement was made.

On an analysis of Ss. 24 to 27 of the Indian Evidence Act and S. 162 of the Code of Criminal Procedure, the following material propositions emerge:

(*a*) Whether a person is in custody or outside, a confession made by him to a police officer or the making of which is procured by inducement, threat or promise having reference to the charge against him and proceeding from a person in authority, is not provable against him in any proceeding in which he is charged with the commission of an offence.

(*b*) A confession made by a person whilst he is in the custody of a police officer to a person other than a police officer is not provable in a proceeding in which he is charged with the commission of an offence unless it is made in the immediate presence of a Magistrate.

(*c*) That part of the information given by a person whilst in police custody whether the information is confessional or otherwise, which distinctly relates to the fact thereby discovered but no more, is provable in a proceeding in which he is charged with the commission of an offence.

(*d*) A statement whether it amounts to a confession or not made by a person when he is not in custody, to another person such latter person not being a police officer may be proved if it is otherwise relevant.

(*e*) A statement made by a person to a police officer in the course of an investigation of an offence under Ch. XIV of the CrPC cannot except to the extent permitted by S. 27 of the Indian Evidence Act, be used for any purpose at any enquiry or trial in respect of any offence under investigation at the time when the statement was made in which he is concerned as a person accused of an offence. *State of U.P.* v. *Deoman Upadhyaya*, AIR 1960 SC 1125: (1961) 1 SCR 14: 1960 Cri LJ 1504.

Bench Strength **5**. Coram: *S.K. Das*[1], *J.L. Kapur*[1], **K. Subba Rao**[2], **M. Hidayatullah**[3] and **J.C. Shah**[1], JJ. [Date of decision: 6-5-1960]

[7941] — S. 162 — Contradiction with previous statement of a witness — Omission amounting to contradiction — *Witnesses in statements under S. 161, CrPC, attributing clear intention to the accused to commit murder — In Sessions Court the witness stating that the accused was insane — Previous statements are contradictions under S. 162 CrPC and can be used to contradict no witness — Evidence Act, 1872, S. 145*

The witnesses in their statement before the police attributed a clear intention to the accused to commit murder, but before the court they stated that the accused was insane and, therefore, he committed the murder. In the circumstances it was necessarily implied in the previous statements of the witnesses before the police that the accused was not insane at the time he committed the murder. In this view the previous statements of the witnesses before the police can be used to contradict their version in the court.

Where the witnesses in their statements under S. 161, CrPC stated that the accused came out of the room with a blood-stained knife in his hand and admitted that he had murdered his wife; but in the witness-box they said that when the accused came out of the room he was behaving like a mad man, the statement in the two statements were contradictions within the meaning of S. 162 CrPC. *Dahyabhai Chhaganbhai Thakkar* v. *State of Gujarat*, AIR 1964 SC 1563: (1964) 7 SCR 361: (1964) 2 Cri LJ 472.

Bench Strength **3**. Coram: **K. Subba Rao**, *K.C. Das Gupta* and *Raghubar Dayal*, JJ. [Date of decision: 19-3-1964]

[7942] — S. 162 — Use of statement made to the police under S. 161 — Scope with reference to S. 145 Evidence Act — *The accused is entitled to cross-examine a witness with reference to his statement recorded under S. 161 subject to the limitations of S. 162 — Reference to S. 145 Evi-*

dence Act brings in the whole of the manner and machinery of this section and not merely 2nd part

Per Hidayatullah and Imam, JJ.

The fact that the accused can use the previous statement for the purpose of contradicting, shows that the previous statement cannot be used for corroborating the witness. The basis for contradicting may arise, because of there being a contrary statement, irreconcilable statement or even material omission. The accused can establish a contradiction by cross-examining the witness but only so as to bring out a contradiction and no more. It is not correct that the accused is not entitled to cross examine but only to contradict. The reference to S. 145 the Indian Evidence Act brings in the whole of the manner and machinery of S. 145 and not merely the second part. The accused cannot of course go beyond S. 162 or ignore what the section prohibits but cross-examination to establish a contradiction between one statement and another is certainly permissible.

It must not be overlooked that the cross-examination must be directed to bringing out a contradiction between the statements and must not subserve any other purpose. If the cross-examination does anything else, it will be barred under S. 162, which permits the use of the earlier statement for contradicting a witness and nothing else. *Tahsildar Singh* v. *State of U.P.*, AIR 1959 SC 1012: 1959 Supp (2) SCR 875: 1959 Cri LJ 1231.

Bench Strength **6**. Coram: *B.P. Sinha*[1], *Syed Jafer Imam*[2], *J.L. Kapur*[1], *A.K. Sarkar*[1], **K. Subba Rao**[1] and **M. Hidayatullah**[2], JJ. [Date of decision: 5-5-1959]

[7943] — S. 162 — Use of previous statement for contradicting — *Evidence Act, 1872, S. 145*

Per majority

(1) A statement in writing made by a witness before a police officer in the course of investigation can be used only to contradict his statement in the witness-box and for no other purpose; (2) statements not reduced to writing by the police officer cannot be used for contradiction; (3) though a particular statement is not expressly recorded, a statement that can be deemed to be part of that expressly recorded can be used for contradiction, not because it is an omission strictly so called but because it is deemed to form part of the recorded statement; (4) such a fiction is permissible by construction only in the following three cases:

(*i*) When a racital is necessarily implied from the recital or recitals found in the statement;

(*ii*) a negative aspect of a positive recital in a statement;

(*iii*) when the statement before the police and that before the court cannot stand together.

Per Hidayatullah & Kapur, JJ. (concurring)

The right of both the accused and the prosecution is limited to contradictions. It involves cross-examination by the accused as to that contradiction within S. 145 of the Indian Evidence Act and re-examination in relation to the matters "referred to in the cross-examination of the witness". The prosecution cannot range at will to explain away every discrepancy but only such as the accused under his right has brought to light. *Tahsildar Singh* v. *State of U.P.*, AIR 1959 SC 1012, 1026: 1959 Supp (2) SCR 875: 1959 Cri LJ 1231.

Bench Strength **6**. Coram: *B.P. Sinha*[1], *Syed Jafer Imam*[2], *J.L. Kapur*[1], *A.K. Sarkar*[1], **K. Subba Rao**[1] and **M. Hidayatullah**[2], JJ. [Date of decision: 5-5-1959]

[7944] — S. 162 — Statements recorded during investigation under S. 8(1) of the 1966 Act do not attract S. 162 CrPC, 1898 — *Railway Property (Unlawful Possession) Act, 1966, S. 8(1)*

In cases of prosecution under the extensive powers of the Railway Property (Unlawful Possession) Act, 1966, for unlawful possession of railway property, officers of the Railway Protection Force have power to investigate into the alleged offence and statements recorded by them during the course of investigation do not attract the provisions of S. 162 CrPC. *Srilal Shaw* v. *State of W.B.*, (1975) 1 SCC 336: 1975 SCC (Cri) 172: AIR 1975 SC 393: (1975) 2 SCR 913: 1975 Cri LJ 423.

Bench Strength **3**. Coram: *M.H. Beg*, **Y.V. Chandrachud** and *A.C. Gupta*, JJ. [Date of decision: 4-12-1974]

[7945] — S. 162 — Excise Officer if a police officer under S. 25, Evidence Act, 1872 — Confession to Excise Officer inadmissible under S. 162 CrPC also — *Bihar and Orissa Excise Act, 1915 (2 of 1915). Raja Ram Jaiswal* v. *State of Bihar*, AIR 1964 SC 828, 832, 83: (1964) 2 SCR 752: (1964) 1 Cri LJ 705.

Bench Strength **3**. Coram: *K. Subba Rao*[1], **Raghubar Dayal**[2] and **J.R. Mudholkar**[1], JJ. [Date of decision: 4-4-1963]

[7946] — S. 162 — "Period of investigation" and "course of investigation"

For a statement to come within the purview of S. 162, it must not merely be made during the period of investigation but also in the course of investigation. The two things, that is, "the period of investigation" and "course of investigation" are not synonymous. S. 162 is aimed at statements recorded by a police officer while investigating into an offence. This is clear from the opening words of S. 162. They speak only of statements made to a police officer during the course of investigation. This implies that the statements sought to be excluded from evidence must be ascribable to the enquiry conducted by the investigating officer and not one which is de hors the enquiry. Therefore, an anonymous letter from an accused recovered by the investigating officer will not fall within the ambit of such statement. *Baleshwar Rai* v. *State of Bihar*, (1963) 2 SCR 433: (1964) 1 Cri LJ 564.

Bench Strength **3**. Coram: *K.C. Das Gupta*, **J.R. Mudholkar** and *T.L. Venkatarama Ayyar*, JJ. [Date of decision: 26-4-1962]

[7947] — S. 162 — "Statement in writing"

Per Subba Rao, J. (for majority)

Looking at the express words used in S. 162 CrPC two sets of words stand out prominently which afford the key to the intention of the legislature. They are: "statement in writing", and "to contradict". "Statement" in its dictionary meaning is the act of stating or reciting. 'Prima facie' a statement cannot take in an omission. A statement cannot include that which is not stated. But very often to make a statement sensible or self-consistent, it becomes necessary to imply words which are not actually in the statement. Though something is not expressly stated, it is necessarily implied from what is directly or expressly stated. *Tahsildar Singh* v. *State of U.P.*, AIR 1959 SC 1012: 1959 Supp (2) SCR 875: 1959 Cri LJ 1231.

Bench Strength **6**. Coram: *B.P. Sinha*[1], *Syed Jafer Imam*[2], *J.L. Kapur*[1], *A.K. Sarkar*[1], **K. Subba Rao**[1] and **M. Hidayatullah**[2], JJ. [Date of decision: 5-5-1959]

[7948] — S. 162 — Accused's statement made to police — Admissibility of

Statement made by the accused to the Police in course of investigation is rendered inadmissible by S. 162 CrPC. *Rao Shiv Bahadur Singh* v. *State of V.P.*, AIR 1954 SC 322: 1954 SCR 1098: 1954 Cri LJ 910.

Bench Strength **3**. Coram: **N.H. Bhagwati**, *B. Jagannadhadas* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 5-3-1954]

[7949] — S. 162 — Belated Investigation — Effect of S. 325, IPC

Although the case ought to have been registered as a serious one and investigation started immediately, yet the delay in investigation could be ignored in view of the provision of Regulation 104 of the U.P. Police Regulations which seems to have given a handle to the Head Constable in not starting the investigation immediately. The said regulation thwarted investigation without a specific order of the Superintendent of Police or the report of a Medical Officer. Nevertheless, delay of a week is remarkable. *Hazara Singh* v. *State of U.P.*, (1969) 2 SCC 22: AIR 1969 SC 951: 1969 Cri LJ 1428: 1969 MLJ (Cri) 721.

Bench Strength **3**. Coram: **S.M. Sikri**, *R.S. Bachawat* and *K.S. Hegde*, JJ. [Date of decision: 11-2-1969]

[7950] — S. 162 — Cross-examination of defence witness with respect to his statement recorded by police during investigation is not permissible — *Supreme Court calling this aspect of law as unfortunate — Evidence Act, 1872, S. 145. Laxman Kalu Nikalje* v. *State of Maharashtra*, AIR 1968 SC 1390: (1968) 3 SCR 685: 1968 Cri LJ 1647.

Bench Strength **3**. Coram: **M. Hidayatullah**, **C.J.** and *C.A. Vaidialingam* and *A.N. Grover*, JJ. [Date of decision: 5-4-1968]

[7951] — S. 162 — Delayed examination by Investigating Officer — Presumption — Rebuttal of — Burden of proof

The fact of delayed examination of a witness should be put to the Investigating Officer so as to enable him to explain the undue delay, if any, in examining a particular witness. The question of delay in examining a witness during investigation is material only if it is indicative and suggestive of some unfair practice by the investigating agency for purpose of introducing a got-up witness to falsely support the prosecution case. It is, therefore, essential that the Investigating Officer should be asked specifically about the delay and the reasons therefor. *Ranbir* v. *State of Punjab*, (1973) 2 SCC 444: 1973 SCC (Cri) 858: AIR 1973 SC 1409: 1973 Cri LJ 1120.

Bench Strength **2**. Coram: *K.K. Mathew* and **I.D. Dua**, JJ. [Date of decision: 26-4-1973]

[7952] — S. 162 — Documents prepared by I.O. and statements made to him soon after the occurrence are valuable for testing the veracity of witnesses. *Rameshwar Dayal* v. *State of U.P.*, (1978) 2 SCC 518: 1978 SCC (Cri) 311: AIR 1978 SC 1558: 1978 ALJ 1011: (1978) 15 ACC 276.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 15-2-1978]

[7953] — S. 162 — Effect of amendment by Act 2 of 1945

After the amendment it was open to the prosecution with the permission of the Court to use such a statement in order to contradict a witness in the manner provided by S. 145 of the Evidence Act though before the amendment, the prosecution could not make use of any such statement to contradict a witness but could only use any part of the statement other than that used by the defence to contradict a witness, for explaining any matter referred to in cross-examination at the time of re-examination. *Gurbachan Singh* v. *State of Punjab*, AIR 1957 SC 623: 1957 Cri LJ 1009.

Bench Strength **3**. Coram: *B. Jagannadhadas, Syed Jafer Imam* and **P. Govinda Menon**, JJ. [Date of decision: 24-4-1957]

[7954] — S. 162 — Furnishing copy of statement to accused — Only of witness called for prosecution

Section 162 permits the furnishing of a copy of the accused only of a witness who is called for the prosecution at the trial. *Shiv Narain Jafa* v. *Judges of High Court Allahabad*, AIR 1953 SC 368, 369: 1953 Cri LJ 1459.

Bench Strength **5**. Coram: *M.C. Mahajan, B.K. Mukherjea*, **Ghulam Hasan**, *N.H. Bhagwati* and *B. Jagannadhadas*, JJ. [Date of decision: 15-5-1953]

[7955] — S. 162 — Object & scope — Mandatory provision

The provisions relating to the record of the statements of the witnesses and the supply of copies to the accused so that they may be utilised at the trial for effectively defending himself cannot normally be permitted to be whittled down, and where the circumstances are such that the Court may reasonably infer that prejudice has resulted to the accused from the failure to supply the statements recorded under S. 161, the Court would be justified in directing that the conviction be set aside and in a proper case to direct that the defect be rectified in such manner as the circumstances may warrant. It is only where the Court is satisfied, having regard to the manner in which the case has been conducted and the attitude adopted by the accused in relation to the defect, that no prejudice has resulted to the accused that the Court would, notwithstanding the breach of the statutory provisions, be justified in maintaining the conviction. *Noor Khan* v. *State of Rajasthan*, AIR 1964 SC 286, 294: (1964) 4 SCR 521: (1964) 1 Cri LJ 167.

Bench Strength **3**. Coram: *A.K. Sarkar, M. Hidayatullah* and **J.C. Shah**, JJ. [Date of decision: 19-8-1963]

[7956] — S. 162 — Place of occurrence marked on the site plan in consequence of statements made to the police officer during investigation — ***Held, inadmissible***

Where the police officer has already registered the case under S. 154, Criminal Procedure Code, any statement made by witnesses during the course of investigation would be hit by S. 162(1), CrPC and inadmissible in evidence except for the purpose of contradiction of the witness when examined in Court either by the accused or by prosecution with the leave of Court. A plan prepared in the way done showing the place of occurrence cannot be admissible in law and no reliance can be placed on the place of occurrence as indicated therein. *Sat Kumar* v. *State of Haryana*, (1974) 3 SCC 643: 1974 SCC (Cri) 173: AIR 1974 SC 294: 1974 Cri LJ 345.

Bench Strength **2**. Coram: *P. Jaganmohan Reddy* and **P.K. Goswami**, JJ. [Date of decision: 23-11-1973]

[7957] — S. 162 — Police Inspector during investigation getting statement signed by the maker contrary to S. 162 CrPC — *Held, not substantive evidence — Can be used to corroborate or contradict the maker at the trial — Cannot be used for corroborating testimony of other witnesses. Razik Ram* v. *Jaswant Singh Chouhan*, (1975) 4 SCC 769: AIR 1975 SC 667.

Bench Strength **2**. Coram: *A. Alagiriswami* and **R.S. Sarkaria**, JJ. [Date of decision: 11-2-1975]

[7958] — S. 162 — Police investigation — Considerable and unexplained delay in — Presumption from

Where the matter was not investigated and relevant evidence was not recorded for a period of over six months without any plausible or satisfactory explanation, *held*, that it was not unreasonable to presume that during that period evidence became either unavoidable or the villagers became unable to satisfactorily identify any of the persons who were present on the occasion. *Habeeb Mohd.* v. *State of Hyderabad*, AIR 1954 SC 51: 1954 SCR 475: 1954 Cri LJ 338.

Bench Strength **3**. Coram: **M.C. Mahajan**, *B.K. Mukherjea* and *B. Jagannadhadas*, JJ. [Date of decision: 5-10-1953]

[7959] — S. 162 — Power of Court to put statement of witness made to police during investigation for contradicting him. *Raghunandan* v. *State of U.P.*, (1974) 4 SCC 186: 1974 SCC (Cri) 355: AIR 1974 SC 463: (1974) 3 SCR 92: 1974 Cri LJ 453.

Bench Strength **2**. Coram: **M.H. Beg** and *Y.V. Chandrachud*, JJ. [Date of decision: 10-1-1974]

[7960] — S. 162 — Prohibits the use of statement recorded under S. 161 of the Code for corroborating a witness

The language of S. 162, Criminal Procedure Code is plain and explicit and it admits of no doubt as to its meaning. It lays down the limited use to which a statement recorded under S. 161 of the said Code, can be put. The Courts are prohibited from using such statements as corroboration of the statement made in Court. *Rameshwar Singh* v. *State of J&K*, (1971) 2 SCC 715: 1971 SCC (Cri) 638: AIR 1972 SC 102: 1972 Cri LJ 15.

Bench Strength **3**. Coram: *J.M. Shelat*, **I.D. Dua** and *S.C. Roy*, JJ. [Date of decision: 7-9-1971]

[7961] — S. 162 — Refusal to grant copies of statements to accused — Trial vitiated

There can be no doubt that the right which the accused has got of obtaining copies of the statements made by witnesses during investigation is a valuable right and that the wholesale refusal to grant the same will be a serious irregularity which would vitiate the entire trial.

Held, in circumstances, that there was no foundation laid in the evidence for the larger question that has been raised in this case viz. as to whether or not the statutory right under S. 162 CrPC can be held to apply to a case where there was in fact and in substance an investigation also in respect of a non-cognizable offence though the investigation purported to be confined to the cognizable offence. *Purshottam Jethanand* v. *State of Kutch*, AIR 1954 SC 700: 1954 Cri LJ 1751.

Bench Strength **3**. Coram: *N.H. Bhagwati*, **B. Jagannadhadas** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 5-3-1954]

[7962] — S. 162 — Signing of panchnama by accused also — Document a complete confession *— Held to be highly irregular and in contravention of the code. Narayan Rao* v. *State of A.P.*, AIR 1957 SC 737: 1958 SCR 283: 1957 Cri LJ 1320.

Bench Strength **3**. Coram: **B.P. Sinha**, *Syed Jafer Imam* and *J.L. Kapur*, JJ. [Date of decision: 15-7-1957]

[7963] — S. 162 — Sketch map — Prepared by the Sub-Inspector on the basis of the statements of the eyewitnesses *— Held, hit by S. 162 and is not admissible in evidence*

The spot where the deceased is alleged to be present marked on the sketch map by the Sub-Inspector on the basis of the statements of the eyewitnesses recorded is really bringing on record the conclusion of the Sub-Inspector on the basis of the statements made by the witnesses to him. This would not be admissible in view of the provisions of S. 162 of Criminal Penal Code, for it is in effect nothing more than the statement of the Sub-Inspector that the eyewitnesses told him that the deceased was at such and such place at the time when he was hit. The sketch map would be admissible so far as it indicates all that the Sub-Inspector saw himself at the spot; but any mark put by him on the sketch map based on the statements made by the witnesses to the Sub-Inspector would be inadmissible in view of the clear provisions of S. 162 of the Code of Criminal Procedure as it will be no more than a statement made to the police during investigation.

Therefore, the marks on the map based on the statements made to the Sub-Inspector are inadmissible under S. 162 CrPC and cannot be used to found any argument as to the probability of the deceased being hit on that part of the body where he was actually injured, if he was standing at the spot marked on the sketch map. *Tori Singh* v. *State of U.P.*, AIR 1962 SC 399: (1962) 3 SCR 580: (1962) 1 Cri LJ 469, 471.

Bench Strength **3**. Coram: **K.N. Wanchoo**, *K.C. Das Gupta* and *J.C. Shah*, JJ. [Date of decision: 12-9-1961]

[7964] — S. 162 — Statement by a witness made not during the course of investigation *— Admissibility is not governed by the section*

The preliminary condition for the application of S. 162 of the Code is that the statement should have been made to a Police Officer in the course of an investigation under Ch. XIV of the Code. If it was not made in the course of such investigation, the admissibility of such statement would not be governed by S. 162 of the Code. *K.M. Nanavati* v. *State of Maharashtra*, AIR 1962 SC 605: 1962 Supp (1) SCR 567: (1962) 1 Cri LJ 521, 28.

Bench Strength **3**. Coram: *S.K. Das*, **K. Subba Rao** and *Raghubar Dayal*, JJ. [Date of decision: 24-11-1961]

[7965] — S. 162 — Statement made in the course of investigation — Whether admissible as evidence *— Only exception provided by the proviso to S. 162 — Use of such statements under S. 145, Evidence Act — Explained — Rule not applicable to S. 32(1) nor affects S. 27 of the Evidence Act*

Statements made by some of the accused at the police station, during investigation, are not legally admissible in evidence and cannot be used to substantive evidence.

According to S. 162 of the Code of Criminal Procedure, no statement made by any person to a Police Officer in the course of an investigation shall be signed by the person making it, or used for any purpose at any enquiry or trial in respect of any offence under investigation at the time when such statement was made.

The only exception to the above rule is mentioned in the proviso to that section. According to the proviso, when any witness is called and with the permission of the Court by the accused and with the permission of the Court by the prosecution, to contradict such witness in the manner provided by S. 145 of the Evidence Act, and when any part of such statement is so used any part thereof, may also be used in the re-examination of such witness for the purpose only of explaining any matter referred to in his cross-examination.

The above rule is, however, not applicable to statements falling within the provisions of cl. 1 of S. 32 of the Evidence Act or to affect the provisions of S. 27 of that Act.

The bar of inadmissibility operates not only on statements of witnesses but also on those of the accused. *Mahabir Mandal* v. *State of Bihar*, (1972) 1 SCC 748: 1972 SCC (Cri) 454: AIR 1972 SC 1331: (1972) 3 SCR 639: 1972 Cri LJ 860.

Bench Strength **3**. Coram: *J.M. Shelat*, **H.R. Khanna** and *G.K. Mitter*, JJ. [Date of decision: 7-3-1972]

[7966] — S. 162 — Statement of a witness recorded by the police during investigation — Its copy to be furnished to the accused — Court's duty

The corresponding section of the Hyderabad Penal Code is 166 which is not the same as S. 162. While under S. 162 it is the duty of the Court to direct a copy of the statement of a witness recorded by the police in the course of investigation to be furnished to the accused with a view to enable him to cross-examine such a witness with reference to his previous statement, no such duty is imposed by S. 166 and the matter is left entirely to the discretion of the Court.

Where on an application made for copies of the statements of prosecution witnesses recorded by the police the order of the Court in effect deprived the appellant of being furnished with those copies as such, but no complaint was made before the trial Judge or before the High Court, however before the Supreme Court be complained that by Court's omission to furnish him with those copies he was hampered in cross-examining the witnesses with reference to their previous statements and, therefore, had no fair trial, held that had the appellant any legitimate ground for grievance on this score, he would undoubtedly have raised it before the High Court, which he had not done, therefore there was no substance in the point. *Aftab Ahmad Khan* v. *State of Hyderabad*, AIR 1954 SC 436: (1955) 1 SCR 588: 1954 Cri LJ 1155.

Bench Strength **3**. Coram: *B.K. Mukherjea*, *Vivian Bose* and **Ghulam Hasan**, JJ. [Date of decision: 6-5-1954]

[7967] — S. 162 — Statement of the accused recorded by police during investigation of the cross case — *Statement not to be used either to corroborate or contradict his evidence as he was not examined in the case — Evidence Act, 1872, Ss. 145, 154 & 157*

No portion of the statement of the accused B recorded by the police during investigation in cross case could have been used for the purpose of contradicting the complaint of the co-accused either under S. 157 or S. 145 of the Evidence Act. As *B* was not examined as a witness in the case his previous statement could not have been used either to contradict his statement or corroborate it even if it is to be held that it is a statement coming under S. 154 CrPC. *Mohar Rai* v. *State of Bihar*, AIR 1968 SC 1281: (1968) 3 SCR 525: 1968 ALJ 1094: 1969 MPWR 2: 1968 Cri LJ 1479.

Bench Strength **2**. Coram: *R.S. Bachawat* and **K.S. Hegde**, JJ. [Date of decision: 22-3-1968]

[7968] — S. 162 — Statement to police officer — *Evidence Act, 1872, Ss. 25 and 27*

The words of S. 162 are wide enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may be recorded by a Magistrate under S. 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by S. 27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected under S. 25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by S. 162 of the Code of Criminal Procedure, and a confession to any other person made by him while in the custody of a police officer is protected by S. 26, unless it is made in the immediate presence of a Magistrate. *Aghnoo Nagesia* v. *State of Bihar*, AIR 1966 SC 119, 123: (1966) 1 SCR 134: 1966 Cri LJ 100.

Bench Strength **3**. Coram: *K. Subba Rao*, *Raghubar Dayal* and **R.S. Bachawat**, JJ. [Date of decision: 4-5-1965]

[7969] — S. 162 — Statements made by prosecution witness at the time of investigation — *Use for contradicting them — Not substantive evidence*

The accused persons are entitled to challenge the testimony of witnesses examined in court with reference to the statements said to have been made by them before the investigating police officer. Statements made by prosecution witnesses before the investigating police officer being the earliest statements made by them with reference to the facts of the occurrence are valuable material for testing the veracity of the witnesses examined in court, with particular reference to those statements which happen to be at variance with their earlier statements; but the statements made during police investigation are not substantive evidence.

Therefore the record made by a police investigating officer has to be considered by the Court only with a view to weighing the evidence actually adduced in court. If the police record becomes suspect or unreliable on the ground that it was deliberately perfunctory or dishonest, it loses much of its value and the Court in judging the case of a particular accused has to weigh the evidence given against him in court keeping in view the fact that the earlier statements of witnesses as recorded by the police is tainted record and has not as great a value as it otherwise would have in weighing all the material on the record as against each individual accused. *Baladin* v. *State of U.P.*, AIR 1956 SC 181, 187, 18: 1956 Cri LJ 345.

Bench Strength **3**. Coram: *Vivian Bose*, *B. Jagannadhadas* and **B.P. Sinha**, JJ. [Date of decision: 18-10-1955]

[7970] — S. 162 — Statements made in depositions in Court inconsistent with certain statements made before police — *Effect*

The statements made in the depositions are really inconsistent with the earlier statement made before the police and they are, therefore, contradictory within the meaning of S. 162 of the Code of Criminal Procedure. *Dahyabhai Chhaganbhai Thakkar* v. *State of Gujarat*, AIR 1964 SC 1563: (1964) 7 SCR 361: (1964) 2 Cri LJ 472.

Bench Strength **3**. Coram: **K. Subba Rao**, *K.C. Das Gupta* and *Raghubar Dayal*, JJ. [Date of decision: 19-3-1964]

[7971] — S. 162 — Statements made to a police officer under S. 162 — *Can be used only for contradicting a prosecution witness and for no other purpose*

Per Subba Rao, Sinha, Kapur and Sarkar, JJ.

The section was conceived in an attempt to find a happy 'via media', namely, while it enacts an absolute bar against the statement made before a police officer being used for any purpose whatsoever, it enables the accused to rely upon it for a limited purpose of contradicting a witness in the manner provided by S. 145 of the Evidence Act by drawing his attention to parts of the statement intended for contradiction. It cannot be used for corroboration of a prosecution or a defence witness or even a court witness. Nor can it be used for contradicting a defence or a court witness. Shortly stated, there is a general bar against its use subject to a limited exception in the interest of the accused, and the exception cannot obviously be used to cross the bar. *Tahsildar Singh* v. *State of U.P.*, AIR 1959 SC 1012: 1959 Supp (2) SCR 875: 1959 Cri LJ 1231.

Bench Strength **6**. Coram: *B.P. Sinha*[1], *Syed Jafer Imam*[2], *J.L. Kapur*[1], *A.K. Sarkar*[1], **K. Subba Rao**[1] and **M. Hidayatullah**[2], JJ. [Date of decision: 5-5-1959]

[7972] — S. 162 — Taking of specimen signature of accused during investigation does not amount to giving a statement under S. 162 nor Art. 20(3) of the Constitution. *State of U.P.* v. *Boota Singh*, (1979) 1 SCC 31: 1979 SCC (Cri) 115: AIR 1978 SC 1770: 1979 MLJ (Cri) 290: (1979) 1 SCR 298: 1978 ALJ 1156.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 22-8-1978]

[7973] — S. 162 — Test identification parade — Statement of the witnesses during parade to the Panch witnesses — *Held, hit by S. 162 in case the parade is conducted by the police and the Panch witnesses are simply called and the parade did not take place under their exclusive direction*

In case the test identification parade was held by the police and later it had completely obliterated themselves and the Panch witnesses were left solely in the charge of the parade, the statements would not be hit by S. 162. The police officers would certainly arrange the parade, would call the persons who were to be mixed up with the accused in the course of the parade and would also call the Panch witnesses who were to conduct the parade. But once the Panch witnesses were called for the purpose the whole of the process of identification would be under the exclusive direction and supervision of the Panch witnesses. If the Panch witnesses thereafter explained the purpose of the parade to the identifying witnesses and the process of identification was carried out under their exclusive direction and supervision, the statements involved in the process of identification would be statements made by the identifiers to the Panch witnesses and would be outside the purview of S. 162. In the present case the police officers were present all throughout the process of identification and the Panch witnesses appear only to have been brought in there for the purpose of proving that the requirements of law in the matter of holding the identification parades were fully satisfied. The whole of the identification parades were thus directed and supervised by the police officers and the Panch witnesses took a minor part in the same and were there only for the purpose guaranteeing that the requirements of the law in regard to the holding of the identification parades were satisfied. In these circumstances the statements, if any, involved in the process of identification were statements made by the identifiers to the police officers and not to the Panch witnesses as otherwise it will be easy for the police officers to circumvent the provisions of S. 162 by formally asking the Panch witnesses to be present and contending that the statements, if any, made by the identifiers were to the Panch witnesses and not to themselves.

Per Jagannadhadas, J.

On the evidence given in this case, there is no scope for any differentiation and that the entire evidence relating to the prior identification parade concerning the accused is in substance, evidence only of the prior statements of the identifying witnesses to the police officer and is hence inadmissible. However, it is not correct that in law a differentiation can be made in such cases between the three classes of evidence viz: (1) of the police officer, (2) of the Panch witnesses, and (3) of the identifying himself, in so far as they speak to a prior identification at a parade held by the police officer. Such a differentiation is unsound and inadmissible. *Ramkishan Mithanlal Sharma* v. *State of Bombay*, AIR 1955 SC 104: (1955) 1 SCR 903: 1955 Cri LJ 196.

Bench Strength **3**. Coram: **N.H. Bhagwati**[1], **B. Jagannadhadas**[2] and *T.L. Venkatarama Aiyar*[1], JJ. [Date of decision: 22-10-1954]

[7974] — S. 162 — Test identification parade — Statements of witnesses during — *Held, hit by S. 162*

Test identification parades are held by the police in the course of their investigation for the purpose of enabling witnesses to identify the properties which are the subject-matter of the offence or to identify the persons who are concerned in the offence. They are not held merely for the purpose of identifying property or persons irrespective of their connection with the offence. Whether the police officers interrogate the identifying witnesses or the Panch witnesses who are procured by the police do so, the identifying witnesses are explained the purpose of holding these parades and are asked to identify the properties which are the subject-matter of the offence or the persons who are concerned in the offence.

It is clear that the process of identification by the identifying witnesses involves the statement by the identifying witnesses that the particular properties identified were the subject-matter of the offence or the persons identified were concerned in the offence. This statement may be expressed or implied. The identifier may point out by his finger or touch the property or the persons identified, may either nod his head or give his assent in answer to a question addressed to him in that behalf or may make signs or gestures which are tantamount to saying that the particular property identified was the subject-matter of the offence or the persons identified was concerned in the offence. All these statements express or implied including the signs and gesture, would amount to a communication of the fact of identification by the identifier to another persons.

The physical fact of identification has thus no separate existence apart from the statement involved in the very process of identification and in so far as a police officer seeks to prove the fact of such identification such evidence of his would attract the operation of S. 162 and would be inadmissible in evidence, the only exception being the evidence sought to be given by the identifier himself in regard to his mental act of identification which he would be entitled to give by way of corroboration of his identification of the accused at the trial. *Ramkishan Mithanlal Sharma* v. *State of Bombay*, AIR 1955 SC 104: (1955) 1 SCR 903: 1955 Cri LJ 196.

Bench Strength **3**. Coram: **N.H. Bhagwati**[1], **B. Jagannadhadas**[2] and *T.L. Venkatarama Aiyar*[1], JJ. [Date of decision: 22-10-1954]

[7975] — S. 162 — Use of statement made to the police under S. 161 — *"Contradiction" includes omission in a previous statement which by implication amounts to contradiction*

Per Hidayatullah and Imam, JJ.

The meaning of the word "contradiction" must at least include the case of an omission in a previous statement which by implication amounts to contradiction and therefore such an omission is a matter which is covered by the first proviso to S. 162 and questions in cross-examination can put with respect to it in order to contradict the witness. *Tahsildar Singh* v. *State of U.P.*, AIR 1959 SC 1012: 1959 Supp (2) SCR 875: 1959 Cri LJ 1231.

Bench Strength **6**. Coram: *B.P. Sinha*[1], *Syed Jafer Imam*[2], *J.L. Kapur*[1], *A.K. Sarkar*[1], **K. Subba Rao**[1] and **M. Hidayatullah**[2], JJ. [Date of decision: 5-5-1959]

[7976] — S. 162 — Use of statement made to the police under S. 161 — "Cross-examination" and "Re-examination" — *Extent to which can be done by the accused and prosecution — Right of both is limited to cross-examinations*

Per Hidayatullah and Imam, JJ.

The right of both the accused and the prosecution is limited to contradictions. It involves cross-examination by the accused as to that contradiction within S. 145 of the Indian Evidence Act and re-examination in relation to the matters 'referred to in the cross-examination of the witness'. The prosecution cannot range at will to explain away every discrepancy but only such as the accused under his right has brought to light. In our opinion, reading the section in this way gives effect to every part. *Tahsildar Singh* v. *State of U.P.*, AIR 1959 SC 1012: 1959 Supp (2) SCR 875: 1959 Cri LJ 1231.

Bench Strength **6**. Coram: *B.P. Sinha*[1], *Syed Jafer Imam*[2], *J.L. Kapur*[1], *A.K. Sarkar*[1], **K. Subba Rao**[1] and **M. Hidayatullah**[2], JJ. [Date of decision: 5-5-1959]

[7977] — S. 162 — Use of statement made to the police under S. 161 in evidence — Scope, meaning and application — *Omission in the statement can be used for contradiction if it can be deemed to form part of the recorded statement*

Per Subba Rao, J. (for majority)

The following propositions emerge: (1) A statement in writing made by a witness before a police officer in the course of investigation can be used only to contradict his statement in the witness-box and for no other purpose; (2) statement not reduced to writing by the police officer cannot be used for contradiction; (3) though a particular statement is not expressly recorded, a statement that can be deemed to be part of that expressly recorded can be used for contradiction, not because it is an omission strictly so-called but because it is deemed to form part of the recorded statement; (4) such a fiction is permissible by construction only in the following three cases: *(i)* when a recital is necessarily implied from the recital or recitals found in the statement: illustration: in the recorded statement before the police the witness states that he saw *A* stabbing *B* at a particular point of time, but in the witness-box he says that he saw *A* and *C* stabbing *B* at the same point of time; in the statement before the police the word "only" can be implied i.e., the witness saw *A* only stabbing *B*; *(ii)* a negative aspect of a positive recital in a statement illustration: in the recorded statement before the police the witness says that a dark man stabbed *B*, but in the witness-box he says that a fair man stabbed *B*; the earlier statement must be deemed to contain the recital not only that the culprit was a dark complexioned man but also that he was not of fair complexion; and *(iii)* when the statement before the police and that before the Court cannot stand together: illustration: the witness says in the recorded statement before the police that *A* after stabbing *B* ran away by a northern lane, but in the Court he says that immediately after stabbing he ran away towards the southern lane; as he could not have run away immediately after the stabbing i.e. at the same point of time, towards the northern lane as well as towards the southern lane, if one statement is true, the other must necessarily be false. *Tahsildar Singh* v. *State of U.P.*, AIR 1959 SC 1012: 1959 Supp (2) SCR 875: 1959 Cri LJ 1231.

Bench Strength **6**. Coram: *B.P. Sinha*[1], *Syed Jafer Imam*[2], *J.L. Kapur*[1], *A.K. Sarkar*[1], **K. Subba Rao**[1] and **M. Hidayatullah**[2], JJ. [Date of decision: 5-5-1959]

[7978] — S. 162 — Use of the statement made to the police under S. 161 — *The witness can only be contradicted with the statement — Manner in which this is to be done — Provisions of S. 162 are to be strictly followed — S. 145 Evidence Act is to be used subject to the express provisions of S. 162*

Per Subba Rao, J. (for majority)

The procedure prescribed under S. 145 of the Evidence Act is that, if it is intended to contradict a witness by the writing his attention must, before the writing can be proved be called to those portions of it which are used for the purpose of contradicting him. The proviso to S. 162 of the Code of Criminal Procedure only enables the accused to make use of such statement to contradict a witness in the manner provided by S. 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of S. 145 of the Evidence Act. The view that it would not be possible to invoke the second part of S. 145 of the Evidence Act without putting relevant questions under the first part there is not correct. The difficulty is more imaginary than real. The second part of S. 145 of the Evidence Act clearly indicates the simple procedure to be followed. If *A* says in the witness-box that *B* stabbed *C*; before the police he had stated that *D*, stabbed *C*, then his attention can be drawn to that part of the statement made before the police which contradicts his statement in the witness-box. If he admits his previous statement no further proof is necessary; if he does not admit the practice generally followed is to admit it subject to proof by the police officer. The procedure suggested by the defence that if a witness is asked: "Did you say before the police officer that he saw a gas light?" and he answers "yes", then the statement which does not contain such recital is put to him as contradiction. This procedure involves two fallacies; one is, it enables the accused to elicit by a process of cross-examination what the witness stated before the police officer. If a police officer did not make record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police officer recorded a few sentences, by this process of cross-examination, the witnesses oral statement could be brought on record. The second fallacy is that there is no self-contradiction of the primary statement made in the witness-box, for the witness has yet not made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness-box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually made before him. In such a case the question could not be put and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. Thus the contention based upon S. 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of S. 162 of the Code of Criminal Procedure. *Tahsildar Singh* v. *State of U.P.*, AIR 1959 SC 1012: 1959 Supp (2) SCR 875: 1959 Cri LJ 1231.

Bench Strength **6**. Coram: *B.P. Sinha*[1], *Syed Jafer Imam*[2], *J.L. Kapur*[1], *A.K. Sarkar*[1], **K. Subba Rao**[1] and **M. Hidayatullah**[2], JJ. [Date of decision: 5-5-1959]

[7979] — S. 162 — Use of the statement made to the police under S. 161 — "Statement in writing" — *Includes what is not stated in the statement but is necessarily implied from what is directly or expressly stated*

Per Subba Rao, J. (for majority)

Looking at the express words used in S. 162 CrPC two sets of words stand out prominently which afford the key to the intention of the Legislature. They are: "statement in writing", and "to contradict". "Statement" in its dictionary meaning is the act of stating or reciting. 'Prima facie' a statement cannot take in an omission. A statement cannot include that which is not stated. But very often to make a statement sensible or self-consistent, it becomes necessary to imply words which are not actually in the statement. Though something is not expressly stated, it is necessarily implied from what a directly or expressly stated. *Tahsildar Singh* v. *State of U.P.*, AIR 1959 SC 1012: 1959 Supp (2) SCR 875: 1959 Cri LJ 1231.

Bench Strength **6**. Coram: *B.P. Sinha*[1], *Syed Jafer Imam*[2], *J.L. Kapur*[1], *A.K. Sarkar*[1], **K. Subba Rao**[1] and **M. Hidayatullah**[2], JJ. [Date of decision: 5-5-1959]

[7980] — S. 162 — Witness stating that he signed his statement — Duty of Court

Statements made by witness during investigations should not be got signed by them if they are reduced into writing. Where a witness stated that he had signed his statement or put his thumb-mark on his statement, it is the duty of the Trial Judge to clear this point by questioning the investigating officer and by looking into the relevant records whether the witness had actually signed his statement or not. *Makan Jivan* v. *State of Gujarat*, (1971) 3 SCC 297: 1971 SCC (Cri) 587: AIR 1971 SC 1797: 1971 Cri LJ 1310.

Bench Strength **2**. Coram: **K.S. Hegde** and *A.N. Grover*, JJ. [Date of decision: 30-4-1971]

[7981] — S. 162 — Written statement by witness during investigation

Where the witness was made to write his statement during investigation, it is inadmissible in evidence. *Kanu Ambu Vish* v. *State of Maharashtra*, (1971) 1 SCC 503: 1971 SCC (Cri) 211: AIR 1971 SC 2256: 1971 Cri LJ 1547.

Bench Strength **3**. Coram: *S.M. Sikri, C.J.* and **P. Jaganmohan Reddy** and *I.D. Dua*, JJ. [Date of decision: 1-2-1971]

[7982] — Ss. 162, 173(4) and 207-A(3) — Supply of statements to accused — Failure may not vitiate trial

The object of Ss. 162, 173(4) and 107-A(3) is to enable the accused to obtain a clear picture of the case against him before the commencement of the inquiry. The sections impose an obligation upon the investigation officer to supply before the commencement of the inquiry copies of the statements of witnesses who are intended to be examined at the trial so that the accused may utilize those statements for cross-examining the witnesses to establish such defence as he desires to put up, and also to shake their testimony. Section 161(3) does not require a police officer to record in writing the statements of witnesses examined by him in the course of the investigation, but if he does record in writing any such statements, he is obliged to make copies of those statements available to the accused before the commencement of proceedings in the Court. *Noor Khan* v. *State of Rajasthan*, AIR 1964 SC 286, 291: (1964) 4 SCR 521: (1964) 1 Cri LJ 167.

Bench Strength **3**. Coram: *A.K. Sarkar*, *M. Hidayatullah* and **J.C. Shah**, JJ. [Date of decision: 19-8-1963]

[7983] — Ss. 162, 270-A and 510 — Admissibility of chemical examiner's report submitted to the police officer — Report is admissible — Is not hit by S. 162

Section 510 makes provision with regard to proof of documents by production thereof, and the application of S. 162(1) is expressly made subject to what is provided in the Code of Criminal Procedure. Exclusion from evidence of any part of a statement made to a police officer or a record from being used for any purpose at any enquiry or trial in respect of an offence under investigation at the time when such statement was made is "save as hereinafter provided". The word "hereinafter" is not restricted in its operation to S. 162 alone but applies to the body of the Code; to hold otherwise would be to introduce a patent inconsistency between S. 162 of the Code, for by the former section in a committal proceeding statements recorded under S. 162 are to be regarded as evidence. Therefore, the contention that the report made to the police officer by the Chemical Examiner was inadmissible in evidence in view of S. 162 CrPC is without substance. *Ukha Kolhe* v. *State of Maharashtra*, AIR 1963 SC 1531: (1964) 1 SCR 926: (1963) 2 Cri LJ 418: 1964 Mah LJ 246: 65 Bom LR 793.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.*[1] and *P.B. Gajendragadkar*[1], *K.N. Wanchoo*[1], **K.C. Das Gupta**[2] and **J.C. Shah**[1], JJ. [Date of decision: 11-2-1963]

Followed in Rajesh Kumar v. State Govt. of NCT of Delhi, (2008) 4 SCC 493

[7984] — Ss. 162 and 1(2)(a) — Applicability in Bombay city — Bombay Police Act, 1951 replacing Bombay City Police Act, 1902 repealing S. 1(2)(a) of Criminal Procedure Code — *In Bombay City S. 162 CrPC will not apply to the statements recorded during the investigation conducted up to the repeal and will apply to the investigations conducted after the repeal*

Under S. 1(2)(*a*) of the Criminal Procedure Code the Code did not apply to the Police in the towns of Calcutta and Bombay and therefore S. 162 of the Criminal Procedure Code was not applicable to the investigations made by the Bombay City Police. On the 11-6-1951 the State Legislature passed the Bombay Police Act 22 of 1951. Section 167(3) of that Act repealed S. 1(2)(*a*) of the Criminal Procedure Code so far as the police in the town of Bombay were concerned with the result that when this Act came into operation with effect from the 1st August, 1951 the Bombay City Police were also governed by the provisions of Criminal Procedure Code thus bringing into operation the provisions of S. 162 thereof in the investigations conducted by the Bombay City Police.

The provisions of S. 162 applied to investigations conducted by the Bombay City Police from and after the 1st August, 1951. They applied to investigations "under this chapter" i.e. investigations conducted under the Criminal Procedure Code and therefore 'prima facie' did not apply to the investigations conducted by the Bombay City police prior to the 1st August, 1951 in which case S. 63 of the Bombay City Police Act 4 of 1902 was applicable.

Section 167(2) could only apply to those rights, privileges, obligations or liabilities already acquired, accrued or incurred under the Bombay City Police Act 4 of 1902 before the date of its repeal. An investigation conducted by the police under the provisions of that Act would not create or impose any right, privilege, obligation or liability which could be saved by the provisions of S. 167(2) of the Bombay Police Act 22 of 1951. The investigation which had been conducted up to the 1st August, 1951 would be governed by the provisions of Bombay City Police Act 4 of 1902 and unless there was something in the Bombay Police Act 22 of 1951 which referred to those investigations, all the incidents of those investigations would be governed by the provisions of the repealed Act and the question as to the admissibility in evidence of the results of such investigations would also have to be considered with reference to the provisions of that Act.

Section 162 of the Criminal Procedure Code in terms applied to the investigations conducted "under this Chapter" i.e. Chapter 14 which relates to information to the police and their powers to investigate, whereas S. 63 of the Bombay City Police Act 4 of 1902 specifically referred to the investigations conducted "under this Act" i.e. the Bombay City Police Act 4 of 1902. Section 162 of the Criminal Procedure Code therefore applied by reasons of the context and the terms of that very section to investigations which had been conducted by the Bombay City Police after the 1st August, 1951 and would not have a retrospective operation, because the investigations conducted up to 1st August, 1951 by the Bombay City police would certainly not be investigations conducted "under this Chapter" i.e. Chapter 14 of the Criminal Procedure Code. *Ramkishan Mithanlal Sharma* v. *State of Bombay*, AIR 1955 SC 104: (1955) 1 SCR 903: 1955 Cri LJ 196.

Bench Strength **3**. Coram: **N.H. Bhagwati**[1], **B. Jagannadhadas**[2] and *T.L. Venkatarama Aiyar*[1], JJ. [Date of decision: 22-10-1954]

[7985] — Ss. 162 and 157 — Site plan, seizure lists, inquest report based on actual observation of I.O. are not hit by S. 162 — *It is direct evidence admissible under S. 60, Evidence Act, 1872 — That part of such documents which is based on information given to the I.O. or on the statement recorded by him is hit by S. 162. Rameshwar Dayal* v. *State of U.P.*, (1978) 2 SCC 518: 1978 SCC (Cri) 311: AIR 1978 SC 1558: 1978 ALJ 1011: (1978) 15 ACC 276.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 15-2-1978]

[7986] — Ss. 162 and 164 — Accused's statement made to persons assisting police during investigation — Admissibility of

Every statement made to a person assisting the police during an investigation cannot be treated as a statement made to the police or to the Magistrate and as such excluded by S. 162 of S. 164 of the Criminal Procedure Code. The question is one of fact and has got to be determined having regard to the circumstances of each case.

On a scrutiny of the evidence of the witnesses and the circumstances under which the statements came to be made by the accused to them, held that the accused was asked by the Additional Magistrate to make the statements to these witnesses not with a view to avoid the bar of S. 164 of the Criminal Procedure Code or by way of colourable pretence but by way of greater caution particularly having regard to the fact that the accused occupied the position of a Minister of Industries in the State of Vindhya Pradesh. *Rao Shiv Bahadur Singh* v. *State of V.P.*, AIR 1954 SC 322: 1954 SCR 1098: 1954 Cri LJ 910.

Bench Strength **3**. Coram: **N.H. Bhagwati**, *B. Jagannadhadas* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 5-3-1954]

[7987] — S. 162(1) — Dying declaration — What is — Evidentiary value of — Bar of S. 162(1) — Applicability to dying declaration — *Evidence Act, 1872, S. 32(1)*

The dying declaration is a statement by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death and it becomes relevant under S. 32(1) of the Indian Evidence Act in a case in which the cause of that person's death comes into question. It is true that a dying declaration is not a deposition in court and it is neither made on vote nor in the presence of the accused. It is therefore, not tested by cross-examination on behalf of the accused. But a dying declaration is admitted in evidence by way of an exception to the general rule against the admissibility of hearsay evidence on the principle of necessity. The weak points of a dying declaration just mentioned merely serve to put the Court on its guard while testing its reliability by imposing on it an obligation to closely scrutinise all the relevant attendant circumstances. The bar created by S. 162(1), CrPC is inapplicable to dying declarations. *Tapinder Singh* v. *State of Punjab*, (1970) 2 SCC 113: 1970 SCC (Cri) 328: AIR 1970 SC 1566: 1970 Cri LJ 1415.

Bench Strength **2**. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 7-5-1970]

[7988] — S. 162(1) proviso — Object — To serve the interest of the accused

The object of S. 162 as redrafted by the Act, 18 of 1923 was to protect the accused against the user of the statements of witnesses made before the police during investigation at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence. Both the section and the proviso intended to serve primarily the same purpose i.e. the interest of the accused. *Tahsildar Singh* v. *State of U.P.*, AIR 1959 SC 1012: 1959 Supp (2) SCR 875: 1959 Cri LJ 1231, 37, 39.

Bench Strength **6**. Coram: *B.P. Sinha*[1], *Syed Jafer Imam*[2], *J.L. Kapur*[1], *A.K. Sarkar*[1], **K. Subba Rao**[1] and **M. Hidayatullah**[2], JJ. [Date of decision: 5-5-1959]

[7989] — S. 162(1) proviso — "Cross-examination" — Meaning of — *Meaning is confined to the cross-examination by contradiction allowed by the proviso*

The word "cross-examination" in the last line of the first proviso to S. 162 of the Code of Criminal Procedure cannot be understood to mean the entire gamut of cross-examination without reference to the limited scope of the proviso, but should be confined only to the cross-examination by contradiction allowed by the said proviso. *Tahsildar Singh* v. *State of U.P.*, AIR 1959 SC 1012: 1959 Supp (2) SCR 875: 1959 Cri LJ 1231.

Bench Strength **6**. Coram: *B.P. Sinha*[1], *Syed Jafer Imam*[2], *J.L. Kapur*[1], *A.K. Sarkar*[1], **K. Subba Rao**[1] and **M. Hidayatullah**[2], JJ. [Date of decision: 5-5-1959]

[7990] — S. 162(1) proviso — Accused's right to be furnished with statements — True scope of

The statutory right of the accused to be furnished with statements appears clearly to relate to a trial in respect of the very offence which was investigated and does not apply to a trial for a non-cognizable offence in respect of which there has been in fact no investigation. The proviso to S. 162(1) which gives the right to obtain copies relates to "such inquiry or trial" i.e. "enquiry or trial of any offence under investigation (under this chapter) at the time when the statement was made". *Purshottam Jethanand* v. *State of Kutch*, AIR 1954 SC 700: 1954 Cri LJ 1751.

Bench Strength **3**. Coram: *N.H. Bhagwati*, **B. Jagannadhadas** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 5-3-1954]

[7991] — S. 162(1) proviso — Use of previous statement — *Can be used to test veracity of the written statements and pointing out contradictions*

Though the contents of those statements cannot be used for any purpose other than that laid down in S. 162 CrPC, the fact of that statement having been made can certainly be relied upon for the purpose of showing how untruthful the witness is or how undependable his memory is. *Rameshwar Singh* v. *State of J&K*, (1971) 2 SCC 715: 1971 SCC (Cri) 638: AIR 1972 SC 102: 1972 Cri LJ 15.

Bench Strength **3**. Coram: *J.M. Shelat*, **I.D. Dua** and *S.C. Roy*, JJ. [Date of decision: 7-9-1971]

[7992] — S. 162(2) — So far as it relates to S. 27, Evidence Act, is intra vires and does not offend Art. 14 of the Constitution

Per Shah, S.K. Das and Kapur, JJ

Section 27 of the Indian Evidence Act and S. 162(2) of CrPC, in so far as "that section relates to S. 27 of the Indian Evidence Act" are intra vires and do not offend Art. 14 of the Constitution.

By the combined operation of S. 27 of the Evidence Act and S. 162 of the Code of Criminal Procedure the admissibility in evidence against a person in a criminal proceeding of a statement made to a police officer leading to the discovery of a fact depends for its determination on the question whether he was in custody at the time of making the statement. It is provable if he was in custody at the time when he made it, otherwise it is not.

Between persons in custody and persons not in custody, distinction has evidently been made by the Evidence Act in some matters and they are differently treated. The distinction between persons in custody and persons not in custody in the context of admissibility of statements made by them concerning the offence charged cannot be called arbitrary, artificial or erasive; a real distinction has been made between these two clauses and distinct rules have been provided about admissibility of statements confessional or otherwise made by them.

Considered in the background that "persons in custody" and "persons not in custody" do not stand on the same footing, not require identical protection, the mere theoretical possibility of some degree of inequality of the protection of laws relating to the admissibility of evidence between persons in custody and persons not in custody is not by itself a ground of striking down a statutory provision of law of evidence on the ground that it offends Art. 14 of the Constitution.

The principle of admitting evidence of statements made by a person giving information leading to the discovery of facts which may be used in evidence against him is manifestly reasonable. The fact that the principle is restricted to persons in custody will not by itself be a ground for holding that there is an attempted hostile discrimination because the rule of admissibility of evidence is not extended to a possible, but an uncommon or abnormal class of cases.

Per Hidayatullah, J.

The law is concerned in seeing fairplay, and this is achieved by insisting that an unguarded statement should not be receivable. The need for caution is there, and this caution is very forcefully brought home to an accused, when he is accused of an offence and is in the custody of the police. There is thus a classification which is reasonable as well as intelligible, and it subserves a purpose recognised now for over two centuries. The rule is for advancement of justice with protection both to a suspect not yet arrested and to an accused in custody. There is ample protection to an accused, because only that portion of the statement is made admissible against him which has resulted in the discovery of a material fact otherwise unknown to the police. This cannot therefore be regarded as evidence of unequal treatment.

When a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact, having bearing on the charge which may be made against him he may appropriately be deemed to have surrendered himself to the police. Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody: submission to the custody by word or action by a person is sufficient. A person directly giving to a police officer by word of mouth information which may be used as evidence against him, may be deemed to have submitted himself to the "custody" of the police officer within the meaning of S. 27 of the Indian Evidence Act. Exceptional cases may certainly be imagined in which a person may give information without presenting himself before a police officer who is investigating an offence. For instance, he may write a letter and give such information or may send a telephonic or other message to the police officer. But in considering whether a statute is unconstitutional on the ground that the law has given equal treatment to all persons similarly circumstanced, it must be remembered that the Legislature has to deal with practical problems; the question is not to be judged by merely enumerating other theoretically possible situations to which the statute might have been but is not applied. As has often been said in considering whether there has been a denial of the equal protection of the laws, a doctrinaire approach is to be avoided.

Per Subba Rao, J. (dissenting)

Section 27 of the Evidence Act is void as violative of Art. 14 of the Constitution. *State of U.P. v. Deoman Upadhyaya*, AIR 1960 SC 1125: (1961) 1 SCR 14: 1960 Cri LJ 1504.

Bench Strength **5**. Coram: *S.K. Das*[1], *J.L. Kapur*[1], **K. Subba Rao**[2], **M. Hidayatullah**[3] and **J.C. Shah**[1], JJ. [Date of decision: 6-5-1960]

— S. 163 *See* Ch. XIV (Ss. 154 to 176)
See also Ss. 161 and 163

[7993] — S. 163 — Burden of proof — Lies on the person making allegations of use of threats and duress. *Bhagwan Singh* v. *State of Punjab*, AIR 1952 SC 214: 1952 SCR 812: 1952 Cri LJ 1131.

Bench Strength **2**. Coram: *Fazl Ali* and **Vivian Bose**, JJ. [Date of decision: 30-4-1952]

— S. 163(1) *See* Ss. 160, 161(1), (2) and (3), 163(1) and 174(4)

— S. 164 *See* Ch. XIV (Ss. 154 to 176)
See also Ss. 155, 61, 94, 167, 164 and 202
See also Ss. 162 and 164
See also Ss. 342 and 164
See also Ss. 533 and 164

[7994] — S. 164 — Confession before Executive Magistrate held voluntary

In the present case, the appellant was kept in jail custody for three days from October 25 to 28-10-1966 and on October 28, the Executive Magistrate made the preliminary questioning of the appellant, gave him a warning and sent him back to the District Jail at Sangli. On the next day the appellant was produced before the Magistrate and the confession was recorded. It is clear that the appellant had spent four days in judicial custody and he was not under the influence of the investigating agency for at least four days. Again he had 24 hours to think after he was told that he was not bound to make any confession and if he made one, it would be used against him. The appellant in answer to question No. 77 regarding the confession merely said that he did not make the confession. He did not say that the confession was made on account of any inducement or coercion on the part of the police. Both the trial Court and the High Court, have upon the examination of all the circumstances, reached the conclusion that the confession of the appellant was voluntary, and we see no reason to take a different view. *Abdul Rajak Murtaja Dafedar* v. *State of Maharashtra*, (1969) 2 SCC 234: AIR 1970 SC 283: 1970 Cri LJ 373: 1969 MLJ (Cri) 862.

Bench Strength **3**. Coram: *S.M. Sikri*, *R.S. Bachawat* and **V. Ramaswami**, JJ. [Date of decision: 2-5-1969]

[7995] — S. 164 — Confession of accused should be voluntary and reliable — When court should rely upon confession — *Evidence Act, 1872, S. 24*

When in a capital case, the prosecution demands a conviction of the accused primarily on the basis of his confession under S. 164, Criminal Procedure Code, the court must apply a double test, namely, whether the confession is perfectly voluntary; and if so whether it is true and trustworthy. Satisfaction of the first test is a *sine qua non* for the admissibility in evidence. If the confession appears to the court to have been caused by any inducement, threat or promise, it must be excluded and rejected *brevi manu*. If this test is satisfied the court must then reach a finding that it is true and reliable. There is no rigid canon for judging the reliability of any evidence, but in the case of a confession, the court should carefully examine the confession and compare it with the rest of the evidence. If on such an examination, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken that the confession satisfies the second test.

The prosecution has pointed out that when the question of recording the appellant's confession arose, there was no competent magistrate at the place where the appellant was first taken and so he was taken to the second place where it was recorded. There is nothing to show that it was done with the oblique motive of extorting a confession or for depriving the appellant of independent legal advice.

From the mere fact that the judicial lock-up is located in the proximity of the police station it does not follow that both are under the control of the police. In fact the judicial lock-up was not under the control of the police and there was no evidence that the investigating officer was in the place or visited the police station.

Moreover the confession was not retracted at the earliest. It was only after recording of prosecution evidence in his own examination under S. 313, Criminal Procedure Code, 1973 that the accused retracted his confession, which was a year later after it was made. *Shankaria* v. *State of Rajasthan*, (1978) 3 SCC 435: 1978 SCC (Cri) 439: AIR 1978 SC 1248: 1978 Cri LJ 1251.

Bench Strength **3**. Coram: **R.S. Sarkaria**, *N.L. Untwalia* and *P.S. Kailasam*, JJ. [Date of decision: 26-4-1978]

[7996] — S. 164 — Statement of accused recorded by a village Mukhiya before arrest — Whether admissible in evidence — *Whether the court could reject the exculpatory part and accept the inculpatory part in convicting the accused*

The exculpatory part of the appellant's statement was not only inherently improbable but was contradicted by the other evidence and so it was wholly unacceptable. The other incriminating circumstances considered along with the appellant's statement pointed conclusively to his having committed the murder. The court could reject the exculpatory portion of the statement and accept inculpatory portion. *Nishi Kant Jha* v. *State of Bihar*, (1969) 1 SCC 347: AIR 1969 SC 422: 1969 Cri LJ 671: 1969 ALJ 638.

Bench Strength **5**. Coram: *M. Hidayatullah, C.J.* and *J.C. Shah, V. Ramaswami*, **G.K. Mitter** and *A.N. Grover*, JJ. [Date of decision: 2-12-1968]

[7997] — S. 164 — Statement made under S. 108, Customs Act, 1962 not confessions under S. 164, CrPC — Applicability of S. 30 Evidence Act, 1872 if such statements voluntary — *Customs Act, 1962, S. 108. Haroon Haji Abdulla* v. *State of Maharashtra*, AIR 1968 SC 832: (1968) 2 SCR 641: 1968 Cri LJ 1017.

Bench Strength **2**. Coram: **M. Hidayatullah** and *C.A. Vaidialingam*, JJ. [Date of decision: 14-12-1967]

[7998] — S. 164 — Sea Customs Act, 1878 — S. 171-A — Notice under — Statements made in reply to — *Held, not covered. Haroon Haji Abdulla* v. *State of Maharashtra*, AIR 1968 SC 832: (1968) 2 SCR 641; 1968 Cri LJ 1017.

Bench Strength **2**. Coram: **M. Hidayatullah** and *C.A. Vaidialingam*, JJ. [Date of decision: 14-12-1967]

[7999] — S. 164 — Brief confession — Brevity cannot be interpreted adversely where the related incident was also brief. *State of Maharashtra* v. *Manglya Dhavu Kongil*, (1972) 3 SCC 46: 1972 SCC (Cri) 237: AIR 1972 SC 1797: 1972 Cri LJ 570.

Bench Strength **2**. Coram: *P. Jaganmohan Reddy* and **D.G. Palekar**, JJ. [Date of decision: 7-1-1972]

[8000] — S. 164 — Confession — Confessing accused kept in a solitary cell — Is no ground to assume that the confession was not voluntary

It is no ground for thinking that when a particular accused had been kept in a solitary cell the confession made by him was not voluntary. *Nand Kumar* v. *State of Rajasthan*, (1963) 2 SCR 890: (1963) 2 Cri LJ 702.

Bench Strength **2**. Coram: **K.C. Das Gupta** and *J.R. Mudholkar*, JJ. [Date of decision: 3-5-1962]

[8001] — S. 164 — Confession — Evidence prior to confession — Whether can be used to corroborate that confession

The contention that a confession can only be corroborated by evidence discovered by the police after a confession has been made and any material that is already in their possession, cannot be put in evidence in support of it, is not well founded. A confession can be made even during a trial and the evidence already recorded may well be used to corroborate it. It may be made in the Court of the committing magistrate and materials already in possession of the police may well be used for purposes of corroboration. *Hem Raj Devilal* v. *State of Ajmer*, AIR 1954 SC 462: 1954 SCR 1133: 1954 Cri LJ 1313.

Bench Strength **3**. Coram: **M.C. Mahajan, C.J.** and *Vivian Bose* and *Ghulam Hasan*, JJ. [Date of decision: 17-3-1954]

[8002] — S. 164 — Confession — Meaning

A confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not of itself a confession. A statement that contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact, which if true, would negative the offence alleged to be confessed. *Palvinder Kaur* v. *State of Punjab*, AIR 1952 SC 354: 1953 SCR 94: 1953 Cri LJ 154.

Bench Strength **3**. Coram: **M.C. Mahajan**, *N. Chandrasekhara Aiyar* and *N.H. Bhagwati*, JJ. [Date of decision: 22-10-1952]

[8003] — S. 164 — Confession — Rule of corroboration

In law a court can convict on the basis of the confession even though retracted later on.

Nevertheless usually Courts require some corroboration to the confessional statement before convicting an accused person on such a statement. What amount of corroboration would be necessary in such a case would always be a question of fact to be determined in the light of the circumstances of each case. *Sarwan Singh Rattan Singh* v. *State of Punjab*, AIR 1957 SC 637, 643: 1957 SCR 953: 1957 Cri LJ 1014.

Bench Strength **3**. Coram: *B. Jagannadhadas, B.P. Sinha* and **P.B. Gajendragadkar**, JJ. [Date of decision: 10-4-1957]

[8004] — S. 164 — Confession — Use of — Whether self-incriminating — Constitutionality — *Constitution of India, Art. 20(3) — Retracted confession*

Sub-sec. (3) of Art. 20 does not apply at all to a case where the confession is made without any inducement, threat or promise. It is true that a retracted confession has only little value as the basis for a conviction, and that the confession of one accused is not evidence against a co-accused tried jointly for the same offence, but can only be taken into consideration against him. This deals with its probative value and has nothing to do with any repugnancy to the Constitution. *Kalawati* v. *State of Himachal Pradesh*, AIR 1953 SC 131, 132: 1953 SCR 546: 1953 Cri LJ 668.

Bench Strength **5**. Coram: *Patanjali Sastri, C.J.* and *B.K. Mukherjea*, **N. Chandrasekhara Aiyar**, *Vivian Bose* and *Ghulam Hasan*, JJ. [Date of decision: 19-1-1953]

[8005] — S. 164 — Confession if voluntary a question of fact — *Appeal to Supreme Court under Art. 136 — General rule of non-interference applies. Sarwan Singh Rattan Singh* v. *State of Punjab*, AIR 1957 SC 637: 1957 SCR 953: 1957 Cri LJ 1014.

Bench Strength **3**. Coram: *B. Jagannadhadas*, *B.P. Sinha* and **P.B. Gajendragadkar**, JJ. [Date of decision: 10-4-1957]

[8006] — S. 164 — Confession made before Magistrate, on facts, held voluntary — *Evidence leading up to confession reconsidered — No evidence showing use of coercion. State of U.P.* v. *Boota Singh*, (1979) 1 SCC 31: 1979 SCC (Cri) 115: AIR 1978 SC 1770: 1979 MLJ (Cri) 290: (1979) 1 SCR 298: 1978 ALJ 1156.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 22-8-1978]

[8007] — S. 164 — Confession recorded in jail — *Held, cannot be said to be voluntary. Ram Chandra* v. *State of U.P.*, AIR 1957 SC 381: 1957 Cri LJ 559.

Bench Strength **3**. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 26-11-1956]

[8008] — S. 164 — Confession to be accepted as a whole

The confession must either be accepted as a whole or rejected as a whole and that the Court is not competent to accept only the inculpatory part while rejecting the exculpatory part as inherently incredible. *Palvinder Kaur* v. *State of Punjab*, AIR 1952 SC 354, 357: 1953 SCR 94: 1953 Cri LJ 154.

Bench Strength **3**. Coram: **M.C. Mahajan**, *N. Chandrasekhara Aiyar* and *N.H. Bhagwati*, JJ. [Date of decision: 22-10-1952]

[8009] — S. 164 — Confession to be used as a whole

An admission made by a person whether amounting to a confession or not cannot be split up and part of it used against him. An admission must be used either as a whole or not at all. *Hanumant Govind Nargundkar* v. *State of M.P.*, AIR 1952 SC 343, 350: 1952 SCR 1091: 1953 Cri LJ 129.

Bench Strength **3**. Coram: **M.C. Mahajan**, *S.R. Das* and *N.H. Bhagwati*, JJ. [Date of decision: 23-9-1952]

[8010] — S. 164 — Confession to be voluntary

When an accused person is produced by the investigating officer before the Magistrate for recording his confession, it is of the utmost importance that his mind should be completely free from any possible influence of the police and he must be sent to jail custody and given adequate time to consider whether he should make a confession at all. *Chinna Gowda* v. *State of Mysore*, (1963) 2 SCR 517, 532.

Bench Strength **3**. Coram: *K.C. Das Gupta*, **J.R. Mudholkar** and *T.L. Venkatarama Ayyar*, JJ. [Date of decision: 27-4-1962]

[8011] — S. 164 — Confession to be voluntary — Remand to police for ten days — Adverse to the voluntary nature of the confession

A confession cannot be used against an accused person unless the Court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise.

It is abhorrent to our notions of justice and fair play, and is also dangerous, to allow a man to be convicted on the strength of a confession unless it is made voluntarily and unless he realises that anything he says may be used against him; and any attempt by a person in authority to bully a person into making a confession or any threat or coercion would at once invalidate it if the fear was still operating on his mind at the time he makes the confession if it "would appear to him reasonable for supporting that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him."

That is why the recording of a confession is hedged around with so many safeguards and is the reason why Magistrates ordinarily allow a period for reflection and why an accused person is remanded to jail custody and is put out of the reach of the investigating police before he is asked to make his confession.

But the force of these precautions is destroyed when, instead of isolating the accused from the investigating police, he is for all practical purposes sent back to them for a period of ten days. *Aher Raja Khima* v. *State of Saurashtra*, AIR 1956 SC 217, 221, 22: (1955) 2 SCR 1285: 1956 Cri LJ 426: (1956) 1 MLJ (SC) 135.

Bench Strength **3**. Coram: **Vivian Bose**[1], **T.L. Venkatarama Aiyar**[2] and *N. Chandrasekhara Aiyar*[1], JJ. [Date of decision: 22-12-1955]

[8012] — S. 164 — Consideration first of circumstances which are corroborative of the confession and then considering the confession and finding it not voluntary — *Held, to be a* *wrong approach — Confession itself should be considered first and then other circumstances considered to determine extent of corroboration of the various parts of the statement made in the confession. State of U.P.* v. *Boota Singh*, (1979) 1 SCC 31: 1979 SCC (Cri) 115: AIR 1978 SC 1770: 1979 MLJ (Cri) 290: (1979) 1 SCR 298: 1978 ALJ 1156.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 22-8-1978]

[8013] — S. 164 — "During the course of investigation" — Meaning — *Discovery and arrest of offender — Second class Magistrate not specially empowered by Government to record confession — Magistrate recording confession and calling police for arrest — Confessional statement inadmissible in evidence — Importance of discovery and arrest of accused in the absence of confession. Nika Ram* v. *State of H.P.*, (1972) 2 SCC 80: 1972 SCC (Cri) 635: AIR 1972 SC 2077: 1972 Cri LJ 1317: (1973) 1 SCR 428.

Bench Strength **2**. Coram: *J.M. Shelat* and **H.R. Khanna**, JJ. [Date of decision: 28-4-1972]

[8014] — S. 164 — Evidence Act, 1872, S. 24 — Confessions — Retracted and voluntary — *Scope of — Appellant making confession out of repentance — Caution by Magistrate — Retraction by accused — No evidence that appellant-accused beaten by police — Confession held voluntary — Retracted confession corroborated to connect accused with the crime*

Confessions can be acted upon if the court is satisfied that they are voluntary and they are true. The voluntary nature of the confession depends upon whether there was any threat, inducement or promise and its truth is judged in the context of the entire prosecution case. The confession must fit into the proved facts and not run counter to them. When the voluntary character of the confession and its truth are accepted it is safe to rely on it. Indeed a confession, if it is voluntary and true and not made under any inducement or threat or promise, is the most potent piece of evidence against the maker.

Retracted confession, however, stands on a slightly different footing. As the Privy Council once stated, in India it is the rule to find a confession and to find it retracted later. A Court may take into account the retracted confession, but it must look for the reasons for the making of the confession as well as for its retraction, and must weigh the two to determine whether the retraction affects the voluntary nature of the confession or not. If the court is satisfied that it was retracted because of an afterthought or advice, the retraction may not weigh with the court if the general facts proved in the case and the tenor of the confession as made and the circumstances of its making and withdrawal warrant its user. All the same, the courts do not act upon the retracted confession without finding assurance from some other sources as to the guilt of the accused. Therefore, it can be stated that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted confession requires the general assurance that the retraction was an afterthought and that the earlier statement was true. *Bharat* v. *State of U.P.*, (1971) 3 SCC 950: 1972 SCC (Cri) 198.

Bench Strength **3**. Coram: **M. Hidayatullah, C.J.** and *A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 17-3-1970]

Impliedly distinguished in *Kanhaiyalal* v. *Union of India*, *(2008) 4 SCC 668*

[8015] — S. 164 — Failure to comply with S. 164 and High Court circulars — *Effect — Confession though admissible may yet not be relied upon by the Court if it is not convinced that it is true and voluntary*

It is true that the failure to comply with S. 164(3), Criminal Procedure Code, or with the High Court Circulars will not render the confessions inadmissible in evidence. Relevancy and admissibility of evidence have to be determined in accordance with the provisions of the Evidence Act. Section 29 of Evidence Act lays down that if a confession is otherwise relevant it does not become irrelevant merely because, inter alia, the accused was not warned that he was not bound to make it and the evidence of it might be given against him. If, therefore, a confession does not violate any one of the conditions operative under Ss. 24 to 28 of the Evidence Act, it will be admissible in evidence. But as in respect of any other admissible evidence, oral or documentary, so in the case of confessional statements which are otherwise admissible, the Court has still to consider whether they can be accepted as true. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the Court may refuse to act upon the confession even if it is admissible in evidence. That shows how important it is for the Magistrate who records the confession to satisfy himself by appropriate questioning of the confessing accused, that the confession is true and voluntary. A strict and faithful compliance with S. 164 of the Code and with the instructions issued by the High Court affords in a large measure the guarantee that the confession is voluntary. If a confession is retracted, it further impairs its evidentiary value. *Dagdu* v. *State of Maharashtra*, (1977) 3 SCC 68: 1977 SCC (Cri) 421: AIR 1977 SC 1579: (1977) 3 SCR 636: 1977 Cri LJ 1206.

Bench Strength **3**. Coram: **Y.V. Chandrachud**[1], **P.K. Goswami**[2] and *P.N. Shinghal*, JJ. [Date of decision: 19-4-1977]

[8016] — S. 164 — Free and voluntary confession — Requirements of

It is a well settled principle that in order that evidence of a confession by a prisoner may be admissible, it must be affirmatively proved that such confession was free and voluntary and that it was not preceded by any inducement to the prisoner to make a statement held out by a person in authority, or that it was not made until after such inducement had clearly been removed. However mere bald assertion by the prisoner that he was threatened, tutored or that inducement was offered to him, cannot be accepted as true without more. *Hem Raj Devilal* v. *State of Ajmer*, AIR 1954 SC 462: 1954 SCR 1133: 1954 Cri LJ 1313.

Bench Strength 3. Coram: **M.C. Mahajan, C.J.** and *Vivian Bose* and *Ghulam Hasan*, JJ. [Date of decision: 17-3-1954]

[8017] — S. 164 — Mere fact that the police secures statement of a witness under, in view of expediency or anticipating possibility of his being won over would not make the statement unreliable — *It is for the court to determine the extent of reliance to be placed on such statement in the circumstances of the case including the fact of witness having resiled from it and at which stage — Statement under S. 164 has corroborative value — Evidence Act, 1872, S. 157. Dhanabal* v. *State of T.N.*, (1980) 2 SCC 84: 1980 SCC (Cri) 340: AIR 1980 SC 628: 1980 Cri LJ 439: (1980) 17 ACC 115.

Bench Strength 3. Coram: *S. Murtaza Fazal Ali*, **P.S. Kailasam** and *A.D. Koshal*, JJ. [Date of decision: 13-12-1979]

[8018] — S. 164 — Non-confessional statement made by accused — To be recorded in accordance with the Section

Once the investigation had started any non-confessional statement made by the accused also required to be recorded in the manner indicated in that section and if no such record had been made by the Magistrate, the Magistrate would not be competent to give oral evidence of such statement having been made by the accused. *Rao Shiv Bahadur Singh* v. *State of V.P.*, AIR 1954 SC 322: 1954 SCR 1098: 1954 Cri LJ 910.

Bench Strength 3. Coram: **N.H. Bhagwati**, *B. Jagannadhadas* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 5-3-1954]

[8019] — S. 164 — Probative value of evidence of witnesses who had been examined earlier under S. 164 — *Closer scrutiny necessary*

The fact that some of the prosecution witnesses had been examined earlier under S. 164, CrPC, is only a circumstance to be taken into account in appraising the value of their testimony and the court has to scrutinise such evidence a little more closely and see if the other circumstances lend support to it. *Baburao Bajirao Patil* v. *State of Maharashtra*, (1971) 3 SCC 432: 1971 SCC (Cri) 680.

Bench Strength 2. Coram: *S.M. Sikri, C.J.* and **I.D. Dua**, J. [Date of decision: 19-2-1971]

[8020] — S. 164 — Procedure to be followed by Magistrate mandatory. *Zwinglee Ariel* v. *State of M.P.*, AIR 1954 SC 15: 1954 Cri LJ 230.

Bench Strength 3. Coram: *M.C. Mahajan*, **S.R. Das** and *N.H. Bhagwati*, JJ. [Date of decision: 3-12-1952]

[8021] — S. 164 — Recording of confession — Adequate time to be given by the Magistrate — *Time given to the accused to consider whether he should make a confession at all — Generally at least 24 hours time should be given — Where there is reason to suspect that the accused has been persuaded or coerced to make a confession even longer period may be given*

When an accused person is produced before the Magistrate by the investigating officer, it is of utmost importance that the mind of the accused person should be completely freed from any possible influence of the police and the effective way of securing such freedom from fear to the accused person is to send him to jail custody and give him adequate time to consider whether he should make a confession at all. It would naturally be difficult to lay down any hard and fast rule as to the time which should be allowed to an accused person in any given case. It would be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession. Where there may be reason to suspect that the accused has been persuaded or coerced to make a confession, even longer period may have to be given to him before his statement is recorded. *Sarwan Singh Rattan Singh* v. *State of Punjab*, AIR 1957 SC 637: 1957 SCR 953: 1957 Cri LJ 1014.

Bench Strength 3. Coram: *B. Jagannadhadas*, *B.P. Sinha* and **P.B. Gajendragadkar**, JJ. [Date of decision: 10-4-1957]

[8022] — S. 164 — Recording of confession — Duty of the Magistrate — *Magistrate must take care to see that the requirement of sub-section (3) of the Section are fully satisfied — Questions under sub-section(3) should not be put mechanically; no element of casualness should be allowed to creep in and the Magistrate should be fully satisfied that the confessional statement which the accused wants to make is in fact and substance voluntary*

The act recording confessions under S. 164, CrPC, is a very solemn act and, in discharging his duties under the said section, the Magistrate must take care to see that the requirements of sub-section (3) of S. 164 are fully satisfied. It would of course be necessary in every case to put the questions prescribed by the High Court circulars but the questions intended to be put under sub-section (3) of S. 164 should not be allowed to become a matter of a mere mechanical enquiry. No element of casualness should be allowed to creep in and the Magistrate should be fully satisfied that the confessional statement which the accused wants to make is in fact and in substance voluntary.

The whole object of putting questions to an accused person who offers to confess is to obtain an assurance of the fact that the confession is not caused by any inducement, threat or promise having reference to the charge against the accused person as mentioned in S. 24 of the Indian Evidence Act. *Sarwan Singh Rattan Singh* v. *State of Punjab*, AIR 1957 SC 637: 1957 SCR 953: 1957 Cri LJ 1014.

Bench Strength 3. Coram: *B. Jagannadhadas*, *B.P. Sinha* and **P.B. Gajendragadkar**, JJ. [Date of decision: 10-4-1957]

[8023] — S. 164 — Recording of confession by Taluka Magistrate rather than by the Judicial Magistrate, held, not fatal to the prosecution where the Taluka Magistrate was specially empowered and had sufficient experience. *Abdul Rehman* v. *State of Karnataka*, (1979) 3 SCC 426: 1979 SCC (Cri) 518: AIR 1979 SC 1924: 1979 Cri LJ 1296.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 20-3-1979]

[8024] — S. 164 — Recording of confession in jail — Effect of

Ordinarily confession should be recorded in the Court house and if it is recorded in jail instead it is an irregularity.

Held, however that in the circumstances of the case, such irregularity did not affect the voluntary character of the confession. *Hem Raj Devilal* v. *State of Ajmer*, AIR 1954 SC 462: 1954 SCR 1133: 1954 Cri LJ 1313.

Bench Strength 3. Coram: **M.C. Mahajan, C.J.** and *Vivian Bose* and *Ghulam Hasan*, JJ. [Date of decision: 17-3-1954]

[8025] — S. 164 — Recording of reasons an essential step in search

Section 165 of the Code lays down various steps to be followed in making a search. The recording of reasons is an important step in the matter of search and to ignore it is to ignore the material part of the provisions governing searches. If that can be ignored, it cannot be said that the search is carried out in accordance with the provisions of the Code of Criminal Procedure; it would be a search made in contravention of the provisions of the Code. *State of Rajasthan* v. *Rehman*, AIR 1960 SC 210, 213: (1960) 1 SCR 991: 1960 Cri LJ 286.

Bench Strength 2. Coram: *P.B. Gajendragadkar* and **K. Subba Rao**, JJ. [Date of decision: 14-10-1959]

[8026] — S. 164 — Recording of statements of witnesses by Investigating Officer under — Applicability of the rule of caution to the testimony of such witnesses at the trial — *CrPC, 1973, S. 164*

It would be wrong to find fault with the Investigating Officer merely because he got the statements of witnesses recorded under S. 164. Nor can the evidence of a witness be discarded for the mere reason that his statement was recorded under S. 164. But the evidence of witnesses whose statements are recorded under S. 164 must be approached with caution. Such witnesses feel tied to their previous statements given on oath and have but a theoretical freedom to depart from the earlier version. A prosecution for perjury could be the price of that freedom. It is, of course, open to the Court to accept the evidence of a witness whose statement was recorded under S. 164, but the salient rule of caution must always be borne in mind. that is all the more necessary when almost all the eyewitnesses are subjected to this tying-up process. *Balak Ram* v. *State of U.P.*, (1975) 3 SCC 219: 1974 SCC (Cri) 837: AIR 1974 SC 2165: 1974 Cri LR (SC) 530: 1974 Cri LJ 1486.

Bench Strength 2. Coram: *H.R. Khanna* and **Y.V. Chandrachud**, JJ. [Date of decision: 16-8-1974]

[8027] — S. 164 — Retracted confession — Cannot alone be the basis of conviction

Where the conclusion of guilt rests solely on a retracted confession, not only uncorroborated in material particulars, but untrue in many parts. Such a conviction is opposed to law and cannot be allowed to stand. *Arjuna Lal Misra* v. *State*, AIR 1953 SC 411, 413: 1953 Cri LJ 1633.

Bench Strength 3. Coram: **Fazl Ali**[1], **B.K. Mukherjea**[2] and **N. Chandrasekhara Aiyar**[3], JJ. [Date of decision: 30-11-1950]

[8028] — S. 164 — Retracted confession — Corroboration

The confession is inculpatory but corroboration is necessary because of the retraction. *Pangambam Kalanjoy Singh* v. *State of Manipur*, AIR 1956 SC 9, 11: 1956 Cri LJ 126.

Bench Strength 3. Coram: *M.C. Mahajan*, *N. Chandrasekhara Aiyar* and **Vivian Bose**, JJ. [Date of decision: 24-4-1952]

[8029] — S. 164 — Retracted confession — Corroboration — No hard and fast rule can be laid down — Rule of prudence. *Muthuswami* v. *State of Madras*, AIR 1954 SC 4: 1954 Cri LJ 236.

Bench Strength **3**. Coram: *Fazl Ali*, *M.C. Mahajan* and **Vivian Bose**, JJ. [Date of decision: 22-10-1951]

[8030] — S. 164 — Retracted confession — Corroboration necessary

Unless a retracted confession is corroborated in material particulars, it is not prudent to base a conviction in a criminal case on its strength alone. *Puran* v. *State of Punjab*, AIR 1953 SC 459, 462: 55 Punj LR 158: 1953 Cri LJ 1925.

Bench Strength **3**. Coram: **M.C. Mahajan**, *S.R. Das* and *N.H. Bhagwati*, JJ. [Date of decision: 13-11-1952]

[8031] — S. 164 — Retracted confession — Rule of corroboration one of prudence and not of law

A retracted confession may form the legal basis of a conviction if the Court is satisfied that it was true and was voluntarily made. But it has been held that a court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only a rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances such a conviction can be made without corroboration, for a court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration; but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the Court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars. *Pyare Lal Bhargava* v. *State of Rajasthan*, AIR 1963 SC 1094, 1096-9: 1963 Supp (1) SCR 689: (1963) 2 Cri LJ 178.

Bench Strength **4**. Coram: *Syed Jafer Imam*, **K. Subba Rao**, *N. Rajagopala Ayyangar* and *J.R. Mudholkar*, JJ. [Date of decision: 22-10-1962]

See also AIR 1967 SC 349: 1967 Cri LJ 409

[8032] — S. 164 — Retracted confession — Should be substantially corroborated by independent circumstances — *Not necessary that it be corroborated in each material particular — Sufficient that there is general corroboration of the important incidents mentioned in the confession — Corroboration by evidence at Test Identification Parade, opinion of handwriting expert, etc. State of U.P.* v. *Boota Singh*, (1979) 1 SCC 31: 1979 SCC (Cri) 115: AIR 1978 SC 1770: 1979 MLJ (Cri) 290: (1979) 1 SCR 298: 1978 ALJ 1156.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 22-8-1978]

[8033] — S. 164 — Retracted confession — Testimony in court conflicting with statement under S. 164 — Witness not necessarily false. *Rai Singh* v. *State of Haryana*, (1972) 4 SCC 289: AIR 1971 SC 2505: 1971 Cri LJ 1738.

Bench Strength **3**. Coram: *J.M. Shelat*, **I.D. Dua** and *S.C. Roy*, JJ. [Date of decision: 1-9-1971]

[8034] — S. 164 — Retracted confession against co-accused — Corroboration

Although a retracted confession is admissible against a co-accused by virtue of S. 30 of the Evidence Act, as a matter of prudence and practice a court would not ordinarily act upon it to convict a co-accused without corroboration. *Ram Parkash* v. *State of Punjab*, AIR 1959 SC 1, 3: 1959 SCR 1219: 1959 Cri LJ 90.

Bench Strength **3**. Coram: *B.P. Sinha*, **Syed Jafer Imam** and *K.N. Wanchoo*, JJ. [Date of decision: 2-9-1958]

[8035] — S. 164 — Statement in the course of investigation recorded by Magistrate — Value of — Is not substantive evidence — Can be used only to corroborate or contradict a witness

Statements recorded under S. 164 of the Code are not substantive evidence in a case and cannot be made use of except to corroborate or contradict the witness. An admission by a witness that a statement of his was recorded under S. 164 of the Code and that what he had stated there was true would not make the entire statement admissible much less than any part of it could be used as substantive evidence in the case.

The Court commits an error in law in using the statement of a witness under S. 164 CrPC to come to the conclusion that he has been won over. *State of Delhi* v. *Shri Ram Lohia*, AIR 1960 SC 490: 1960 Cri LJ 679.

Bench Strength **3**. Coram: **Syed Jafer Imam**, *J.L. Kapur* and *K.N. Wanchoo*, JJ. [Date of decision: 9-12-1959]

[8036] — S. 164 — Statement of child witness after confining her in police station for 10 days — *Held, unreliable and inadmissible. State of Bihar* v. *Kapil Singh*, AIR 1969 SC 53: (1968) 3 SCR 810: 1969 Cri LJ 279.

Bench Strength **3**. Coram: *S.M. Sikri*, *J.M. Shelat* and **V. Bhargava**, JJ. [Date of decision: 18-4-1968]

[8037] — S. 164 — Statement recorded in derogation of the Section — *Cannot be admitted in evidence under S. 9 of Evidence Act — Magistrate's own statement about facts establishing identity of anything is admissible under S. 9, Evidence Act, 1872*

If a statement of witness recorded by a Magistrate in derogation of the provisions of S. 164 will go in as evidence under S. 9 of the Evidence Act, the object of S. 164 of the said Code will be defeated. It is, therefore, necessary to resort to the rule of harmonious construction so as to give full effect to both the provisions. If a Magistrate speaks to facts which establish the identity of anything, the said facts would be relevant within the meaning of S. 9 of the Evidence Act; but if the Magistrate seeks to prove statements of a person not recorded in compliance with the mandatory provisions of S. 164 of the Code of Criminal Procedure, such part of the evidence, though it may be relevant within the meaning of S. 9 of the Evidence Act, will have to be excluded.

On the basis of the statement made by the witness 'S' giving the particulars of the building, the Magistrate got a plan and Memorandum prepared. It is contended that the plan and Memorandum and the statement of the Magistrate about these papers were inadmissible in evidence.

Held, the memorandum prepared by the Magistrate describing the present condition of the house and the evidence given by him on the basis of that memorandum would be relevant evidence under S. 9 of the Evidence Act; but the statements made by 'S' to the Magistrate said to be not recorded in the manner prescribed by S. 164 of the Code of Criminal Procedure would be inadmissible. The evidence of the Magistrate, excluding that part of evidence pertaining to the statements made to him by 'S', was relevant in the case. *Deep Chand* v. *State of Rajasthan*, AIR 1961 SC 1527: (1962) 1 SCR 662: (1961) 2 Cri LJ 705: (1962) 2 MLJ 1 (SC).

Bench Strength **2**. Coram: **K. Subba Rao** and *Raghubar Dayal*, JJ. [Date of decision: 30-3-1961]

[8038] — S. 164 — Statement recorded under S. 164 — Endorsement recorded below the statement not proper and in accordance with S. 164 — *Cannot, however, lead to the inference that any threat was given to the witnesses and that the evidence of the witnesses given in trial Court necessarily becomes suspect or less believable.* *Ram Charan* v. *State of U.P.*, AIR 1968 SC 1270: (1968) 3 SCR 354: 1968 Cri LJ 1473.

Bench Strength **3**. Coram: **S.M. Sikri**, *J.M. Shelat* and *V. Bhargava*, JJ. [Date of decision: 1-3-1968]

[8039] — S. 164 — Statement recorded under S. 164 — Inference that there was a time when police thought that the witness could change his statement — *When witness sticks to his statement recorded under the section throughout the mere fact that his statement was recorded under the section will not be sufficient to discard it — Evidence to be considered with caution and acted upon if corroborated by other circumstances*

If a statement of a witness is previously recorded under S. 164, Criminal Procedure Code, it leads to an inference that there was a time when the police thought the witness may change but if the witness sticks to the statement made by him throughout, the mere fact that his statement was previously recorded under S. 164 will not be sufficient to discard it. The Court, however, ought to receive it with caution and if there are other circumstances on record which lend support to the truth of the evidence of such witness, it can be acted upon. *Ram Charan* v. *State of U.P.*, AIR 1968 SC 1270: (1968) 3 SCR 354: 1968 Cri LJ 1473.

Bench Strength **3**. Coram: **S.M. Sikri**, *J.M. Shelat* and *V. Bhargava*, JJ. [Date of decision: 1-3-1968]

Parmanand v. Emperor, AIR 1940 Nag 340 quoted with approval

[8040] — S. 164 — Statement under — Corroboration

Statements made under S. 164 were not evidence but were corroborative of what had been stated earlier in the Committal Court. *State of Rajasthan* v. *Kartar Singh*, (1970) 2 SCC 61: 1970 SCC (Cri) 297: AIR 1970 SC 1305: 1970 Cri LJ 1144.

Bench Strength **3**. Coram: **M. Hidayatullah, C.J.** and *A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 18-3-1970]

[8041] — S. 164 — Statements of witnesses or accused — Recording of — *Magistrate recording the statement of identifying witnesses and accused in the memorandum of identification proceedings — Statements so recorded in contravention of S. 164, CrPC — Magistrate's evidence on the basis of verification proceedings is relevant and admissible — Evidence about the statements recorded is inadmissible*

The evidence given by a Magistrate on the basis of the verification proceedings conducted by him is relevant evidence, though he could not speak to statements made by the accused or a witness recorded by him in contravention of S. 164 of the Code of Criminal Procedure.

A Magistrate when called upon to conduct verification proceedings should confine his attention only to the steps to be taken to ensure that the witnesses were able to identify certain persons alleged to have been concerned in the commission of the crime or to identify certain things which were said to be the subject-matter thereof. The Code of Criminal Procedure does not sanction his transgression of this limit and recording of other statements which may have a bearing in establishing the guilt of the accused except in accordance with S. 164 of the Code.

Where a Magistrate, III Class, not entitled to record a statement under S. 164 CrPC conducted proceedings of identification parade and prepared a memorandum of proceedings indicating inter alia the statements made by the witnesses after identifying the suspects, and deposed about the identification and also the statement of two witnesses, the statements recorded in the memo- randum will be inadmissible in evidence, but his statements and portion of memorandum about a witness identifying the suspects will be admissible in evidence. *Harnath Singh* v. *State of M.P.*, AIR 1970 SC 1619: (1969) 2 SCR 289: 1970 Cri LJ 1422.

Bench Strength **5**. Coram: *J.C. Shah*, *V. Ramaswami*, **G.K. Mitter**, *K.S. Hegde* and *A.N. Grover*, JJ. [Date of decision: 27-9-1968]

[8042] — S. 164 — Use of statement made — Not substantive evidence

A statement under S. 164 of the Code of Criminal Procedure is not substantive evidence. It can be used to corroborate the statement of a witness. It can be used to contradict a witness. *Ram Kishan Singh* v. *Harmit Kaur*, (1972) 3 SCC 280: 1972 SCC (Cri) 493: AIR 1972 SC 468: 1972 Cri LJ 267.

Bench Strength **2**. Coram: **A.N. Ray** and *D.G. Palekar*, JJ. [Date of decision: 9-12-1971]

[8043] — Ss. 164 and 364 — Magistrate recording confession — Not desirable for the Magistrate who takes part in investigation of a case to record the confession of the accused in the same case

It is desirable that magistrates who take part in attesting recovery memos should not record confessions by persons accused of the offence being investigated. It is conceivable that the investigating department seeks the assistance of the magistrates in the matter of investigation by requesting them to attest the recovery memos in order to give assurance and authenticity to the investigation. But if that is done care should be taken to see that for recording confessions the accused persons are sent to some other magistrate. *Babu Singh* v. *State of Punjab*, (1963) 3 SCR 749: (1964) 1 Cri LJ 566, 71.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.C. Das Gupta* and *J.R. Mudholkar*, JJ. [Date of decision: 28-8-1962]

[8044] — Ss. 164 and 533 — Confession — Not recorded in accordance with S. 164 or not recorded by a Magistrate empowered under S. 164(1) — Oral evidence of the making of the confession is inadmissible

A Magistrate cannot in the course of investigation record a confession except in the manner laid down in S. 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of S. 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The Section, therefore, by conferring on magistrates the power to record statements or confessions, by necessary implication, prohibited a magistrate from giving oral evidence of the statements or confessions made to him. *State of U.P.* v. *Singhara Singh*, AIR 1964 SC 358: (1964) 4 SCR 485: (1964) 1 Cri LJ 263 (2).

Bench Strength **3**. Coram: **A.K. Sarkar**, *M. Hidayatullah* and *J.C. Shah*, JJ. [Date of decision: 16-8-1963]

[8045] — Ss. 164(2), 364(3) and 533(1) — Confession — Proof and validity — *Magistrate not himself recording the confession and not complying with the provisions of S. 364(3) — The scribes of one of the confessions produced by the defence and the other not produced at all — Held, omission to comply with the provisions will not vitiate the confession in view of S. 533 CrPC and will not make it inadmissible — When proved can be considered on merit if shown to be voluntary*

The Magistrate admitted that the confessions of the two accused were recorded by his different Ahalmad Readers. The prosecution did not examine any of the two scribes. One of them was examined as defence witness. The Magistrate explained that he himself did not record the statements because he did not know Urdu. He however did not make a memorandum of the statements as required by S. 364(3) CrPC. It is contended by the accused that the confession is not proved and is invalid. It is contended by the prosecution that the confessions are saved by S. 533 CrPC.

Held, the contention that since the Magistrate's evidence shows that the confessions had been duly recorded and therefore in view of S. 533 CrPC the irregularity committed by the Magistrate in not complying with S. 364(3) will not vitiate the confessions nor will make them inadmissible unless it is proved that the error has injured the accused as to his defence has some force. It is, therefore, assumed in favour of the prosecution that the confessions have been proved and may, therefore, be considered on merits, if they are shown to be voluntary. *Babu Singh* v. *State of Punjab*, (1963) 3 SCR 749: (1964) 1 Cri LJ 566, 71.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.C. Das Gupta* and *J.R. Mudholkar*, JJ. [Date of decision: 28-8-1962]

[8046] — Ss. 164(2) and 364(3) — Confession — When voluntary — *Magistrate recording confession actively associated with the investigation of the case — Accused kept in police custody for about 12 days after the substantial part of the investigation was over — Accused produced before the Magistrate on February 6 in the evening and sent to judicial custody — Confessional statement recorded on February 7 — Accused not kept in judicial custody before confession was recorded even for 24 hours — Magistrate not complying with S. 364(3) CrPC indicating his casual attitude — Held, the confession was not voluntary*

Where the investigating officer kept the accused in police custody for long even after a substantial portion of the investigation was over, where the Magistrate recording the confessional statement actively assisted the investigation by attesting the recovery memos and where the Magistrate failed to comply with the provisions of S. 364(3) CrPC indicating his casual attitude in recording the evidence, the confessional statements were not voluntary. *Babu Singh* v. *State of Punjab*, (1963) 3 SCR 749: (1964) 1 Cri LJ 566, 71.

Bench Strength 3. Coram: **P.B. Gajendragadkar**, *K.C. Das Gupta* and *J.R. Mudholkar*, JJ. [Date of decision: 28-8-1962]

— S. 164(3) *See* Ss. 364(3) and 164(3)
— S. 165 *See* Ss. 103 and 165
See also Ch. XIV (Ss. 154 to 176)
See also Ss. 156 and 165
See also Ss. 166(3) and 165

[8047] — S. 165 — Nature and scope — Conditions for making search

Under S. 165 four conditions are imposed: (*i*) the police officer must have reasonable ground for believing that anything necessary for the purposes of an investigation of an offence cannot, in his opinion, be obtained otherwise than by making a search, without undue delay, (*ii*) he should record in writing the grounds of his belief and specify in such writing as far as possible the things for which the search is to be made; (*iii*) he must conduct the search, if practicable, in person; and (*iv*) if it is not practicable to make the search himself, he must record in writing the reasons for not himself making the search and shall authorize a subordinate officer to make the search after specifying in writing the place to be searched, and, so far as possible, the thing for which search is to be made. As search is a process exceedingly arbitrary in character, stringent statutory conditions are imposed on the exercise of the power. *State of Rajasthan* v. *Rehman*, AIR 1960 SC 210, 212: (1960) 1 SCR 991: 1960 Cri LJ 286.

Bench Strength 2. Coram: *P.B. Gajendragadkar* and **K. Subba Rao**, JJ. [Date of decision: 14-10-1959]

[8048] — S. 165 — Nature — Power of search incidental to investigation. *State of Rajasthan* v. *Rehman*, AIR 1960 SC 210: (1960) 1 SCR 991: 1960 Cri LJ 286.

Bench Strength 2. Coram: *P.B. Gajendragadkar* and **K. Subba Rao**, JJ. [Date of decision: 14-10-1959]

[8049] — S. 165 — Illegality of search would not justify wrongful confinement of public officer or prevent discharge of his duties — *Penal Code, 1860, Ss. 342 and 353*

An obstruction during the course of an irregular search not conducted in conformity with the provisions of S. 165, Criminal Procedure Code, might be justified, but that is no warrant for further preventing a public servant from discharging his duties. That constitutes an offence.

To say merely because the search was illegal the obstruction would be justified and those who caused it would be entitled to take law into their hands would result in conferring licence and afford them an unwarranted excuse to commit each and every criminal act.

Obstruction to search is to the act of the person conducting the search. It is a defensive act, but where search has ended and the persons conducting the search have left the premises, to bring them back and make them do things against their will is not an obstruction to an act, but a compulsion to make them act. *Shyam Lal Sharma* v. *State of M.P.*, (1972) 1 SCC 764: 1972 SCC (Cri) 470: AIR 1972 SC 886: (1972) 3 SCR 422: 1972 Cri LJ 638: 1973 ALJ 366.

Bench Strength 2. Coram: **P. Jaganmohan Reddy** and *H.R. Khanna*, JJ. [Date of decision: 9-2-1972]

See also AIR 1960 SC 210: 1960 Cri LJ 286

[8050] — S. 165 — Scope of powers — How and when can be assailed — Writ petition against — *IT Act, 1961, S. 132 (Post 1965) — Income Tax Rules, 1962, R. 112 — Constitution of India — Article 226*

The Act and the Rules do not require that the warrant of authorisation should specify the particulars of documents and books of account: a general authorisation to search for and seize documents and books of account relevant to or useful for any proceeding complies with the requirements of the Act and the Rules. It is for the officer making the search to exercise his judgment and seize or not to seize any documents or books of account. An error committed by the officer in seizing documents which may ultimately be found to be useful for or relevant to the proceedings under the Act will not by itself vitiate the search, nor will it entitle the aggrieved person to an omnibus order releasing all documents seized. The aggrieved party may undoubtedly move a competent court for an order releasing the documents seized. In such a proceeding the officer who has made the search will be called upon to prove how the documents seized are likely to be useful for or relevant to a proceeding under the Act. If has is unable to do so, the court may order that those documents be released. But the circumstance that a large number of document have been seized is not a ground for holding that all documents seized are irrelevant or the action of the officer is mala fide.

The issue of a search warrant by the Commissioner is not a judicial or a quasi-judicial act and even if the Commissioner is enjoined to issue a warrant only when in fact there is information in his possession in consequence of which he may form the necessary belief, the matter is not thereby subject to scrutiny by the court. Section 132 of the Income Tax Act does not require specific mention by description of each particular document which has to be discovered on search: it is for the officer who is conducting the search to decide whether a particular document found on search is relevant for the purpose or not. The mere fact that it may ultimately be found that some document seized was not directly relevant to any proceeding under the Act or that another officer with more information at his disposal may have come to a different conclusion will not be ground for setting aside the order and the proceeding for search and seizure.

It is true that a large number of documents were seized from the premises of M/s Seth Bros. but that has by itself no direct bearing on the question whether the Income Tax Officer acted mala fide. If the Income Tax Officer in making a search had reason to believe that any books of account or other documents useful for, or relevant to, any proceedings under the Act may be found, he may make a search for and seize those books of account and other documents. Some books, maps of the cold storage, assessment returns, and doctor's prescriptions were seized by the Income Tax Officer. It appears, however, from the inventory that a large number of documents which related to the business of the assessee and their allied concerns were also seized. It would be impossible merely from the circumstances that some of the documents may be shown to have no clear or direct relevance to any proceeding under the Act that the entire search and seizure was made not in bona fide discharge of official duty but for a collateral purpose. The suggestion that the books of account and other documents which could be taken possession of should only be those which directly related to the business carried on the name of M/s Seth Bros has no substance. The books of account and other documents in respect of other businesses carried on by the partners of the firm of the assessees would certainly be relevant because they would tend to show inter-relation between the dealings and supply materials having a bearing on the case of evasion of income tax by the firm.

One cannot that because the Income Tax Officers made a search for and seized the books of accounts and documents in relation to business carried on in the names of other firms and companies, the search and seizure were illegal.

It is also said that marks of identification were not placed on several documents. Assuming that this allegation is true, in the absence of anything to show that the documents were either replaced or tampered with, that irregularity will not by itself supply a ground for holding that the search was mala fide. A delay of two months in issuing a notice calling for explanation is also not a ground for holding that the action was taken for a collateral purpose.

By the express terms of the Act and the Rules the Income Tax Officer may obtain the assistance of a police officer. By sub-section (13) of S. 132 the provisions of the Code of Criminal Procedure, 1898, relating to searches, apply so far as may be, to searches under S. 132. Thereby it is only intended that the officer concerned shall issue the necessary warrant, keep present respectable persons of the locality to witness the search, and generally carry out the search in the manner provided by the Code of Criminal Procedure. But sub-section (13) of S. 132 does not imply that the limitations prescribed by S. 165 of the Code of Criminal Procedure are also incorporated therein.

It is not disputed that assistance of the police may be obtained in the course of a search.

In keeping police officers present at the time of the search in the house of influential businessmen to ensure the protection of the officers and the record, it cannot be said that "excessive force was used".

In appropriate cases a writ petition may lie challenging the validity of the action on the ground of absence of power or on a plea that proceedings were taken maliciously or for a collateral purpose. But, normally, the High Court in such a case does not proceed to determine merely on affidavits important issues of fact especially where serious allegations of improper conduct are made against public servants. *ITO* v. *Seth Bros.*, (1969) 2 SCC 324: AIR 1970 SC 292: (1969) 74 ITR 836, 843-44.

Bench Strength 2. Coram: **J.C. Shah** and *G.K. Mitter*, JJ. [Date of decision: 15-7-1969]

Seth Bros. v. CIT, (1956) 62 ITR 44 (All), reversed

[8051] — S. 165 — Applicability — Only when search as part of investigation of an offence. *Sheonath Prasad* v. *State of Bihar*, AIR 1968 SC 1517: (1969) 1 SCR 150: (1968) 22 STC 488: 1969 Cri LJ 37.

Bench Strength 2. Coram: *S.M. Sikri* and **R.S. Bachawat**, JJ. [Date of decision: 30-4-1968]

[8052] — S. 165 — Procedure under R. 201 of rules framed under the 1944 Excise Act for search warrants — Compliance with S. 165 CrPC, 1898 — *Central Excises and Salt Act, 1944, S. 18 & R. 201*

A comparative study of Chapter XIV CrPC, 1898 with the provisions of R. 201 of the Rules indicates that searches made by a police officer during the course of an investigation of a cognizable offence can properly be approximated with the searches to be made by the authorised officer under R. 201 of the Rules; for, in the former case, the police officer makes a search during the investigation of a cognizable offence and in the latter the authorised officer makes the search to ascertain whether a person contravened the provisions of the Act or the Rules which is an offence. There is also no reason why conditions should be imposed in the matter of a search by the police officer under S. 165 of the Code, but no such safeguard need to be provided in the case of a search by the excise officer under the Rules. The legislature, by stating in S. 18 of the Act that the searches under the Act and the Rules shall be carried out in accordance with the provisions of the Code relating to searches, clearly indicated that the appropriate provisions of the Code shall govern searches authorised under the Act and the Rules. Therefore the provisions of S. 165 of the Code must be followed in the matter of searches under R. 201 of the Rules.

Section 165 of the Code lays down various steps to be followed in making a search. The recording of reasons in an important step in the matter of search and to ignore it is to ignore the material part of the provisions governing searches. If that can be ignored, it cannot be said that the search is carried out in accordance with the provisions of the Code of Criminal Procedure: it would be a search made in contravention of the provisions of the Code. *State of Rajasthan* v. *Rehman*, AIR 1960 SC 210, 212, 21: (1960) 1 SCR 991: 1960 Cri LJ 286.

Bench Strength 2. Coram: *P.B. Gajendragadkar* and **K. Subba Rao**, JJ. [Date of decision: 14-10-1959]

[8053] — S. 165 — Applicability to searches under S. 41(2), Madras General Sales Tax Act, 1959

Though Section 41(2) of the Madras Act itself provides no safeguards and might have been open to objection on that ground, there is a provision in the proviso to sub-section (2) which lays down that all searches under this sub-section shall, so far as may be, be made in accordance with the provisions of the Code of Criminal Procedure. Therefore, the provision of the Code of Criminal Procedure so far as may be apply to all searches made under sub-section (2).

When the proviso applies the provisions of the Code of Criminal Procedure to all searches made under this sub-section, as far as may be possible, there is no reason why S. 165 should not apply mutatis mutandis to searches made under sub-section (2). Therefore safeguards provided in S. 165 also apply to searches made under sub-section (2). *Commr. of Commercial Taxes, Board of Revenue* v. *Ramkishan Shrikishan Jhaver*, AIR 1968 SC 59, 66: (1968) 1 SCR 148: (1967) 2 ITJ 919: (1967) 66 ITR 664: 20 STC 453.

Bench Strength 5. Coram: **K.N. Wanchoo, CJ.** and *R.S. Bachawat*, *V. Ramaswami*, *G.K. Mitter* and *K.S. Hegde*, JJ. [Date of decision: 9-8-1967]

[8054] — S. 165 — Non-conformity with requirements — Irregular search — *Whether public servant can be obstructed during course of his irregular search — Whether can be obstructed after search and seizure is over — Obstruction to act and compulsion to make one act — Difference*

Section 165 of the Code of Criminal Procedure deals with search and seizure. The non-conformity with any of the requirements of the provision must be confined to that part of the investigation which relates to the actual search and seizure, but once the search and seizure is complete that provision ceases to have any application to the subsequent steps in the investigation. The illegality of a search does not continue during the whole process of investigation till the filing of the charge-sheet under S. 173, Criminal Procedure Code.

An obstruction during the course of an irregular search not conducted in conformity with the provisions of S. 165, Criminal Procedure Code, might be justified, but that is no warrant for further preventing a public servant from discharging his duties. That constitutes an offence.

To say merely because the search was illegal the obstructionists would be entitled to take law into their hands would result in conferring licence and afford them an unwarranted excuse to commit each and every criminal act. *Shyam Lal Sharma* v. *State of M.P.*, (1972) 1 SCC 764: 1972 SCC (Cri) 470: AIR 1972 SC 886: (1972) 3 SCR 422: 1972 Cri LJ 638: 1973 ALJ 366.

Bench Strength 2. Coram: **P. Jaganmohan Reddy** and *H.R. Khanna*, JJ. [Date of decision: 9-2-1972]

[8055] — S. 165 — Obstruction to the search — Meaning

Obstruction to search is to the act of the person conducting the search. It is a defensive act, but where search has ended and the persons conducting the search have left the premises to bring them back and make them do things against their will is not an obstruction to an act, but a compulsion to make them act. *Shyam Lal Sharma* v. *State of M.P.*, (1972) 1 SCC 764: 1972 SCC (Cri) 470: AIR 1972 SC 886: (1972) 3 SCR 422: 1972 Cri LJ 638: 1973 ALJ 366.

Bench Strength 2. Coram: **P. Jaganmohan Reddy** and *H.R. Khanna*, JJ. [Date of decision: 9-2-1972]

[8056] — S. 165(1) and S. 105(2), Customs Act, 1962

Section 105 of the Act and S. 165(1) of the Code of Criminal Procedure are intended to meet totally different situations. While under S. 105 of the Act the Assistant Collector of Customs either makes the search personally or authorises any officer of Customs to do so, if he has reason to believe the facts mentioned therein under S. 165(1) of the Code of Criminal Procedure the recording of the reasons for believing the facts is only to enable him to make a search urgently in a case where search warrants in the ordinary course cannot be obtained. It is, therefore, not possible to invoke that condition and apply it to a situation arising under S. 105 of the Act. *R.S. Gopikrishan Agarwal* v. *R.N. Sen, Asstt. Collector of Customs and Central Excise*, AIR 1967 SC 1298: (1967) 2 SCR 340: 1967 Mah LJ 492: 69 Bom LR 459: 1967 Cri LJ 1194.

Bench Strength 5. Coram: **K. Subba Rao, C.J.** and *J.C. Shah, S.M. Sikri, V. Ramaswami* and *C.A. Vaidialingam*, JJ. [Date of decision: 5-1-1967]

— S. 165(4) *See* Ss. 103 and 165(4)

— S. 166 *See* Ch. XIV (Ss. 154 to 176)

[8057] — Ss. 166(3) and 165 — Search by police party of a place falling under the jurisdiction of another police station — *Non-compliance of the provisions of S. 165 — Effect of — Search whether mala fide — Search party mistaken for dacoits dressed in police uniforms — Resistance offered to the search party — Whether offence committed. Gopi* v. *State of U.P.*, (1970) 2 SCC 68: 1970 SCC (Cri) 304: 1970 ALJ 1164.

Bench Strength 3. Coram: **M. Hidayatullah, C.J.** and *A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 3-2-1970]

— S. 167 *See* Ch. XIV (Ss. 154 to 176)
See also Ss. 155, 61, 94, 167, 164 and 202
See also Ss. 344 and 167

— S. 167(2) *See also* Ss. 344 and 167(2)

[8058] — S. 167(2) — Undertrial prisoners — Petitioners imprisoned for more than seven years without any investigation and laying any charge-sheet — Magistrates mechanically authorising repeated detentions — *Held, Art. 21, as also S. 167(2) CrPC violated — Authorities directed to release the petitioners forthwith on their own bond without sureties, subject to the legal proceedings that State may take if warranted — Constitution of India — Arts. 21 & 32. Mantoo Majumdar* v. *State of Bihar*, (1980) 2 SCC 406: 1980 SCC (Cri) 504: AIR 1980 SC 847: 1980 Cri LJ 546: 1980 BLJR 577.

Bench Strength 3. Coram: **V.R. Krishna Iyer**, *A.C. Gupta* and *R.S. Pathak*, JJ. [Date of decision: 27-2-1980]

[8059] — Ss. 167(2) and 344 — Magistrate wrongly recording presence of accused in the remand orders, when in fact the accused was not produced — *Whether orders bad*

The wrong entries made by the Magistrate, however, do not mean that the remand orders were not in fact passed by him though he did so in the absence of the appellant. Such remand orders can be lawfully passed if an accused person cannot for some reason or the other be brought before the Magistrate. It was, therefore, not possible to say that remand orders were not passed or that consequently his detention in the jail was without a valid basis. *Gouri Shankar Jha* v. *State of Bihar*, (1972) 1 SCC 564: 1972 SCC (Cri) 328: AIR 1972 SC 711: (1972) 3 SCR 129: 1972 Cri LJ 505.

Bench Strength 2. Coram: **J.M. Shelat** and *H.R. Khanna*, JJ. [Date of decision: 20-1-1972]

[8060] — Ss. 167(2) and 344 — Remand orders passed in the absence of accused — *Whether valid*

It is clear from the Jail Superintendent's report that the appellant himself had refused to appear and be present before the Magistrate when he heard the remand applications. He, therefore, cannot legitimately make a grievance that those orders were passed in his absence. Those remand orders could be passed validly in his absence if his presence at the time could not be secured. *Gouri Shankar Jha* v. *State of Bihar*, (1972) 1 SCC 564: 1972 SCC (Cri) 328: AIR 1972 SC 711: (1972) 3 SCR 129: 1972 Cri LJ 505.

Bench Strength 2. Coram: **J.M. Shelat** and *H.R. Khanna*, JJ. [Date of decision: 20-1-1972]

— S. 168 *See* Ch. XIV (Ss. 154 to 176)

— S. 169 *See* Ch. XIV (Ss. 154 to 176)

See also Ss. 190 and 169

[8061] — S. 169 — Appellant not entitled to papers of Investigation Officer as long as investigation continues. *Hazari Lal Gupta* v. *Rameshwar Prasad*, (1972) 1 SCC 452: 1972 SCC (Cri) 208: AIR 1972 SC 484: (1972) 2 SCR 666: 1972 Cri LJ 298.

Bench Strength 2. Coram: **A.N. Ray** and *D.G. Palekar*, JJ. [Date of decision: 2-12-1971]

[8062] — Ss. 169 and 170 — Applicability — Sea Customs Act, 1878 — Investigation under — Held, not applicable

The offences were non-cognizable and were not investigated by the police. The investigation was by customs officers under the Sea Customs Act and not by the police under chapter XIV of the Code. Therefore, no question of the application of Ss. 169 and 170 arose. *Laxmipat Choraria* v. *State of Maharashtra*, AIR 1968 SC 938: (1968) 2 SCR 624: 1968 Cri LJ 1124.

Bench Strength 2. Coram: **M. Hidayatullah** and *C.A. Vaidialingam*, JJ. [Date of decision: 14-12-1967]

[8063] — Ss. 169 and 170 — Formation of opinion by police only — Interference by Magistrate not justified

The investigation under the Code, takes in several aspects and stages ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected, a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge-sheet or a final report is dependent on the nature of the opinion so formed. The formation of the said opinion, by the police, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority.

There is no power, expressly or impliedly conferred, under the Code, on a Magistrate to call upon the police to submit a charge-sheet, when they have sent a report under S. 169 of the Code, that there is no case made out for sending up an accused for trial. *Abhinandan Jha* v. *Dinesh Mishra*, AIR 1968 SC 117, 123, 12: (1967) 3 SCR 668: 1968 Cri LJ 97.

Bench Strength 2. Coram: *M. Hidayatullah* and **C.A. Vaidialingam**, JJ. [Date of decision: 17-4-1967]

— S. 170 *See* Ch. XIV (Ss. 154 to 176)

See also Ss. 169 and 170

— S. 171 *See* Ch. XIV (Ss. 154 to 176)

— S. 172 *See also* Ch. XIV (Ss. 154 to 176)

[8064] — S. 172 — Police Diary — Entry regarding receipt of ornaments of deceased — Evidentiary value — Inferences that can be supported

An entry was made in the station diary of police station in accordance with Regulation 295 of U.P. Police Regulations regarding the receipt of the sealed parcels containing ornaments at the police station. This circumstance, does not in any way connect the accused with the commission of the crime, nor does it show that those ornaments were recovered from the houses of the accused in pursuance of their disclosure statements. *Rahim Beg* v. *State of U.P.*, (1972) 3 SCC 759: 1972 SCC (Cri) 827: AIR 1973 SC 343: 1972 Cri LJ 1260.

Bench Strength 2. Coram: *J.M. Shelat* and **H.R. Khanna**, JJ. [Date of decision: 20-4-1972]

[8065] — S. 172 — Police diary not to be examined in each case

To say that in every murder case, the Court must scrutinise the police diary and make a list of witnesses whom the prosecutor must examine is virtually to suggest that the Court should itself take the role of a prosecutor. *Darya Singh* v. *State of Punjab*, AIR 1965 SC 328, 333: (1964) 3 SCR 397: (1965) 1 Cri LJ 350.

Bench Strength 3. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 25-4-1963]

[8066] — S. 172(2) — Police diaries — Use of — By Court — Extent of

A Judge falls in error in making use of the police diaries at all in his judgment and in seeking confirmation of his opinion on the question of appreciation of evidence from statements contained in those diaries. The only proper use he can make of these diaries is the one allowed by S. 172, CrPC i.e. during the trial he can get assistance from them by suggesting means of further elucidating points which need clearing up and which might be material for the purpose of doing justice between the State and the accused. *Habeeb Mohd.* v. *State of Hyderabad*, AIR 1954 SC 51: 1954 SCR 475: 1954 Cri LJ 338.

Bench Strength 3. Coram: **M.C. Mahajan**, *B.K. Mukherjea* and *B. Jagannadhadas*, JJ. [Date of decision: 5-10-1953]

— **S. 173** *See* Ch. XIV (Ss. 154 to 176)
See also Ss. 161 and 173
See also Ss. 190 and 173
See also Ss. 251-A and 173
See also Ss. 417(3), 200, 202, 156(3) and 173

[8067] — S. 173 — One case instituted on a police report under S. 173 and the other initiated on a criminal complaint, both arising out of the same transaction and exclusively triable by Sessions Court — *Held, the two cases should be tried separately but by the same court to avoid risk of two courts coming to conflicting findings — Criminal Trial — Counter or Cross-Cases. Kewal Krishan* v. *Suraj Bhan*, 1980 Supp SCC 499: 1981 SCC (Cri) 438: AIR 1980 SC 1780: 1980 Cri LJ 1271.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *R.S. Pathak*, JJ. [Date of decision: 1-8-1980]

[8068] — Ss. 173 and 251-A — Report by police officer under S. 11, Essential Commodities Act, 1955 — Held, can included in a charge-sheet under S. 173 CrPC, 1898 — Trial under S. 251-A, CrPC not improper — *Essential Commodities Act, 1955, Ss. 11 & 7*

The enquiry was an integrated one, being based on the same set of facts. Even if the offence under the Essential Commodities Act may not be cognizable the police officer would be competent to include it in the charge-sheet under S. 173, CrPC, 1898 with respect to a cognizable offence.

Both the offences if cognizable could be investigated together under Chapter XIV of the Code and also if one of them was a non-cognizable offence. *Pravin Chandra Mody* v. *State of A.P.*, AIR 1965 SC 1185, 1187: (1965) 1 SCR 269: (1965) 2 Cri LJ 250.

Bench Strength **3**. Coram: *K. Subba Rao*, **M. Hidayatullah** and *J.R. Mudholkar*, JJ. [Date of decision: 15-9-1964]

[8069] — S. 173 — Charge-sheet if sufficient

The charge-sheet is hardly a complete or accurate thesis of the prosecution case. *R.K. Dalmia* v. *Delhi Admn.*, AIR 1962 SC 1821, 1876: (1963) 1 SCR 253: (1962) 2 Cri LJ 805: (1962) 32 Comp Cas 699.

Bench Strength **3**. Coram: *S.K. Das*, *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 5-4-1962]

[8070] — S. 173 — Complete report — Supplementary report does not indicate incompleteness of first report. *Tara Singh* v. *State*, AIR 1951 SC 441: 1951 SCR 729: (1951) 52 Cri LJ 1491.

Bench Strength **4**. Coram: **Fazl Ali**[1], **Patanjali Sastri**[2], **S.R. Das**[3] and **Vivian Bose**[4], JJ. [Date of decision: 1-6-1951]

[8071] — S. 173 — Non-mention in final report — Not a case of discharge

There cannot be any question of discharge when the appellant was not sent up upon the charge-sheet submitted by the police. *Raghubans Dubey* v. *State of Bihar*, AIR 1967 SC 1167, 1168: (1967) 2 SCR 423: 1967 Cri LJ 1081.

Bench Strength **3**. Coram: *M. Hidayatullah*, **S.M. Sikri** and *C.A. Vaidialingam*, JJ. [Date of decision: 19-1-1967]

[8072] — S. 173 — Opinion of officer-in-charge

The final step in the investigation viz. the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer-in-charge of the police station. There is no provision permitting delegation thereof but only a provision entitling superior officers to supervise or participate under S. 551. *H.N. Rishbud* v. *State of Delhi*, AIR 1955 SC 196, 201: (1955) 1 SCR 1150: 1955 Cri LJ 526.

Bench Strength **3**. Coram: *B.K. Mukherjea*, *Vivian Bose* and **B. Jagannadhadas**, JJ. [Date of decision: 14-12-1954]

[8073] — S. 173 — Police report — Inordinate delay in submitting — Investigation into criminal offences must always be free from objectionable features

It is of utmost importance that investigation into criminal offences must always be free from any objectionable features or infirmities which may legitimately lead to the grievance of the accused that the work of investigation is carried on unfairly or with any ulterior motive. *R.P. Kapur* v. *State of Punjab*, AIR 1960 SC 866: (1960) 3 SCR 388: 1960 Cri LJ 1239.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 25-3-1960]

[8074] — S. 173 — Police submitting final report and requesting that the case be consigned to record as untraced — Magistrate ordering that the case be consigned to record as untraced — Held, the procedure not correct

It may well happen in some cases that the culprit is untraced. But we do not understand how the case can be untraced. It is surprising that the police should make such a request to the Magistrate. It is even more surprising and indeed it is a matter which has caused us deep concern, that the Magistrate readily did what the police requested him to do. *R.P. Kapur* v. *S. Pratap Singh Kairon*, AIR 1964 SC 295: (1964) 4 SCR 224: (1964) 1 Cri LJ 224.

Bench Strength **7**. Coram: *S.K. Das, A.C.J.*[1] and *P.B. Gajendragadkar*[1], **A.K. Sarkar**[2], *K.N. Wanchoo*[3], **M. Hidayatullah**[1], *K.C. Das Gupta*[3] and **N. Rajagopala Ayyangar**[3], JJ. [Date of decision: 2-8-1963]

[8075] — Ss. 173, 156 and 190 — Statutory rights of police to further investigate after submitting report under S. 173(1) and where Magistrate has already taken cognizance of the offence, upheld — *Final discretion to take fresh cognizance being on the Magistrate, abuse of power by the police cannot be alleged — Police should ordinarily seek formal permission of court for fresh investigation — Prosecuting authority should move for trying the two cases together — But in absence of any malice, failure on its part would not render the investigation illegal. Ram Lal Narang v. State (Delhi Admn.),* (1979) 2 SCC 322: 1979 SCC (Cri) 479: AIR 1979 SC 1791: 1979 Cri LJ 1346.

Bench Strength **2**. Coram: *N.L. Untwalia* and **O. Chinnappa Reddy**, JJ. [Date of decision: 10-1-1979]

Distinguished in State of A.P. v. A.S. Peter, (2008) 2 SCC 383

[8076] — Ss. 173, 156(3) and 190(1)(c) — Magistrate's power to order submission of a charge-sheet on the police filing a final report under S. 173 — *Magistrate has no such power — He can order further investigation under S. 156(3) or can take cognizance under S. 190(1)(c)*

There may be instances when the Magistrate may take the view, on a consideration of the final report, that the opinion formed by the police is not based on a full and complete investigation, in which case the Magistrate will have ample jurisdiction to give directions to the police, under S. 156(3), to make a further investigation. That is, if the Magistrate feels, after considering the final report, that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and direct the police to make further investigation, under S. 156(3). The police after such further investigation, may submit a charge-sheet, or, again submit a final report, depending upon the further investigation made by them. If ultimately, the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he can take cognizance of the offence, under S. 190(1)(*b*), notwithstanding the contrary opinion of the police, expressed in the final report.

The investigation, under the Code, takes in several aspects and stages sending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected, a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge-sheet, or a final report is dependent on the nature of the opinion so formed. The formation of the said opinion, by the police, as pointed out earlier, is the final step to be taken only by the police and by no other authority.

Therefore, there is no power, expressly or impliedly conferred, under the Code, on a Magistrate to call upon the police to submit a charge-sheet, when they have sent a report under S. 169 of the Code, that there is no case made out for sending up an accused for trial. *Abhinandan Jha* v. *Dinesh Mishra*, AIR 1968 SC 117: (1967) 3 SCR 668: 1968 Cri LJ 97, 98, 101.

Bench Strength **2**. Coram: *M. Hidayatullah* and **C.A. Vaidialingam**, JJ. [Date of decision: 17-4-1967]

[8077] — Ss. 173, 190, 251-A and 252 — Scope and applicability — Power of police to investigate non-cognizable offence — *Information disclosing cognizable and non-cognizable offence — Police can investigate non-cognizable offence if arising out of the same facts — The trial as a whole can proceed under S. 251-A*

In S. 190, a distinction is made between the classes of persons who can start a criminal prosecution. Under the three clauses of S. 190(1) criminal prosecution can be initiated: (*i*) by a police officer by a report in writing, (*ii*) upon information received from any person other than a police officer or upon the Magistrate's own knowledge or suspicion, and (*iii*) upon receiving a complaint of facts. If the report in this case falls within (*i*) above, then the procedure under S. 251-A, Criminal Procedure Code, must be followed. If it falls in (*ii*) or (*iii*) then the procedure under S. 252, Criminal Procedure Code, must be followed.

Section 156(2) provides that where a police officer enquires into an offence under S. 156(1) his action cannot be called into question on the ground that he was not empowered to investigate the offence. The enquiry was an integrated one, being based on the same set of facts. Even if the offence under the Essential Commodities Act may not be cognizable — though it is not alleged by the appellant that it is non-cognizable — the police officer would be competent to include it in the charge-sheet under S. 178 with respect to a cognizable offence. The provisions of S. 155(1), Criminal Procedure Code, must be regarded as applicable to those cases where the information given to the police is solely about a non-cognizable offence. Where the information discloses a cognizable as well as a non-cognizable offence the police officer is not debarred from investigating any non-cognizable offence which may arise out of the same facts. He can include that non-cognizable offence in the charge-sheet which he presents for a cognizable offence. *Pravin Chandra Mody* v. *State of A.P.*, AIR 1965 SC 1185: (1965) 1 SCR 269: (1965) 2 Cri LJ 250, 252.

Bench Strength **3**. Coram: *K. Subba Rao*, **M. Hidayatullah** and *J.R. Mudholkar*, JJ. [Date of decision: 15-9-1964]

[8078] — Ss. 173 and 195 — FIR prepared on the basis of complainant's information disclosing offences under Ss. 182, 211, 193, 467, 471 & 385 IPC — *Same complainant filing a complaint about the same facts — Police filing a report under S. 173, CrPC stating that the allegations were false — Prosecutions under Ss. 182, 211 & 193 not competent for non-compliance of S. 195(1)(b) — Prosecution for non-cognizable offences under Ss. 408, 467, 474, 385 etc., competent — High Court not justified in quashing the entire proceedings*. *State of Punjab* v. *Brij Lal Palia*, AIR 1969 SC 355: (1969) 1 SCR 853: 1969 Cri LJ 645, 47.

Bench Strength 3. Coram: *S.M. Sikri*, *R.S. Bachawat* and **A.N. Grover**, JJ. [Date of decision: 26-8-1968]

— S. 173(1) *See* Ss. 190(1)(b) and 173(1)

[8079] — S. 173(1)(a) — Complete report — Police challan setting out the particulars — Held, a complete report. *Tara Singh* v. *State*, AIR 1951 SC 441: 1951 SCR 729: (1951) 52 Cri LJ 1491.

Bench Strength 4. Coram: **Fazl Ali**[1], **Patanjali Sastri**[2], **S.R. Das**[3] and **Vivian Bose**[4], JJ. [Date of decision: 1-6-1951]

[8080] — S. 173(3) — Courses open before Magistrate under — *Except where Magistrate orders further investigation having not agreed with the police, he generally acts in the capacity of a court*

Per Koshal, J. (Jaswant Singh, J. concurring)

The caption of Chap. XII, CrPC is not decisive of the question as to whether a particular provision thereunder is limited to the supervisory jurisdiction of the Magistrate or deals with his judicial functions as a court. The courses open to a Magistrate under S. 173(3) are: (*i*) to agree with the report of the police and file the proceedings; or (*ii*) not to agree with the police report and (*a*) order further investigation, or (*b*) hold that the evidence is sufficient to justify the forwarding of the accused to the Magistrate and take cognizance of the offence complained of. The appropriate course has to be decided upon after a consideration of the report and the application of the mind of the Magistrate to the contents thereof. Excepting an order under course, *(ii)(a)* above, which pertains to the Magistrate's supervisory authority the order passed by him in each of the other courses follows a conclusion of the investigation. All orders passed by a Magistrate acting judicially [such as orders of bail and those passed under S. 173(3) discharging an accused or orders taking cognizance of the offence complained of] are parts of an integral whole which may end with a definitive judgment after an inquiry or a trial, or earlier according to the exigencies of the situation obtaining at a particular stage, and which involves, if need be, the adducing of evidence and the decision of the Magistrate on an appreciation thereof. They cannot be viewed in isolation and given a character different from the entire judicial process of which they are intended to form a part. *Kamlapati Trivedi* v. *State of W.B.*, (1980) 2 SCC 91: 1980 SCC (Cri) 347: AIR 1979 SC 777: 1979 Cri LJ 679.

Bench Strength 3. Coram: **Jaswant Singh**[1], **P.S. Kailasam**[2] and **A.D. Koshal**[3], JJ. [Date of decision: 13-12-1978]

— S. 173(4) *See* Ss. 94 and 173(4)

See also Ss. 162, 173(4) and 207-A(3)

See also Ss. 207-A(3) and 173(4)

[8081] — S. 173(4) — Not retrospective. *Gurbachan Singh* v. *State of Punjab*, AIR 1957 SC 623: 1957 Cri LJ 1009.

Bench Strength 3. Coram: *B. Jagannadhadas*, *Syed Jafer Imam* and **P. Govinda Menon**, JJ. [Date of decision: 24-4-1957]

[8082] — S. 173(4) — Supply of a copy of report etc. — Scope and application — *S. 273(4) is attracted only in a case investigated by police officer under Ch. 14 CrPC — Does not apply to a case instituted on private complaint*

Section 173(4) CrPC is attracted only in a case investigated by a police officer under Chapter XIV of the Criminal Procedure Code, followed up by a final report under S. 173, Criminal Procedure Code. Under the procedure prescribed in S. 251-A, Criminal Procedure Code but for the facility provided to him under S. 173(4) of that Code an accused person would have been greatly handicapped in his defence. But in a case instituted on a complaint, and governed by Ss. 252 and 259 of the Criminal Procedure Code, no such difficulty arises.

Section 94(1) CrPC does not empower a Magistrate to direct the prosecution to give copies of any documents to an accused person. It is impermissible to read into S. 94, Criminal Procedure Code the requirements of S. 173(4), Criminal Procedure Code. The requirements of S. 173(4) CrPC cannot be applied to cases instituted on private complaints. *Collector of Customs* v. *L.R. Melwani*, AIR 1970 SC 962: (1969) 2 SCR 438: (1970) 72 Bom LR 782: 1970 Cri LJ 885.

Bench Strength 5. Coram: *J.C. Shah*, *V. Ramaswami*, *G.K. Mitter*, **K.S. Hegde** and *A.N. Grover*, JJ. [Date of decision: 16-10-1968]

[8083] — Ss. 173(4) and 207-A(3) — Supply of statements and documents to the accused — If the statements in connected cases should be

supplied to the accused — *No provision in the Code for the supply of the statements in the connected cases to the accused*

There is no provision in the Code of Criminal Procedure that copies of statements recorded under S. 161 in a connected case should be made available to the defence though there is nothing prohibiting it and in the instant case it would have been better to have done so especially since the statements of these witnesses were not recorded by the Sub-Inspector of Mukhtsar apart from what they had stated before the Sub-Inspector of Jalalabad, copies of which could have been given to the defence.

Sub-section (4) of S. 173, read with sub-section (3) of S. 207-A, makes ample provision for the defence to be in possession of all the statements and documents before the inquiry begins, but nowhere is it stated either in S. 173(4) or S. 207-A (3) that the statements in connected cases should be supplied to the accused. In this connection we may also refer to S. 251-A inserted in Chap. XXI, relating to the trial of Warrant Cases by Magistrates. Sub-section (1) of S. 251-A corresponds to S. 207-A (3). Even here there is no reference to the statements in connected cases. *Gurbachan Singh* v. *State of Punjab*, AIR 1957 SC 623: 1957 Cri LJ 1009, 1012.

Bench Strength 3. Coram: *B. Jagannadhadas*, *Syed Jafer Imam* and **P. Govinda Menon**, JJ. [Date of decision: 24-4-1957]

[8084] — Ss. 173(4) and 207-A(3) — Supply of documents to the accused — Effect of non-compliance — If mandatory — *Does not necessarily have the result of vitiating committal proceedings and subsequent trial*

Provisions of Ss. 173(4) and 207-A(3) have been introduced by the amending Act of 1955, in order to simplify the procedure in respect of inquiries leading up to a sessions trial, and at the same time, to safeguard the interests of accused persons by enjoining upon police officers concerned and Magistrate before whom such proceedings are brought, to see that all the documents, necessary to give the accused persons all the information for the proper conduct of their defence, are furnished. Non-compliance with these provisions does not however has, necessarily, the result of vitiating those proceedings and subsequent trial. The word "shall" occurring both in sub-section (4) of S. 173 and sub-section (3) of S. 207-A, is not mandatory but only directory, because an omission by a police officer, to fully comply with the provisions of S. 173, should not be allowed to have such a far reaching effect as to render the proceedings including the trial before the Court of Sessions, wholly ineffective. Certainly, if it is shown, in a particular case, on behalf of the accused persons that the omission on the part of police officers concerned or of the Magistrate before whom the committal proceedings had pended, has caused prejudice to the accused, in the interest of justice, the Court may re-open the proceedings by insisting upon full compliance with the provisions of the Code. *Narayan Rao* v. *State of A.P.*, AIR 1957 SC 737: 1958 SCR 283: 1957 Cri LJ 1320, 24, 25.

Bench Strength 3. Coram: **B.P. Sinha**, *Syed Jafer Imam* and *J.L. Kapur*, JJ. [Date of decision: 15-7-1957]

[8085] — S. 173(4) (as amended by Act 26 of 1955) — Scope

When the police officer after completing his investigation sends his report to the Magistrate, copies of the statements and documents should be furnished to the accused. *Gurbachan Singh* v. *State of Punjab*, AIR 1957 SC 623: 1957 Cri LJ 1009, 1012.

Bench Strength 3. Coram: *B. Jagannadhadas*, *Syed Jafer Imam* and **P. Govinda Menon**, JJ. [Date of decision: 24-4-1957]

— S. 174 *See also* Ch. XIV (Ss. 154 to 176)

[8086] — S. 174 — Inquest report signed by Head Constable who conducted the inquest and by five persons present there — No witness examined except the Head Constable — Effect of

Section 174 does not prescribe that any of the Panchayatdars should be examined as the witnesses in the case. The inquest report was proved by the Head Constable who conducted the inquest. *Pati Ram* v. *State of U.P.*, (1970) 3 SCC 703.

Bench Strength 2. Coram: *V. Bhargava* and **K.S. Hegde**, JJ. [Date of decision: 24-9-1969]

[8087] — S. 174 — Inquest report and post-mortem report not tallying — Admissibility. *Pandurang* v. *State of Hyderabad*, AIR 1955 SC 216: (1955) 1 SCR 1083: 1955 Cri LJ 572.

Bench Strength 3. Coram: *B.K. Mukherjea*, *S.R. Das* and **Vivian Bose**, JJ. [Date of decision: 3-12-1954]

[8088] — S. 174 — Object — Inquest report — Details of overt acts of accused to be recorded in — *Whether any reflection can be cast on the credibility of eyewitnesses from such omission — CrPC, 1973, S. 174*

The object of the proceedings under S. 174 is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under S. 174. In these circumstances, therefore, neither in practice nor in law is it necessary for the police to mention these details in the inquest report.

From the mere fact that these were not noted in the inquest report it cannot be concluded that the statements given by the witnesses and read over at the inquest did not contain those overt acts and the statements produced at the trial are those of the witnesses which were taken later.

Hence the omissions in the inquest report are not sufficient to put the prosecution out of court. *Pedda Narayana* v. *State of A.P.*, (1975) 4 SCC 153: 1975 SCC (Cri) 427: AIR 1975 SC 1252: 1975 Cri LJ 1062: (1975) 12 ACC 201: 1975 Cr LR (SC) 335.

Bench Strength **2**. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 8-4-1975]

[8089] — S. 174 — Post-mortem — Form to be filled in as part of the medical report — *No significance can be attached to things necessarily done as part of routine by the medical officer*

Every post-mortem report form, as used in Maharashtra, contains a para about the preservation of the viscera, the idea simply being that in spite of the Medical Officer not suspecting any poison he was not at liberty to destroy the viscera until he finally hears from the Investigating Officer that the viscera might be destroyed. It is wrong to think that the Medical Officer had himself suspected some poisoning and had, therefore, preserved the viscera. *State of Maharashtra* v. *Manglya Dhavu Kongil*, (1972) 3 SCC 46: 1972 SCC (Cri) 237: AIR 1972 SC 1797: 1972 Cri LJ 570.

Bench Strength **2**. Coram: *P. Jaganmohan Reddy* and **D.G. Palekar**, JJ. [Date of decision: 7-1-1972]

— **S. 174(4)** *See* Ss. 160, 161(1), (2) and (3), 163(1) and 174(4)

— **S. 175** *See* Ch. XIV (Ss. 154 to 176)

— **S. 176** *See* Ch. XIV (Ss. 154 to 176)

[8090] — S. 177 — Scope — "Ordinarily" — Meaning

The rule laid down by S. 177 is one of general application and governs all criminal trials held under the provisions of the Code of Criminal Procedure. It is true that the Section has used the word "ordinarily" but it is not disputed that the said word means "except where provided otherwise in the Code". *Narumal* v. *State of Bombay*, AIR 1960 SC 1329, 1332: 1960 Cri LJ 1674.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.* and **P.B. Gajendragadkar**[1], **K. Subba Rao**[2], *K.C. Das Gupta* and *J.C. Shah*, JJ. [Date of decision: 25-11-1959]

See also (1962) 2 SCR 101: AIR 1961 SC 1589, 1593: (1961) 1 Cri LJ 728 for a different opinion

[8091] — S. 177 — Bombay Prevention of Hindu Bigamous Marriages Act, 1946 — S. 8 Proviso and S. 8-A Proviso — *Held, do not have overriding effect. (Per majority). Narumal* v. *State of Bombay*, AIR 1960 SC 1329: 1960 Cri LJ 1674.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.* and **P.B. Gajendragadkar**[1], **K. Subba Rao**[2], *K.C. Das Gupta* and *J.C. Shah*, JJ. [Date of decision: 25-11-1959]

[8092] — S. 177 — Foreigner committing crime in India, without being corporeally present — Jurisdiction — *Penal Code, 1860, Ss. 2 and 3*

On a plain reading of S. 2 of Penal Code, the Code does apply to a foreigner who has committed an offence within India notwithstanding that he was corporeally present outside. *Mobarik Ali Ahmed* v. *State of Bombay*, AIR 1957 SC 857, 870: 1958 SCR 328: 1957 Cri LJ 1346.

Bench Strength **3**. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 6-9-1957]

[8093] — S. 177 — Foreigner extradited for another offence can be tried for other offences committed by him. *Mobarik Ali Ahmed* v. *State of Bombay*, AIR 1957 SC 857: 1958 SCR 328: 1957 Cri LJ 1346.

Bench Strength **3**. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 6-9-1957]

[8094] — S. 177 — Power of State Legislature to make overriding provision — Must be explicitly done

There is no doubt that the State Legislature is competent to provide for the trial of offences created by its statutes otherwise than is prescribed by S. 177 of the Code; but it must clearly appear from the relevant provision of the special statute that a departure from the general principle prescribed by S. 177 is intended. *Narumal* v. *State of Bombay*, AIR 1960 SC 1329, 1332: 1960 Cri LJ 1674.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.* and **P.B. Gajendragadkar**[1], **K. Subba Rao**[2], *K.C. Das Gupta* and *J.C. Shah*, JJ. [Date of decision: 25-11-1959]

[8095] — Ss. 177, 180 and 239 — Place of trial — Court having jurisdiction to try offences committed in pursuance of the conspiracy — Can also try offence of conspiracy even if it was committed outside its jurisdiction

The Court having jurisdiction to try the offence of criminal conspiracy can also try offences committed in pursuance of that conspiracy even if those offences were committed outside the jurisdiction of that Court, as the provisions of S. 239, CrPC are not controlled by the provisions of S. 177, CrPC which do not create an absolute prohibition against the trial of offences by a court other than the one within whose jurisdiction the offence is committed. *L.N. Mukherjee* v. *State of Madras*, AIR 1961 SC 1601: (1962) 2 SCR 116: (1961) 2 Cri LJ 736.

Bench Strength 2. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 19-4-1961]

[8096] — Ss. 177, 235 and 239 — Place of trial — Trial of criminal conspiracy and of the overt acts committed in pursuance of it — *The Court having jurisdiction to try the offence of conspiracy has also jurisdiction to try an offence constituted by the overt acts committed in pursuance of the conspiracy*

The provisions of Ss. 177, 235 and 239 Criminal Procedure Code should be construed to give jurisdiction to the Court trying the offence of criminal conspiracy to try all the overt acts committed in pursuance of that conspiracy.

The desirability of the trial, together, of an offence of criminal conspiracy and of all the overt acts committed in pursuance of it, is obvious. To establish the offence of criminal conspiracy, evidence of the overt acts must be given by the prosecution. Such evidence will be necessarily tested by cross examination on behalf of the accused.

The Court will have to come to a decision about the credibility of such evidence and, on the basis of such evidence, would determine whether the offence of criminal conspiracy has been established or not. Having done all this, the Court could also very conveniently record a finding of 'guilty' or 'not guilty' with respect to the accused said to have actually committed the various overt acts. If some of the overt acts were committed outside the jurisdiction of the Court trying the offence of criminal conspiracy and if the law be that such overt acts could not be tried by that Court, it would mean that either the prosecution is forced to give up its right of prosecuting those accused for the commission of those overt acts or that both the prosecution and the accused are put to unnecessary trouble inasmuch as the prosecution will have to produce the same evidence a second time and the accused will have to test the credibility of that evidence a second time. The time of another Court will be again spent a second time in determining the same question. There would be the risk of the second Court coming to a different conclusion from that of the first Court. It may also be possible to urge in the second Court that it is not competent to come to a different conclusion.

Section 177 simply says that ordinarily every offence would be tried by a court within the local limits of whose jurisdiction it was committed. It does not say that it would be tried by such court except in the cases mentioned in Ss. 179 to 185 and 188 or in cases specially provided by any other provision of law. It leaves the place of trial open. Its provisions are not peremptory. There is no reason why the provisions of Ss. 233 to 239 may not also provide exceptions to S. 177, if they do permit the trial of a particular offence along with others in one court.

As Ss. 235 and 239 of the Code are enabling sections, the Legislature, rightly, did not use the expression which would have made it incumbent on the Court to try a person of the various offences at one trial or to try various persons for the different offences committed in the course of the same transaction together. The omission to make such peremptory provision does not necessarily indicate the intention of the Legislature that the Court having jurisdiction to try certain offences cannot try an offence committed in the course of the same transaction, but beyond its jurisdiction.

The only limitation on the jurisdiction of the Court to charge and try together various persons in pursuance of the provisions of cl. (*a*) of S. 239, CrPC is that the accusation against those persons should be of offences committed in the course of the same transaction. It cannot be disputed that the accusation against the accused with respect to the overt acts committed by them in pursuance of a conspiracy is with respect to offences committed in the course of the same transaction and that therefore persons accused of these offences can be tried together at one trial in pursuance of the provisions of cl. (*a*) of S. 239. *Purushottamdas Dalmia* v. *State of W.B.*, AIR 1961 SC 1589: (1962) 2 SCR 101: (1961) 2 Cri LJ 728: (1961) 2 MLJ (SC) 137.

Bench Strength 2. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 19-4-1961]

See also AIR 1960 SC 1239: 1960 Cri LJ 1674

[8097] — S. 179 — Jurisdiction — Court competent to try an accused of conspiracy — Is competent to try him for all offences committed in pursuance of that conspiracy even beyond its territorial jurisdiction

A court trying an accused for an offence of conspiracy is competent to try him for all offences committed in pursuance of that conspiracy irrespective of the fact that any or all the other offences were not committed within its territorial jurisdiction. *Banwarilal Jhunjhunwala* v. *Union of India*, AIR 1963 SC 1620: 1963 Supp (2) SCR 338: (1963) 2 Cri LJ 529, 33.

Bench Strength 2. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 21-11-1962]

[8098] — Ss. 179 and 180 — Place of trial — Trial of 'S' for offence of cheating and of 'H' for its abetment — *Misrepresentation by S at Simla — Payment to S as a result of misrepresentation at Lahore — S and H can be tried for cheating and abetment of this offence respectively either at Simla or Lahore*

Misrepresentation by *S* was at Simla and the consequence was at Lahore as the Government of Burma was induced by the misrepresentation to deliver money at Lahore. *S* could therefore have been tried either at Simla or at Lahore. Illustration (*a*) to S. 180 CrPC states that a charge of abetment can be inquired into or tried either within the local limits of whose jurisdiction abetment was committed or by the Court within the local limits of whose jurisdiction the offence abetted was committed. Consequently *H* could be tried for the abetment of the offence of cheating either at Lahore or at Shimla. There was therefore no illegality in trying both *S* and *H* together at Simla. *K. Satwant Singh* v. *State of Punjab*, AIR 1960 SC 266: (1960) 2 SCR 89: 1960 Cri LJ 410.

Bench Strength 5. Coram: *B.P. Sinha, C.J.*[1] and **Syed Jafer Imam**[1], **J.L. Kapur**[1], *K.N. Wanchoo*[1] and *K.C. Das Gupta*[1], JJ. [Date of decision: 28-10-1959]

[8099] — Ss. 179 and 182 — Applicability — Jurisdiction of court — *Truck of accused with a forged permit issued at Indore checked at Nasik — Trial for offences under Ss. 471 and 474, IPC at Indore — Held the Court had jurisdiction*

The appellant was the owner of the truck which was in the possession of his driver. The truck was checked at Nasik on the suspicion that it was overloaded. The permit which was produced before the authorities was found to be a temporary permit issued at Indore. On inspection it was found that the permit which had been issued from July 1, 1960 to July 31, 1960 was altered to read August 1, 1960 to August 31, 1960. The appellant was tried at Indore. It was contended that Indore Courts had no jurisdiction to try the case.

Held :

The appellant in the present case had a forged permit which could be used by him at any of the points between Indore and any out-station. He obviously intended using it when occasion demanded and thus he was guilty of an offence under S. 474, Penal Code, from the moment he had in his possession the forged permit, knowing that it was forged and intended to use it. As this offence was a continuing one it could be tried at Indore and the offence under S. 471 which was the desired consequence could also be tried at Indore in view of S. 179. *Gajjan Singh* v. *State of M.P.*, AIR 1965 SC 1921: (1965) 2 Cri LJ 822.

Bench Strength 3. Coram: *A.K. Sarkar*, **M. Hidayatullah** and *V. Ramaswami*, JJ. [Date of decision: 7-5-1965]

[8100] — Ss. 179 and 182 — Place of trial — Accused despatching commodity from Bombay to Nasik — Sample taken at Nasik — *Trial under Food Adulteration Act at Nasik is within jurisdiction. Mangaldas Raghavji Ruparel* v. *State of Maharashtra*, AIR 1966 SC 128: (1965) 2 SCR 894: 1966 Cri LJ 106.

Bench Strength 5. Coram: *K.N. Wanchoo*, *M. Hidayatullah*, *J.C. Shah*, **J.R. Mudholkar** and *S.M. Sikri*, JJ. [Date of decision: 8-2-1965]

[8101] — Ss. 179 and 188 — Applicability — Plea of inquiry and trial — *Charge of cheating in 1942 when Kolhapur was in a native State — Misrepresentation by accused at Simla — False certification by the abetter at Jhansi — Payment as a result of misrepresentation made by cheque posted from Kolhapur, delivered at Lahore and cashed at Lahore — No part of offence cheating committed at Kolhapur i.e. outside British India — S. 183 not applicable. K. Satwant Singh* v. *State of Punjab*, AIR 1960 SC 266: (1960) 2 SCR 89: 1960 Cri LJ 410.

Bench Strength 5. Coram: *B.P. Sinha, C.J.*[1] and **Syed Jafer Imam**[1], **J.L. Kapur**[1], *K.N. Wanchoo*[1] and *K.C. Das Gupta*[1], JJ. [Date of decision: 28-10-1959]

— S. 180 *See* Ss. 177, 180 and 239

See also Ss. 179 and 180

[8102] — S. 180 — Offence committed in furtherance of criminal conspiracy

The Court having jurisdiction to try the offence of conspiracy has also jurisdiction to try an offence constituted by the overt acts which are committed, in pursuance of the conspiracy, beyond its jurisdiction. *Purushottamdas Dalmia* v. *State of W.B.*, AIR 1961 SC 1589: (1962) 2 SCR 101: (1961) 2 Cri LJ 728: (1961) 2 MLJ (SC) 137.

Bench Strength 2. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 19-4-1961]

Affirmed in (1963) 1 SCR 253: AIR 1962 SC 1821: (1962) 2 Cri LJ 805

— S. 181 *See* Ss. 182 and 181

[8103] — Ss. 181(2) and 182 — Territorial jurisdiction of Chief Presidency Magistrate — *5th Presidency Magistrate reporting uncertainty on location of crime — No challenge before Chief Presidency Magistrate — Cannot be pleaded in appeal to High Court*

In view of the report made by the 5th Presidency Magistrate that it was uncertain in which of the local areas the offence was committed, which was not challenged before the Chief Presidency Magistrate, plea of absence of territorial jurisdiction which appealed to the High Court has no substance. The Chief Presidency Magistrate was competent to enquire into and to try the proceedings before him. *K.A.A. Brinnand* v. *Bijoyanand Patnaik*, (1971) 3 SCC 943: 1972 SCC (Cri) 191.

Bench Strength **3**. Coram: **J.C. Shah**, *K.S. Hegde* and *A.N. Grover*, JJ. [Date of decision: 27-2-1970]

— S. 182 *See* Ss. 179 and 182

See also Ss. 181(2) and 182

[8104] — Ss. 182 and 181 — Offence for criminal breach of trust — Prosecution being in doubt as to when the idea of embezzlement took root — Prosecution was justified to file a charge-sheet taking the plea that the place of embezzlement was uncertain — *Venue of enquiry or trial in a case when the place of embezzlement is uncertain is primarily to be determined by the averment contained in the complaint or charge-sheet — Ordinarily where the facts contained in the complaint or charge-sheet are disproved the court where the charge-sheet or complaint is filed has to proceed with it*

The respondent was an agent of company *A* whose head office was situated at Nagpur where the books were maintained and the staff located. The Board of Directors functioned at Nagpur and the employment of the respondent was also at Nagpur though he stayed for a term at Bombay. On 12-1-1950 a car belonging to *A* was entrusted to the respondent at Nagpur for sale. Respondent sold the car at Bombay and received the money there between 13th and January 14, 1950. The sale proceeds were not credited in the company's books, nor the money paid over to the company there or thereafter. For the first time in October, 1950 the respondent in the general meeting of the shareholders stated that the sale proceeds were entered in the books of accounts which admittedly was a false statement.

Held :

The venue of enquiry or trial of a case like the present is primarily to be determined by the averments contained in the complaint or charge-sheet and unless the facts there are positively disproved, ordinarily the court, where the charge-sheet or complaint is filed, has to proceed with it, except where action has to be taken under S. 202 of the Criminal Procedure Code.

In the circumstances it is uncertain whether the offence of embezzlement was committed at Bombay or Nagpur, and that being the case, paragraph 1 of S. 182 of the Criminal Procedure Code applies, with the result that the offence can be enquired into by a court situated either in Nagpur or in Bombay. Section 182, Criminal Procedure Code, is a specific provision and not a general principle of law, and in fact, S. 182 is supplemental to the 3rd clause of S. 181(2).

Courts of Nagpur and Bombay both had jurisdiction to try the case in view of S. 182 CrPC which applied to the case. *State of M.P.* v. *K.P. Ghiara*, AIR 1957 SC 196: 1957 Cri LJ 322: 1957 MPLJ 230.

Bench Strength **3**. Coram: *N.H. Bhagwati*, *Syed Jafer Imam* and **P. Govinda Menon**, JJ. [Date of decision: 19-9-1956]

[8105] — S. 185 — Duty of High Court when considering question of jurisdiction

It is obligatory, when a question as to the jurisdiction of a Court is raised, to decide, if it is contended that the offence was committed in another jurisdiction, to determine in which jurisdiction the offence was committed. *K.A.A. Brinnand* v. *Bijoyanand Patnaik*, (1971) 3 SCC 943: 1972 SCC (Cri) 191.

Bench Strength **3**. Coram: **J.C. Shah**, *K.S. Hegde* and *A.N. Grover*, JJ. [Date of decision: 27-2-1970]

[8106] — S. 186 — Direct evidence produced — Documentary evidence — Destruction of — Prosecution's duty

It was not any part of the duty of the prosecution to produce documentary evidence, particularly in view of the fact that direct evidence of the offence was produced in the case.

Further, since the register containing the material entries was destroyed, it was impossible for the prosecution to discharge the alleged burden of proving the entries in the duty register on the material date. *Aftab Ahmad Khan* v. *State of Hyderabad*, AIR 1954 SC 436: (1955) 1 SCR 588: 1954 Cri LJ 1155.

Bench Strength **3**. Coram: *B.K. Mukherjea*, *Vivian Bose* and **Ghulam Hasan**, JJ. [Date of decision: 6-5-1954]

— S. 188 *See also* Ss. 179 and 188

[8107] — S. 188 — Effect of cl. 3 of Instrument of Accession on the power of Raj Pramukh of United States of Vindhya Pradesh to legislate about the application of Ss. 3 and 4 Penal Code and S. 188, CrPC to areas within Vindhya Pradesh — *Various States and particularly Rewa State had the power to pass extra-territorial laws —*

Ss. 3 and 4, IPC and S. 188, CrPC at least in so far as it affected the subjects and courts of the States were entirely within the legislative competence of the States concerned for all purposes of adaptation or amendment — Instrument of Accession Dated 20-7-1948, Cls. 3, 6 and 9

The authority of Raj Pramukh referred to in cl. 9 of Instrument of Accession is not only the unfettered legislative authority to make and promulgate Ordinances for the peace and good governance of the United States or any part thereof "vested in him by Art. 9 of the integration Covenant dated 18-3-1948 but also that which is vested in him under Art. 6 of the said agreement. This article vests in him "all rights, authority, and jurisdiction belonging to the ruler of each Covenanting State and incidental to the government thereof". There can be no doubt therefore that if, as has been pointed out above, the various Covenanting States and in particular the State of Rewa, had the power to pass extra-territorial laws at least to the extent of making certain acts committed outside the State by its subjects as offences and to vest, in the State courts authority to deal with such offences, that power has not in any way been curtailed either by the integration Covenant or the Instrument of Accession. It follows therefore that Ss. 3 and 4, IPC and S. 188, CrPC — at least in so far as it affected the subjects and courts of the State were entirely within the legislative competence of the States concerned for all purposes of adaptation or amendments. *Rao Shiv Bahadur Singh* v. *State of V.P.*, AIR 1953 SC 394: 1953 SCR 1188: 1953 Cri LJ 1480.

Bench Strength **5**. Coram: *Patanjali Sastri, C.J.* and *B.K. Mukherjea, Vivian Bose, Ghulam Hasan* and **B. Jagannadhadas**, JJ. [Date of decision: 22-5-1953]

[8108] — S. 188 [as amended by Vindhya Pradesh Ordinance 15 of 1948 and Vindhya Pradesh Ordinance (27 of 1949)] — Extra territorial offences — Jurisdiction of Criminal Courts of Vindhya Pradesh to try extra territorial offences was lost by Ordinance 15 of 1948 — *The jurisdiction was restored by Ordinance 27 of 1949 bringing in into line with S. 188 CrPC with the requisite adaptations — Power of Vindhya Pradesh Criminal Courts to try extra territorial offences interrupted from 31-12-1948 was restored on 3-5-1949 with retrospective operation*

Items 62 and 63 of S. 2 of Ordinance No. 15 of 1948 would seem to indicate that the jurisdiction which the Criminal Courts of Vindhya Pradesh previously had to try extra-territorial offences was probably lost thereby. If so, that jurisdiction was restored under Ordinance 27 of 1949 by the amendment thereby of the said Items 62 and 63 thus bringing it into line with S. 188, CrPC, with the requisite adaptations. Hence the power of the Vindhya Pradesh Courts to hold trials for extra territorial offences which was probably interrupted from 31-12-1948 was restored on 3-5-1949 before the trial in this case commenced with retrospective operation i.e. as from the date of the prior ordinance i.e. 31-12-1948. *Rao Shiv Bahadur Singh* v. *State of V.P.*, AIR 1953 SC 394: 1953 SCR 1188: 1953 Cri LJ 1480.

Bench Strength **5**. Coram: *Patanjali Sastri, C.J.* and *B.K. Mukherjea, Vivian Bose, Ghulam Hasan* and **B. Jagannadhadas**, JJ. [Date of decision: 22-5-1953]

[8109] — S. 188 — Sanction for prosecution for an offence committed by an Indian citizen out of India — *A person not being an Indian citizen at the time of commission of offence later acquiring Indian citizenship — Permission and trial are illegal. Central Bank of India* v. *Ram Narain*, AIR 1955 SC 36: (1955) 1 SCR 697: 57 Punj LR 153: 1955 Cri LJ 152, 154.

Bench Strength **5**. Coram: **M.C. Mahajan, C.J.** and *B.K. Mukherjea, Vivian Bose, B. Jagannadhadas* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 12-10-1954]

[8110] — S. 188 — Scope — Accused must be citizen of India at the time of commission of the offence

The language of the sections plainly means that if at the time of the commission of the offence, the person committing it is a citizen of India, then even if the offence is committed outside India he is subject to the jurisdiction of the courts in India. The rule enunciated in the sections is based on the principle that qua-citizens the jurisdiction of courts is not lost by reason of the venue of the offence. If, however, at the time of the commission of the offence the accused person is not a citizen of India, then the provisions of these sections have no application whatsoever. *Central Bank of India* v. *Ram Narain*, AIR 1955 SC 36, 38: (1955) 1 SCR 697: 57 Punj LR 153: 1955 Cri LJ 152.

Bench Strength **5**. Coram: **M.C. Mahajan, C.J.** and *B.K. Mukherjea, Vivian Bose, B. Jagannadhadas* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 12-10-1954]

— S. 190 *See* Ss. 4(1)(h) and 190
See also Ss. 173, 156 and 190
See also Ss. 173, 190, 251-A and 252
See also Ss. 195 and 190
See also Ss. 195(1)(a) to (c), 190

[8111] — S. 190 — Pari materia provision — S. 190 CrPC, 1898, held was in pari materia with S. 190 CrPC, 1973 (Para 26). *Chief Enforcement Officer* v. *Videocon International Ltd.*, (2008) 2 SCC 492: (2008) 1 SCC (Cri) 471: AIR 2008 SC 1213: 2008 Cri LJ 1636.

Bench Strength **2**. Coram: **C.K. Thakker** and *P.P. Naolekar*, JJ. [Date of decision: 25-1-2008]

[8112] — S. 190 — Cognizance already taken

Cognizance having already been taken by the Magistrate before he made the order there was no scope of cognizance being taken afresh of the same offence after the police officer's report was received. *Jamuna Singh* v. *Bhadai Shah*, AIR 1964 SC 1541, 1545: (1964) 5 SCR 37: (1964) 2 Cri LJ 468.

Bench Strength **3**. Coram: *B.P. Sinha, C.J.* and *M. Hidayatullah* and **K.C. Das Gupta**, JJ. [Date of decision: 4-10-1963]

[8113] — S. 190 — Cognizance of all offences to be taken

When a Magistrate takes cognizance of offences under S. 190(1)(*b*) CrPC he takes cognizance of all offences constituted by the facts reported by the police officer and not only of some of such offences. *Pramatha Nath Mukherjee* v. *State of W.B.*, AIR 1960 SC 810, 812: (1960) 3 SCR 245: 1960 Cri LJ 1165.

Bench Strength **2**. Coram: **K.C. Das Gupta** and *J.C. Shah*, JJ. [Date of decision: 11-3-1960]

[8114] — S. 190 — Cognizance of offence a step to exercise of jurisdiction — Cognizance when

The competence of a Court, however, depends not merely on the circumstance that under some law it is entitled to try a case falling in the particular category in which the offence alleged against the accused falls. In addition to this, taking cognizance of the offence is also material in this regard. Under the Code of Criminal Procedure a court can take cognizance of an offence only if the conditions requisite for initiation of proceedings before it as set out in Part B of Ch. XV are fulfilled. If they are not fulfilled the Court does not obtain jurisdiction to try the offence. *Mohd. Safi* v. *State of W.B.*, AIR 1966 SC 69, 71: (1965) 3 SCR 467: 1966 Cri LJ 75.

Bench Strength **3**. Coram: *A.K. Sarkar*, **J.R. Mudholkar** and *R.S. Bachawat*, JJ. [Date of decision: 25-3-1965]

[8115] — S. 190 — Cognizance of offence when takes place — *Magistrate taking cognizance upon police report takes cognizance of the offences disclosed in such report*

Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon a police report, prima facie he does so of the offence or offences disclosed in such report. *Darshan Singh Ram Kishan* v. *State of Maharashtra*, (1971) 2 SCC 654: 1971 SCC (Cri) 628: AIR 1971 SC 2372: 1971 Cri LJ 1697.

Bench Strength **3**. Coram: **J.M. Shelat**, *I.D. Dua* and *S.C. Roy*, JJ. [Date of decision: 2-9-1971]

[8116] — S. 190 — Defect or illegality in investigation — Effect on taking cognizance

A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in S. 190, CrPC, as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190, CrPC, is one out of a group of sections under the heading "Conditions requisite for initiation of proceedings". The language of this section is in marked contrast with that of the other sections of the group under the same heading i.e. Ss. 193 and 195 to 199.

These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But S. 190 does not. While no doubt, in one sense, Cls. (*a*), (*b*) and (*c*) of S. 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under Cl. (*a*) or (*b*) of S. 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. *H.N. Rishbud* v. *State of Delhi*, AIR 1955 SC 196, 203: (1955) 1 SCR 1150: 1955 Cri LJ 526.

Bench Strength **3**. Coram: *B.K. Mukherjea*, *Vivian Bose* and **B. Jagannadhadas**, JJ. [Date of decision: 14-12-1954]

[8117] — S. 190 — Exception to the right of private party to complain

The offences about which the court alone, to the exclusion of the aggrieved private parties, is clothed with the right to complain may, therefore, be appropriately considered to be only those offences committed by a party to a proceeding in that court, the commission of which has a reasonably close nexus with the proceedings in that court so that it can, without embarking upon a completely independent and fresh inquiry, satisfactorily consider by reference principally to its records the expediency of prosecuting the delinquent party. *Patel Laljibhai Somabhai* v. *State of Gujarat*, (1971) 2 SCC 376: 1971 SCC (Cri) 548: AIR 1971 SC 1935: 1971 Cri LJ 1437.

Bench Strength 3. Coram: *S.M. Sikri, C.J.* and *P. Jaganmohan Reddy* and **I.D. Dua**, JJ. [Date of decision: 7-5-1971]

[*See also* S. 195(1)(c)]

[8118] — S. 190 — Initiation of proceedings — When commences — Whether suspected person can be arrested during investigation

It is clear from the wording of the section that the initiation of the proceedings against a person commences on the cognizance of the offence by the Magistrate under one of the three contingencies mentioned in the section. In cases of cognizable offence before proceedings are initiated and while the matter is under investigation by the police the suspected person is liable to be arrested by the police without an order by the Magistrate. *R.R. Chari* v. *State of U.P.*, AIR 1951 SC 207: 1951 SCR 312: (1951) 52 Cri LJ 775.

Bench Strength 3. Coram: **Harilal J. Kania, C.J.** and *Patanjali Sastri* and *S.R. Das*, JJ. [Date of decision: 19-3-1951]

[8119] — Ss. 190, 252 and 251-A — Scope — Applicability of procedure under S. 252 and S. 251-A, CrPC

In S. 190, a distinction is made between the classes of persons who can start a criminal prosecution. Under the three clauses of S. 190(1), criminal prosecution can be initiated: (*i*) by a police officer by a report in writing, (*ii*) upon information received from any person other than a police officer or upon the Magistrate's own knowledge or suspicion, and (*iii*) upon receiving a complaint of facts. If the report in this case falls within (*i*) above, then the procedure under S. 251-A, Criminal Procedure Code, must be followed. If it falls in (*ii*) or (*iii*) then the procedure under S. 252, Criminal Procedure Code, must be followed. *Pravin Chandra Mody* v. *State of A.P.*, AIR 1965 SC 1185, 1186: (1965) 1 SCR 269: (1965) 2 Cri LJ 250.

Bench Strength 3. Coram: *K. Subba Rao*, **M. Hidayatullah** and *J.R. Mudholkar*, JJ. [Date of decision: 15-9-1964]

[8120] — Ss. 190 and 173 — Scope — Exercise of discretion by Magistrate

The use of the words 'may take cognizance of any offence', in sub-section (1) of S. 190, imports the exercise of a 'judicial discretion', and the Magistrate, who receives the report, under S. 173, will have to consider the said report and judicially take a decision, whether or not to take cognizance of the offence.

It is not as if the Magistrate is bound to accept the opinion of the police that there is a case for placing the accused, on trial. It is open to the Magistrate to take the view that the facts, disclosed in the report, do not make out an offence for taking cognizance or he may take the view that there is no sufficient evidence to justify an accused being put on trial. On either of these grounds, the Magistrate will be perfectly justified in declining to take cognizance of an offence, irrespective of the opinion of the police. On the other hand, if the Magistrate agrees with the report, which is a charge-sheet submitted by the police, no difficulty whatsoever is caused, because he will have full jurisdiction to take cognizance of the offence, under S. 190(1)(*b*) of the Code. This will be the position, when the report, under S. 173, is a charge-sheet.

This provision is obviously to meet a contingency of the Magistrate, when he considers the report of the investigating officer, and judicially takes a view different from the police. *Abhinandan Jha* v. *Dinesh Mishra*, AIR 1968 SC 117, 122, 12: (1967) 3 SCR 668: 1968 Cri LJ 97.

Bench Strength 2. Coram: *M. Hidayatullah* and **C.A. Vaidialingam**, JJ. [Date of decision: 17-4-1967]

See Ss. 169 and 170

[8121] — S. 190 — Taking cognizance — Meaning & scope — "Institution of case"

The Code does not contain any definition of the words "institution of a case". A case can be said to be instituted in a Court only when the Court takes cognizance of the offence alleged therein. Section 190(1) of the Code of Criminal Procedure contains the provision for cognizance of offences by Magistrates. It provides for three ways in which such cognizance can be taken. The first is on receiving a complaint of facts which constitute such offence; the second is on a report in writing of such facts — that is, facts constituting the offence — made by any police officer; the third is upon information received from any person other than a police officer or upon the Magistrate's own knowledge or suspicion that such offence has been committed.

When a Magistrate takes cognizance of an offence upon receiving a complaint of facts which constitute such offence a case is instituted in the Magistrate's Court and such a case is one instituted on a complaint. Again, when a Magistrate takes cognizance of any offence upon a report in writing of such facts made by any police officer.

When on a petition of complaint being filed before him a Magistrate applies his mind for proceeding under the various provisions of Ch. XVI of the Code of Criminal Procedure, he must be held to have taken cognizance of the offences mentioned in the complaint. When however he applies his mind not for such purpose but for purposes of ordering investigation under S. 156(3) or issues a search warrant for the purpose of investigation he cannot be said to have taken cognizance of any offence. *Jamuna Singh* v. *Bhadai Shah*, AIR 1964 SC 1541, 1543: (1964) 5 SCR 37: (1964) 2 Cri LJ 468.

Bench Strength 3. Coram: *B.P. Sinha, C.J.* and *M. Hidayatullah* and **K.C. Das Gupta**, JJ. [Date of decision: 4-10-1963]

[8122] — S. 190 — 'Instituted'

There are three different ways in which cognizance is taken by Magistrates of offences. This is stated in S. 190 of the Code. They are:

(a) upon receiving a complaint of the facts made by any Police Officer;

(b) upon a report in writing of such facts made by any Police Officer; and

(c) upon information received from any persons other than a Police Officer, or upon his own knowledge or suspicion, that such offence has been committed. *Bhimappa Basappa Bhu Sannavar* v. *Laxman Shivarayappa Samagouda*, (1970) 1 SCC 665: 1970 SCC (Cri) 263: AIR 1970 SC 1153: 1970 Cri LJ 1132.

Bench Strength 3. Coram: **M. Hidayatullah, C.J.** and *A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 11-3-1970]

[8123] — S. 190 — Taking cognizance of a case — Scope and meaning — *Magistrate not applying his mind for proceeding under the sections of Ch. XVI of the Code — Applying his mind for taking some other action e.g. ordering investigation under S. 156(3) of the Code etc. etc. — Cognizance not taken*

When a Magistrate applies his mind not for the purpose of proceeding under the various sections of Ch. XVI but for taking action of some other kind e.g. ordering investigation, under S. 156(3) or issuing a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of any offence. *Gopal Das Sindhi* v. *State of Assam*, AIR 1961 SC 986: (1961) 2 Cri LJ 39.

Bench Strength 3. Coram: **Syed Jafer Imam**, *K. Subba Rao* and *Raghubar Dayal*, JJ. [Date of decision: 20-1-1961]

[8124] — S. 190 — Taking cognizance of a case on complaint — Scope and meaning — Magistrate not bound to take cognizance if the facts disclose the commission of an offence

Provisions of S. 190 cannot mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of an offence. Word 'may' in S. 190 cannot be construed to mean 'must'. A complaint disclosing cognizable offences may well justify a Magistrate in sending the complaint, under S. 156(3) to the police for investigation. There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offences is with the police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and take cognizance of a cognizable offence. If he does so then he would have to proceed in the manner provided by Ch. XVI of the Code. *Gopal Das Sindhi* v. *State of Assam*, AIR 1961 SC 986: (1961) 2 Cri LJ 39.

Bench Strength 3. Coram: **Syed Jafer Imam**, *K. Subba Rao* and *Raghubar Dayal*, JJ. [Date of decision: 20-1-1961]

[8125] — Ss. 190, 193 and 206 — New Code provides for cognizance of an offence and committal of a case, as contradistinguished from cognizance of an offender or committal of an accused to Court of Session as was in the old Code — *CrPC, 1973, Ss. 190 and 193* (Para 23). *Popular Muthiah* v. *State*, (2006) 7 SCC 296: (2006) 3 SCC (Cri) 245.

Bench Strength 2. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 4-7-2006]

[8126] — Ss. 190, 195(1)(a) to (c) — Stage when the legality of the cognizance taken is to be adjudged — *Secondly the question whether Magistrate's power to take cognizance has or has not been taken away by Sections 195(1)(a) to (c) are to be examined*

The point of time at which the legality of the cognizance taken is to be adjudged is the time when cognizance is actually taken by a Magistrate. The Magistrate has normally got jurisdiction to take cognizance under S. 190 of the Code in the circumstances enumerated therein. S. 195 is in fact a limitation on the unfettered powers of a Magistrate to take cognizance under S. 190 of the Code. Therefore, at the stage when the Magistrate is taking cognizance under S. 190, he must examine the facts of the complaint before him and determine whether his power to take cognizance under S. 190 has or has not been taken away by any of the Cls. (*a*) to (*c*) of S. 195(1). Therefore, if there is a non-compliance with the provisions of S. 195, the Magistrate will have no jurisdiction to take cognizance of any of the offences enumerated therein. *Govind Mehta* v. *State of Bihar*, (1971) 3 SCC 329: 1971 SCC (Cri) 608: AIR 1971 SC 1708: 1971 Cri LJ 1266.

Bench Strength 2. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 7-5-1971]

[8127] — Ss. 190, 202 and 156(3) — Powers of Magistrate to ask for investigation before and after taking cognizance of the case

The Magistrate can under S. 190 of CrPC before taking cognizance ask for investigation by the police under S. 156(3) of CrPC. The Magistrate can also issue warrant for production before taking cognizance. If after cognizance has been taken the Magistrate wants any investigation, it will be under S. 202 of CrPC. *State of Assam* v. *Abdul Noor*, (1970) 3 SCC 10: 1970 SCC (Cri) 360: AIR 1970 SC 1365: 1970 Cri LJ 1264: 72 Punj LR 585.

Bench Strength 2. Coram: **A.N. Ray** and *I.D. Dua*, JJ. [Date of decision: 13-3-1970]

[8128] — Ss. 190 and 169 — Magistrate, held, does not take cognizance of offence before he discharges the accused agreeing with the police report under S. 169

Per Kailasam, J.

A report under S. 169 of the CrPC and the Magistrate agreeing with it, are proceedings under Chap. XIV which relates to information to the police and their power to investigate. The Chapter provides for supervision by the Magistrates of the investigation by the police. Magistrate has no option except to agree with the report of the police officer unless he proceeds to take cognizance of the offence under S. 190(1)(*c*). It cannot be held that before a Magistrate discharges an accused agreeing with the report of the police under S. 169, CrPC, he takes cognizance. Though the Magistrate in deciding whether to accept the report or not may be exercising his judicial mind, it cannot be said that he is acting as a court. Most of requirements of a court are lacking when the Magistrate agrees with the report of the police officer under S. 169. At this stage the rights of the parties are not finally decided as the complainant is entitled to file a complaint directly to the Magistrate. The persons accused are not before the Magistrate and neither the complainant nor the accused are entitled to be heard or to adduce evidence before the Magistrate at this stage. It cannot be said that the Magistrate has a duty to decide the matter on a consideration of the evidence adduced before him. Thus the conclusion is that when no further proceedings are taken by the Magistrate on receipt of a police report under S. 169 there is no proceeding in or in relation to any court and, therefore, no complaint by the court is necessary. *Kamlapati Trivedi* v. *State of W.B.*, (1980) 2 SCC 91: 1980 SCC (Cri) 347: AIR 1979 SC 777: 1979 Cri LJ 679.

Bench Strength 3. Coram: **Jaswant Singh**[1], **P.S. Kailasam**[2] and **A.D. Koshal**[3], JJ. [Date of decision: 13-12-1978]

[8129] — Ss. 190 and 195 to 199 — Generally — Scope

Section 190 of the Code of Criminal Procedure confers a general power on a criminal Court to take cognizance of offences, but the exercise of such power in certain cases is prohibited by the provisions of Ss. 195 to 199 of the Code unless the conditions mentioned therein are complied with. *S.A. Venkataraman* v. *State*, AIR 1958 SC 107, 110: 1958 SCR 1040: (1958) 2 LLJ 1: 1958 Cri LJ 254.

Bench Strength 3. Coram: *B.P. Sinha*, **Syed Jafer Imam** and *J.L. Kapur*, JJ. [Date of decision: 3-12-1957]

[8130] — Ss. 190 and 195(1)(b) — Scope — Cognizance of an offence otherwise than under S. 195(1)(b) — "In or in relation to, any proceeding in any Court" occurring in S. 195(1)(b) — Meaning of — A proceeding in contemplation not a proceeding in Court — *In December, 1958, M filing a complaint against R with the police — In April, 1959 when M's complaint was still under investigation R filing a complaint before the Magistrate for offences under S. 211 IPC and some other sections of IPC — Cognizance taken — Later R arrested and challaned on the complaint of M to police in July, 1959 i.e. long after cognizance an R's complaint was taken — Held, complaint under S. 211 IPC was not "in, or in relation to, any proceeding in any Court" and was therefore not barred by S. 195(1)(b) CrPC. M.L. Sethi* v. *R.P. Kapur*, AIR 1967 SC 528: (1967) 1 SCR 520: 1967 Cri LJ 528, 31, 34.

Bench Strength 3. Coram: *V. Ramaswami*, **V. Bhargava** and *Raghubar Dayal*, JJ. [Date of decision: 23-9-1966]

[8131] — Ss. 190 and 200 — Cognizance of offence by Magistrate on the basis of complaint — *Examination of complainant not essential*

Taking cognizance of an offence within the meaning of S. 190 only means that the Magistrate must apply his mind to the contents of the complaint before him for the purpose of proceeding under S. 200 and other provisions of the Code following it. If he can be said to have taken cognizance on the said complaint, there was no necessity for him to examine the complainant as the complaint was in writing and was by a public officer who was directed by the State Government to prosecute the petitioner and others. *Mowu* v. *Supdt., Special Jail*, (1971) 3 SCC 936: 1972 SCC (Cri) 184: 1971 CAR 66 (SC).

Bench Strength **5**. Coram: *M. Hidayatullah, C.J.* and **J.M. Shelat**, *G.K. Mitter*, *C.A. Vaidialingam* and *A.N. Ray*, JJ. [Date of decision: 14-12-1970]

[8132] — Ss. 190 and 207-A — Discharge of an accused named in Col. No. 2 of charge-sheet under the heading 'not sent up' — *Accused appellant's plea of alibi being accepted by police — He not being named in charge-sheet as accused but mentioned in Col. No. 2 of charge-sheet under heading not sent up — Magistrate taking cognizance against accused named in Col. Nos. 3 and 4 and discharging the accused named in Col. No. 2 — Held, accused not discharged — Magistrate during the trial was competent to summon the accused appellant as an accused*

There is no force in the contention that the judicial refusal to summon amounts to discharge. There cannot be any question of discharge when the appellant was not sent up upon the charge-sheet submitted by the police. The Magistrate was therefore competent to summon the appellant during the trial. *Raghubans Dubey* v. *State of Bihar*, AIR 1967 SC 1167: (1967) 2 SCR 423: 1967 Cri LJ 1081, 83, 84.

Bench Strength **3**. Coram: *M. Hidayatullah*, **S.M. Sikri** and *C.A. Vaidialingam*, JJ. [Date of decision: 19-1-1967]

[8133] — S. 190(1) — Cognizance of an offence — Complaint filed and the Magistrate sending the case for trial to another Magistrate — *Magistrate taking cognizance on the date on which complaint was filed and case sent to the other Magistrate*

On 16-9-1952 the Inspector applied to the Magistrate for a search warrant which was issued and permission to investigate the case was allowed. The same day a warrant of arrest was also issued with the permission of the Magistrate. The appellant was arrested, released on bail and directed to appear before the Magistrate on September 19, 1952. On September 19, 1952 the appellant was allowed to give bail and time for investigation was extended till November 19, 1952. Time was further extended to January 2, 1953 and later to February 2, 1953. The inspector filed the complaint on February 2, 1953. The Magistrate, the same day, sent the case to another Magistrate for disposal.

Held :

The Magistrate must be regarded to have taken cognizance of the offence on February 2, 1953 when he sent the case to another Magistrate for trial. On a reading of the various orders of the Magistrate it is clear that no cognizance of the offence was taken till February 2, 1953. The orders passed by the Magistrate prior to February 2, 1953 were orders passed while the investigation by the police into a non-cognizable offence was in progress. *Narayandas Bhagwandas Madhavdas* v. *State of W.B.*, AIR 1959 SC 1118: (1960) 1 SCR 93: 1959 Cri LJ 1368, 73.

Bench Strength **2**. Coram: **Syed Jafer Imam** and *J.L. Kapur*, JJ. [Date of decision: 7-5-1959]

[8134] — S. 190(1) — Cognizance of offence — Meaning — Depends on the facts and circumstances of each case — *Cognizance is taken when the Magistrate has applied his mind*

As to when cognizance is taken of an offence will depend upon the facts and circumstances of each case and it is impossible to attempt to define what is meant by taking cognizance. Issuing of a search warrant for the purpose of an investigation or of a warrant of arrest for that purpose cannot by themselves be regarded as acts by which cognizance was taken of an offence. Obviously, it is only when a Magistrate applies his mind for the purpose of proceeding under S. 200 and subsequent sections of Ch. XVI of the Code of Criminal Procedure or under S. 204 of Ch. XVII of the Code that it can be positively stated that he had applied his mind and therefore had taken cognizance. *Narayandas Bhagwandas Madhavdas* v. *State of W.B.*, AIR 1959 SC 1118: (1960) 1 SCR 93: 1959 Cri LJ 1368, 73.

Bench Strength **2**. Coram: **Syed Jafer Imam** and *J.L. Kapur*, JJ. [Date of decision: 7-5-1959]

1951 SCR 312: AIR 1951 SC 207: 52 Cri LJ 775, explained

[8135] — S. 190(1) — Scope and meaning — "Cognizance" — Meaning of — Means taking notice of by a Court judicially — *Cognizance is taken as soon as Court applies its mind*

The word "cognizance" has no esoteric or mystic significance in criminal law or procedure. It merely means — become aware of and when used with reference to a court or Judge, to take notice of judicially. "Taking cognizance does not involve any formal action; or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence". *Ajit Kumar Palit* v. *State of W.B.*, AIR 1963 SC 765: 1963 Supp (1) SCR 953: (1963) 1 Cri LJ 797, 801.

Bench Strength 3. Coram: *Syed Jafer Imam*, **N. Rajagopala Ayyangar** and *J.R. Mudholkar*, JJ. [Date of decision: 7-11-1962]

— Ss. 190(1)(a), (b) & (c) *See* Ss. 207-A and 190(1)(a), (b) & (c)

[8136] — Ss. 190(1)(a) and (b) & 529 — Cognizance of proceedings taken of by Magistrate without power — *No prejudice shown — Validity of proceedings — Curability of defect*

Where a Magistrate of the First Class 'bona fide' takes cognizance of the proceedings under S. 190(1)(*a*) and (*b*) though he had no power to do so and no prejudice to the accused is shown the defect is cured by S. 529 CrPC. It cannot be held that the defect will not be cured by a 'bona fide' decision given by Sri Kansara as to the existence of the power when objection thereto is taken, even assuming without deciding that "the taking of cognizance" was then continuing. Therefore the said proceedings are not void. *Purshottam Jethanand* v. *State of Kutch*, AIR 1954 SC 700: 1954 Cri LJ 1751.

Bench Strength 3. Coram: *N.H. Bhagwati*, **B. Jagannadhadas** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 5-3-1954]

— S. 190(1)(b) *See* Ss. 190(1)(a) and (b) & 529

[8137] — S. 190(1)(b) — Held, mandatory — When it may violate Art. 14 of the Constitution

Under S. 190(1)(*b*) of the Code of Criminal Procedure, the Magistrate is bound to take cognizance of any cognizable offence brought to his notice. The words "may take cognizance in the context means "must take cognizance". He has no discretion in the matter, otherwise that section will be violative of Art. 14. *A.C. Aggarwal, Sub-Divisional Magistrate* v. *Ram Kali*, AIR 1968 SC 1: (1968) 1 SCR 205: 70 Punj LR 261: 1968 Cri LJ 82.

Bench Strength 5. Coram: *K.N. Wanchoo, C.J.* and *R.S. Bachawat, V. Ramaswami, G.K. Mitter* and **K.S. Hegde**, JJ. [Date of decision: 16-8-1967]

[8138] — S. 190(1)(b) — "Police officer" — Meaning — *Held, to mean a police officer properly so called Central Excise Officer cannot complain under Cl. (b) but he can under Cl. (a). Badaku Joti Savant* v. *State of Mysore*, AIR 1966 SC 1746: (1966) 3 SCR 698: 1966 Cri LJ 1353.

Bench Strength 5. Coram: *P.B. Gajendragadkar, C.J.* and **K.N. Wanchoo**, *M. Hidayatullah, J.C. Shah* and *S.M. Sikri*, JJ. [Date of decision: 1-3-1966]

[8139] — Ss. 190(1)(b) and 173(1) — An incomplete challan submitted by the police — Magistrate took cognizance on that challan — Whether it vitiates the proceedings

An incomplete challan submitted by the police under S. 173(1) is in fact a complete report within the meaning of S. 190(1)(*b*) CrPC. *Tara Singh* v. *State*, AIR 1951 SC 441: 1951 SCR 729: (1951) 52 Cri LJ 1491.

Bench Strength 4. Coram: **Fazl Ali**[1], **Patanjali Sastri**[2], **S.R. Das**[3] and **Vivian Bose**[4], JJ. [Date of decision: 1-6-1951]

— S. 190(1)(c) *See* Ss. 156(3) and 190(1)(c)

See also Ss. 173, 156(3) and 190(1)(c)

— S. 190(1)(f) *See* Ss. 190(1)(a) and (b) & 529

See also Ss. 251-A(2) and 190(1)(b)

[8140] — S. 192 — Transfer of case — Transfer of case by a Magistrate before taking cognizance — *Is not a transfer under S. 192 — Is only an administrative action*

The transfer of a case contemplated under S. 192 is only of cases in which cognizance of an offence has been taken. If the Additional District Magistrate had not taken cognizance of any offence when the complaint was presented to him his sending the complaint to another Magistrate for disposal would not be a transfer of case under S. 192. The complaint appears to have been sent by way of an administrative action. *Gopal Das Sindhi* v. *State of Assam*, AIR 1961 SC 986: (1961) 2 Cri LJ 39.

Bench Strength 3. Coram: **Syed Jafer Imam**, *K. Subba Rao* and *Raghubar Dayal*, JJ. [Date of decision: 20-1-1961]

— S. 193 *See also* Ss. 190, 193 and 206

[8141] — S. 193 — High Court transferring case to Session's Court — Whether Session's Court barred under S. 193 — Whether amounts to taking cognizance

When the Sessions Court receives a case on transfer by the High Court it is not to consider whether it should proceed or not with the case. It has to proceed with the case as it has been transferred to it by the High Court. There is, therefore, no occasion for the Court of Session to take cognizance of the offence in the sense that it has to determine whether the proceeding should be initiated in connection with the offence or not. The proceedings have been already initiated by the Magistrate and have been simply transferred to it. It has simply to proceed with the inquiry or trial as the case may be as the case has been made over to it by the High Court.

Therefore, the further proceedings by the Court of Session in a case transferred to it by the High Court are not barred by S. 193 of the Code. *P.C. Gulati* v. *Lajya Ram*, AIR 1966 SC 595, 598, 59: (1966) 1 SCR 560: 1966 Cri LJ 465.

Bench Strength **3**. Coram: *A.K. Sarkar*[1], **Raghubar Dayal**[1] and **V. Ramaswami**[2], JJ. [Date of decision: 19-8-1965]

— S. 195 *See* Ss. 173 and 195

See also Ss. 190 and 195 to 199

See also Ss. 476-B, 195 and 476

[8142] — S. 195 — Court — Meaning of — *A nominee of the Registrar appointed under S. 95 of the Maharashtra Cooperative Societies Act, 1960, is not a court within the meaning of S. 195. Rama Rao* v. *Narayan*, (1969) 1 SCC 167: AIR 1969 SC 724: 1969 Cri LJ 1064.

Bench Strength **2**. Coram: **J.C. Shah** and *A.N. Grover*, JJ. [Date of decision: 20-12-1968]

[8143] — S. 195 — Applicability — Preparation of false record by government servant — *Offence is complete the moment such false record is complete — Use of such record in judicial proceeding not necessary — Offence falls under S. 218 IPC — Bar of S. 195, CrPC, 1898 cannot be invoked — Private complaint maintainable — Penal Code, 1860, Ss. 218, 192 and 193*

The offence in S. 218 is the preparation of a false record by a public servant with the intention of saving or injuring any person or property. The offence was complete the moment the false record was made with the said intention and it was not necessary for the completion of this offence that the record should be used in a judicial proceedings so as to cause an erroneous opinion to be formed touching on a point material to the result of such proceeding. Where the lekhpal prepared a false record to save any property of *H* from vendees and *H* abetted the act, the offences would fall within S. 218 and not under Ss. 192/193 of the Penal Code. It may fall in the latter sections if the entry can be said to be in or in relation to a Court. This cannot be said of the entries in the khasra. As S. 218 is not named in S. 195 of the Code of Criminal Procedure, the private complaint could be entertained by court and this was no bar. *Kamla Prasad Singh* v. *Hari Nath Singh*, AIR 1968 SC 19: (1967) 3 SCR 828: 1968 Cri LJ 86, 88-89.

Bench Strength **2**. Coram: **M. Hidayatullah** and *C.A. Vaidialingam*, JJ. [Date of decision: 27-4-1967]

[8144] — Ss. 195 and 200 — Cognizance of offence under S. 297 IPC can be taken though no proceedings are taken for offence under S. 182 IPC under S. 195, CrPC, 1898 — *Appellant lodging false report of murder leading to stoppage of funeral — State not proceeding against appellant — Affected party could complain under S. 200, CrPC and court can record conviction under Ss. 297 and 500, IPC — S. 195, CrPC is no bar — Penal Code, 1860, Ss. 297 and 182. Basir-ul-Haq* v. *State of W.B.*, AIR 1953 SC 293: 1953 SCR 836: 1953 Cri LJ 1232.

Bench Strength **3**. Coram: **M.C. Mahajan**, *Vivian Bose* and *B. Jagannadhadas*, JJ. [Date of decision: 10-4-1953]

See also AIR 1962 SC 876: 1962 (1) Cri LJ 770

[8145] — Ss. 195 and 190 — Relative scope — *Held, S. 195 is a fetter on the power of Magistrate under S. 190*

Section 195, is, in fact, a limitation on the unfettered power of a Magistrate to take cognizance under S. 190. *M.L. Sethi* v. *R.P. Kapur*, AIR 1967 SC 528, 531: (1967) 1 SCR 520: 1967 Cri LJ 528.

Bench Strength **3**. Coram: *V. Ramaswami*, **V. Bhargava** and *Raghubar Dayal*, JJ. [Date of decision: 23-9-1966]

[8146] — S. 195 — No interference with exercise of discretion

Whether action should be taken under S. 195 is a matter primarily for the court which hears the application, and its discretion is not to be lightly interfered with in appeal, even when that is competent. *Virindar Kumar Satyawadi* v. *State of Punjab*, AIR 1956 SC 153, 158: (1955) 2 SCR 1013: 58 Punj LR 583: 1956 Cri LJ 326.

Bench Strength **3**. Coram: *B.K. Mukherjea, C.J.* and **T.L. Venkatarama Aiyar** and *Syed Jafer Imam*, JJ. [Date of decision: 24-11-1955]

[8147] — S. 195 — Prosecution cannot bypass a serious charge to avoid formalities under S. 195

It is not permissible for the prosecution to drop a serious charge and select one which does not require the procedure under S. 195 of the Code of Criminal Procedure. If the offence was under S. 196, Indian Penal Code, a complaint in writing by the Court concerned was required. Before a complaint is made the Court has to consider whether it is expedient in the interests of justice to order a prosecution. In the lesser offence no such complaint by the Court is necessary and it is obvious that the lesser offence was chosen to bypass the Sessions Judge who had earlier decided that Dr. Dutt should not be prosecuted for perjury. Such a device is not to be commended. *S. Dutt (Dr.)* v. *State of U.P.*, AIR 1966 SC 523, 529: (1966) 1 SCR 493: 1966 Cri LJ 459.

Bench Strength **3**. Coram: *K.N. Wanchoo*, **M. Hidayatullah** and *J.C. Shah*, JJ. [Date of decision: 18-8-1965]

[8148] — S. 195 — Scope and applicability — S. 195 does not bar the trial of an accused for a distinct offence disclosed by same facts and not included within the ambit of that section — *Provision of the section not to be permitted to be evaded by resorting to devices and camouflages*

Though S. 195 does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included within the ambit of that section, it has also to be borne in mind that the provisions of that section cannot be evaded by resorting to devices or camouflages. The test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the Court or of the public servant is required. In other words, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, upon the ground that such latter offence is a minor offence of the same character, or by describing the offence as being one punishable under some other section of the Indian Panel Code, though in truth and substance the offence falls in the category of section mentioned in S. 195, CrPC. Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of S. 195 prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it. *Basir-ul-Haq* v. *State of W.B.*, AIR 1953 SC 293: 1953 SCR 836: 1953 Cri LJ 1232.

Bench Strength 3. Coram: **M.C. Mahajan**, *Vivian Bose* and *B. Jagannadhadas*, JJ. [Date of decision: 10-4-1953]

Limited in State, CBI v. Sashi Balasubramanian, (2006) 13 SCC 252: (2007) 3 SCC (Cri) 337

[8149] — S. 195 — Scope and applicability — Whether offences under Ss. 297 & 500 IPC are bound by S. 195 CrPC when the accused could also be tried under S. 182 IPC — *Acting on a false information given by the accused at the police station the accused and the police proceeding to cremation ground, taking out a dead body from funeral pyre and sending it for post-mortem — Held, the offence under Ss. 297 and 500 IPC disclosed by the facts not bound by the section even though the accused could be tried under S. 182 IPC the trial of which offence is barred by the section*

D, whose mother died a natural death took her to cremation ground *N* made a report to the police that *D* had murdered his mother by throttling. When the funeral pyre was in flame *N*, the police Sub-Inspector and some others came and *N* told the Police Sub-Inspector that the lady had been murdered by *D* and there were injury marks on the dead body. Thereupon the fire was extinguished and the dead body was first examined and then sent for post-mortem. No injury marks were found on the dead body. The accused *N* was tried and convicted for offences under Ss. 297 and 500 IPC. It was contended that the trial was barred by S. 195 CrPC, because the accused could be prosecuted for offences under S. 182 IPC.

Held :

The charge for the offence under S. 297, Penal Code, could in no circumstance, as pointed out by the High Court, be described as falling within the purview of S. 195, CrPC. The act of trespass was alleged to have been committed subsequent to the making of the false report and all the ingredients of the offence that have been held to have been established on the evidence, concern the conduct of the appellants during the post-report period. In these circumstances, no serious contention could be raised that the provisions of S. 195 would stand defeated by the magistrate having taken cognizance of the offence under that section.

As regards the charge under S. 500, Penal Code, it seems fairly clear both on principle and authority that where the allegations made in a false report disclose two distinct offences, one against the public servant and the other against a private individual, that other is not debarred by the provisions of S. 195 from seeking redress for the offence committed against him. Section 199, Penal Code, which mentions the ingredients of the offence of defamation gives within defined limits immunity to persons making depositions in Court, but it is now well settled that immunity is a qualified one and is not absolute. An offence under S. 499, Penal Code, can only be initiated at the instance of the person defamed, in like manner as cognizance for an offence under S. 182 cannot be taken except at the complaint of the public servant concerned. In view of these provisions, there does not seem in principle any warrant for the proposition that a complaint under S. 499 in such a situation cannot be taken cognizance of unless two persons join in making it i.e. it can only be considered if both the public servant and the person defamed join in making it, otherwise the person defamed is without any redress. The statute has prescribed distinct procedure for the making of the complaints under these two provisions of the Indian Penal Code and when the prescribed procedure has been followed, the Court is bound to take cognizance of the offence complained of. *Basir-ul-Haq* v. *State of W.B.*, AIR 1953 SC 293: 1953 SCR 836: 1953 Cri LJ 1232.

Bench Strength 3. Coram: **M.C. Mahajan**, *Vivian Bose* and *B. Jagannadhadas*, JJ. [Date of decision: 10-4-1953]

[8150] — S. 195 — Scope of — Credentials of an expert examined in a court challenged — *Expert filing his diplomas and certificates for examination by the Court under its orders — Allegation that the documents filed were forged — Court refusing to file a complaint under S. 195 CrPC — Government expert filing a complaint against the expert under Ss. 465/471 IPC — Held, facts disclosed an offence under Ss. 139/196 IPC and not under Ss. 465/471 IPC — Expert could not be prosecuted in the absence of a complaint by Court under S. 195 CrPC. S. Dutt (Dr.)* v. *State of U.P.*, AIR 1966 SC 523: (1966) 1 SCR 493: 1966 Cri LJ 459, 61, 64.

Bench Strength **3**. Coram: *K.N. Wanchoo*, **M. Hidayatullah** and *J.C. Shah*, JJ. [Date of decision: 18-8-1965]

[8151] — S. 195 — Scope of — Does not bar trial for an offence not covered by the section — Provisions of the section cannot be evaded by resorting to devices or camouflage

Section 195, CrPC, does not bar the trial of an accused person for a distinct offence disclosed by the same or slightly different set of facts and which is not included within the ambit of the section, but it must be pointed out that the provisions of S. 195 cannot be evaded by resorting to devices or camouflage. For instance, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, on the ground that the latter offence is a minor one of the same character, or by describing the offence as one punishable under some other section of the IPC, though in truth and substance the offence falls in the category of sections mentioned in S. 195, CrPC. Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of S. 195 prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it. *Durgacharan Naik* v. *State of Orissa*, AIR 1966 SC 1775: (1966) 3 SCR 636: 1966 Cri LJ 1491, 93, 94.

Bench Strength **2**. Coram: *K. Subba Rao* and **V. Ramaswami**, JJ. [Date of decision: 23-2-1966]

[8152] — Ss. 195, 476 and 476-B — Appeal under S. 476-B — Lies if the offence under S. 193 IPC is committed in or in relation to a proceeding in "Court" — *Does not lie if the offence under S. 193 IPC is committed before a Returning Officer in proceedings under S. 36, Representation of the People Act, 1951*

Section 476-B provides for an appeal from an order passed under S. 476 to the appropriate Court. The result then is that if the complaint relates to offences mentioned in Ss. 195(1)(*b*) and 195(1)(*c*), an appeal would be competent, but not if it relates to offences mentioned in S. 195(1)(*a*). Now, the order of the Magistrate, dated September 17, 1952 directs that the appellant should be prosecuted for offences under Ss. 181, 182 and 193. There is no dispute that the order in so far as it relates to offences under Ss. 181 and 182 is not appealable, as they fall directly under S. 195(1)(*a*).

Section 193 makes it an offence to give false evidence whether it be in a judicial proceeding or not, and it likewise makes it an offence to fabricate false evidence for use in a judicial proceeding or elsewhere. If the offence is not committed in a judicial proceeding then it will fall outside S. 195(1)(*b*), which applies only when it is committed in or in relation to a proceeding in court, and there is in consequence no bar to a complaint being made in respect thereof unaffected by the restrictions contained in S. 195(1)(*b*).

But if the offence under S. 193 is committed in or in relation to a proceeding in court, then it will fall under S. 195(1)(*b*), and the order directing prosecution under S. 476 will be appealable under S. 476-B.

The returning officer deciding on the validity of a nomination paper is not a court for the purpose of S. 195(1)(*b*) of the Code of Criminal Procedure, and the result is that even as regards the charge under S. 193, the order of the Magistrate was not appealable, as the offence was not committed in or in relation to any proceeding in a court. *Virindar Kumar Satyawadi* v. *State of Punjab*, AIR 1956 SC 153: (1955) 2 SCR 1013: 58 Punj LR 583: 1956 Cri LJ 326, 330.

Bench Strength **3**. Coram: *B.K. Mukherjea, C.J.* and **T.L. Venkatarama Aiyar** and *Syed Jafer Imam*, JJ. [Date of decision: 24-11-1955]

— S. 195(1)(a) *See* Ss. 190, 195(1)(a) to (c)

[8153] — S. 195(1)(a) — Complaint by public servant for offence under S. 182 IPC — *Court is barred from taking seisin of the case except in the manner provided by S. 195 CrPC — Complaint must be lodged by a public servant — Charge-sheet by the police is without jurisdiction ab initio*

There is an absolute bar against the Court taking seisin of a case under S. 182 IPC except in the manner provided by S. 195(1)(*a*). Where the patwari makes a false report against certain persons knowing and believing that action would be taken the offence under S. 182 IPC was complete. It was therefore incumbent if the prosecution was to be launched, that the complaint in writing should be made by the Tahsildar viz. the public servant concerned. Compliance of S. 195 is not made if the Superintendent of Police, after the allegations were disproved asked the Tahsildar for "a calender". The Court having taken cognizance without the complaint in writing of a public servant the cognizance of the case wrongly assumed and the trial was thus without jurisdiction ab initio. *Daulat Ram* v. *State of Punjab*, AIR 1962 SC 1206: 1962 Supp (2) SCR 812: (1962) 2 Cri LJ 286.

Bench Strength 3. Coram: *J.L. Kapur*, **M. Hidayatullah** and *Raghubar Dayal*, JJ. [Date of decision: 25-1-1962]

[8154] — Ss. 195(1)(a) and (b) — FIR being registered against the accused — Later a complaint on the same facts disclosing an offence under S. 211 IPC having been filed — Held, Magistrate not to take cognizance unless provisions of S. 195(1)(b) complied with — *Proceedings under S. 182 IPC — Offence disclosed also covered by S. 211 IPC — Held, Magistrate again not to take cognizance unless provisions of S. 195(1)(b) complied with*

So far as prosecution under S. 211 of the Penal Code is concerned, once a complaint filed by the informant is being proceeded with which is based on the same facts and allegations on which the first information was registered it is not open to a Magistrate to take cognizance of any offence alleged to have been committed under that section unless there has been proper compliance with the provisions of S. 195(1)(*b*) of the CrPC.

Where the prosecution is under S. 182 IPC but the offence disclosed is covered by S. 211 IPC and a complaint is pending which has been filed by the informant on the same facts and allegations as were contained in his FIR no cognizance can be taken by the Magistrate for the alleged offence under S. 193 of the Penal Code which is one of the sections mentioned in S. 195(1)(*b*) on a parity of reasoning with regard to an offence under S. 211 of the Penal Code. *State of Punjab* v. *Brij Lal Palia*, AIR 1969 SC 355: (1969) 1 SCR 853: 1969 Cri LJ 645, 47-49.

Bench Strength 3. Coram: *S.M. Sikri, R.S. Bachawat* and **A.N. Grover**, JJ. [Date of decision: 26-8-1968]

[8155] — Ss. 195(1)(a) to (c), 190 — Scope of S. 195(1) — *Magistrate submitted an explanation in a transfer application pending against him in a superior court — Cl. (c) operates as a bar when the offence is alleged to have been committed by a 'party to any proceedings in any court' — Complaint — Non-compliance with the provisions of S. 195(1)(a) to (c) — Magistrate will have no jurisdiction to take cognizance — Penal Code, 1860 — Ss. 167, 475. Govind Mehta* v. *State of Bihar*, (1971) 3 SCC 329: 1971 SCC (Cri) 608: AIR 1971 SC 1708: 1971 Cri LJ 1266.

Bench Strength 2. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 7-5-1971]

***Overruled** in S.L. Goswami (Dr.) v. High Court of M.P., (1979) 1 SCC 373*

— S. 195(1)(b) *See* Ss. 190, 195(1)(a) to (c)
See also Ss. 190 and 195(1)(b)
See also Ss. 195(1)(a) and (b)
See also Ss. 195(1)(a) to (c) and 190
See also Ss. 195(1)(b), (2) and 6

[8156] — S. 195(1)(b) — Offence under S. 193 IPC referred to in S. 195(1)(b), CrPC, 1898 must be in relation to "judicial proceedings" before a "Court" — *Penal Code, 1860, S. 193*

S. 193 makes it an offence to give false evidence whether it be in a judicial proceeding or not, and it likewise makes it an offence to fabricate false evidence for use in a judicial proceeding or elsewhere. If the offence is not committed in a judicial proceeding, then it will fall outside S. 195(1)(*b*), which applies only when it is committed in or in relation to a proceeding in Court, and there is in consequence no bar to a complaint being made in respect thereof unaffected by the restrictions contained in S. 195(1)(*b*).

But if the offence under S. 193 is committed in or in relation to a proceeding in Court, then it will fall under S. 195(1)(*b*), and the order directing prosecution under S. 476 will be appealable under S. 476-B. *Virindar Kumar Satyawadi* v. *State of Punjab*, AIR 1956 SC 153: (1955) 2 SCR 1013: 58 Punj LR 583: 1956 Cri LJ 326, 329.

Bench Strength 3. Coram: *B.K. Mukherjea, C.J.* and **T.L. Venkatarama Aiyar** and *Syed Jafer Imam*, JJ. [Date of decision: 24-11-1955]

[8157] — S. 195(1)(b) — Proceedings before Income Tax Officer are judicial proceedings — *They must be treated as judicial proceedings in any court for the purpose of S. 195(1)(b), CrPC, 1898 — Complaint filed by private individual and not by Income Tax Officer incompetent — Penal Code, 1860, S. 193*

Per majority

Section 37(4) of the Income Tax Act, 1922 makes the proceedings before the Income Tax Officer judicial proceedings under S. 193, IPC and these judicial proceedings must be treated as proceedings in any Court for the purpose of S. 195(1)(*b*), CrPC, 1898. A complaint filed by a private individual was not maintainable because the condition precedent prescribed by S. 195(1)(*b*), CrPC, 1898 had not been complied with as no complaint had been filed by the Income Tax Officer.

Per Das Gupta and Sarkar, JJ. (dissenting)

The words used in S. 37(4) of the Income Tax Act furnish no reason to alter the legal position that is inescapable on a consideration of the functions of the Income Tax Officer that he is not a court within the meaning of S. 195 of the Code of Criminal Procedure. *Lalji Haridas* v. *State of Maharashtra*, AIR 1964 SC 1154: (1964) 6 SCR 700: (1964) 2 Cri LJ 249, 253: (1964) 52 ITR 423: 66 Bom LR 460.

Bench Strength 5. Coram: **P.B. Gajendragadkar, C.J.**[1] and *A.K. Sarkar*[2], *K.N. Wanchoo*[1], **K.C. Das Gupta**[2] and *N. Rajagopala Ayyangar*[1], JJ. [Date of decision: 7-2-1964]

[8158] — S. 195(1)(b) — Cautious use of

Every incorrect or false statement does not make it incumbent on the Court to order prosecution. The Court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. The Court orders prosecution in the larger interest of the administration of justice and not to gratify feelings of personal revenge or vindictiveness or to serve the ends of a private party. Too frequent prosecutions for such offence tend to defeat its very object. It is only in glaring cases of deliberate falsehood where conviction is highly likely that the Court should direct prosecution. *Santokh Singh* v. *Izhar Hussain*, (1973) 2 SCC 406: 1973 SCC (Cri) 828: AIR 1973 SC 2190: (1974) 1 SCR 78: 1973 Cri LJ 1176.

Bench Strength 2. Coram: *K.K. Mathew* and **I.D. Dua**, JJ. [Date of decision: 25-4-1973]

[8159] — S. 195(1)(b) — False entry relating to Bhumidari Lands — *Complaint by party affected — Held, case could only be instituted by court in which or in relation to which offence committed. Kamla Prasad Singh* v. *Hari Nath Singh*, AIR 1968 SC 19: (1967) 3 SCR 828: 1968 Cri LJ 86.

Bench Strength 2. Coram: **M. Hidayatullah** and *C.A. Vaidialingam*, JJ. [Date of decision: 27-4-1967]

[8160] — S. 195(1)(b) — Interruption of Income Tax proceedings covered — *IT Act, 1922, S. 37(4)*

Per majority

Section 37(4) of the Act makes the proceedings before the Income Tax Officer Judicial proceedings under S. 193 IPC and these judicial proceedings must be treated as proceedings in any court for the purpose of S. 195(1)(*b*), CrPC.

The offence with which S. 228 IPC deals is an offence committed against a public servant sitting in a judicial proceeding. This section is one of the sections mentioned in S. 195(1)(*b*), CrPC, and so, any complaint in respect of the offence alleged to have been committed under S. 228, IPC has to be made by the Court in question.

Section 37(4) makes a proceeding before the Income Tax Officer a proceeding under S. 228 IPC and thus, an interruption in his proceedings, or an insult given to him, has now become punishable under the said section.

Per majority

The words used in S. 37(4) of the Income Tax Act furnish no reason to alter the legal position that is inescapable on a consideration of the functions of the Income Tax Officer that he is not a court within the meaning of S. 195 of the Code of Criminal Procedure. *Lalji Haridas* v. *State of Maharashtra*, AIR 1964 SC 1154, 1159: (1964) 6 SCR 700: (1964) 2 Cri LJ 249: (1964) 52 ITR 423: 66 Bom LR 460.

Bench Strength 5. Coram: **P.B. Gajendragadkar, C.J.**[1] and *A.K. Sarkar*[2], *K.N. Wanchoo*[1], **K.C. Das Gupta**[2] and *N. Rajagopala Ayyangar*[1], JJ. [Date of decision: 7-2-1964]

[8161] — S. 195(1)(b) — Proceeding in contemplation not a proceeding

A proceeding in contemplation cannot be said to be a proceeding in a court. *M.L. Sethi* v. *R.P. Kapur*, AIR 1967 SC 528, 533: (1967) 1 SCR 520: 1967 Cri LJ 528.

Bench Strength 3. Coram: *V. Ramaswami*, **V. Bhargava** and *Raghubar Dayal*, JJ. [Date of decision: 23-9-1966]

[8162] — S. 195(1)(b) — Proceedings need not be actually pending

Section 195(1)(*b*) does not require that the proceeding in any court must actually be pending at the time when the question of applying this bar arises. *M.L. Sethi* v. *R.P. Kapur*, AIR 1967 SC 528, 533: (1967) 1 SCR 520: 1967 Cri LJ 528.

Bench Strength 3. Coram: *V. Ramaswami*, **V. Bhargava** and *Raghubar Dayal*, JJ. [Date of decision: 23-9-1966]

[8163] — Ss. 195(1)(b), (2) and 6 — Expression "in relation to, any proceeding in any court" in Section 195(1)(b) — Meaning of — *On a complaint lodged with the police by the appellant against the accused, the Magistrate by bailing out the accused and ultimately by discharging him on the basis of a final report submitted by the police stating the complaint to be false, held, acted as a 'court' and hence proceeding before him fell within the expression "any proceeding in any court" — Subsequent complaint before the Magistrate, alleging that the appellant committed an offence under S. 211, IPC, having initiated a false case against him, held, was "in relation to" the earlier proceeding before the Magistrate's Court — Magistrate, therefore, held, barred under S. 195(1)(b) to take cognizance of the offence complained of by the accused in absence of any written complaint made by him. Kamlapati Trivedi* v. *State of W.B.*, (1980) 2 SCC 91: 1980 SCC (Cri) 347: AIR 1979 SC 777: 1979 Cri LJ 679.

Bench Strength 3. Coram: **Jaswant Singh**[1], **P.S. Kailasam**[2] and **A.D. Koshal**[3], JJ. [Date of decision: 13-12-1978]

[8164] — Ss. 195(1)(b), (c) and 476 — Expression "in or in relation to" — Meaning of — *Proceedings for release of accused on bail before one Magistrate and subsequent proceedings for prosecution of the accused by presentation of challan by police in the court of another magistrate, held, not distinct but stages of the same process — Offences under Ss. 205, 419, 465, 467 and 471, IPC committed by certain other accused involved in forging the bail bonds, discovered in the course of the subsequent proceedings, held, are "in relation to" proceedings in the court of the second magistrate — Hence, S. 195(1)(b) would not bar the second Magistrate from taking action under S. 476*

One 'D' was produced before 'L', a Judicial Magistrate (First Class), Akola, in connection with offences under S. 85(1) of the Bombay Prohibition Act. While in judicial custody, an application for releasing 'D', together with an affidavit, scribed by one 'M' and purportedly sworn in by one 'G' as a surety, were filed. The affidavit was sworn before a senior clerk of the court and the first respondent allegedly identified 'G' and attested that application for this purpose. The senior clerk accepted the affidavit and on that basis 'D' was released on bail. The case against 'D' was then transferred to the court of 'K', another Judicial Magistrate (First Class), Akola. But on the date of hearing 'D' having failed to appear, the Magistrate issued a non-bailable warrant of arrest and production against 'D' and a notice to the surety 'G'. Accordingly, 'G' appeared and filed a reply denying having either stood as a surety of 'D' or made the affidavit or signed the application or the affidavit. The Magistrate then conducted an inquiry as a result of which he was satisfied that 'G' was not the real surety. Later, 'M' made an application to the Magistrate stating that the real name of the surety was 'S', the second respondent. The Magistrate, therefore, summoned 'S' and recorded his admission that the bail application and the affidavit had been thumb marked by him at the instance of the first respondent and without any knowledge of the same. The Magistrate then made a complaint under S. 476 read with Section 195, CrPC, 1898 to the Judicial Magistrate (First Class), Akola for prosecution of the two respondents and 'M' in respect of offences under Ss. 205, 419, 465, 467 and 471, IPC. The complaint came up before 'P', Judicial Magistrate, who after holding an inquiry under S. 207-A, CrPC, 1898, and recording a finding that there was a prima facie case against all the accused, committed them for trial to the Court of Session. The Sessions Judge acquitted 'M' but convicted the two respondents under the aforesaid provisions of the Penal Code. On appeal, the High Court, held that the complete proceedings before the committing Magistrate were without jurisdiction since the proceedings before 'K' were not the same proceedings or continuation of the same proceedings which were before 'L', the previous Magistrate, in which or in relation to which the offence is said to have been committed within the meaning of Section 476 read with Section 195, CrPC, 1898.

Held :

The words "in or in relation to" which occur in cl. (*b*) of S. 195(1) are not repeated in clause (*c*). But these words occur in S. 476 both with reference to cl. (*b*) and cl. (*c*) of S. 195(1). If the two proceedings, one in which the offence is committed and the other, the final proceedings, in the same or a transferee Court are, in substance, different stages of the same integrated judicial process, the offence can be said to have been committed "in relation to" the proceedings before the court to whom the case was subsequently transferred or which finally tried the case.

While considering a bail application of a person accused of an offence under investigation of the police, the Magistrate acts as a 'court', the proceedings in the bail application being judicial proceedings. Thus in the instant case, the bail proceedings before the Magistrate 'L' were judicial proceedings before a court, although such proceedings took place at a stage when the offence against the accused, who was bailed out, was under police investigation. The very terms of the bail bonds (surety bond and personal bond) show that they were intended to be a preliminary part of the proceedings of inquiry or trial before the Magistrate commencing with the presentation of a charge-sheet under S. 173, CrPC against the accused. This being the real position, the bail proceedings before 'L' and the subsequent proceedings before 'K' commencing with the presentation of the challan by the police for the prosecution of 'D', could not be viewed as distinct and different proceedings but as stages in and parts of the same judicial process. Neither the time-lag between the order of bail and the challan, nor the fact that on presentation of the challan, the case was not marked to 'L' but was transferred under S. 192 of the Code, to 'K', would make any difference to the earlier and subsequent proceedings being parts or stages of the same integral whole. Indeed, the commission of the offences under Ss. 205, 419, 465, 467 and 471, Penal Code, came to light only when 'K', on the basis of the forged surety bond in question, attempted to procure the attendance of the accused. Thus the offences under the Penal Code could be said to have been committed "in or in relation to" the proceedings in the court of 'K', and therefore 'K' was competent to hold a preliminary inquiry under S. 476, CrPC and/or to make a complaint for prosecution of the respondents, herein, in respect of those offences. *State of Maharashtra* v. *Sk. Bannu*, (1980) 4 SCC 286: 1980 SCC (Cri) 951: AIR 1981 SC 22: 1980 Cri LJ 1280.

Bench Strength 2. Coram: **R.S. Sarkaria** and *O. Chinnappa Reddy*, JJ. [Date of decision: 12-9-1980]

— S. 195(1)(c) *See* Ss. 190, 195(1)(a) to (c)
See also Ss. 195(1)(a) to (c), 190
See also Ss. 195(1)(b), (c) and 476

[8165] — S. 195(1)(c) — Scope — Held, offence under S. 466, IPC is covered by the expression "offences described in S. 463 [IPC]"

Section 466 is an aggravated form of forgery in that the forgery should relate to a document specified in the section. One of the documents specified is a document purporting to be a record or proceeding of or in a court of justice. Section 466, is therefore an offence as described in S. 463 which is committed in relation to a record or proceeding of or in a court of justice. In S. 195(1)(*c*) the words used are "of any offence described in S. 463 or punishable under S. 471, S. 475 or S. 476 of the same Code". Thus, S. 466, Penal Code is covered by cl. (*b*) or (*c*) of S. 195(1). *S.L. Goswami (Dr.)* v. *High Court of M.P.*, (1979) 1 SCC 373: 1979 SCC (Cri) 311: AIR 1979 SC 437: 1979 Cri LJ 193.

Bench Strength 3. Coram: **P.S. Kailasam**, *D.A. Desai* and *A.D. Koshal*, JJ. [Date of decision: 23-11-1978]

[8166] — S. 195(1)(c) — Words "by a party to any proceeding in any court" occurring in — Omission of, in the corresponding provision of new CrPC of 1973 i.e. S. 195(1)(b)(ii) — *Object of, held, is to afford protection against vexatious prosecutions to witnesses also — CrPC, 1973, S. 195(1)(b)(ii)* (Paras 20 and 19). *Iqbal Singh Marwah* v. *Meenakshi Marwah*, (2005) 4 SCC 370: 2005 SCC (Cri) 1101: AIR 2005 SC 2119: (2005) 3 Mah LJ 530: 2005 Cri LJ 2161.

Bench Strength 5. Coram: *R.C. Lahoti, C.J.* and *B.N. Agrawal, H.K. Sema*, **G.P. Mathur** and *P.K. Balasubramanyan*, JJ. [Date of decision: 11-3-2005]

[8167] — S. 195(1)(c) — Presenting forged will before Patwari and mutation proceedings commenced on the strength of such will — *Requirement of S. 195(1)(c) — Penal Code, 1860, Ss. 464, 467 and 468*

The allegation of the complainant was that the appellants forged a will in the name of *K* and thereafter produced it either before the Patwari or the Tehsildar in the mutation proceedings commenced by them on the strength of the will. The forgery therefore was alleged to have been committed by the appellants not after they became parties to the mutation proceedings but prior to the commencement of those proceedings. Section 195(1)(*c*) can therefore have no application at least in regard to the offences under Ss. 464, 467 and 468, Penal Code. *Mohan Lal* v. *State of Rajasthan*, (1974) 3 SCC 628: 1974 SCC (Cri) 118: AIR 1974 SC 299: 1974 Cri LJ 350.

Bench Strength 2. Coram: *M.H. Beg* and **Y.V. Chandrachud**, JJ. [Date of decision: 21-11-1973]

[8168] — S. 195(1)(c) — Applicability — *Offence to be committed by party to a proceeding after he becomes such party — Material document neither produced nor given in evidence in the proceeding — S. 195(1)(c) inapplicable — On facts, trial under Ss. 418, 471 and 477-A, IPC could be proceeded with before the High Court under its original criminal jurisdiction — Companies Act, 1956, Ss. 397 and 398. Legal Remembrancer of Govt. of W.B.* v. *Haridas Mundra*, (1976) 1 SCC 555: 1976 SCC (Cri) 67: AIR 1976 SC 2225: (1976) 2 SCR 933: 1976 Cri LJ 1732.

Bench Strength 3. Coram: **P.N. Bhagwati**, *P.K. Goswami* and *N.L. Untwalia*, JJ. [Date of decision: 9-12-1975]

[8169] — S. 195(1)(c) — Object, construction and meaning — Words "such court" — Meaning of — *Party to a proceeding producing document in respect of which an offence is committed — Whether Magistrate can take cognizance of such an offence*

The object and purpose of S. 195(1)(*c*) is that it is the Court before which an offence is alleged to have been committed in respect of a document produced in a proceeding before it by a party to such proceeding, which should file or cause a complaint to be filed and not a private party.

The words "such court" used in S. 195(1)(*c*) of the Code mean the very court before which a party to a proceeding in that court has produced or tendered in evidence a document in respect of which the offence is alleged to have been committed. Clause (*c*) means that it is that court before which there is a proceeding and the party to such a proceeding is said to have committed an offence in respect of a document produced or tendered in evidence by him, on whose complaint the offence can be taken cognizance of.

Thus the proper construction of S. 195(1)(*c*) is that when a party to a proceeding before any court produces or tenders in evidence a document in respect of which an offence e.g. S. 471 read with S. 467, is alleged to have been committed, it is that court before which the document is produced in or tendered evidence which can file a complaint regarding such an offence and a Magistrate cannot take cognizance of such an offence except upon a complaint by such court or a court subordinate to it. *Nirmaljit Singh Hoon* v. *State of W.B.*, (1973) 3 SCC 753: 1973 SCC (Cri) 521: AIR 1972 SC 2639.

Bench Strength 3. Coram: **J.M. Shelat**[1], *I.D. Dua*[1] and **H.R. Khanna**[1&2], JJ. [Date of decision: 6-9-1972]

[8170] — S. 195(1)(c) — Offence committed by a party to any proceeding in a court — *Accused filing a copy of a forged document in a court — Prosecution under S. 471 IPC — S. 195(1)(c) does not apply — Complaint by the Court is not necessary*

From a plain grammatical construction of S. 195(1)(*c*) it is clear that a complaint by the Court is required where the offence is of forging or of using as genuine any document which is known or believed to be a forged document when such document is produced or given in evidence in court. It is clear therefore that it is only when the forged document is produced in court that a complaint by the Court is required. Where, however, what is produced before the Court is not the forged document itself, but its copy, S. 195(1)(*c*) will not apply on its terms. *Budhu Ram* v. *State of Rajasthan*, (1963) 3 SCR 376: (1963) 2 Cri LJ 698.

Bench Strength 3. Coram: *B.P. Sinha, C.J.* and **K.N. Wanchoo** and *J.C. Shah*, JJ. [Date of decision: 24-7-1962]

[8171] — S. 195(1)(c) — Prosecution for offences relating to documents given in evidence — *Forgery of sale deed — Duration of time between date of forgery and production of document in court — Whether governing factor in the matter*

The duration of time between the date of forgery and the production or giving in evidence of the forged document in court is not a governing factor.

The principle laid down in *Somabhai* case was not founded on any such consideration. Reference to such delay was made in that decision in another context. *Raghunath* v. *State of U.P.*, (1973) 1 SCC 564: 1973 SCC (Cri) 448: AIR 1973 SC 1100: 1973 Cri LJ 858.

Bench Strength 2. Coram: **I.D. Dua** and *C.A. Vaidialingam*, JJ. [Date of decision: 23-1-1973]

[8172] — S. 195(1)(c) — Scope — *Party producing forged document in judicial proceedings — Complaint by other party — Complaint by Civil Court necessary — Effect on proceeding — Scope of prohibition under S. 195(1)(c) — Requires offence to be committed after having become a party to proceeding — Construction in light of S. 476 necessary*

The allegation of commission of an offence in respect of a document produced or given in evidence in a proceeding in a Court; and (*ii*) the commission of such offence by a party to such proceeding. The use of the words "in respect of" in the first ingredient would seem to some extent to enlarge the scope of this clause. Judicial opinion, however, differs on the effect and meaning of the words "to have been committed by a party to any proceeding in any Court". As cl. (*b*) of S. 195(1) does not speak of offence committed by a party to the proceedings, while considering decision on that clause this distinction deserves to be borne in mind.

The underlying purpose of enacting Ss. 195(1)(*b*) and (*c*) and S. 476, seems to be to control the temptation on the part of the private parties considering themselves aggrieved by the offences mentioned in those sections to start criminal prosecutions on frivolous, vexatious, or insufficient grounds inspired by a revengeful desire to harass or spite their opponents. These offences have been selected for the court's control because of their direct impact on the judicial process. It is the judicial process, in other words the administration of public justice, which is the direct and immediate object or victim of those offence and it is only by misleading the courts and thereby perverting the due course of law and justice that the ultimate object of harming the private party is designed to be realised. As the purity of the proceedings of the court is directly sullied by the crime, the Court is considered to be the only party entitled to consider the desirability of complaining against the guilty party. The private party designed ultimately to be injured through the offence against the administration of public justice is undoubtedly entitled to move the court for persuading it to file the complaint. But such party is deprived of the general right recognised by S. 190, CrPC, of the aggrieved parties directly initiating the criminal proceedings. The offences about which the court alone, to the exclusion of the aggrieved private parties, is clothed with the right to complain may, therefore, be appropriately considered to be only those offences committed by a party to a proceeding in that court, the commission of which has a reasonably close nexus with the proceedings in that court so that it can, without embarking upon a completely independent and fresh inquiry, satisfactorily consider by reference principally to its records the expediency of prosecuting the delinquent party. It is more appropriate to adopt the strict construction of confining the prohibition contained in S. 196(1)(*c*) only to those cases in which the offences specified therein were committed by a party to the proceeding in the character as such party. Therefore, the Legislature could not have intended to extend the prohibition contained in S. 195(1)(*c*), CrPC, to the offences mentioned therein when committed by a party to a proceeding in that court prior to his becoming such party.

So the purpose and object of the Legislature in creating the bar against cognizance of private complaints in regard to the offences mentioned in Ss. 195(1)(*b*) and (*c*) is both to save the accused person from vexatious or baseless prosecutions inspired by feelings of vindictiveness on the part of the private complainants to harass their opponents and also to avoid confusion which is likely to arise on account of conflicts between findings of the courts in which forged documents are produced or false evidence is led and the conclusions of the criminal courts dealing with the private complaint. It is for this reason as suggested earlier, that the Legislature has entrusted the court, whose proceedings had been the target of the offence of perjury to consider the expediency, in the larger public interest, of a criminal trial of the guilty party. *Patel Laljibhai Somabhai* v. *State of Gujarat*, (1971) 2 SCC 376: 1971 SCC (Cri) 548: AIR 1971 SC 1935: 1971 Cri LJ 1437.

Bench Strength **3**. Coram: *S.M. Sikri*, *C.J.* and *P. Jaganmohan Reddy* and **I.D. Dua**, JJ. [Date of decision: 7-5-1971]

[8173] — S. 195(1)(c) — Scope and applicability — Forged document produced before the Sales Tax Officer — *Sales Tax Officer is not a Court under S. 195(1)(c) — No complaint under S. 195(6) CrPC, 1898 necessary for prosecution under S. 471 IPC — Penal Code, 1860, S. 471*

No doubt the Sales Tax Officers have certain powers which are similar to the powers exercised by court but still they are not courts as understood in S. 195 of the Criminal Procedure Code. A Sales Tax Officer is not a Court within the meaning of S. 195 of the Criminal Procedure Code and therefore it was not necessary for a Sales Tax Officer to make a complaint and the proceedings without such a complaint are not without jurisdiction. *Jagannath Prasad* v. *State of U.P.*, AIR 1963 SC 416: (1963) 2 SCR 850: (1963) 1 Cri LJ 330, 333: (1963) 14 STC 536.

Bench Strength **3**. Coram: **J.L. Kapur**, *K.C. Das Gupta* and *Raghubar Dayal*, JJ. [Date of decision: 3-5-1962]

[8174] — Ss. 195(1)(c), 476, 476-A and 476-B — Complaint against a person filing a forged document before Subordinate Judge I Class in respect of offences under Ss. 193 and 471 — *Subordinate Judge I Class transferred and replaced Subordinate Judge IV Class — On being asked to make a complaint he submitted the case to the District Judge who sent the case to Senior Subordinate Judge who made the complaint — Senior Subordinate Judge was neither the same court nor the Court to which the Court of Subordinate Judge I Class was subordinate. He had no jurisdiction to file the complaint — District Judge's Court was the Court to which the Court of Subordinate Judge I Class was subordinate and was competent to file the complaint*

The appellant filed a forged document in the Court of *A*, a Subordinate Judge I Class. After *A* was transferred *'B'* a Subordinate Judge IV Class, was posted in his place. The complainant filed an application before *B* requesting that a complaint under Ss. 193 and 471 IPC be filed against the appellant. Since *B* was a Subordinate Judge IV Class he thought that he was not a successor Court of *A* and referred the complaint to the District Judge who transferred the matter to the Senior Subordinate *C*, who made the complaint. The appellant filed an appeal against this order to the Court of District Judge who transferred it to the Court of Additional District Judge. Additional District Judge held that the senior Subordinate Judge *C* had no jurisdiction because he was not the successor of *A* and there was no prima facie case. In revision the High Court held that *C* had jurisdiction and there was a prima facie case. In revision the High Court held that *C* had jurisdiction and there was a prima facie case and set aside the order of the Additional District Judge and restored the order of *C*. The appellant came in appeal before the Supreme Court.

Held :

The Senior Subordinate Judge *C*, who made the complaint had no jurisdiction to make it, either as the original court which tried the suit or as the appellate authority under S. 476-B, CrPC. It is not enough that he also had I Class powers because he was not the same Court.

When the matter was reported to the District Judge by *B* the District Judge dealt with it. The District Judge was the appellate authority for the purposes of Ss. 476-A and 476-B CrPC. He had, therefore, authorised under S. 476-A either to make the complaint himself or reject the application. He did neither and instead sent the case to *C* who had no jurisdiction. He could have sent the case to the original Court or the successor Judge of that court if there was any, but he sent it to a court without jurisdiction and so his order was ineffective and the subsequent order of the Court *C* was without jurisdiction.

When the case came back to the District Judge in appeal he could act under S. 476-A, because the original court had not taken any action. Addl. District Judge who too had no jurisdiction to deal with the case because he was not a Judge of the District Court but was a separate court of his own. Therefore the order of the Additional District Judge was also without jurisdiction. *Kuldip Singh* v. *State of Punjab*, AIR 1956 SC 391: 1956 SCR 125: 58 Punj LR 595: 1956 Cri LJ 781, 785, 86.

Bench Strength 5. Coram: **Vivian Bose**, *B. Jagannadhadas, B.P. Sinha, Syed Jafer Imam* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 15-2-1956]

[8175] — Ss. 195(1)(c) and 476 — Offence under Ss. 467/109 IPC alleged by Additional District Judge in respect of a Will held to be executed under suspicious circumstances — *However, no finding given as to part played by the accused in respect of the offence — Held, such complaint deserves to be quashed. Har Gobind* v. *State of Haryana*, (1979) 4 SCC 482: 1980 SCC (Cri) 98: AIR 1979 SC 1760: 1979 Cri LJ 1334.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.S. Kailasam*, JJ. [Date of decision: 26-4-1979]

— S. 195(2) *See* Ss. 195(1)(b), (2) and 6

— S. 195(3) *See* Ss. 476, 476-B and 195(3)

See also Ss. 476-B and 195(3)

[8176] — Ss. 195(3) and 476-B — High Court by a notification authorising Senior Subordinate Judge to hear appeals against orders and decrees passed by Subordinate Judge — *Senior Subordinate Judge does not become appellate tribunal within the meaning of S. 195(3) — District Court must be regarded as appellate authority for purposes of S. 476-B — Punjab Courts Act, 1918 (6 of 1918), S. 39. Kuldip Singh* v. *State of Punjab*, AIR 1956 SC 391: 1956 SCR 125: 58 Punj LR 595: 1956 Cri LJ 781.

Bench Strength 5. Coram: **Vivian Bose**, *B. Jagannadhadas, B.P. Sinha, Syed Jafer Imam* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 15-2-1956]

[8177] — S. 195(3) — Subordinate court — Court of Additional District Magistrate if subordinate to High Court

The Court of the Additional District Magistrate would not seem to be subordinate to the High Court as provided by S. 195(3), CrPC. *Santokh Singh* v. *Izhar Hussain*, (1973) 2 SCC 406: 1973 SCC (Cri) 828: AIR 1973 SC 2190: (1974) 1 SCR 78: 1973 Cri LJ 1176.

Bench Strength 2. Coram: *K.K. Mathew* and **I.D. Dua**, JJ. [Date of decision: 25-4-1973]

[8178] — Ss. 195(3), 476, 476-A and 476-B — "Court subordinate to the Court" used in S. 195(3) — Meaning of

Subordination has been given a special meaning in S. 476-A. It is not the superior court that has jurisdiction, nor yet the court to which the "former court" is subordinate for, what might be termed, most general purposes, but only the Court to which it is subordinate within the meaning of S. 195(3) Criminal Procedure Code.

The question about the interpretation of S. 195(3) CrPC is to be viewed thus. The first question to be asked is whether any decrees, orders or sentences of the original court are appealable at all. If they are not and the Court is a civil court, then, under S. 195(3) the appeal against the order making or refusing to make a complaint will be to the principal court of ordinary original civil jurisdiction. If, however, appeals from its various decrees and orders lie to different courts, then it will have to be seen to which of them they ordinarily lie and select the one of the lowest grade from among them.

In determining the court or courts to which an appeal will ordinarily lie it will have to be seen which court or courts entertain appeals from that class of tribunal in the ordinary way apart from special notification or laws that lift the matter out of the general class.

It would be wrong to say that the nature of the proceedings in the case must be wholly ignored because sub-clause (*b*) to the proviso to sub-section (3) of S. 195 CrPC provides that where appeals lie to a civil court and also to a Revenue Court such court will be deemed to be subordinate to the civil court of Revenue Court according to the nature of the case of proceedings. Therefore to that limited extent the nature of the proceedings must be taken into account but once the genus of the proceedings is determined, namely whether Civil, Criminal or Revenue, the hierarchy of the superior courts for these purposes will be determined, first by the rule in third special cases and hit by the rule in S. 195(3). *Kuldip Singh* v. *State of Punjab*, AIR 1956 SC 391: 1956 SCR 125: 58 Punj LR 595: 1956 Cri LJ 781, 785, 86.

Bench Strength 5. Coram: **Vivian Bose**, *B. Jagannadhadas, B.P. Sinha, Syed Jafer Imam* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 15-2-1956]

[8179] — Ss. 195(3) and 476-B — Order of division bench of High Court — *Whether appeal lies to Supreme Court under S. 476-B — S. 476-B r/w S. 195(3) — True meaning of*

Right of appeal has been expressly conferred by S. 476-B provided there is a higher forum to which an appeal can be made; and the appellate forum has been designed in an artificial way. The appeal lies to the court to which the former Court is subordinate within the meaning of S. 195(3). But "subordinate" does not bear its ordinary meaning. It is used as a term of art and has been given a special meaning by reason of the definition in S. 195(3); a fiction has been imposed by the use of the word "deemed".

In case where the former court is a Division Bench of the High Court the only Court to which an appeal 'ordinarily' lies from the "appealable' decrees and sentences of a Division Bench of a High Court is the Supreme Court. Therefore, a Division Bench of a High Court is a court "subordinate" to the Supreme Court within the meaning of S. 195(3); accordingly an appeal lies to the Supreme Court from an order of a Division Bench under S. 476.

Before the Supreme Court can apply the definition given in S. 195(3) it has to see whether there is a class of decrees or sentences in the Court under consideration which are at all open to appeal. If there are not, the matter ends and there is no right of appeal under S. 476-B. If there are, then it has to see to which court those appeals will "ordinarily" lie. It is evident that the only 'Court' to which the 'appealable' decrees and sentences of a Division Bench of a High Court can lie is the Supreme Court. There is no other 'Court' to which an appeal can be made. It follows that there is the ordinary course in the case of all 'appealable' decrees and sentences and that consequently Supreme Court is the Court to which such appeals will ordinarily lie. *M.S. Sheriff* v. *State of Madras*, AIR 1954 SC 397: 1954 SCR 1144: 1954 Cri LJ 1019.

Bench Strength **5**. Coram: *M.C. Mahajan, C.J.* and *B.K. Mukherjea, S.R. Das,* **Vivian Bose** and *Ghulam Hasan,* JJ. [Date of decision: 18-3-1954]

— S. 196 *See* Ss. 190 and 195 to 199

[8180] — S. 196-A — Applicability — Prior consent of State Government or District Magistrate for initiation of proceeding — Requirement of — *Offence under S. 161 IPC may be punished with imprisonment up to three years — Punishment under S. 5(1)(d), Prevention of Corruption Act, 1947 shall not be less than one year, but may extend to seven years — Thus, conspiracy to commit either of the offences was punishable with imprisonment for a term exceeding two years' RI — Hence S. 196(2), held, not applicable in the instant case — Discretion of court in respect of said offences to award lesser sentence (below 2 years), held, would not support the defence plea as to applicability of S. 196(2) — Penal Code, 1860, Ss. 161 and 120-B — Prevention of Corruption Act, 1947, S. 5(1)(d) — Prevention of Corruption Act, 1988, S. 13(1)(d) — CrPC, 1973, S. 196(2)*

The conspiracy to commit either of the offences in question was punishable with imprisonment for a term exceeding two years' rigorous imprisonment and, therefore, Section 196(2) CrPC had no application because in respect of both the offences, the court had jurisdiction to pass a sentence of over two years' RI. The submission that it was permissible for the court to award simple imprisonment for any term subject to the maximum prescribed and, therefore, Section 196(2) was applicable, cannot be accepted. Equally without substance is the submission that the conspiracy alleged must be compulsorily punishable with rigorous imprisonment for a term exceeding two years, leaving no discretion in the court to pass a lesser sentence. (Para 3). *Shiv Nandan Dixit* v. *State of U.P.*, (2003) 12 SCC 636.

Bench Strength **2**. Coram: **N. Santosh Hegde** and *B.P. Singh*, JJ. [Date of decision: 19-12-2003]

[8181] — S. 196-A — Charge clearly of conspiracy to cheat by impersonation — *Sanction not necessary — CrPC, 1973, S. 196(2). Yash Pal Mittal* v. *State of Punjab*, (1977) 4 SCC 540: 1978 SCC (Cri) 5: AIR 1977 SC 2433: 1978 Cri LJ 189.

Bench Strength **3**. Coram: **P.K. Goswami**, *N.L. Untwalia* and *D.A. Desai*, JJ. [Date of decision: 3-11-1977]

[8182] — S. 196-A — Question whether charges which require sanction under S. 196-A can be tried along with charges not requiring such sanction and entire sanction is vitiated for want of sanction — *Not considered. Union of India* v. *Maj. I.C. Lala*, (1973) 2 SCC 72: 1973 SCC (Cri) 738: AIR 1973 SC 2204: (1973) 3 SCR 818: 1973 Cri LJ 1190.

Bench Strength **3**. Coram: **A. Alagiriswami**, *I.D. Dua* and *C.A. Vaidialingam*, JJ. [Date of decision: 29-3-1973]

[8183] — S. 196-A — Sanction for prosecution — Form and proof of — *Home Department's letter to the District Magistrate communicating that the Governor has been pleased to grant the sanction — There is a presumption that a sanction has been validly granted — Valid sanction is proved*

It is admitted that there is a document on the record which is a letter addressed by the Under Secretary to Government, Uttar Pradesh Department to the District Magistrate, Kanpur informing him that the Governor has been pleased to grant sanction to the initiation of proceedings. The document is an official communication emanating from the Home Department and addressed to the District Magistrate, Kanpur. A presumption would, therefore, arise that sanction to which reference has been made in the document, had in fact been accorded. Further, since the communication is an official one, a presumption would also arise that the official act to which reference has been made in the document was regularly performed. Therefore the document prima facie meets the requirements of S. 196-A of the Code of Criminal Procedure. *Tulsi Ram* v. *State of U.P.*, AIR 1963 SC 666: 1963 Supp (1) SCR 382: (1963) 1 Cri LJ 623: ILR (1963) 1 All 840.

Bench Strength **4**. Coram: *Syed Jafer Imam, K. Subba Rao, N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 27-9-1962]

[8184] — S. 196-A — Sanction for prosecution for certain types of criminal conspiracies — Absence of sanction — *Plea not raised in the trial Court or before the High Court in appeal — Plea is barred in the Supreme Court*

The question whether a sanction had been granted under S. 196-A CrPC is a question of fact which ought to have been urged at the trial and before the High Court. It is impossible in the Supreme Court in special leave case to go into this question of fact. *Kanta Prashad* v. *Delhi Admn.*, AIR 1958 SC 350: 1958 SCR 1218: 1958 Cri LJ 698.

Bench Strength **2**. Coram: *B.P. Sinha* and **Syed Jafer Imam**, JJ. [Date of decision: 6-2-1958]

[8185] — S. 196-A — Sanction for prosecution under S. 120-A IPC — *Complaint disclosing an offence of abetment by conspiracy — No sanction under S. 196-A is necessary*

Though expression "criminal conspiracy" was used in the complaint, but it disclosed an offence by abetment of conspiracy for which no sanction under S. 196-A CrPC was necessary. The Magistrate was, therefore, right in taking cognizance of the offence without sanction under S. 196-A and there was no violation of the provisions of the section. *Pramatha Nath Talukdar* v. *Saroj Ranjan Sarkar*, AIR 1962 SC 876: 1962 Supp (2) SCR 297: (1962) 1 Cri LJ 770.

Bench Strength **3**. Coram: **S.K. Das**[1], **J.L. Kapur**[2] and *M. Hidayatullah*[2], JJ. [Date of decision: 21-12-1961]

[8186] — S. 196-A — Sanction for prosecution under S. 120-A IPC — "Criminal conspiracy" mentioned in the heading of complaint — *Allegations in the complaint should be examined to find if consent under S. 196-A is necessary. Pramatha Nath Talukdar* v. *Saroj Ranjan Sarkar*, AIR 1962 SC 876: 1962 Supp (2) SCR 297: (1962) 1 Cri LJ 770.

Bench Strength **3**. Coram: **S.K. Das**[1], **J.L. Kapur**[2] and *M. Hidayatullah*[2], JJ. [Date of decision: 21-12-1961]

[8187] — S. 196-A — Sanction under — *Sanction in case of offence under S. 5 of Prevention of Corruption Act is not required*

The offences under Ss. 161, 165 and 165-A of the Indian Penal Code and S. 5 of the Prevention of Corruption Act are cognizable offences and there is no question of their being cognizable if investigated by a Deputy Superintendent of Police and non-cognizable when investigated by an Inspector of Police. Nor can there be any question of those offences being cognizable if they are investigated under S. 156 of the CrPC but not when investigated in accordance with the provisions of S. 5-A of the Prevention of Corruption Act. The question, therefore, of the need for a sanction under S. 196-A does not arise. Consequently, the need to order reinvestigation or to begin the trial again after the sanction under S. 196-A is obtained, and the consequent inordinate delay and harassment of the officers concerned, reasons that weighed with the learned Single Judge for quashing the charges, does not arise. *Union of India* v. *Maj. I.C. Lala*, (1973) 2 SCC 72: 1973 SCC (Cri) 738: AIR 1973 SC 2204: (1973) 3 SCR 818: 1973 Cri LJ 1190.

Bench Strength **3**. Coram: **A. Alagiriswami**, *I.D. Dua* and *C.A. Vaidialingam*, JJ. [Date of decision: 29-3-1973]

[8188] — S. 196-A(2) — Requirement under — *Authorisation obtained by Assistant Collector of Customs for prosecution under S. 120-B, Penal Code, read with Item 81, Schedule to S. 167, Sea Customs Act, 1878, read with Imports and Exports (Control) Act, 1947, held, not improper where such officer was not holding authorisation envisaged by S. 187-A, Sea Customs Act, 1878 — No such requirement can be read into S. 196-A, Criminal Procedure Code, 1898 — Customs Act, 1962, S. 137 — CrPC, 1973, S. 196(2). S.N. Banerjee* v. *Babulal Gupta*, (1979) 2 SCC 390: 1979 SCC (Cri) 507: AIR 1979 SC 1526: 1979 Cri LJ 950.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and **A.D. Koshal**, JJ. [Date of decision: 12-4-1979]

[8189] — S. 196-A(2) — Commission of non-cognizable offences committed while cheating (IPC 1860, S. 420) — Sanction if necessary

No sanction is necessary, under S. 196-A(2) CrPC, when the object of the conspiracy is to commit the offence of cheating (420 IPC), but forgery of documents (467 IPC) and similar non-cognizable offences are also committed as merely steps taken, by one or other of the accused, for the purpose of effecting the main object of the conspiracy. A trial under such circumstances, for offences under S. 120-B, read with Ss. 467/471 and 420 IPC, without obtaining sanction, is neither illegal, nor void.

It is necessary to keep in mind the difference between the object of a conspiracy and the means adopted for realising that object. Even if the object of the conspiracy viz. of cheating, is sought to be attained by resort to non-cognizable offences, sanction under S. 196-A of the Code is not necessary.

The object of the conspiracy has to be determined, not only by reference to the sections of the penal enactment, referred to in the charge, but on a reading of the charges themselves. *Bhanwar Singh* v. *State of Rajasthan*, AIR 1968 SC 709, 713: (1968) 2 SCR 528: 1968 Cri LJ 867.

Bench Strength **2**. Coram: *M. Hidayatullah* and **C.A. Vaidialingam**, JJ. [Date of decision: 5-12-1967]

[8190] — S. 196-A(2) — Consent — *Offence primarily and essentially of abetment of forgery and of false impersonation — Charge-sheet — No reference to offence of conspiracy — Magistrate later considering charge under S. 120-B at the time of passing of committal order — Magistrate did not take cognizance of offence of criminal conspiracy — Consent under S. 196-A(2) was not necessary*

Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon a police report, prima facie he does so of the offence or offences disclosed in such report.

It is clear from the charge-sheet submitted to the Magistrate that the offence of criminal conspiracy was not even referred to. The offence "primarily and essentially" alleged therein was one of abetment of forgery under Ss. 468 and 471 and of false impersonation under S. 419 read with S. 109. It cannot be disputed that the charge-sheet also prima facie disclosed the offence of abetment. It was only at a later stage i.e. at the time of passing the committal order that he considered that a charge under S. 120-B was the more appropriate charge and not a charge under S. 109 of the Penal Code. That being so, it must be held that the Magistrate took cognizance of the offence of abetment of an offence of forgery and impersonation so far as the appellant was concerned and not of the offence of criminal conspiracy. That being so, it is impossible to sustain the argument that the Magistrate took cognizance of the offence under S. 120-B, and, therefore, consent under S. 196-A(2) was required as a condition precedent or that the committal order and the proceedings of committal which he took were vitiated for want of such consent. *Darshan Singh Ram Kishan* v. *State of Maharashtra*, (1971) 2 SCC 654: 1971 SCC (Cri) 628: AIR 1971 SC 2372: 1971 Cri LJ 1697.

Bench Strength **3**. Coram: **J.M. Shelat**, *I.D. Dua* and *S.C. Roy*, JJ. [Date of decision: 2-9-1971]

[8191] — S. 196-A(2) — Criminal conspiracy — Sanction for prosecution — Necessity of — *No sanction necessary when the object of conspiracy is to commit the cognizable offence of cheating even though offences of forgery and other non-cognizable offences are committed for effecting the main object of conspiracy*

The case of the prosecution was that Bhanwar Singh and Kapoorchand were constables in the CID, Ajmer Zone, during 1956-57. In the course of their duties of censoring postal mail, these two constables, after having opened the mail, for the purpose of censoring pilfered certain Indian Postal Orders and British Postal Orders and cheques and, after erasing the names of the original payees, as also the names of the post offices or banks, where payment was to be made, inserted their own names or some fictitious names and got the postal orders or cheques encashed at different post offices and banks. Bhanwar Singh and Kapoorchand had entered into a conspiracy, with Kishanlal and Yasoda Devi, whose services were utilised for getting the moneys from the banks. On investigation, the four accused were charged and convicted.

All the four accused challenged their conviction, for these offences and the sentences passed against them contending that the trial held by the Sessions Judge was illegal and void, inasmuch as the prosecution had been conducted, without, obtaining the necessary sanction, under S. 196-A of the Code of Criminal Procedure, in respect of the charge under Ss. 467 and 471 read with S. 120-B IPC.

The only object of the conspiracy was to cheat the bank or the post offices, which is an offence under S. 420 read with S. 120-B IPC for which no sanction is necessary, the sanction for prosecution is not necessary even though there are also charges of committing forgery of valuable security and using such forged documents which are offences under Ss. 467 and 471 and non-cognizable. *Bhanwar Singh* v. *State of Rajasthan*, AIR 1968 SC 709: (1968) 2 SCR 528: 1968 Cri LJ 867, 870, 871.

Bench Strength **2**. Coram: *M. Hidayatullah* and **C.A. Vaidialingam**, JJ. [Date of decision: 5-12-1967]

[8192] — S. 196-A(2) — Sanction for trial — *Sanction of Government is necessary for trial under S. 120-B for conspiracy to commit offences under Ss. 466 and 467 IPC*

Offences under Ss. 466 and 467 are admittedly non-cognizable and, therefore, it would seem from the plain language of sub-section (2) that for the offences under S. 120-B read with Ss. 466 and 467, IPC the sanction of the Government will be necessary. *State of A.P.* v. *Kandimalla Subbaiah*, AIR 1961 SC 1241: (1962) 1 SCR 194: (1961) 2 Cri LJ 302.

Bench Strength 3. Coram: *B.P. Sinha, C.J.* and **J.R. Mudholkar** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 8-3-1961]

[8193] — S. 196-A(2) — Scope of S. 196-A — Accused tried for offence under Ss. 120-B, 409 & 277-A IPC — *No sanction for prosecution under S. 120-B obtained — Trial under S. 409 Penal Code not vitiated — Conviction under S. 409 is valid — Conviction valid also because accused not prejudiced*

The conspiracy to commit an offence is by itself distinct from the offence to do which the conspiracy is entered into. Such an offence, if actually committed, would be the subject-matter of a separate charge. If that offence does not require sanction though the offence of conspiracy does and sanction is not obtained it would appear that the Court can proceed with the trial as to the substantive offence as if there was no charge of conspiracy.

Where there was not a charge for conspiracy under S. 120-B but also two other separate charges for offences under Ss. 409 and 477-A IPC alleged to have been committed in the pursuance of the conspiracy, the charge under S. 120-B required sanction in view of S. 196-A CrPC no such sanction was necessary in respect of the charge under S. 409. The fact that sanction was not obtained in respect of the complaint under S. 120-B did not vitiate the trial on the substantive charge under S. 409. No prejudice could be said to have resulted in view of the appellant's confession that he had in fact misappropriated Rs 2,500 and was prepared to deposit that amount. *Madan Lal* v. *State of Punjab*, AIR 1967 SC 1590: (1967) 3 SCR 439: 1967 Cri LJ 1401, 1403-0.

Bench Strength 2. Coram: *R.S. Bachawat* and **J.M. Shelat**, JJ. [Date of decision: 5-4-1967]

— S. 197 *See* Ss. 190 and 195 to 199

See also Ss. 537 and 197

[8194] — S. 197 — Held, not discriminatory — Government in giving sanction does not discriminate between one government servant and the other — *Person to whom no permission given cannot complain on the ground of discrimination — Constitution of India — Art. 14*

Article 14 does not render S. 197, Criminal Procedure Code, "ultra vires" as the discrimination is based upon a rational classification.

Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard.

There is no question of any discrimination between one person and another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction. If the Government gives sanction against one public servant but declines to do so against another, then the government servant against whom sanction is given may possibly complain of discrimination. *Matajog Dobey* v. *H.C. Bhari*, AIR 1956 SC 44, 48: (1955) 2 SCR 925, 931: (1955) 28 ITR 941: 1956 Cri LJ 140.

Bench Strength 5. Coram: *S.R. Das, Vivian Bose, B. Jagannadhadas, Syed Jafer Imam* and **N. Chandrasekhara Aiyar**, JJ. [Date of decision: 31-10-1955]

[8195] — S. 197 — "Offence committed in discharge of official duty" — Test — *Held, there must be direct and reasonable nexus between the offence committed and the discharge of official duty — Charge of dishonest misappropriation or conversion of goods by Customs Authorities which they had seized and held in trust — The act, held, not in discharge of official duty — Hence, sanction under S. 197 not required — Accused must act in his official capacity so far as entrustment is concerned to attract S. 409, IPC, and for subsequent act of misappropriation or conversion, he need not be in his official capacity — CrPC, 1973, S. 197. B. Saha* v. *M.S. Kochar*, (1979) 4 SCC 177: 1979 SCC (Cri) 939: AIR 1979 SC 1841: 1979 Cri LJ 1367: (1979) 16 ACC 318.

Bench Strength 3. Coram: **R.S. Sarkaria**, *P.N. Shinghal* and *O. Chinnappa Reddy*, JJ. [Date of decision: 27-7-1979]

[8196] — S. 197 — Sanction under — Question in this regard can be raised at any stage of the proceedings — *Court can go beyond the allegations in the complaint to consider the question — Material on record up to the stage when question of want of sanction was raised, considered — CrPC, 1973, S. 197*

The question of sanction under S. 197, Criminal Procedure Code can be raised and considered at any stage of the proceedings. Further, in considering the question whether or not sanction for prosecution was required, it is not necessary for the Court to confine itself to the allegations in the complaint, and it can take into account all the material on the record at the time when the question is raised and falls for consideration.

No copy of the statements of the complainant and the SDM recorded in proceedings preliminary to the issue of process having been furnished before the Court, the contention regarding false allegations in the complaint does not stand.

Although precise and detailed particulars were not given in the complaint, some foundation for the allegation that the goods in question had been misappropriated by the appellants some time after their seizure and before their deposit in the Customs House had been laid during the preliminary enquiry made by the Magistrate. *B. Saha* v. *M.S. Kochar*, (1979) 4 SCC 177: 1979 SCC (Cri) 939: AIR 1979 SC 1841: 1979 Cri LJ 1367: (1979) 16 ACC 318.

Bench Strength 3. Coram: **R.S. Sarkaria**, *P.N. Shinghal* and *O. Chinnappa Reddy*, JJ. [Date of decision: 27-7-1979]

[8197] — S. 197 — Prosecution of public servant for conspiracy and bribery — *Sanction under S. 197, CrPC, 1898 whether necessary — Penal Code, 1860 — Ss. 161 and 120-B*

Sanction under S. 197, CrPC is not necessary where proceedings are instituted against a public servant on charges of conspiracy and bribery. *Ronald Wood Mathams* v. *State of W.B.*, AIR 1954 SC 455: (1955) 1 SCR 216: 1954 Cri LJ 1161, 1164.

Bench Strength 5. Coram: *M.C. Mahajan, C.J.* and *S.R. Das, N.H. Bhagwati, B. Jagannadhadas* and **T.L. Venkatarama Aiyar**, JJ. [Date of decision: 22-4-1954]

H.H.B. Gill v. King, AIR 1948 PC 128 and Phanindra Chandra Neogy v. King, AIR 1949 PC 117, approved.

See also cases under S. 409, IPC

[8198] — S. 197 — Applicability — Entrustment and/or dominion in capacity as public servant — Disposal lawful or otherwise not possible save by an act done or purporting to be done in his official capacity — *S. 197, CrPC, 1898 applies, sanction was necessary and trial is vitiated in its absence — Penal Code, 1860 — S. 409*

If S. 197, CrPC is construed too narrowly it can never be applied, for of course it is not part of an official's duty to commit an offence and never can be. But it is not the duty to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. Section 197 has content and its language must be given meaning. *Shreekantiah Ramayya Munipalli* v. *State of Bombay*, AIR 1955 SC 287: (1955) 1 SCR 1177: 1955 Cri LJ 857.

Bench Strength 3. Coram: *B.K. Mukherjea* and *S.R. Das*, **Vivian Bose**, JJ. [Date of decision: 22-12-1954]

See also 1954 Cri LJ 1161: AIR 1954 SC 455; 1956 Cri LJ 140: AIR 1956 SC 44; and AIR 1966 SC 220: 1966 Cri LJ 179

[8199] — S. 197 — Obstruction — Use of force — Prosecution of officials — Need for sanction under S. 197 — *Income Tax — Search and Seizure*

Under Ss. 6(7) and 6(9) and R. 8 of the Taxation on Income (Investigation Commission) Act, 1947, Warrants of Authorisation were issued to four Authorised Officials to enter and search P-17 Kalakar Street and 36 Armenian Street and seize account books and documents found there. When the officials reached the premises, a darwan offered resistance at the former place and the proprietor at the latter. A scuffle ensued in which the darwan got two ecchymosis and the proprietor a couple of abrasions and a swelling. Complaints were lodged under Ss. 109, 323, 341, 342 and 504, IPC. The accused objected to the prosecution proceeding, in the absence of sanction under S. 197, CrPC. The objection was upheld and all the accused were discharged by the Presidency Magistrate.

Held :

No question of sanction can arise under S. 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What we must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation.

It is not correct to say that when obstruction is laid or resistance offered against an authorised and therefore lawful search, the officials conducting the search have no right to remove or cause to be removed the obstruction or resistance by the employment of reasonable force, and their remedy is only to resort to the police or the magistracy with a complaint. Such a view would frustrate the due discharge of the official duty and defeat the very object of the search, as the books, etc. might be secreted or destroyed in the interval; and it would encourage obstruction or resistance even to lawful acts. It may be that more than reasonable force is used to clear the obstruction or remove the resistance, but that would be a fit subject matter for inquiry during the proceedings; it would not make the act of removal improper or unlawful. *Matajog Dobey* v. *H.C. Bhari*, AIR 1956 SC 44: (1955) 2 SCR 925: (1955) 28 ITR 941, 948: 1956 Cri LJ 140.

Bench Strength 5. Coram: *S.R. Das, Vivian Bose, B. Jagannadhadas, Syed Jafer Imam* and **N. Chandrasekhara Aiyar**, JJ. [Date of decision: 31-10-1955]

[8200] — S. 197 — Accused Government servant ceasing to be so when cognizance taken — *No previous sanction under the section is necessary for the prosecution of a magistrate if he had ceased to be a Magistrate at the time of the taking of the cognizance of the offence committed*

No previous sanction is necessary for a court to take cognizance of an offence committed by a Magistrate while acting or purporting to act in the discharge of his official duty if he had ceased to be a Magistrate at the time the complaint is made or police report is submitted to the Court i.e. at the time of the taking of cognizance of the offence committed. *Keshavlal Mohanlal Shah* v. *State of Bombay*, AIR 1961 SC 1395: (1962) 1 SCR 451: (1961) 2 Cri LJ 571.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 17-3-1961]

[8201] — S. 197 — Connection of offence with discharge of duties — Whether sanction is required will depend on the facts of each case

If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under S. 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required.

Whether sanction is necessary to prosecute a public servant on a charge of criminal misappropriation, will depend on whether the acts complained of hinge on his duties as a public servant. If they do, then sanction is requisite. But if they are unconnected with such duties, then no sanction is necessary. *Amrik Singh* v. *State of Pepsu*, AIR 1955 SC 309: (1955) 1 SCR 1302: 1955 Cri LJ 865, 867.

Bench Strength **3**. Coram: *S.R. Das, N.H. Bhagwati* and **T.L. Venkatarama Aiyar**, JJ. [Date of decision: 28-2-1955]

[8202] — S. 197 — Object, nature and scope — Nature of offence — Tests — Government's sanction when called for

The intention behind S. 197, CrPC is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in the execution of duty.

The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of his duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the "capacity in which the act is performed", "cloak of office" and "professed exercise of office" may not always be appropriate to describe or delimit the scope of the section. An act, merely because it was done negligently, does not cease to be one done or purporting to be done in execution of a duty.

Thus, there must be a reasonable connection between the act and the discharge of official duty, the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim that he did it in the course of the performance of his duty.

The mere fact that the accused proposes to raise a defence of the act having purported to be done in execution of duty would not in itself be sufficient to justify the case being thrown out for want of sanction. Facts subsequently coming to light during the course of the judicial inquiry or during the course of the prosecution evidence at the trial may establish the necessity for sanction. Whether sanction is necessary or not may have to depend from stage to stage. The necessity may reveal itself in the course of the progress of the case. It would be open to the accused to place the material on record during the course of the trial for showing what his duty was and also that the acts complained of were so interrelated with his official duty so as to attract the protection afforded by S. 197, CrPC. *Pukhraj* v. *State of Rajasthan*, (1973) 2 SCC 701: 1973 SCC (Cri) 944: AIR 1973 SC 2591: 1973 Cri LJ 1795: (1974) 1 SCR 559.

Bench Strength **2**. Coram: *H.R. Khanna* and **A. Alagiriswami**, JJ. [Date of decision: 29-8-1973]

[8203] — S. 197 — "Discharge of official duty" — Test — *Postmaster General visiting a post office for inspection — A clerk working there requesting for cancellation of his transfer — P.M.G. abusing and kicking the clerk — Clerk lodging a complaint against P.M.G. under Ss. 323 and 504, IPC — P.M.G. filing application under S. 197 — Held, alleged act of abusing and kicking cannot be said to be in purported exercise of his duty — Hence court can take cognizance of the offence without sanction of Government. Pukhraj* v. *State of Rajasthan*, (1973) 2 SCC 701: 1973 SCC (Cri) 944: AIR 1973 SC 2591: 1973 Cri LJ 1795: (1974) 1 SCR 559.

Bench Strength **2**. Coram: *H.R. Khanna* and **A. Alagiriswami**, JJ. [Date of decision: 29-8-1973]

[8204] — S. 197 — Expression "acting or purporting to act in the discharge of official duties" — Meaning of — *H certifying a false claim of accused knowing it to be false and thereby abetting offence of cheating — Sanction for prosecution under the section is not necessary*

Per Imam, J.

Some offences cannot by their very nature be regarded as having been committed by public servants while acting or purporting to act in the discharge of their official duty. For instance, acceptance of a bribe, and offence punishable under S. 161 of the Indian Penal Code, is one of them and the offence of cheating or abetment thereof is another. Supreme Court has no hesitation in saying that where a public servant commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offences have no necessary connection between them and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offences. *H* was not prosecuted for any offence concerning his act of certification. He was prosecuted for abetting the accused to cheat. His offence was not one committed by him while acting or purporting to act in the discharge of his official duty. Therefore provisions of S. 197 of the Code are inapplicable even if *H* be regarded as a public servant who was removable from his office by the Governor-General in Council or a Provincial Government.

Per Kapur, J.

The evidence to support the plea under S. 197 and to establish the requisite nexus between the act done by *H* and the scope and extent of his duties is lacking and therefore the applicability of S. 197 to the facts of the case is not proved. *K. Satwant Singh* v. *State of Punjab*, AIR 1960 SC 266: (1960) 2 SCR 89: 1960 Cri LJ 410, 13 to 1.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.*[1] and **Syed Jafer Imam**[1], **J.L. Kapur**[1], *K.N. Wanchoo*[1] and *K.C. Das Gupta*[1], JJ. [Date of decision: 28-10-1959]

[8205] — S. 197 — Facts constituting offence to be shown on the face of the sanction — *Otherwise prosecution to prove by extraneous evidence that those facts were placed before the sanctioning authority*

The burden of providing that the requisite sanction has been obtained rests on the prosecution, and such burden includes proof that the sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution was to be based; and these facts might appear on the face of the sanction or might be proved by extraneous evidence. *Madan Mohan Singh* v. *State of U.P.*, AIR 1954 SC 637, 641: 1954 Cri LJ 1656.

Bench Strength **3**. Coram: **B.K. Mukherjea**, *Vivian Bose* and *Ghulam Hasan*, JJ. [Date of decision: 7-5-1954]

Gokul Chand Dwarkadas Morarka v. King, 75 IA 30: AIR 1948 PC 82 approved; 1963 Supp 2 SCR 652: (1964) 2 Cri LJ 65, followed

[8206] — S. 197 — Failure to obtain sanction

Where on the facts, S. 197(1) is applicable and sanction is essential, failure to obtain such sanction is fatal to the maintainability of the conviction. *Amrik Singh* v. *State of Pepsu*, AIR 1955 SC 309: (1955) 1 SCR 1302: 1955 Cri LJ 865, 867.

Bench Strength **3**. Coram: *S.R. Das, N.H. Bhagwati* and **T.L. Venkatarama Aiyar**, JJ. [Date of decision: 28-2-1955]

[8207] — S. 197 — Failure to obtain sanction not to affect co-accused not a Government servant — *Accused a contractor tried up to certain stage with an officer of Government — Accused charged under S. 420 IPC and officer charged for abetment of the offence — Trial of accused not bad if the officer was being tried without sanction*

The appellant was not a Government servant, but only an independent contractor, and in his case, therefore, there was no question of any sanction of the Central Government being obtained under S. 197 of the Code of Criminal Procedure. His trial would, therefore, be unaffected by the want of sanction of the Central Government for the prosecution of. *Bakhshish Singh Dhaliwal* v. *State of Punjab*, AIR 1967 SC 752: (1967) 1 SCR 211: 1967 Cri LJ 656.

Bench Strength **3**. Coram: *V. Ramaswami*, **V. Bhargava** and *Raghubar Dayal*, JJ. [Date of decision: 31-8-1966]

[8208] — S. 197 — Imports and Exports (Control) Act, 1947, S. 6 — Principles under S. 197 held not applicable. *Electrical Mfg. Co. Ltd.* v. *D.D. Bhargava*, AIR 1968 SC 247: (1968) 1 SCR 394: 1968 Cri LJ 236.

Bench Strength **3**. Coram: *M. Hidayatullah, V. Bhargava* and **C.A. Vaidialingam**, JJ. [Date of decision: 30-8-1967]

[8209] — S. 197 — Object and purpose of — *Sanction for prosecution of public servant for offence committed in discharge of official duty — Public servant charged with having used defamatory and abusive words — Sanction for prosecution — Necessity — Relation between the act and discharge of official duty*

The object and purpose underlying this section is to afford protection to public servants against frivolous, vexatious or false prosecution for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty. The larger interest of efficiency of State administration demands that public servants should be free to perform their official duty fearlessly and undeterred by apprehension of their possible prosecution at the instance of private parties to whom annoyance or injury may have been caused by their legitimate acts done in the discharge of their official duty. This section is designed to facilitate an effective and unhampered performance of their official duty by public servants by providing for scrutiny into the allegations of commission of offence by them by their superior authorities and prior sanction for their prosecution as a condition precedent to the cognizance of the cases against them by the courts. It is neither to be too narrowly construed nor too widely. Too narrow and pedantic construction may render it otiose for it is no part of an official duty — and never can be — to commit an offence. It is not the "duty" which requires examination so much as the "act" because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. One must also guard against too wide a construction because in our constitutional set-up, the idea of legal equality or of universal subjection of all citizens to one law administered by the ordinary courts has been pushed to its utmost limits by enshrining equality before the law in our fundamental principles. Broadly speaking, with us no man, whatever his rank or condition is above the law and every official from the highest down to the lowest is under the same responsibility for every act done without legal justification as any other citizen. In construing S. 197, CrPC, therefore, a line has to be drawn between the narrow inner circle of strict official duties and acts outside the scope of official duties. The principle embodied in this section seems to be well understood; the difficulty normally lies in its application to the facts of a given case. The question whether a particular act is done by a public servant in the discharge of his official duty is substantially one of fact to be determined on the circumstances of each case. *Bhagwan Prasad Srivastava* v. *N.P. Mishra*, (1970) 2 SCC 56: 1970 SCC (Cri) 292: AIR 1970 SC 1661: 1970 Cri LJ 1401.

Bench Strength **2**. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 20-4-1970]

[8210] — S. 197 — Object of sanction for prosecution — *Object is that the sanctioning authority is able to consider the evidence and conclude if prosecution be sanctioned or forbidden*

The object of the provision for sanctions is that the authority giving the sanction should be able to consider for itself the evidence before it comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden. *Jaswant Singh* v. *State of Punjab*, AIR 1958 SC 124: 1958 SCR 762: 1958 Cri LJ 265, 267, 68: (1958) 2 LLJ 269.

Bench Strength **2**. Coram: *B.P. Sinha* and **J.L. Kapur**, JJ. [Date of decision: 25-10-1957]

[8211] — S. 197 — Offence committed in private capacity — *Hawkers threatening to trespass over complainant's land — Police asking the hawkers not to commit trespass — Accused a Deputy Superintendent of Police coming to the land threatening the complainant and asking the hawkers to trespass over the land — Held, accused not acting in discharge of his Official duties — Sanction under the section not necessary. Prabhakar V. Sinari* v. *Shanker Anant Verlekar*, AIR 1969 SC 686: (1969) 2 SCR 1013: 1969 Cri LJ 1057, 60: (1969) 2 MLJ 1 (SC).

Bench Strength **2**. Coram: *J.C. Shah* and **A.N. Grover**, JJ. [Date of decision: 29-11-1968]

[8212] — S. 197 — Offence under Ss. 120-B & 409 IPC and S. 5(2) of Prevention of Corruption Act — *Whether acts complained of concerned with the official duties of a public servant — Sanction for prosecution — Whether necessary*

Sanction for prosecutions under S. 197(1) of the Code of Criminal Procedure, 1898 (5 of 1898) is required if the act complained of is directly concerned with the performance of the official duties by a public servant. The real question for determination while examining the question of sanction under S. 197(1) in a particular case is whether the acts complained of were directly concerned with the official duties of the accused in their capacity as public servants. As far as the offence of criminal conspiracy punishable under S. 120-B, read with S. 409 of the Penal Code is concerned and also S. 5(2) of the Prevention of Corruption Act are concerned they cannot be said to be of the nature mentioned in S. 197 of the Code of Criminal Procedure. It is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under S. 197 of the Code of Criminal Procedure is, therefore, no bar to a prosecution under S. 120-B, read with S. 409 of the Penal Code. *Harihar Prasad* v. *State of Bihar,* (1972) 3 SCC 89: 1972 SCC (Cri) 409: 1972 Cri LJ 707.

Bench Strength **2**. Coram: *J.M. Shelat* and **S.C. Roy**, JJ. [Date of decision: 7-9-1971]

[8213] — S. 197 — Power to grant sanction — Vests absolutely in the Government — *Court has no jurisdiction in the matter — Court should examine whether it can take cognizance of a case without necessary sanction if no sanction exists*

The Court has to find out if the act complained against was committed by the accused while acting or purporting to act in the discharge of official duty. Once this is settled, the case proceeds or is thrown out.

Whether sanction is to be accorded or not is a matter for the Government to consider. The absolute power to accord or withhold sanction conferred on the Government is irrelevant and foreign to the duty cast on the Court, which is the ascertainment of the true nature of the act. *Matajog Dobey* v. *H.C. Bhari*, AIR 1956 SC 44: (1955) 2 SCR 925: (1955) 28 ITR 941: 1956 Cri LJ 140, 143, 45.

Bench Strength **5**. Coram: *S.R. Das, Vivian Bose, B. Jagannadhadas, Syed Jafer Imam* and **N. Chandrasekhara Aiyar**, JJ. [Date of decision: 31-10-1955]

[8214] — S. 197 — Prevention of Corruption Act, 1947 — S. 6 — Effect on construction of

Section 6, must be construed with reference to the words used therein independent of any construction which may have been placed by these decisions on the words used in S. 197 of the Code. *S.A. Venkataraman* v. *State*, AIR 1958 SC 107, 110: 1958 SCR 1040: (1958) 2 LLJ 1: 1958 Cri LJ 254.

Bench Strength **3**. Coram: *B.P. Sinha*, **Syed Jafer Imam** and *J.L. Kapur*, JJ. [Date of decision: 3-12-1957]

[8215] — S. 197 — Prosecution for offence other than sanctioned improper — *Accused prosecuted under S. 5(1)(a) for habitually taking bribe — Sanction for prosecution given for taking one individual item of bribe by the accused — Conviction under S. 5(1)(d) for taking one individual item of bribe is not illegal*

The sanctioning authority sanctioned the prosecution of the accused for taking one item of bribe, but he was prosecuted under S. 5(1)(*a*) of the Prevention of Corruption Act, 1947 for habitually accepting bribe. The incident for which prosecution was sanctioned was also mentioned in the charge. The Special Judge convicted the accused. In appeal conviction under S. 5(2) was maintained but the sentence was reduced on the ground that the sanction for prosecution was with respect to one item of bribe only.

The contention before the Supreme Court was that the trial for two offences requiring sanction is wholly void, where the sanction is granted for one offence and not for the other.

Held :

S. 6(1) of the Prevention of Corruption Act bars the jurisdiction of the Court to take cognizance of an offence for which previous sanction is required and has not been given. The prosecution for offence under S. 5(1)(*d*) is therefore not barred because the proceedings are not without previous sanction which was validly given for the offence of receiving one item of bribe, but the offence of habitually receiving illegal gratification could not be taken cognizance of and the prosecution and trial for that offence was void for want of sanction which is a condition precedent for the Courts taking cognizance of the offence alleged to be committed and therefore the High Court has rightly set aside the conviction for that offence. The want of sanction for the offence of habitually accepting bribe, therefore does not make taking of cognizance of the offence of taking one item of bribe void nor the trial of that offence illegal and the Court a court without jurisdiction. *Jaswant Singh* v. *State of Punjab*, AIR 1958 SC 124: 1958 SCR 762: 1958 Cri LJ 265, 267, 68: (1958) 2 LLJ 269.

Bench Strength **2**. Coram: *B.P. Sinha* and **J.L. Kapur**, JJ. [Date of decision: 25-10-1957]

[8216] — S. 197 — Provisions with regard to sanction must be strictly observed

The sanction under the Prevention of Corruption Act, 1947 is not intended to be nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness. *Jaswant Singh* v. *State of Punjab*, AIR 1958 SC 124: 1958 SCR 762: 1958 Cri LJ 265, 267, 68: (1958) 2 LLJ 269.

Bench Strength **2**. Coram: *B.P. Sinha* and **J.L. Kapur**, JJ. [Date of decision: 25-10-1957]

[8217] — S. 197 — Public servant committing criminal breach of trust — No sanction necessary

A public servant committing criminal breach of trust does not normally act in his capacity as a public servant. *Om Parkash Gupta* v. *State of U.P.*, AIR 1957 SC 458, 464: 1957 SCR 423: (1958) 2 LLJ 645: 1957 Cri LJ 575.

Bench Strength **5**. Coram: *S.R. Das, C.J.* and *N.H. Bhagwati, T.L. Venkatarama Aiyar, S.K. Das* and **P. Govinda Menon**, JJ. [Date of decision: 11-1-1957]

[8218] — S. 197 — Public servant employed by the State Government — Loaned to the Central Government — *Governor-General and not the Governor is competent to sanction prosecution*

The first part of S. 197(1) provides a special protection, inter alia to public servants who are not removable from their offices save by or with the sanction of the State Government or the Central Government where they are charged with having committed offences while acting or purporting to act in the discharge of their official duties; and the form which this protection has taken is that before a criminal court can take cognizance of any offence alleged to have been committed by such public servants, a sanction should have been accorded to the said prosecution by the appropriate authorities. In other words, the appropriate authorities must be satisfied that there is a prima facie case for starting the prosecution and this prima facie satisfaction has been interposed as a safeguard before the actual prosecution commences. The object of S. 197(1) clearly is to save public servants from frivolous prosecution.

That being the object of the section it is clear that if persons happened to be employed in connection with the affairs of the Federation, it was the Governor-General who gave sanction and if persons happened to be employed in connection with the affairs of the State, it was the Governor.

Therefore when a public servant belonging to State service was loaned to the Central Government and at the relevant time he was employed in connection with the affairs of Federation it was the Governor-General alone who was competent to accord sanction. *R.R. Chari* v. *State of U.P.*, AIR 1962 SC 1573: (1963) 1 SCR 121: (1962) 2 Cri LJ 510: ILR (1962) 2 All 904.

Bench Strength **2**. Coram: **P.B. Gajendragadkar** and *K.N. Wanchoo*, JJ. [Date of decision: 28-3-1962]

[8219] — S. 197 — Public servant illegally exercising his discretion as a public servant — *Sanction is necessary — Assistant Commissioner of Police refusing to grant bail unless a condition which could not be legally imposed, was fulfilled — His prosecution under S. 348, IPC — Sanction is necessary*

Whether a person charged with an offence should or should not be released on bail was a matter within the discretion of the respondent and if while exercising a discretion he acted illegally by saying that bail would not be granted unless the appellant did something which the appellant was not bound to do, the respondent cannot be said to have acted otherwise than in his capacity as a public servant. For this reason the sanction of the appropriate authority for the respondent's prosecution was necessary under S. 197, Criminal Procedure Code. *Somchand Sanghvi* v. *Bibhuti Bhusan Chakravarty*, AIR 1965 SC 588: (1964) 6 SCR 275: (1965) 1 Cri LJ 499.

Bench Strength **2**. Coram: *K. Subba Rao* and **J.R. Mudholkar**, JJ. [Date of decision: 21-1-1964]

[8220] — S. 197 — Sanction — Lacuna in — When can be remedied

If there is any lacuna in the sanction of the kind contemplated in *Gokulchand's case*, AIR 1948 PC 82, it can be remedied in the course of the trial by specific evidence in that behalf. *M.K. Gopalan* v. *State of M.P.*, AIR 1954 SC 362: (1955) 1 SCR 168: 1954 Cri LJ 1012.

Bench Strength **5**. Coram: *B.K. Mukherjea, S.R. Das, N.H. Bhagwati*, **B. Jagannadhadas** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 5-4-1954]

[8221] — S. 197 — Sanction accorded after the Court taking cognizance is not proper sanction. *Baijnath* v. *State of M.P.*, AIR 1966 SC 220: (1966) 1 SCR 210: 1966 Cri LJ 179.

Bench Strength **3**. Coram: **A.K. Sarkar**[1], *M. Hidayatullah*[2] and **V. Ramaswami**[2], JJ. [Date of decision: 7-5-1965]

[8222] — S. 197 — Sanction for prosecution — Necessity of — *Sanction is necessary only when the public servant is acting or purporting to act in the discharge of his duties*

The language of S. 197 CrPC clearly is that no court can take cognizance of an offence alleged to have been committed by any person belonging to the categories mentioned in the section. When he is accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, it was not every offence committed by a public servant which required sanction for prosecution under S. 197(1) of the Code of Criminal Procedure nor even every act done by him while he was actually engaged in the performance of his official duties. But if the act complained of was directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary and that would be so, irrespective of whether it was in fact, a proper discharge of his duties or not. *Prabhakar V. Sinari* v. *Shanker Anant Verlekar*, AIR 1969 SC 686: (1969) 2 SCR 1013: 1969 Cri LJ 1057, 60: (1969) 2 MLJ 1 (SC).

Bench Strength **2**. Coram: *J.C. Shah* and **A.N. Grover**, JJ. [Date of decision: 29-11-1968]

[8223] — S. 197 — Sanction for prosecution for abetment of cheating — *Not necessary when an officer of Government prosecuted for abetment of the offence of cheating committed by persons submitting bogus bills by falsely certifying the correctness of bills*

He was not being prosecuted for the act of certification of the correctness of the bills which were sent to him for verification, but was to be prosecuted for abetment of the offence of cheating committed by those persons who had submitted the bills by falsely certifying the correctness of those bills. The act of thus abetting the principal offenders could not possibly be held to have been done in the discharge of official duties as a public servant. *Bakhshish Singh Dhaliwal* v. *State of Punjab*, AIR 1967 SC 752: (1967) 1 SCR 211: 1967 Cri LJ 656.

Bench Strength **3**. Coram: *V. Ramaswami*, **V. Bhargava** and *Raghubar Dayal*, JJ. [Date of decision: 31-8-1966]

[8224] — S. 197 — Sanction for prosecution of a public servant — *Scope and test for determination — There must be reasonable connection between the act and the official duty*

The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under S. 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merit.

What has to be found out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation. *Matajog Dobey* v. *H.C. Bhari*, AIR 1956 SC 44: (1955) 2 SCR 925: (1955) 28 ITR 941: 1956 Cri LJ 140, 143, 45.

Bench Strength **5**. Coram: *S.R. Das, Vivian Bose, B. Jagannadhadas, Syed Jafer Imam* and **N. Chandrasekhara Aiyar**, JJ. [Date of decision: 31-10-1955]

[8225] — S. 197 — Sanction for prosecution of a public servant for offence under S. 409 IPC — *Not necessary when act of criminal misappropriation was not committed by the appellant while he was acting or purporting to act in the discharge of his official duties and that offence has no direct connection with the duties of the accused as a public servant*

Sanction of the State Government was not necessary for the prosecution of a public servant under S. 409 IPC where the act of criminal misappropriation was not committed by the appellant while he was acting or purporting to act in the discharge of his official duties and that offence has no direct connection with the duties of the appellant as a public servant, and the official status of the appellant only furnished the appellant with an occasion or an opportunity of committing the offence. *Baijnath* v. *State of M.P.*, AIR 1966 SC 220: (1966) 1 SCR 210: 1966 Cri LJ 179.

Bench Strength **3**. Coram: **A.K. Sarkar**[1], *M. Hidayatullah*[2] and **V. Ramaswami**[2], JJ. [Date of decision: 7-5-1965]

[8226] — S. 197 — Sanction for prosecution of a railway servant — Class I Railway Officer removable by Railway Board and not by the Central Government — *Section not applicable to such an Officer — Sanction for prosecution not necessary under the section. K.N. Shukla* v. *Navnit Lal Manilal Bhatt*, AIR 1967 SC 1331: (1967) 2 SCR 290: 1967 Cri LJ 1200: (1967) 2 LLJ 261.

Bench Strength **5**. Coram: *K. Subba Rao, C.J.* and *J.C. Shah, S.M. Sikri*, **V. Ramaswami** and *C.A. Vaidialingam*, JJ. [Date of decision: 15-12-1966]

[8227] — S. 197 — Sanction for prosecution of a Sub-Inspector of Police in Mysore State — Inspector-General of Police competent to dismiss a Sub-Inspector under Mysore Police Act, 1908 — *No sanction for prosecution necessary. Nagraj* v. *State of Mysore*, AIR 1964 SC 269: (1964) 3 SCR 671: (1964) 1 Cri LJ 161, 66.

Bench Strength **3**. Coram: *K. Subba Rao*, **Raghubar Dayal** and *J.R. Mudholkar*, JJ. [Date of decision: 8-5-1963]

[8228] — S. 197 — Sanction for prosecution under S. 409 IPC — *Accused charged under S. 409 IPC and S. 5(2) of the Prevention of Corruption Act, 1947 — Sanction for prosecution under the said S. 5(2) accorded, but no sanction for prosecution under the said S. 409 accorded — The sanction for prosecution under the said S. 5(2) cannot be extended to cover prosecution under S. 409 IPC — In case the sanctioning authorities to the two prosecutions on the same the prosecution under S. 409*

IPC after the sanction for prosecution under the said S. 5(2) is incompetent. Shreekantiah Ramayya Munipalli v. *State of Bombay*, AIR 1955 SC 287: (1955) 1 SCR 1177: 1955 Cri LJ 857, 860.

Bench Strength 3. Coram: *B.K. Mukherjea* and *S.R. Das*, **Vivian Bose**, JJ. [Date of decision: 22-12-1954]

[8229] — **S. 197 — Sanction should be given in respect of the facts constituting the offence charged**. *Ram Sagar Pandit* v. *State of Bihar*, 1963 Supp (2) SCR 652: (1964) 2 Cri LJ 65.

Bench Strength 4. Coram: *Syed Jafar Imam*, **K. Subba Rao**, *N. Rajagopala Ayyangar* and *J.R. Mudholkar*, JJ. [Date of decision: 4-12-1962]

Gokal Chand Dwarkadas v. King, AIR 1948 PC 82: 75 IA 30, Approved

See also AIR 1954 SC 359

[8230] — **S. 197 — Sanction should indicate that the sanctioning authority has applied its mind**

It should be clear from the form of the sanction that the sanctioning authority considered the evidence before it and after a consideration of all the circumstances of the case sanctioned the prosecution, and therefore unless the matter can be proved by other evidence, in the sanction itself the facts should be referred to indicate that the sanctioning authority had applied its mind to the facts and circumstances of the case. *Jaswant Singh* v. *State of Punjab*, AIR 1958 SC 124: 1958 SCR 762: 1958 Cri LJ 265, 267, 68: (1958) 2 LLJ 269.

Bench Strength 2. Coram: *B.P. Sinha* and **J.L. Kapur**, JJ. [Date of decision: 25-10-1957]

[8231] — **S. 197 — Sanction under S. 270, Government of India Act, 1935 accorded — Such sanction cannot be treated as sanction under S. 197 CrPC**. *K. Satwant Singh* v. *State of Punjab*, AIR 1960 SC 266: (1960) 2 SCR 89: 1960 Cri LJ 410, 13 to 1.

Bench Strength 5. Coram: *B.P. Sinha, C.J.*[1] and **Syed Jafer Imam**[1], **J.L. Kapur**[1], *K.N. Wanchoo*[1] and *K.C. Das Gupta*[1], JJ. [Date of decision: 28-10-1959]

[8232] — **S. 197 — Scope and application — "Acting or purporting to act in the discharge of official duty" — Meaning of** — *Railway officials witnessing a search in the house of another Railway official at the request of the police, and not under the orders of superior Officers — During the search such officials, committing offences under Ss. 461, 379, 403, 342, 166 and 167, Penal Code — No sanction under S. 197, Criminal Procedure Code necessary. Dhannjay Ram Sharma* v. *M.S. Uppadaya*, AIR 1960 SC 745: 1960 Cri LJ 1153: (1960) 2 MLJ 98 (SC).

Bench Strength 2. Coram: **K.C. Das Gupta** and *J.C. Shah*, JJ. [Date of decision: 11-3-1960]

[8233] — **S. 197 — Taking "Cognizance" — Sanction of Government when necessary** — *Can a court take cognizance of an offence without sanction*

The word 'cognizance' in this section indicates the stage of initiation of proceedings against a public servant. *R.R. Chari* v. *State of U.P.*, AIR 1951 SC 207: 1951 SCR 312: (1951) 52 Cri LJ 775.

Bench Strength 3. Coram: **Harilal J. Kania, C.J.** and *Patanjali Sastri* and *S.R. Das*, JJ. [Date of decision: 19-3-1951]

[8234] — **S. 197 — Time when question of sanction to be considered** — *Court can consider the question of necessity of sanction at any stage of the trial when necessity of sanction is disclosed*

The question whether sanction under S. 197 CrPC is necessary may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity of sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case. *Matajog Dobey* v. *H.C. Bhari*, AIR 1956 SC 44: (1955) 2 SCR 925: (1955) 28 ITR 941: 1956 Cri LJ 140, 143, 45.

Bench Strength 5. Coram: *S.R. Das*, *Vivian Bose*, *B. Jagannadhadas*, *Syed Jafer Imam* and **N. Chandrasekhara Aiyar**, JJ. [Date of decision: 31-10-1955]

— **S. 197(1)** *See also* Ss. 14, 197(1) and 197(2)

[8235] — **S. 197(1) — Objection as to want of sanction under for prosecution of accused public servant not taken in courts below** — *Held, the objection open to accused at the stage of Supreme Court, as it was a pure question of law — Penal Code, 1860 — S. 409. Rameshwar Sahai* v. *State of U.P., Cr. A. No. 144 of 1954*

Bench Strength 3. Coram: *B.K. Mukherjea, C.J.*, **T.L. Venkatarama Aiyar** and *Syed Jafer Imam*, JJ. [Date of decision: 30-11-1955]

(1955) 1 SCR 1177, distinguished

[8236] — **S. 197(1) — Scope — Sanction to prosecute for offences committed by public servants in the discharge of official duties**

It is not every offence committed by a public servant that requires sanction for prosecution under S. 197(1), Criminal Procedure Code, nor even every act done by him while he is actually engaged in the performance of his official duties, but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution. *Amrik Singh* v. *State of Pepsu*, AIR 1955 SC 309: (1955) 1 SCR 1302: 1955 Cri LJ 865, 867.

Bench Strength 3. Coram: *S.R. Das, N.H. Bhagwati* and **T.L. Venkatarama Aiyar**, JJ. [Date of decision: 28-2-1955]

[8237] — S. 197(1) — Prosecution of a public servant under S. 409 IPC — Whether sanction is required under S. 197(1) will depend on the facts of each case — *Penal Code, 1860 — S. 409*

Even when the charge is one of misappropriation by a public servant, whether sanction is required under S. 197(1) will depend upon the facts of each case. If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under S. 197(1) CrPC would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required.

Whether sanction is necessary to prosecute a public servant on a charge of criminal misappropriation, will depend on whether the acts complained of hinge on his duties as a public servant. If they do, then sanction is requisite. But if they are unconnected with such duties, then no sanction is necessary. *Amrik Singh* v. *State of Pepsu*, AIR 1955 SC 309: (1955) 1 SCR 1302: 1955 Cri LJ 865, 867.

Bench Strength 3. Coram: *S.R. Das, N.H. Bhagwati* and **T.L. Venkatarama Aiyar**, JJ. [Date of decision: 28-2-1955]

[**Ed.**: Reviewing *Shreekantiah* (AIR 1955 SC 287) and *Amrik Singh* (AIR 1955 SC 309) the Supreme Court in *Matajog Dubey* v. *H.C. Bhari*, (1955) 2 SCR 925: AIR 1956 SC 44: 1956 Cri LJ 140, 145 stated: "There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of duty."

Also "whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of progress of the case".

AIR 1939 FC 43: 40 Cri LJ 468; AIR 1948 PC 128: 49 Cri LJ 503: and AIR 1949 PC 117: 50 Cri LJ 395, *affirmed*

See also AIR 1966 SC 20: 1966 Cri LJ 179; AIR 1969 SC 686: 1969 Cri LJ 1057; AIR 1954 SC 455: 1954 Cri LJ 1161; and AIR 1956 SC 44: 1956 Cri LJ 140

For an instance see (1955) 1 SCR 1177: AIR 1955 SC 287: 1955 Cri LJ 857

Followed in (1972) 3 SCC 89: 1972 SCC (Cri) 409.]

[8238] — S. 197(1) — Public servant — Sanction not necessary if act not connected with his official duty — *S. 106, T.N. Village Panchayats Act, 1950 (10 of 1950) — Held, similar prosecution of President of Panchayat Board upheld — Penal Code, 1860 — S. 409. P. Arulswami* v. *State of Madras*, AIR 1967 SC 776: (1967) 1 SCR 201: 1967 Cri LJ 665.

Bench Strength 3. Coram: **V. Ramaswami**, *V. Bhargava* and *Raghubar Dayal*, JJ. [Date of decision: 29-8-1966]

[8239] — S. 197(1) — Policy behind the section

Section 197(1) CrPC is inspired by the underlying policy of protection of the concerned public servant. *M.K. Gopalan* v. *State of M.P.*, AIR 1954 SC 362: (1955) 1 SCR 168: 1954 Cri LJ 1012.

Bench Strength 5. Coram: *B.K. Mukherjea, S.R. Das, N.H. Bhagwati*, **B. Jagannadhadas** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 5-4-1954]

— S. 197(2) *See* Ss. 14, 197(1) and 197(2)
See also Ss. 14(1) and 197(2)

[8240] — S. 197(2) — Not inspired by any policy for protection of public servants

There is no reason to think that S. 197(2) is inspired by any policy of protection of the public servant concerned, as S. 197(1) is. There can be no question of protection involved by an accused being tried by one court rather than by another at the choice of the Government.

The power under S. 197(2) appears to be vested in the appropriate Government for being exercised, on grounds of convenience, or the complexity or gravity of the case or other relevant considerations.

The power to specify a court for trial in such cases is a permissive power. *M.K. Gopalan* v. *State of M.P.*, AIR 1954 SC 362, 363: (1955) 1 SCR 168: 1954 Cri LJ 1012.

Bench Strength 5. Coram: *B.K. Mukherjea, S.R. Das, N.H. Bhagwati*, **B. Jagannadhadas** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 5-4-1954]

[8241] — Ss. 197(2) and 14 — Relative scope

As regarding the scopes of the powers under S. 197(2) and S. 14, the one relates to the "Court" and the other to the "person". Under sub-section (2) of S. 197, the sanctioning Government may specify a court for the trial of the case but is not bound to do so. When it does not choose to specify the Court, the trial is subject to the operation of the other provisions of the Code. But even when it chooses to exercise the power of specifying the Court before which the trial is to be held, such specification of the Court does not touch the question as to who is the person to function in such court before which the trial is to take place. That is a matter still left to be exercised by the Provincial Government of the area where the trial is to take place. The argument of learned counsel proceeds on treating the word "court" in sub-section (2) of S. 197 as being the same as a "person" in sub-section (1) of S. 14, for which there is no warrant. *M.K. Gopalan* v. *State of M.P.*, AIR 1954 SC 362, 363: (1955) 1 SCR 168: 1954 Cri LJ 1012.

Bench Strength **5**. Coram: *B.K. Mukherjea*, *S.R. Das*, *N.H. Bhagwati*, **B. Jagannadhadas** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 5-4-1954]

— S. 198 *See also* Ss. 190 and 195 to 199

[8242] — S. 198 — Scope — Mandatory nature

Section 198, lays down an exception to the general rule that a complaint can be filed by anybody whether he is an aggrieved person or not, and modifies that rule by permitting only an aggrieved person to move a magistrate in cases of defamation. The section is mandatory, so that if a magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an aggrieved person, the trial and conviction of an accused in such a case by the Magistrate would be void and illegal. *G. Narasimhan* v. *T.V. Chokkappa*, (1972) 2 SCC 680: 1972 SCC (Cri) 777: AIR 1972 SC 2609: (1972) 2 MLJ 61 (SC): 1973 Cri LJ 52.

Bench Strength **3**. Coram: **J.M. Shelat**, *D.G. Palekar* and *S.N. Dwivedi*, JJ. [Date of decision: 4-9-1972]

[8243] — S. 198 — "Aggrieved person" — Defamation — Class if definite, identifiable and determinate in relation to the imputation. *G. Narasimhan* v. *T.V. Chokkappa*, (1972) 2 SCC 680: 1972 SCC (Cri) 777: AIR 1972 SC 2609: (1972) 2 MLJ 61 (SC): 1973 Cri LJ 52.

Bench Strength **3**. Coram: **J.M. Shelat**, *D.G. Palekar* and *S.N. Dwivedi*, JJ. [Date of decision: 4-9-1972]

[8244] — S. 198 — Complaint by an aggrieved person only — *Accused charged on facts not made out in the complaint — Mandatory provisions of the section are violated. Abdul Rehman Mahomed Yusuf* v. *Mahomed Haji Ahmad Agbotwala*, AIR 1960 SC 82: (1960) 1 SCR 749: 1960 Cri LJ 158.

Bench Strength **2**. Coram: **Syed Jafer Imam** and *K.N. Wanchoo*, JJ. [Date of decision: 15-9-1959]

[8245] — Ss. 198 and 198-B — Scope and meaning — *Complaint for offence under S. 500 IPC against a public servant in respect of his conduct in discharge of his public functions can be filed direct in Sessions Court*

Section 198, CrPC provides inter alia that no court shall take cognizance of an offence falling under Ch. XXI (which contains Ss. 499 and 500 IPC) except upon complaint made by some person aggrieved by such offence. Section 198-B, however, is an exception to the provisions of S. 198 and provides that notwithstanding anything contained in the Code, when any offence falling under Ch. XXI of the Indian Penal Code other than the offence of defamation by spoken words is alleged to have been committed against any public servant, employed in connection with the affairs of a State, in respect of his conduct in the discharge of his public functions, a Court of Sessions may take cognizance of such offences without the accused being committed to it for trial, upon a complaint in writing made by the public prosecutor. It is thus that a public prosecutor can file a complaint in writing in the Court of Sessions directly with respect to an offence under S. 500 IPC committed against a public servant in respect of his conduct in the discharge of his public functions. *Sahib Singh Mehra* v. *State of U.P.*, AIR 1965 SC 1451: (1965) 2 SCR 823: (1965) 2 Cri LJ 434.

Bench Strength **2**. Coram: **Raghubar Dayal** and *J.R. Mudholkar*, JJ. [Date of decision: 22-1-1965]

[8246] — Ss. 198 and 435 — Presidency Magistrate framing a charge and ordering acquittal in a case violating mandatory provisions of S. 198 — Order of acquittal is bad — *Magistrate must refer the case to the High Court for correction of the error*

The offence charged was a separate offence although of the same kind from the offence in respect of which the facts had been stated in the complaint. For the separate offence a complaint should have been filed and provisions of S. 198, CrPC which are mandatory, complied with. The Presidency Magistrate wrongly framed the charge, as on the record, when in respect of the offence charged there was no complaint filed and the facts as stated in the complaint actually filed did not make out the offence as charged. In such a situation the Presidency Magistrate, instead of proceeding to record an order of acquittal should have brought the matter to the notice of the High Court so that the error might be corrected. The Supreme Court can when the matter is before it in appeal do that which High Court could have done.

The Supreme Court allowed the appeal, set aside the order of acquittal and dismissed the complaint. *Abdul Rehman Mahomed Yusuf* v. *Mahomed Haji Ahmad Agbotwala*, AIR 1960 SC 82: (1960) 1 SCR 749: 1960 Cri LJ 158.

Bench Strength 2. Coram: **Syed Jafer Imam** and *K.N. Wanchoo*, JJ. [Date of decision: 15-9-1959]

[8247] — Ss. 198 and 495 — Trial on complaint of a non-cognizable non-compoundable offence exclusively triable by Sessions Judge under Ss. 493 & 496 IPC — *Complainant dying during pendency of trial — Court substituting complainant's mother in her place and there by permitting the continuance of the case — Magistrate acted legally and the prosecution can be continued by complainant's mother*

Section 198, CrPC creates a bar that cognizance of the case under Ss. 493 and 496 can only be taken on the complaint of a person aggrieved subject to some exceptions and this bar has to be removed before cognizance is taken. Once the bar is removed, because the proper person has filed a complaint, the section works itself out. If any other restriction was also there the Code would have said so. Not having said so, one must treat the section as fulfilled and worked out. There is nothing in the Code or in Ch. XVIII which says that, if any, consequence would follow if the complainant remains absent at any subsequent hearing after filing the complaint. In this respect Ch. XVIII is distinctly dissimilar to the chapters dealing with the trial of summons and warrant cases where it is specifically provided what consequence follows on the absence of the complainant.

When the complaint was rightly filed by a person aggrieved as required by S. 198, CrPC for offences under Ss. 417, 493 and 496 IPC and the Magistrate on the death of the complainant has substituted the complainant's mother in her place what he has done is to allow the mother to act as the complainant to continue the prosecution. This power was undoubtedly possessed by the Presidency Magistrate because of S. 495 of the Code by which courts are empowered (with some exceptions) to authorise the conduct of prosecution by any person. The words, any person, would indubitably include the mother of the complainant in a case such as this. Section 198 itself contemplates that a complaint may be made by a person other than the person aggrieved and there seems to be no valid reason why in such a serious case one should hold that the death of the complainant puts an end to the prosecution.

The Presidency Magistrate was right in proceeding with the inquiry by allowing the mother to carry on the prosecution, and under S. 495 the mother may continue the prosecution herself or through a pleader. *Ashwin Nanubhai Vyas* v. *State of Maharashtra*, AIR 1967 SC 983: (1967) 1 SCR 807: 1967 Cri LJ 943, 45, 46: 69 Bom LR 308.

Bench Strength 3. Coram: **M. Hidayatullah**, *S.M. Sikri* and *Raghubar Dayal*, JJ. [Date of decision: 10-10-1966]

— S. 198-B *See also* Ss. 198 and 198-B

[8248] — S. 198-B(3) — Sanction for prosecution — Facts constituting the charge not appearing on the face of sanction — *Court not vested to exercise jurisdiction unless proved by extraneous evidence that the facts were placed before the sanctioning authority and the said authority applied its mind*

Mere production of a document which sets out the names of the persons to be prosecuted and the provisions of the statute alleged to be contravened, and purporting to bear the signature of an officer competent to grant the sanction where such sanction is a condition precedent to the exercise of jurisdiction does not invest the Court with jurisdiction to try the offence. If the facts which constitute the charge do not appear on the face of the sanction, it must be established by extraneous evidence that those facts were placed before the authority competent to grant the sanction and that the authority applied his mind to those facts before giving sanction. *P.C. Joshi* v. *State of U.P.*, AIR 1961 SC 387: (1961) 2 SCR 63: (1961) 1 Cri LJ 566, 570.

Bench Strength 2. Coram: *S.K. Das* and **J.C. Shah**, JJ. [Date of decision: 25-10-1960]

[8249] — S. 198-B(3) — Sanction to file a complaint — Form of — *Sanction to file a complaint under S. 500 IPC for making defamatory remarks against a particular Public Prosecutor and other prosecuting staff of the State — Validity of sanction*

The sanction conveyed by the Home Secretary for making a complaint under S. 500, IPC against the appellant with respect to the defamatory article containing defamatory remarks against the Assistant Public Prosecutor, Aligarh and other prosecuting staff against the Government in respect of their conduct in the discharge of public functions. The sanction was therefore with respect to defamation of two persons: (*i*) Assistant Public Prosecutor Aligarh; and (*ii*) other police prosecuting staff of Government of Uttar Pradesh which would be the entire prosecuting staff in the State. There was therefore nothing wrong in the form of sanction. *Sahib Singh Mehra* v. *State of U.P.*, AIR 1965 SC 1451: (1965) 2 SCR 823: (1965) 2 Cri LJ 434.

Bench Strength 2. Coram: **Raghubar Dayal** and *J.R. Mudholkar*, JJ. [Date of decision: 22-1-1965]

[8250] — S. 198-B(3)(a) — Scope — Complaint under Ss. 500 & 501 IPC for defaming the Governor — Essentials explained — *Secretary to Government according the sanction — Authorization by the Governor before the sanction is essential — Governor cannot leave the decision relating to authorization to Government — Decision must first be taken by him — Thereafter he is free to accord or not accord the sanction — Sanction by the Secretary without proper authorization — Is illegal and prosecution is without jurisdiction*

Under S. 198-B(3)(*a*) CrPC there are two restrictions placed upon the power of the Public Prosecutor to lodge a complaint with respect to defamation of a high dignitary such as the Governor. The first is that he must have been given a sanction to lodge such complaint and the other is that the sanction should be accorded by a Secretary to the Government, authorised by the Governor in this behalf. This means that the Governor has first to consider for himself whether the alleged defamatory statement is of a kind of which he should take notice and seek to vindicate himself or whether the defamatory statement being of a trivial nature of having been made by an irresponsible person or for some other reason should be ignored. This decision has to be taken by the Governor himself. He cannot leave it to some other person or an authority like the Government to decide whether, a complaint should be lodged or not.

While it is no doubt true that it is the sanctioning authority which has to apply its mind to the facts of a case before according sanction and that in performing the function of according the sanction the Secretary does not merely perform a ministerial act, it is clear that initiative has to be taken by the Governor by indicating unequivocally that he desires action to be taken and that the authorization by him is not an idle formality, where the Governor leaves the matter to the Government that to take such action as it deems necessary the authorization is neither proper nor it is an authorization to the Secretary.

The Secretary is expected to look at the question objectively and decide whether it is in the public interest to take notice of the alleged defamatory statement and prosecute the person who made it. A person who is directly aggrieved by the statement may not be in a position to take an objective view of an alleged defamatory statement and since the expenses for the prosecution will have to be borne by the State the Legislature evidently felt that there was a good reason for leaving the final decision to a third person rather than with the aggrieved person. All the same the initiative to lodge a complaint must be taken by the Governor himself and unless he has, in pursuance of this decision to lodge a complaint, authorised a Secretary to sanction its being lodged, the Secretary gets no power to accord his sanction. *Gour Chandra Rout* v. *Public Prosecutor, Cuttack*, AIR 1963 SC 1198: 1963 Supp (2) SCR 447: (1963) 2 Cri LJ 194, 98.

Bench Strength **4**. Coram: *Syed Jafer Imam, K. Subba Rao, N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 23-11-1962]

[8251] — S. 198-B(3)(a) — Authorisation by the Governor to accord sanction to the Secretary to Government — Mode of proof — *Can be proved either by the statement of the Governor or from any writing emanating from him*

Whether sanction was authorised by the Governor could be proved either from the evidence of the Governor himself or from any writing emanating from the Governor in which the Governor has said that he has authorised the lodging of a complaint. *Gour Chandra Rout* v. *Public Prosecutor, Cuttack*, AIR 1963 SC 1198: 1963 Supp (2) SCR 447: (1963) 2 Cri LJ 194, 98.

Bench Strength **4**. Coram: *Syed Jafer Imam, K. Subba Rao, N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 23-11-1962]

[8252] — S. 198-B(3)(a) — Authorisation by Governor for according sanction to the Secretary to Government — General authorisation is not sufficient — *Authorisation must be for each specific complaint*

Sub-sec. (3) of S. 198-B speaks of a complaint under sub-section (1) and the complaint under sub-section (1) is specific complaint in writing made by the Public Prosecutor. Therefore, reading the two sub-sections together it would be clear that the authorization by the Governor is of the sanction with respect to a specific complaint. A general sanction can, therefore, not be of any avail. Clause (*a*) contemplates authorisation by the Governor defamed and, therefore, an authorisation of the type which we have here made by someone else in 1956 can be of no avail. Indeed, considering the nature of the offence it is difficult to appreciate how an authorisation in advance to sanction the making of a complaint of defamation can at all be given. *Gour Chandra Rout* v. *Public Prosecutor, Cuttack*, AIR 1963 SC 1198: 1963 Supp (2) SCR 447: (1963) 2 Cri LJ 194, 98.

Bench Strength **4**. Coram: *Syed Jafer Imam, K. Subba Rao, N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 23-11-1962]

[8253] — Ss. 198-B(5) and (7) — Compensation payable to an accused if the complaint is false and frivolous or vexatious — *Person aggrieved by the alleged defamation is concerned with the lodging of the complaint even though it is filed by the Public Prosecutor — Compensation to the accused under Cl. (7) can be awarded only on satisfaction that the allegation made by the aggrieved person are false and frivolous or vexatious*

Clause (5) of S. 198-B indicates that the question whether the claim was false and either frivolous or vexatious may fall to be determined only if the person complaining to be defamed actively supports the complaint. Therefore S. 198-B does not provide for compensation being awarded against a person who is not concerned with the complaint.

The complainant eo nomine in cases under S. 198-B, is undoubtedly the Public Prosecutor, but the complaint may when the person defamed is a Minister or a Public servant, properly be regarded as filed at the instance of such Minister or Public servant. It cannot be said that a person who has either been instrumental in the initiation of a complaint, or in any event has to support it by his evidence, has no concern with the lodging of the complaint. The Court would obviously award compensation only if it is satisfied that the claim made by the person posing to be aggrieved is false and either frivolous or vexatious. *P.C. Joshi* v. *State of U.P.*, AIR 1961 SC 387: (1961) 2 SCR 63: (1961) 1 Cri LJ 566, 570.

Bench Strength 2. Coram: *S.K. Das* and **J.C. Shah**, JJ. [Date of decision: 25-10-1960]

— S. 198-B(7) *See* Ss. 198-B(5) and (7)

[8254] — S. 198-B(13) — "Derogation" — *Words and Phrases*

"Derogation" means, taking away, lessening or impairing the authority, position or dignity, and the context in which sub-s. (13) occurs clearly shows that the provisions of S. 198-B do not impair the remedy provided by S. 198. *P.C. Joshi* v. *State of U.P.*, AIR 1961 SC 387: (1961) 2 SCR 63: (1961) 1 Cri LJ 566.

Bench Strength 2. Coram: *S.K. Das* and **J.C. Shah**, JJ. [Date of decision: 25-10-1960]

[8255] — S. 198-B(13) — Scope and interpretation — Complaint under the section by a Public Prosecutor — Need not be signed by the person aggrieved

Clause (13) of S. 198-B means that S. 198-B is an additional provision and is not intended to take away the right of a person aggrieved even if he belongs to the specified classes and the offence is in respect of his conduct in the discharge of his public function to file a complaint in the manner specified in S. 198. The provisions of S. 198 are therefore not applicable to a complaint under S. 198-B and cognizance of an offence of defamation under S. 198-B can be taken by a court on a complaint filed by the Public Prosecutor which need not be signed by the person aggrieved. *P.C. Joshi* v. *State of U.P.*, AIR 1961 SC 387: (1961) 2 SCR 63: (1961) 1 Cri LJ 566, 570.

Bench Strength 2. Coram: *S.K. Das* and **J.C. Shah**, JJ. [Date of decision: 25-10-1960]

— S. 199 *See also* Ss. 190 and 195 to 199

[8256] — S. 199 — Taking cognizance of an offence on the basis of FIR is a judicial and not administrative act

The District Magistrate must be held to have taken cognizance of the offence at least when, on the first information report having ben produced before him, he noted that he was prima facie satisfied that the accused persons had committed the offence set out in that document. This was clearly not an administrative act on his part but a judicial act after he had applied his mind to the contents of the first information report before him for the purpose of initiation of proceedings before him. *Mowu* v. *Supdt., Special Jail*, (1971) 3 SCC 936: 1972 SCC (Cri) 184: 1971 CAR 66 (SC).

Bench Strength 5. Coram: *M. Hidayatullah, C.J.*, **J.M. Shelat**, *G.K. Mitter*, *C.A. Vaidialingam* and *A.N. Ray*, JJ. [Date of decision: 14-12-1970]

— S. 200 *See* Ss. 190 and 200

See also Ss. 195 and 200

See also Ss. 417(3), 200, 202, 156(3) and 173

[8257] — S. 200 — Duty of Special Judge to examine complainant before taking cognizance — *Such obligation does not arise where he is governed by the provisions of a Special Act under which the case is allotted to him for trial. State of W.B.* v. *Bejoy Kumar Bose*, (1978) 1 SCC 173: 1978 SCC (Cri) 78: AIR 1978 SC 188: 1978 Cri LJ 138: (1978) 2 SCR 382: 1978 MLJ (Cri) 250.

Bench Strength 2. Coram: **P.K. Goswami** and *V.D. Tulzapurkar*, JJ. [Date of decision: 7-12-1977]

[8258] — S. 200 — Examination of complainant and his witness — Object of

The object of examination of the complainant and his witness under S. 200 of the Code of Criminal Procedure is to ascertain whether there is prima facie case against the person accused of the offence in the complaint, and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such a person. Such examination is provided therefore to find out whether there is or not sufficient ground for proceeding. *Nirmaljit Singh Hoon* v. *State of W.B.*, (1973) 3 SCC 753: 1973 SCC (Cri) 521: AIR 1972 SC 2639.

Bench Strength 3. Coram: **J.M. Shelat**^{1}, *I.D. Dua*^{1} and **H.R. Khanna**$^{1\&2}$, JJ. [Date of decision: 6-9-1972]

[8259] — Ss. 200, 202 and 156(3) — After taking cognizance investigation under S. 202 only proper

If the learned Magistrate had used the words "for investigation" instead of the words "for instituting a case" the order would clearly be under S. 202 of the Code of the Criminal Procedure. We do not think that the fact that he used the words "for instituting a case" makes any difference. It has to be noticed that the Magistrate was not bound to take cognizance of the offences on receipt of the complaint. He could have, without taking cognizance, directed an investigation of the case by the police under S. 156(3) of the Code of Criminal Procedure. Once however he took cognizance he could order investigation by the police only under S. 202 of the Code of Criminal Procedure and not under S. 156(3) of the Code of Criminal Procedure. As it is clear here from the very fact that he took action under S. 200 of the Code of Criminal Procedure, that he had taken cognizance of the offences mentioned in the complaint, it was open to him to order investigation only under S. 202 of the Code of Criminal Procedure and not under S. 156(3) of the Code. It would be proper in these circumstances to hold that though the Magistrate used the words "for instituting a case" in the order he was actually taking action under S. 202 of the Code of Criminal Procedure, that being the only section under which he was in law entitled to act.

The fact that the Sub-Inspector of Police treated the copy of the petition of complaint as a first information report and submitted "charge-sheet" against the accused persons cannot make any differences. *Jamuna Singh* v. *Bhadai Shah*, AIR 1964 SC 1541, 1544: (1964) 5 SCR 37: (1964) 2 Cri LJ 468.

Bench Strength 3. Coram: *B.P. Sinha, C.J.* and *M. Hidayatullah* and **K.C. Das Gupta**, JJ. [Date of decision: 4-10-1963]

[8260] — Ss. 200, 202 and 203 — Scope and meaning — Dismissal of complaint under S. 203 — Enquiry under S. 202 — Scope of — *Enquiry officer supporting plea of self defence — The Magistrate can accept the report and dismiss the complaint — Not obligatory to issue process and compel the accused to prove the plea of self-defence*

When a Magistrate directs an enquiry under S. 202 CrPC for ascertaining the truth or falsehood of complaint and receives a report from the enquiry officer supporting a plea of self defence made by the person complained against it is open to the Magistrate to hold that the plea is correct on the basis of the report and the statement of the witnesses recorded by the enquiry officer. He is not bound as a matter of law to issue process in such a case and leave the person complained against to establish his plea of self-defence at the trial.

It is manifestly clear from the provisions of S. 203 that the judgment which the Magistrate has to form must be based on the statements of the complainant and his witnesses and the result of the investigation or inquiry. But the judgment which the Magistrate has to form is whether or not there is sufficient ground for proceeding. This does not mean that the Magistrate is bound to accept the result of the inquiry or investigation or that he must accept any plea that is set up on behalf of the person complained against. The Magistrate must apply his judicial mind to the materials on which he has to form his judgment. In arriving at his judgment he is not fettered in any way except by judicial considerations; he is not bound to accept what the inquiring officer says, nor is he precluded from accepting a plea based on an exception, provided always there are satisfactory and reliable materials on which he can base his judgment as to whether there is sufficient ground for proceeding on the complaint or not. If the Magistrate has not misdirected himself as to the scope of an enquiry under S. 202 and has applied his mind judicially to the materials before him, we think that it would be erroneous in law to hold that a plea based on an exception can never be accepted by him in arriving at his judgment. What bearing such a plea has on the case of complainant and his witnesses, to what extent they are falsified by the evidence of other witnesses — all these are questions which must be answered with reference to the facts of each case. No universal rule can be laid in respect of such questions. *Vadilal Panchal* v. *Dattatraya Dulaji Ghadigaonkar*, AIR 1960 SC 1113: (1961) 1 SCR 1: 1960 Cri LJ 1499, 1503: (1961) 2 MLJ 16 (SC).

Bench Strength 3. Coram: **S.K. Das**, *J.L. Kapur* and *M. Hidayatullah*, JJ. [Date of decision: 6-5-1960]

[8261] — Ss. 200 and 202 — Scope — Application to a complaint by Court — *Enquiry or examination of the complainant is not necessary when complaint is by court*

Under S. 200 proviso (*aa*) it is not necessary for a Magistrate when a complaint is made by a court to examine the complainant and neither S. 200 nor S. 202 requires a preliminary enquiry before the Magistrate can assume jurisdiction to issue process against the person complained against. *Ranjit Singh* v. *State of Pepsu*, AIR 1959 SC 843: 1959 Supp (2) SCR 727: 1959 Cri LJ 1124, 26, 27.

Bench Strength **2**. Coram: *Syed Jafer Imam* and **J.L. Kapur**, JJ. [Date of decision: 21-4-1959]

[8262] — Ss. 200 and 204 — Magistrate taking cognizance

It is only when a Magistrate applies his mind for the purpose of proceedings under S. 200 and subsequent sections of Ch. XVI of the Code of Criminal Procedure or under S. 204 of Ch. XVII of Code that it can be positively stated that he had applied his mind and therefore had taken cognizance. *Narayandas Bhagwandas Madhavdas* v. *State of W.B.*, AIR 1959 SC 1118, 1123-2: (1960) 1 SCR 93: 1959 Cri LJ 1368.

Bench Strength **2**. Coram: **Syed Jafer Imam** and *J.L. Kapur*, JJ. [Date of decision: 7-5-1959]

— S. 202 *See* Ss. 155, 61, 94, 167, 164 and 202
See also Ss. 190, 202 and 156(3)
See also Ss. 200 and 202
See also Ss. 200, 202 and 156(3)
See also Ss. 200, 202 and 203
See also Ss. 417(3), 200, 202, 156(3) and 173

[8263] — S. 202 — Inquiry by the Magistrate — Scope — *Accused does not come into the picture till process is issued — He can insist on his physical presence, but cannot make him to take part in proceedings*

The entire scheme of Ch. XVI of the Code of Criminal Procedure that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would follow from this therefore, that it would not be open to the Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued; nor can he examine any witnesses at the instance of such a person. Of course, the Magistrate himself is free to put such questions to the witnesses produced before him by the complainant as he may think proper in the interest of justice. But beyond that, he cannot go.

No doubt, one of the objects behind the provisions of S. 202, CrPC is to enable the Magistrate to scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant. Whatever defence the accused may have can only be enquired into at the trial. An enquiry under S. 202 can in no sense be characterised as a trial for the simple reason that in law there can be but one trial for an offence. Permitting an accused person to intervene during the enquiry would frustrate its very object and that is why the Legislature has made no specific provision permitting an accused person to take part in an enquiry.

Where the Magistrate in inquiry under S. 202 CrPC examined two witnesses as court witnesses at the instance of the accused the enquiry is vitiated. *Chandra Deo Singh* v. *Prokash Chandra Bose*, AIR 1963 SC 1430: (1964) 1 SCR 639: (1963) 2 Cri LJ 397, 401.

Bench Strength **4**. Coram: *Syed Jafer Imam, K. Subba Rao, Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 22-1-1963]

[8264] — S. 202 — Reinvestigation on breach of mandatory provisions

When the breach of a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such reinvestigation as the circumstances of an individual case may call for.

Such a course is not altogether outside the contemplation of the scheme of the Code as appears from S. 202 under which a Magistrate taking cognizance on a complaint can order investigation by the police. *H.N. Rishbud* v. *State of Delhi*, AIR 1955 SC 196, 204: (1955) 1 SCR 1150: 1955 Cri LJ 526.

Bench Strength **3**. Coram: *B.K. Mukherjea, Vivian Bose* and **B. Jagannadhadas**, JJ. [Date of decision: 14-12-1954]

[8265] — S. 202 — Scope — Magistrate to be satisfied if there is sufficient ground for proceeding and not whether there is sufficient ground for conviction — *Inquiry not like a trial*

For determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is "sufficient ground for proceeding" and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry.

An enquiry under S. 202 is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial. No doubt, as stated in sub-section (1) of S. 202 itself, the object of the enquiry is to ascertain the truth of falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant. *Chandra Deo Singh* v. *Prokash Chandra Bose*, AIR 1963 SC 1430: (1964) 1 SCR 639: (1963) 2 Cri LJ 397, 401.

Bench Strength **4**. Coram: *Syed Jafer Imam*, *K. Subba Rao*, *Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 22-1-1963]

Distinguished in *Prabha Mathur v. Pramod Aggarwal, (2008) 9 SCC 469*

[8266] — Ss. 202 and 203 — Fresh complaint on dismissal of the earlier complaint — Grounds of entertaining — *Magistrate taking evidence into consideration — Order not absurd, unjust or foolish — Necessary principles applied — Fresh complaint not to be entertained*

The Magistrate taking the evidence into consideration came to the conclusion that there was no ground to proceed, and therefore refused to issue process. In his opinion the evidence was not worthy of credit and he was not satisfied with the correctness of the complaint and dismissed it as he was entitled to do so on these findings. The order was, therefore, not in any manner manifestly absurd, unjust or foolish, nor can it be said that the Magistrate ignored any principles which were necessary to apply under Ss. 202 and 203 CrPC.

On the facts of the case the bringing of the fresh complaint is a gross abuse of the process of the Court and is not with the object of furthering the interest of justice.

Per S.K. Das, J. (minority)

The Magistrate instead of holding an enquiry into the complaint proceeded as though he was trying the case itself on merits. This mistake on the part of the Magistrate gave a wrong direction to the whole proceedings on the first complaint and the order of dismissal passed by him was due to a manifest error and resulted in miscarriage of justice.

The entertaining of the second complaint fully serves the interests of justice and its dismissal would defeat the ends of justice. *Pramatha Nath Talukdar* v. *Saroj Ranjan Sarkar*, AIR 1962 SC 876: 1962 Supp (2) SCR 297: (1962) 1 Cri LJ 770.

Bench Strength **3**. Coram: **S.K. Das**[1], **J.L. Kapur**[2] and *M. Hidayatullah*[2], JJ. [Date of decision: 21-12-1961]

[8267] — Ss. 202 and 203 — Object

The object of the provisions of S. 202, CrPC, is to enable a Magistrate to form an opinion as to whether the processes should be issued or not. At that stage what the Magistrate has to see is whether there is evidence in support of the allegations made in the complaint and not whether the evidence is sufficient to warrant conviction. The function of the Magistrate holding a preliminary enquiry is only to be satisfied that a prima facie case is made out against the accused on the materials placed before him by the complainant. Where a prima facie case has been made out even though much can be said on both sides, the committing Magistrate is bound to convict the accused for trial and the accused does not come into the picture at all till the process is issued. The dismissal of a complaint at that stage under S. 203, CrPC, on the ground that the case is covered by the Exceptions to S. 499, IPC, as well as all other defences that may be available to the appellants will have to be gone into during the trial of the complaint. *Balraj Khanna* v. *Moti Ram*, (1971) 3 SCC 399: 1971 SCC (Cri) 647: AIR 1971 SC 1389: 1971 Cri LJ 1110.

Bench Strength **2**. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 22-4-1971]

[8268] — Ss. 202 and 203 — Scope of — Magistrate's judgment under S. 203 to be based on the statements of the complainant and his witnesses and the result of the inquiry if any — *Magistrate does not act erroneously if he has not misdirected himself as to the scope of the enquiry and has applied his mind to the material on record*

The scope of enquiry under S. 202 is limited to finding out the truth or otherwise of the complaint in order to determine whether process should issue or not and S. 203 lays down what materials are to be considered for the purpose. Under S. 203 Criminal Procedure Code the judgment which the Magistrate has to form must be based on the statements of the complainant and of his witnesses and the result of the investigation or enquiry if any. He must apply his mind, to the materials and form his judgment whether or not there is sufficient ground for proceeding. Therefore if he has not misdirected himself as to the scope of the enquiry made under S. 202, Criminal Procedure Code, and has judicially applied his mind to the material before him and then proceeds to make his order it cannot be said that he has acted erroneously. *Pramatha Nath Talukdar* v. *Saroj Ranjan Sarkar*, AIR 1962 SC 876: 1962 Supp (2) SCR 297: (1962) 1 Cri LJ 770.

Bench Strength **3**. Coram: **S.K. Das**[1], **J.L. Kapur**[2] and *M. Hidayatullah*[2], JJ. [Date of decision: 21-12-1961]

[8269] — Ss. 202 and 204 — Cognizance of offence taken by one Magistrate — Issue of process by another Magistrate in the absence of transfer of case to him by the Magistrate taking cognizance of offence — *Legality — Power of Magistrate under S. 202 whether limited by S. 204*

The High Court quashed the issue of process by the Magistrate Shri Sarkar on the ground that he not having cognizance of the offence had no right to issue of process. The cognizance of the offence had been taken by another Magistrate, Shri Ganguly, on appeal to the Supreme Court.

Held:

The High Court correctly quashed the issue of process. In the present case there was no order of the transfer of the case by Shri Ganguly to Shri Sarkar. The issue of process is a matter for judicial determination. Before issuing a process the Magistrate has to examine the complainant. That is why the issue of process is by the Magistrate who has taken cognizance or the Magistrate to whom the case has been transferred. The power of the Magistrate to issue process under S. 202 of the Code of Criminal Procedure is not limited by the terms of S. 204 to issue process. *Rajindra Nath Mahato* v. *T. Ganguly, Dy. Supdt.*, (1972) 1 SCC 450: 1972 SCC (Cri) 206: AIR 1972 SC 470: (1972) 2 SCR 671: 1972 Cri LJ 268.

Bench Strength **2**. Coram: **A.N. Ray** and *D.G. Palekar*, JJ. [Date of decision: 2-12-1971]

[8270] — Ss. 202 and 204 — Issue of process — Existence of sufficient cause for proceeding — *When complaint is dismissed and when process is issued — Whether for issue of process sufficient evidence is required to be adduced by complainant*

Per Khanna, J.

If the Magistrate before whom the complaint is made or to whom it has been transferred, after considering the statement on oath of the complainant and his witnesses and the result of enquiry or investigation under S. 202 is of the opinion that there is no sufficient cause for proceeding, he may for reasons to be recorded briefly, dismiss the complaint. If, on the contrary, the Magistrate taking cognizance of the offence is of the opinion that there is sufficient cause for proceeding, he should issue process against the accused in accordance with S. 204 of the Code. It may be that the evidence which is required to be adduced by the complainant at that stage may not be sufficient for recording a finding of conviction, but that fact would not absolve the complainant who wants the Magistrate to issue a process against the accused persons from leading some credible evidence as may prima facie show the commission of the offence. *Nirmaljit Singh Hoon* v. *State of W.B.*, (1973) 3 SCC 753: 1973 SCC (Cri) 521: AIR 1972 SC 2639.

Bench Strength **3**. Coram: **J.M. Shelat**[1], *I.D. Dua*[1] and **H.R. Khanna**[1&2], JJ. [Date of decision: 6-9-1972]

— S. 203 *See* Ss. 200, 202 and 203

See also Ss. 202 and 203

[8271] — S. 203 — Dismissal of complaint — When can be made — *Whether in spite of patent absurdities of evidence it is justified to proceed with*

An order of dismissal of a complaint under S. 203, Criminal Procedure Code, has to be made on judicially sound grounds. It can only be made where the reasons given disclose that the proceedings cannot terminate successfully in a conviction.

If a bare perusal of a complaint or the evidence led in support of it shows that the essential ingredients of the offences alleged are absent or that the dispute is only of civil nature or that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, the complaint could be properly dismissed under S. 203, Criminal Procedure Code. *D.N. Bhattacharjee* v. *State of W.B.*, (1972) 3 SCC 414: 1972 SCC (Cri) 564: AIR 1972 SC 1607: 1972 Cri LJ 1037.

Bench Strength **2**. Coram: *A.N. Grover* and **M.H. Beg**, JJ. [Date of decision: 22-3-1972]

[8272] — S. 203 — Dismissal of first complaint under the section — Is no bar to the entertainment of second complaint on same facts — *Exceptional circumstances to be shown before the second complaint can be entertained — Exceptional circumstances detailed*

Per Kapur, J. (majority)

An order of dismissal under S. 203 is no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances e.g. where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings, have been adduced. It cannot be said to be in the interest of justice that after a decision has been given against the complainant upon a full consideration of his case, he or any other person should be given another opportunity to have his complaint enquired into.

Per S.K. Das, J.

There is nothing in law which prohibits the entertainment of a second complaint on the same allegations when a previous complaint had been dismissed under S. 203 of the Code of Criminal Procedure. As a rule of necessary caution and of proper exercise of the discretion given to a Magistrate under S. 204(1) of the Code of Criminal Procedure, exceptional circumstances must exist for the entertainment of a second complaint on the same allegations in other words, there must be good reasons why the Magistrate thinks that there is "sufficient ground for proceeding" with the second complaint, when a previous complaint on the same allegations was dismissed under S. 203 of the Code of Criminal Procedure. The exceptional circumstance must be such as would lead the Magistrate to think that the previous order of dismissal was due to a manifest error or resulted in a manifest miscarriage of justice. The exceptional circumstances are brought under three categories: (1) manifest error, (2) manifest miscarriage of justice, and (3) new facts which the complainant had no knowledge of or could not with reasonable diligence have brought forward in the previous proceedings. Any exceptional circumstances coming within any one or more of the aforesaid three categories would fulfil the test.

Whenever a Magistrate is satisfied that the previous order of dismissal was due to a manifest error or has resulted in a miscarriage of justice, he can entertain a second complaint on the same allegations even though an earlier complaint was dismissed under S. 203 of the Code of Criminal Procedure. *Pramatha Nath Talukdar* v. *Saroj Ranjan Sarkar*, AIR 1962 SC 876: 1962 Supp (2) SCR 297: (1962) 1 Cri LJ 770.

Bench Strength 3. Coram: **S.K. Das**[1], **J.L. Kapur**[2] and *M. Hidayatullah*[2], JJ. [Date of decision: 21-12-1961]

[8273] — **S. 203 — Fresh complaint on dismissal of previous complaint** — *Fresh complaint on the same facts, filed 5 years after the first complaint was dismissed — Complainant not disclosing when he came to know about some alleged fresh evidence — Fresh complaint is an abuse of the process of court and should not be entertained. Pramatha Nath Talukdar* v. *Saroj Ranjan Sarkar*, AIR 1962 SC 876: 1962 Supp (2) SCR 297: (1962) 1 Cri LJ 770.

Bench Strength 3. Coram: **S.K. Das**[1], **J.L. Kapur**[2] and *M. Hidayatullah*[2], JJ. [Date of decision: 21-12-1961]

[8274] — **S. 203 — Scope — Dismissal of complaint — Power of Magistrate to do so** — *Magistrate can dismiss a complaint on considering the statement on oath of the enquiring Magistrate and result of investigation or enquiry under S. 202 CrPC — Magistrate cannot take into account the statements of witnesses in enquiry by the police statements in another enquiry*

The power to dismiss a complaint rests only with a Magistrate who has taken cognizance of it. If before issue of process, he had sent down the complaint to a Magistrate subordinate to him for making the enquiry, he has the power to dismiss the complaint, if in his judgment, there is no sufficient ground for proceeding. One of the conditions, however, requisite for doing so is the consideration of the statements on oath if any made by the complainant and the witnesses and of the result of the investigation or the enquiry which he had ordered to be made under S. 202 CrPC.

When the Magistrate considered the statement of witnesses recorded during investigation by the police on the basis of the formative report on the basis of any evidence adduced before him during the enquiry in another complaint, the procedure was illegal.

The object of an enquiry under S. 202 is to ascertain whether the allegations made in the complaint are intrinsically true, the Magistrate acting under S. 203 has to satisfy himself that there is sufficient ground for proceeding. In order to come to this conclusion, he is entitled to consider the evidence taken by him or recorded in an enquiry under S. 202, or statements made in an investigation under that section, as the case may be. He is not entitled to rely upon any material besides this. *Chandra Deo Singh* v. *Prokash Chandra Bose*, AIR 1963 SC 1430: (1964) 1 SCR 639: (1963) 2 Cri LJ 397, 401.

Bench Strength 4. Coram: *Syed Jafer Imam, K. Subba Rao, Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 22-1-1963]

[8275] — **S. 203 — Second complaint on same facts when earlier complaint dismissed** — *Grounds of — Fresh evidence disclosed — Should be such that it could not with reasonable diligence have been adduced*

If the ground for the entertainment of a fresh complaint on the same facts, when earlier complaint was dismissed is the disclosure of fresh evidence the correct view is that it should be such that it could not with reasonable diligence have been adduced. *Pramatha Nath Talukdar* v. *Saroj Ranjan Sarkar,* AIR 1962 SC 876: 1962 Supp (2) SCR 297: (1962) 1 Cri LJ 770.

Bench Strength 3. Coram: **S.K. Das**[1], **J.L. Kapur**[2] and *M. Hidayatullah*[2], JJ. [Date of decision: 21-12-1961]

[8276] — Ss. 203 and 209 — Expression "sufficient ground" — Meaning of — *Construction of S. 203*

Section 203 consists of two parts. The first part lays down the materials which the Magistrate must consider, and the second part says that if after considering those materials there is in his judgment no sufficient ground for proceeding, he may dismiss the complaint.

The words 'sufficient ground' used in S. 203 and in S. 209 have been construed to mean the satisfaction that a prima facie case is made out against the person accused by the evidence of witnesses entitled to a reasonable degree of credit, and not sufficient ground for the purpose of conviction. *Nirmaljit Singh Hoon* v. *State of W.B.*, (1973) 3 SCC 753: 1973 SCC (Cri) 521: AIR 1972 SC 2639.

Bench Strength 3. Coram: **J.M. Shelat**[1], *I.D. Dua*[1] and **H.R. Khanna**[1&2], JJ. [Date of decision: 6-9-1972]

[8277] — Ss. 203 and 537 — Order of dismissal not containing any reasons — *Order is erroneous and a nullity — Error not curable under S. 537*

Under S. 203 of CrPC the Magistrate is required to record his reasons for doing so when he dismisses a complaint. When the Magistrate did not record his reasons for dismissing a complaint under S. 203 CrPC the error is of a kind which goes to the root of the matter. The defect is also not curable under S. 537 CrPC because prejudice is writ large on the face of the order. The complainant is entitled to know why his complaint has been dismissed with a view to consider an approach to a revisional court and where he takes a matter to the revisional court renders his task before that Court difficult, particularly in view of the limited scope of the provisions of Ss. 438 and 439, Code of Criminal Procedure. *Chandra Deo Singh* v. *Prokash Chandra Bose*, AIR 1963 SC 1430: (1964) 1 SCR 639: (1963) 2 Cri LJ 397, 401.

Bench Strength 4. Coram: *Syed Jafer Imam*, *K. Subba Rao*, *Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 22-1-1963]

— **S. 204** *See* Ss. 200 and 204

See also Ss. 202 and 204

— **S. 205** *See* Ss. 540-A and 205

— **S. 206** *See* Ss. 190, 193 and 206

See also Ss. 437, 347, 206 and 207-A

[8278] — Ch. XVIII (Ss. 206 to 220) — Nature

There is nothing in the Code or in Ch. XVIII which says what, if any, consequence would follow if the complainant remains absent at any subsequent hearing after filing the complaint. In this respect Ch. XVIII is distinctly dissimilar to the Chapters dealing with the trial of summons and warrant cases where it is specifically provided what consequence follows on the absence of the complaint. *Ashwin Nanubhai Vyas* v. *State of Maharashtra*, AIR 1967 SC 983, 985: (1967) 1 SCR 807, 811: 1967 Cri LJ 943: 69 Bom LR 308.

Bench Strength 3. Coram: **M. Hidayatullah**, *S.M. Sikri* and *Raghubar Dayal*, JJ. [Date of decision: 10-10-1966]

— **S. 207** *See* Ss. 215, 561-A and 207

See also Ch. XVIII (Ss. 206 to 220)

[8279] — S. 207 — Commitment proceedings — Application of section to case not exclusively triable by Sessions Court — Procedure to be followed — *Magistrate must inform the accused that he is holding an enquiry*

It is open to a Magistrate to hold an inquiry from the beginning under Ch. XVIII in a case not exclusively triable by the Court of Session. But the mere fact that the Magistrate has such power does not necessarily indicate to the accused that he is holding an inquiry under Ch. XVIII rather than a trial before himself. Where the case is not exclusively triable by the Court of Session, the accused would naturally conclude that the proceedings before the Magistrate are in the nature of a trial and not an enquiry under Ch. XVIII. If the Magistrate intends to use his powers under S. 207 and hold an inquiry from the beginning in a case not exclusively triable by the Court of Session, the only way in which the accused can known that he is holding an inquiry and not a trial is by the Magistrate informing the accused that he is holding an inquiry under Ch. XVIII and not a trial. If he fails to do so, the accused can reasonably conclude that a trial is being held. *Chhadamilal Jain* v. *State of U.P.*, AIR 1960 SC 41: (1960) 1 SCR 736: 1960 Cri LJ 145, 149.

Bench Strength 4. Coram: *Syed Jafer Imam*, *J.L. Kapur*, *A.K. Sarkar* and **K.N. Wanchoo**, JJ. [Date of decision: 14-9-1959]

[8280] — Ss. 207, 207-A and 437 — Scope — Facts disclosing a case triable by a Court of Sessions — Two views possible on the point about evidence in a case — *Magistrate must commit the case and not try it himself*

The ultimate duty of weighing the evidence is cast on the Court which has the jurisdiction to try an accused person. Thus, where two views are possible about the evidence in a case before the Magistrate it would not be for him to evaluate the evidence and strike a balance before deciding whether or not to commit the case to a Court of Sessions. If, instead of committing the case to a Court of Sessions, he proceeds to try the accused upon the view that on the evidence found acceptable by him only a minor offence is made out for which no commitment is required he would obviously be making an encroachment on the jurisdiction of the appropriate Court. This may lead to miscarriage of justice and the only way to prevent it would be by a superior Court stepping in and exercising its revisional jurisdiction under S. 437, CrPC. *Thakur Ram* v. *State of Bihar*, AIR 1966 SC 911: (1966) 2 SCR 740: 1966 Cri LJ 700, 703-06.

Bench Strength 3. Coram: **J.R. Mudholkar**, *R.S. Bachawat* and *P. Satyanarayana Raju*, JJ. [Date of decision: 26-11-1965]

[8281] — Ss. 207 and 207-A — Constitutionality — Two kinds of proceedings at the commitment stage — Provision of — *Whether the classification is reasonable — Held, classification reasonable — No discrimination and Art. 14 of the Constitution not hit — Provisions held constitutional*

By Ss. 207 & 207-A of Criminal Procedure Code the Legislature has provided for a clear classification between the two kinds of proceedings at the commitment stage based upon a very relevant consideration, namely, whether or not there has been a previous inquiry by a responsible public servant whose duty is to discover crime and to bring criminals to speedy justice. This basis of classification is clearly connected with the underlying principle of administration of justice that an alleged criminal should be placed on his trial as soon after the commission of the crime as circumstances of the case would permit. This classification cannot be said to be unreasonable and not to have any relation to the object of the legislation, namely, a more speedy trial of offences without any avoidable delay. Therefore there is no discrimination and that the provisions of Art. 14 of the Constitution, have not been contravened. The provisions of the Code, impugned in this case must, therefore, be held to be constitutional. *Macherla Hanumantha Rao* v. *State of A.P.*, AIR 1957 SC 927: 1958 SCR 396: (1957) 1 MLJ (SC) 56: 1957 Cri LJ 1463, 67.

Bench Strength 5. Coram: *S.R. Das, C.J.* and *T.L. Venkatarama Aiyar*, **B.P. Sinha**, *J.L. Kapur* and *A.K. Sarkar*, JJ. [Date of decision: 17-9-1957]

— S. 207-A *See* Ss. 161, 207-A and 537
See also Ss. 190 and 207-A
See also Ss. 207 and 207-A
See also Ss. 207, 207-A and 437
See also Ss. 209 and 207-A
See also Ss. 215 and 207-A
See also Ss. 437, 347, 206 and 207-A

[8282] — S. 207-A — Applicability — Retrospective effect — Accused having been prosecuted in one trial under Arms Act and in another trial under S. 302 IPC — *Proceeding under the Arms Act having been commenced on 30-1-1956 ended in accused's conviction on 16-3-1956 — Murder trial proceedings having been started on 3-12-1955 and the case having been committed to sessions on 3-4-1956 — Accused having been sentenced to death on 1-8-1956 and death sentence having been confirmed by the High Court — Contention being that copies of statements of witnesses recorded in Arms Act case not having been supplied to the accused the murder trial stood vitiated — Held, non compliance of S. 207-A does not vitiate the trial because when the committal proceedings started before the Magistrate S. 207-A was not in the statute and the Act came into force on 1-1-1956 when the proceedings were pending. Gurbachan Singh* v. *State of Punjab*, AIR 1957 SC 623: 1957 Cri LJ 1009, 1012.

Bench Strength 3. Coram: *B. Jagannadhadas*, *Syed Jafer Imam* and **P. Govinda Menon**, JJ. [Date of decision: 24-4-1957]

[8283] — S. 207-A — Committal proceedings — Accused has no right to lead evidence in defence in proceedings under the section

The Scheme of S. 207-A does appear to provide for a defence witness to be examined before an order is passed either under sub-section (6) or sub-section (7) and that may be because it was thought by the Legislature that in dealing with criminal cases instituted on a police report, it may ordinarily not be necessary to prolong the enquiry by allowing the accused person to lead evidence in defence and so, no provision in that behalf has been made. Even the examination of the accused person has been left to the discretion of the Magistrate under sub-section (6). Sub-section. (7) also shows that the examination of the accused person is in the discretion of the Magistrate. It is after the charge is framed and read and explained to the accused person under sub-section (8) that the stage is reached for him to give in a list of persons whom he wants to examine under sub-section (9). On contrasting the provisions of S. 207-A with corresponding provision of S. 208, it is clear that an accused person has no right to lead evidence in defence in proceedings governed by S. 207-A, whereas he has a right to call for such evidence in proceedings governed by S. 208. *State of W.B.* v. *Tulsidas Mundhra*, 1963 Supp (1) SCR 1: (1964) 1 Cri LJ 443.

Bench Strength 3. Coram: **P.B. Gajendragadkar**, *K.C. Das Gupta* and *J.R. Mudholkar*, JJ. [Date of decision: 11-9-1962]

[8284] — S. 207-A — Committal proceedings in serious offences like murder — *All the witnesses of actual commission of offence must be examined — Failure to do this, without examining if it was necessary in the interest of justice, amounts to failure in the discharge of the duties by the Magistrate*

The Magistrate has in the inquiries relating to charges for serious offences like murder the power and indeed a duty in the interest of the accused as well as in the larger interest of the public to record the evidence of other witnesses who throw light on the case. Examination of witnesses to the actual commission of the offence should, in inquiries for committal, on charges for such serious offences, be the normal rule. With a view to shorten delays in the proceeding preliminary to bring the accused to trial, the Legislature has by enacting S. 207-A conferred a discretion upon the Magistrate in the matter of examination of witnesses not produced by the prosecution. Exercise of that discretion must be judicial: it is not to be governed by any set rules or standards, but must be adjusted in the light of circumstances of the case. The Magistrate is again not to be guided by the attitude of the prosecutor. He must of course consider the representation relating to the examination of witnesses by the prosecutor, but in considering whether it is necessary in the interest of justice to take evidence of any one or more of the other witnesses for the prosecution, he must have due regard to the nature and gravity of the offence, the interest of the accused and the larger interest of the public, and the defence if any disclosed by the accused. A Magistrate failing to examine witnesses to the actual commission of the offence because they are not produced, without considering whether it is necessary in the interest of justice to examine such witnesses fails in the discharge of his duties.

It is the duty of the Magistrate to examine all such witnesses as may be produced by the prosecutor as witnesses to the actual commission of the offence alleged, but his duty does not end with such examination. He must apply his mind to the documents referred to in S. 173, and the testimony of witnesses, if any, produced by the prosecution and examined, and consider whether in the interest of justice it is necessary to record the evidence of other witnesses. In inquiries relating to charges for serious offences like murder, normally the Magistrate should insist upon the examination of the principal witnesses to the actual commission of the offence. Failure to examine the witnesses may be justified only in exceptional cases. *Kirpal Singh* v. *State of U.P.*, AIR 1965 SC 712: (1964) 3 SCR 992: (1965) 1 Cri LJ 636.

Bench Strength 3. Coram: *B.P. Sinha, C.J.* and **J.C. Shah** and *N. Rajagopala Ayyangar*, JJ. [Date of decision: 10-5-1963]

[8285] — S. 207-A — Police report suggesting the commission of an offence exclusively triable by a Court of Sessions — *Magistrate on the view that circumstances do not disclose an offence exclusively triable by sessions can nevertheless himself try the case — Where offence triable by Magistrate and Court of Sessions the Magistrate can try the case where in his view circumstances do not warrant a trial by Sessions Judge*

Where the police report suggests the commission of an offence which is exclusively triable by a Court of Session, the Magistrate can nevertheless proceed to try the accused for an offence which is triable by him if he is of the view that no offence exclusively triable by a Court of Sessions is disclosed. Similarly, even in a case where an offence is triable both by a Magistrate and a Court of Sessions, the Magistrate is of the view that the circumstances do not warrant a trial by a Court of Sessions he can proceed with the trial of the accused for that offence himself. *Thakur Ram* v. *State of Bihar*, AIR 1966 SC 911: (1966) 2 SCR 740: 1966 Cri LJ 700, 703.

Bench Strength 3. Coram: **J.R. Mudholkar**, *R.S. Bachawat* and *P. Satyanarayana Raju*, JJ. [Date of decision: 26-11-1965]

[8286] — S. 207-A — Scope and interpretation — No ground for committing the accused made out according to the trial Magistrate — *Magistrate can discharge the accused or try him himself or get him tried by some other Magistrate*

If the Magistrate at the appropriate stage of proceedings under S. 207-A CrPC is of opinion that no ground for committing the accused for trial exists Magistrate can, after recording his reasons, discharge the accused. If, however, it appears to the Magistrate that such person should be tried by himself or some other Magistrate he must proceed accordingly. This contingency will arise if the Magistrate forms an opinion that no case exclusively triable by a Court of Sessions is disclosed but a less serious offence which it is within the competence of the Magistrate to try is disclosed. In that case the Magistrate has to proceed to try the accused himself or send him for trial before another Magistrate. *Ramekbal Tiwary* v. *Madan Mohan Tiwary*, AIR 1967 SC 1156: (1967) 2 SCR 368: 1967 Cri LJ 1076, 79, 81.

Bench Strength **5**. Coram: *K. Subba Rao, C.J.* and *J.C. Shah, S.M. Sikri*, **V. Ramaswami** and *C.A. Vaidialingam*, JJ. [Date of decision: 17-1-1967]

[8287] — S. 207-A — Scope and interpretation — Procedure to be followed — Committal without examining witnesses — *Magistrate has jurisdiction to discharge or commit the accused on the basis of documentary evidence referred to in S. 173 CrPC when he is not of the opinion that it is in the interest of justice to take evidence and the prosecution does not examine any eyewitness*

In a proceeding under S. 207-A instituted on a police report the Magistrate is bound to take evidence of only such eyewitnesses as are actually produced by the prosecution in court. The Magistrate, if he is of the opinion, that it is in the interest of justice to take evidence, whether of eyewitnesses or others, has a duty to do so. If the Magistrate is not of that opinion and if the prosecution has not examined any witness, he has jurisdiction to discharge or commit the accused to Sessions on the basis of the documents referred to in S. 173 CrPC. *Shri Ram* v. *State of Maharashtra*, AIR 1961 SC 674: (1961) 2 SCR 890: (1961) 1 Cri LJ 760, 63: 63 Bom LR 434.

Bench Strength **3**. Coram: *Syed Jafer Imam*, **K. Subba Rao** and *Raghubar Dayal*, JJ. [Date of decision: 5-12-1960]

[8288] — S. 207-A — Scope of — Nature and extent of function of committing Magistrate

From sub-sections (6) and (7) of S. 207-A it is clear that the Magistrate conducting the inquiry proceedings can discharge the accused only if there is no evidence at all to base the conviction.

The committing Magistrate has jurisdiction of a limited character. He has to sift and weigh the evidence but only to determine if the prosecution has made out a prima facie case.

The committing Magistrate has a judicial, not a ministerial, duty to perform and therefore he cannot act as a post office for onward transmission of the case. He must apply his mind to the evidence in order to determine whether that evidence makes out a prima facie case against the accused. Thus, the committal proceedings go before the Sessions Court not in a virgin form but with the judicial imprimatur of the Magistrate that prima facie evidence is such as may justify the conviction of the accused. *Supdt. and Remembrancer of Legal Affairs* v. *Mohd. Samsuddin*, (1975) 3 SCC 390: 1975 SCC (Cri) 16: AIR 1975 SC 146: 1975 Cri LJ 233.

Bench Strength **2**. Coram: **Y.V. Chandrachud** and *P.N. Bhagwati*, JJ. [Date of decision: 12-11-1974]

[8289] — S. 207-A — Order of discharge — When contemplated — *Only where the Magistrate concludes that the act alleged does not amount to any offence*

An express order of discharge is contemplated only in a case where a Magistrate comes to the conclusion that the act alleged against the accused does not amount to any offence at all and, therefore, no question of trying him either himself or by any other court arises. *Thakur Ram* v. *State of Bihar*, AIR 1966 SC 911: (1966) 2 SCR 740: 1966 Cri LJ 700, 703.

Bench Strength **3**. Coram: **J.R. Mudholkar**, *R.S. Bachawat* and *P. Satyanarayana Raju*, JJ. [Date of decision: 26-11-1965]

[8290] — Ss. 207-A and 190(1)(a), (b) & (c) — Scope — Appellant named in Col. No. 2 of charge-sheet with heading "not sent up" — *Magistrate taking cognizance of the case — During the trial the Magistrate summoning by non-bailable warrant the appellant for enquiry as an accused — Held, cognizance is taken of an offence and not accused — Is not a proceeding under S. 207(b), but is covered by S. 207(a) — Case falls within 190(1)(a) CrPC not cl. (b) or (c)*

Section 207(*a*) refers back to S. 190(1)(*b*); in other words, the police report mentioned in S. 207(*a*) is the report mentioned in S. 190(1)(*b*), and once cognizance is taken under S. 190(1)(*b*), a proceeding is instituted within S. 207(*a*). Section 207(*b*) can only apply if the case was instituted otherwise than on a police report. On the facts of this case it is quite clear that the case does not fall within S. 190(1)(*a*) or S. 190(1)(*c*) because the Sub-Divisional Magistrate had taken cognizance of the offence on April 5, 1961. Once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence. The term "complaint" would include allegations made against persons unknown. If a

Magistrate takes cognizance under S. 190(1)(*a*) on the basis of a complaint of facts he would take cognizance and a proceeding would be instituted even though persons who had committed the offence were not known at that time. The same position prevails under S. 190(1)(*b*). *Raghubans Dubey* v. *State of Bihar*, AIR 1967 SC 1167: (1967) 2 SCR 423: 1967 Cri LJ 1081, 83, 84.

Bench Strength 3. Coram: *M. Hidayatullah*, **S.M. Sikri** and *C.A. Vaidialingam*, JJ. [Date of decision: 19-1-1967]

[8291] — Ss. 207-A and 209 — Distinction between — Existence of a stronger case for discharging an accused under S. 207-A is necessary than under S. 207

The words of the two sections are not the same, and it is possible to say that the force of the two sections is also not the same, and that S. 209 gives a power to enter upon the merits of a case in a manner which S. 207-A does not warrant.

The test for discharging the accused must, in a large way, be the same under both the sections, and it is hardly necessary to decide the full ambit of S. 207-A, and contrast it with that of S. 209. If there is any indication in the language, it is altogether on the side that the Magistrate must find a stronger case for discharging the accused under S. 207-A than under S. 209. *Bipat Gope* v. *State of Bihar*, AIR 1962 SC 1195: 1962 Supp (2) SCR 948: (1962) 2 Cri LJ 276, 77.

Bench Strength 2. Coram: **M. Hidayatullah** and *J.C. Shah*, JJ. [Date of decision: 1-2-1962]

[8292] — Ss. 207-A and 209 — S. 209 applies to cases instituted otherwise than on police report, but the principle underlying the section applies to cases instituted on police report also. *Alamohan Das* v. *State of W.B.*, AIR 1970 SC 863: (1969) 2 SCR 520: (1970) All Cri Cas 114: (1970) 40 Comp Cas 643: 1970 Cri LJ 860.

Bench Strength 2. Coram: **J.C. Shah** and *V. Ramaswami*, JJ. [Date of decision: 26-10-1968]

[8293] — Ss. 207-A and 271 — Framing of charge in cases triable by the Sessions Court — *Comparison with procedure under the old Code — CrPC, 1973, S. 228*

The charge against the accused under the procedure prescribed in the new Code is to be framed for the first time by the Court of Session while according to the procedure prescribed under the old Code, the charge is framed by the committing Magistrate and the Court of Session is merely given the power to alter or amend the charge, if it thinks necessary to do so. *State of Karnataka* v. *K.H. Annegowda*, (1977) 1 SCC 417: 1977 SCC (Cri) 106: AIR 1977 SC 357: 1977 Cri LJ 220: (1977) 2 SCR 350.

Bench Strength 2. Coram: **P.N. Bhagwati** and *A.C. Gupta*, JJ. [Date of decision: 8-12-1976]

— S. 207-A(3) *See* Ss. 162, 173(4) and 207-A(3)

See also Ss. 173(4) and 207-A(3)

[8294] — Ss. 207-A(3) and 173(4) — Both provisions only directory and not mandatory — Effect of non-compliance

The word "shall" occurring both in sub-section (4) of S. 173 and sub-section (3) of S. 207-A, is not mandatory but only directory, because an omission by a police officer, to fully comply with the provisions of S. 173, should not be allowed to have such a far-reaching effect as to render the proceedings including the trial before the Court of Sessions, wholly ineffective.

Certainly, if it is shown, in a particular case, on behalf of the accused persons that the omission on the part of police officers concerned or of the Magistrate before whom the committal proceedings had pended, has caused prejudice to the accused, in the interest of justice, the Court may re-open the proceedings by insisting upon full compliance with the provisions of the Code. *Narayan Rao* v. *State of A.P.*, AIR 1957 SC 737, 741: 1958 SCR 283, 293: 1957 Cri LJ 1320.

Bench Strength 3. Coram: **B.P. Sinha**, *Syed Jafer Imam* and *J.L. Kapur*, JJ. [Date of decision: 15-7-1957]

[8295] — Ss. 207-A(4), (6) and (7) — Examination of accused in committal proceedings — "Appearing in the evidence against him" occurring in sub-section (6) — *Meaning of "evidence" in the expression — "Evidence" not restricted to evidence recorded under sub-section (4) — No evidence produced under sub-section (4) — Documentary evidence relied upon — Magistrate can nevertheless examine the accused*

Per majority

The Legislature has used the expression "evidence" at three places in cl. (6) but having regard to the context in which the expression occurs at different places the contention that it uniformly means oral evidence recorded either of witnesses produced by the prosecutor or witnesses examined on his own initiation by the Magistrate and does not include documentary evidence is not correct. In the first clause of sub-section (6) the evidence is, as the statute expressly enacts "the evidence referred to in sub-section (4)" and the expression "that such evidence and documents disclose no grounds for committing" indicates, having regard to the context, that the evidence referred to in sub-section (4) alone is comprehended thereby. But the expression "the evidence in the clause" "examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him" is not restricted to the oral evidence recorded under sub-section (4).

There has been a deliberate change of phraseology in using the expression "the evidence" in cl. (6). In the opening clause the evidence referred to is evidence taken under sub-section (4) and in the last clause the expression "such evidence" presumably is the evidence referred to in that sub-section. But in the context of the examination of the accused for the purpose of enabling him to explain any circumstances appearing against him, the Legislature has used the expression "in the evidence against him", which is not expressly qualified by reference to sub-section (4) nor does any implication arise from the context which would suggest that it has a limited content.

But by the Evidence Act which applies to the trial of all criminal cases, the expression "evidence" is defined in S. 3 as meaning and including all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry and documents produced for the inspection of the Court. There is no restriction in this definition to documents which are duly proved by evidence. Normally in a criminal trial, the Court can proceed on documents which are duly proved or by the rules of evidence made admissible without formal proof but under the amended Code the Legislature has in S. 207-A prescribed a special procedure in proceedings for commitment of the accused. The record consists of the oral evidence recorded under sub-section (4) of S. 173 and it would be difficult to regard only those documents which are duly proved, or which are admissible without proof as "evidence" within the meaning of cl. (6) and not the rest.

The Magistrate has the power, if he thinks it necessary, to examine the accused for the purpose of enabling him to explain any circumstances appearing in the evidence, such evidence being oral evidence, if any, as may have been recorded and the documents referred to in S. 173(4).

Per Ayyangar and Hidayatullah, JJ. (dissenting)

The word "evidence" occurs three times in sub-section (6) of S. 207-A CrPC. In the opening words of the sub-section where it occurs first referring as they do, specifically to the evidence recorded under sub-section (4) the word is obviously used only in the sense of oral evidence recorded under sub-section (4) together with the cross-examination and re-examination permitted by sub-section (5). This followed by the words "the Magistrate has considered all the documents referred to in S. 173. Documents therefore are treated here as a distinct category of material distinct from evidence and the sub-section proceeds on the existence of a dichotomy between these two species of material which the Magistrate has to take into account before ordering committal. If this dichotomy and this distinction between "evidence" and documents underlie the texture of the entire sub-section, it could not be disputed that the word "evidence" on the second occasion when it occurs in sub-section (6) which calls for construction in the appeal has to be read as meaning only the evidence of witnesses examined under sub-section (4). The last place where the word "evidence" occurs in the sub-section is the passage reading 'such Magistrate shall, if he is of opinion that such evidence and documents disclose no grounds for committing the accused person for trial'. It is clear here the word 'document' denotes the documents referred to earlier, namely those in S. 173 and these are again distinguished from 'evidence'. Here also there cannot be any doubt that the word 'evidence' is a reference to the evidence recorded under sub-section (4) and which has already been referred to in the opening words of the sub-section.

The whole scheme of S. 207-A proceeds on drawing a clear and sharp line of distinction between the two terms 'evidence' and 'documents' the latter meaning the documents referred to in S. 173 and that dichotomy is maintained throughout, admittedly twice, in sub-section (6) and in sub-section (7). When therefore 'documents' are referred to in sub-sections (6) and (7) it is reference to them en masse i.e. the entirety of the documents referred to in S. 173 and by no possible construction of S. 207(6) can a distinction be drawn between the documents which prove themselves and those which required to be proved by oral evidence.

Where there is no evidence recorded under sub-section (4) of S. 207-A, the Magistrate has no jurisdiction to examine an accused under S. 207-A(6). *Ramnarayan Mor* v. *State of Maharashtra*, AIR 1964 SC 949: (1964) 5 SCR 1064: (1964) 2 Cri LJ 44, 54.

Bench Strength 5. Coram: *B.P. Sinha, C.J.*[1] and *K. Subba Rao*[1], *M. Hidayatullah*[2], **J.C. Shah**[1] and **N. Rajagopala Ayyangar**[2], JJ. [Date of decision: 16-12-1963]

— S. 207-A(6) *See also* Ss. 207-A(4), (6) and (7)

[8296] **— S. 207-A(6) — Commitment for trial — Jurisdiction** — *Magistrate trying the case of his own by close appraisal of evidence — Later discharging the accused — Exceeds the jurisdiction conferred*

Section 207-A(6), CrPC can only mean that if there is a prima facie case triable by the Court of Sessions, the magistrate must commit the accused to the Court of Sessions to stand his trial. The jurisdiction conferred by sub-section (6) of S. 207-A, does not entitle a Magistrate to try the case on his own, and forestall the decision of the Court of Sessions. Where the magistrate did not stop to find out that there was evidence which, if believed, would establish, at least a prima facie case, but went further to disbelieve that evidence by an elaborate and painstaking process of examination, in aid of which he brought to bear his own appraisal, inconsistencies, improbabilities, etc., and tried the case of his own, the order of discharge passed by him was in excess of his jurisdiction. *Bipat Gope* v. *State of Bihar*, AIR 1962 SC 1195: 1962 Supp (2) SCR 948: (1962) 2 Cri LJ 276, 77.

Bench Strength **2**. Coram: **M. Hidayatullah** and *J.C. Shah*, JJ. [Date of decision: 1-2-1962]

[8297] — S. 207-A(6) — Committal proceedings — Accused refusing to answer questions under S. 207-A(6) — No presumption can be raised against him

Per majority

Declining to avail himself an opportunity to explain circumstances appearing against him from oral or documentary evidence and reserving a right to make a defence at the trial do not amount to refusal to answer a question. The opportunity contemplated by S. 207-A(6) for the examination of the accused is for his benefit and solely for the purpose of enabling him if he desires to do so to explain circumstances against him from the oral evidence and also the documents referred to in S. 173(4). The scheme of cl. (6) of S. 207-A is not the same as the scheme in S. 342 of the Code of Criminal Procedure. Under the latter section the Court is authorised to put questions to the accused for the purpose of enabling him to explain any circumstances appearing against him and the Court is required for that purpose to question him generally on the case after the witnesses for the prosecution have been examined and before he is called upon to enter upon his defence. But S. 207-A (6) does not contemplate such general questioning: it contemplates examination only for the purpose of explaining any circumstances appearing against the accused. Therefore by merely failing to avail himself of the opportunity to explain circumstances to which his attention is drawn, the accused does not refuse to answer a question which would justify a presumption against him that the answer if given would be against him.

Per Ayyangar and Hidayatullah, JJ. (dissenting)

An inference adverse to the accused might be drawn from his refusal to answer in view of illustration (*h*) given in S. 114 of the Indian Evidence Act. The Court would, therefore, be justified in drawing this inference from his refusal to answer. Whether or not a court would do so, it is certain that if the accused refuses to answer when examined by the Magistrate at the committal stage, any explanation which he might offer at a later stage could properly be characterised as an after-thought. In the circumstances it would not be correct to assume that the exercise of the power at this stage by the Magistrate to question the accused might not result in serious prejudice to the accused. *Ramnarayan Mor* v. *State of Maharashtra*, AIR 1964 SC 949: (1964) 5 SCR 1064: (1964) 2 Cri LJ 44, 54.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.*[1] and *K. Subba Rao*[1], *M. Hidayatullah*[2], **J.C. Shah**[1] and **N. Rajagopala Ayyangar**[2], JJ. [Date of decision: 16-12-1963]

[8298] — Ss. 207-A(6) and 215 — No prima facie evidence of charge against accused

Held, where the only charge against the appellant was of conspiracy under S. 120-B, IPC and in the committal proceedings the prosecution produced only documentary evidence and no oral evidence was given and there was no prima facie evidence in respect of this charge, the documentary evidence only showing that the appellant made applications on behalf of the other accused, that he filed their vakalatnamas and that he identified them as the real claimant, it cannot be said that the appellant did anything beyond what a lawyer is authorised to do in a court of law. In the absence of any evidence to suggest that he had previous knowledge of the fact that the accused were not the rightful claimants whom he identified as such and there was no evidence whatsoever that there was any concert between him and the other accused antecedent to the filing of the applications and vakalatnamas in court by him and on the contrary there are circumstances showing his bona fides, it cannot be said that there is prima facie evidence for the offence of conspiracy against him. *Hira Lal Jain* v. *Delhi Admn.*, (1973) 3 SCC 398: 1973 SCC (Cri) 309: AIR 1972 SC 2598: 1973 Cri LJ 47.

Bench Strength **3**. Coram: *J.M. Shelat*, *D.G. Palekar* and **S.N. Dwivedi**, JJ. [Date of decision: 1-9-1972]

— S. 207-A(7) *See* Ss. 207-A(4), (6) and (7)

— S. 208 *See* Ch. XVIII (Ss. 206 to 220)

See also Ss. 347(1), 208 and 537

See also Ss. 537 and 208

[8299] — Ss. 208, 209, 210 and 347(1) — Scope of Right under S. 208 — Magistrate making up his mind at Different Stages

Section 208 gives a right to the accused to produce evidence in defence before the Magistrate examines him under S. 209 and proceeds to frame a charge under S. 210. Now when a Magistrate makes up his mind to commit a case not exclusively triable by the Court of Sessions under the power given to him under S. 347(1) of the Code, he has to follow this procedure.

The Magistrate may make up his mind at any stage of the trial before him and generally speaking four contingencies may arise. Firstly, he may make up his mind after the trial is practically over and the witnesses for the prosecution have been examined and cross-examined after the charge, the accused has been examined both under Ss. 253 and 342 of the Code and all the defence evidence has been taken. In such a case Ss. 208, 209 and 210 have been complied with and all that the Magistrate has to do is to intimate to the accused that he intends to commit him for trial and ask him to give the list of witnesses under S. 211 and proceed thereafter as provided in Ch. XVIII. Secondly, the Magistrate may make up his mind after all the witnesses for the prosecution have been examined and cross-examined and the charge has been framed but no defence has been taken. In such a case that part of S. 208 which lays down that all the evidence for the prosecution shall be taken, has been complied with and the Magistrate may then proceed to comply with the rest of S. 208 and take the defence evidence and then proceed further under Ss. 209 to 213 and amend the charge so as to make it conformable to a charge in an enquiry under Ch. XVIII or cancel it. Thirdly, the Magistrate may make up his mind after some of the prosecution witnesses have been examined and cross-examined and a charge has been framed. In such a case he has to examine the rest of the prosecution witnesses under S. 208 and take the defence evidence, if any, produced by the accused and then proceed under Ss. 209 to 213 amending or cancelling the charge already framed as indicated earlier. Lastly, the Magistrate may have only just begun taking evidence for the prosecution and may not have framed a charge. In such a case he takes the rest of the prosecution evidence and complies with the provisions from Ss. 208 to 213. But in each of these four contingencies it is the duty of the Magistrate to intimate to the accused that he has made up his mind to commit in view of the provisions of S. 347(1) and then proceed in the manner indicated above. It is necessary that the accused should know when the Magistrate makes up his mind to commit so that their right under S. 208 to produce defence, if any, before commitment is made is safeguarded. *Chhadamilal Jain* v. *State of U.P.*, AIR 1960 SC 41, 45: (1960) 1 SCR 736, 744-45: 1960 Cri LJ 145.

Bench Strength **4**. Coram: *Syed Jafer Imam*, *J.L. Kapur*, *A.K. Sarkar* and **K.N. Wanchoo**, JJ. [Date of decision: 14-9-1959]

[8300] — Ss. 208, 209 and 342 — Examination of the accused — Evidentiary value of accused's statement — *Held to be received in evidence and treated in evidence and to be duly considered at the trial — Has to be treated like any other piece of evidence coming from the mouth of a witness — Matters in favour of the accused must be viewed with as much deference and given as much weight as matters which tell against him — Version of the accused should be accepted if it is reasonable and accords with probabilities unless the prosecution can prove beyond reasonable doubt that it is false*

The statements of an accused person recorded under Ss. 208, 209 and 342, CrPC are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness-box. They have to be received in evidence and treated as evidence and be duly considered at the trial (Ss. 287 and 342).

This means that they must be treated like any other piece of evidence coming from the mouth of a witness and matters in favour of the accused must be viewed with as much deference and given as much weight as matters which tell against him. Nay more. Because of the presumption of innocence in his favour even when he is not in a position to prove the truth of his story, his version should be accepted if it is reasonable and accords with probabilities unless the prosecution can prove that this fundamental approach has been ignored in this case. *Hate Singh Bhagat Singh* v. *State of M.B.*, AIR 1953 SC 468: 1953 Cri LJ 1933.

Bench Strength **3**. Coram: *Fazl Ali*, *M.C. Mahajan* and **Vivian Bose**, JJ. [Date of decision: 2-11-1951]

[8301] — Ss. 208, 252 and 286 — Important witness — Not examined — Effect of

It would be much better if the prosecution examines an important witness and does not drop him on the plea that his evidence would merely be a duplication of the evidence of another witness, so as to give an opportunity to the counsel for the accused to cross-examine him. This however is not such a circumstance as would detract from the testimony of the other witnesses whose evidence was believed by the High Court. *Chinna Baliga* v. *State of Hyderabad*, 1954 Cri LJ 1731.

Bench Strength **2**. Coram: *S.R. Das* and **N.H. Bhagwati**, JJ. [Date of decision: 13-1-1954]

— S. 209 *See* Ss. 203 and 209
See also Ch. XVIII (Ss. 206 to 220)
See also Ss. 207-A and 209
See also Ss. 208, 209, 210 and 347(1)
See also Ss. 208, 209 and 342
See also Ss. 435 & 439 and 209

[8302] — S. 209 — Committal of accused — Sufficient grounds for — *Magistrate not to discharge the accused simply because in his view defence evidence is better than prosecution evidence — Magistrate not to appropriate to himself the function of judging whether prosecution or defence evidence was to be believed*

What the Magistrate did was to appropriate to himself the function of judging whether the prosecution evidence was to be believed, or whether the defence evidence was to be believed in preference, and consequently, the evidence of the prosecution witnesses who gave eyewitness account of the offence was unreliable. No doubt a Magistrate enquiring into a case under S. 209, CrPC is not to act as a mere Post Office, and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Sessions; but in arriving at that conclusion, it is not the function of an enquiring Magistrate to weigh the pros and cons of the prosecution and defence evidence and to discharge the accused merely because in his view the defence evidence was better than the prosecution evidence.

Where there was direct evidence of prosecution witnesses to support the charge in the complaint and it could not be held that the witnesses who gave the evidence were such that there was no reasonable possibility of their being believed by any court. The Magistrate commits an error in discharging the appellant. The Sessions Judge was, therefore, right in ordering commitment of the appellant to the Court of Sessions for trial. *K.P. Raghavan* v. *M.H. Abbas*, AIR 1967 SC 740: 1967 Cri LJ 653, 55, 56.

Bench Strength **3**. Coram: *V. Ramaswami*, **V. Bhargava** and *Raghubar Dayal*, JJ. [Date of decision: 6-9-1966]

[8303] — S. 209 — Committal proceedings — Magistrate to sift evidence only to see whether there is sufficient evidence for commitment and not to see if there is sufficient evidence for conviction

A Magistrate holding an enquiry is not intended to act merely as a recording machine. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is his duty to discharge the accused: if there is some evidence on which a conviction may reasonably be based, he must commit the case. The Magistrate at that stage has no power to evaluate the evidence for satisfying himself of the guilt of the accused. The question before the Magistrate at that stage is whether there is some credible evidence which would sustain a conviction. *Alamohan Das* v. *State of W.B.*, AIR 1970 SC 863: (1969) 2 SCR 520: (1970) All Cri Cas 114: (1970) 40 Comp Cas 643: 1970 Cri LJ 860.

Bench Strength **2**. Coram: **J.C. Shah** and *V. Ramaswami*, JJ. [Date of decision: 26-10-1968]

[8304] — Ss. 209 and 207-A — Committal proceedings — Extent of power of committing Magistrate under S. 209 — *Power of Magistrate to assess evidence to find out whether there is sufficient evidence for conviction — Order of discharge by Magistrate — Legality*

Though the language of S. 209 differs from that in S. 207-A, it is well settled that under neither of the sections the Magistrate has the jurisdiction to assess and evaluate the evidence before him for the purpose of seeing whether there is sufficient evidence for conviction. The reason obviously is that if he were to do that he would be trying the case himself instead of leaving it to be done by the Sessions Court which alone has under the Code the jurisdiction to try it. *Rajpal Singh* v. *Jai Singh*, (1970) 2 SCC 206: 1970 SCC (Cri) 392: AIR 1970 SC 1015: 1970 Cri LJ 903.

Bench Strength **2**. Coram: **J.M. Shelat** and *I.D. Dua*, JJ. [Date of decision: 16-4-1970]

Distinguished in Sarabjit Rick Singh v. Union of India, (2008) 2 SCC 417

[8305] — Ss. 209 and 207-A — Introduction of S. 207-A — Effect of an interpretation of S. 209 — *Introduction of S. 207-A in CrPC does not change the principles governing Magistrate's jurisdiction under S. 209*

The Introduction of S. 207-A in the Code of Criminal Procedure by a subsequent amendment does not necessarily imply that the principles governing the exercise of jurisdiction by the Magistrate under S. 209 must thereafter be different from the principles which were held to govern his jurisdiction before this amendment. *K.P. Raghavan* v. *M.H. Abbas*, AIR 1967 SC 740: 1967 Cri LJ 653, 55, 56.

Bench Strength **3**. Coram: *V. Ramaswami*, **V. Bhargava** and *Raghubar Dayal*, JJ. [Date of decision: 6-9-1966]

[8306] — Ss. 209 and 210 — Committal proceedings — Case in which much can be said on both sides — *Held, is a fit case which should be committed by the Magistrate*

The High Court has taken pains to point out that this is one of those cases where much can be said on both sides. It will be for the jury to decide which of the two conflicting versions, will find acceptance at their hands. This was pre-eminently a case which should have been committed to the Court of Sessions for trial. *Ramgopal Ganpatrai Ruia* v. *State of Bombay*, AIR 1958 SC 97: 1958 SCR 618: 1958 Cri LJ 244, 251.

Bench Strength **3**. Coram: **B.P. Sinha**, *P. Govinda Menon* and *J.L. Kapur*, JJ. [Date of decision: 8-10-1957]

[8307] — S. 209 and 210 — Committal proceedings — Scope — *Magistrate can commit when he is satisfied that prima facie case is made out*

"When all the evidence has been heard, the examining justices then present who have heard all the evidence must decide whether the accused is or is not to be committed for trial. Before determining this matter they must take into consideration the evidence and any statement of the accused. If the justices are of opinion that there is sufficient evidence to put the accused upon trial by jury for any indictable offence they must commit him for trial in custody or on bail."

(*Halsbury's Laws of England*, Vol. 10, 3rd Ed. Article 666 at p. 365, approved as good law in India.)

The Magistrate holding the preliminary inquiry, has to be satisfied that a prima facie case is made out against the accused by the evidence of witnesses entitled to a reasonable degree of credit and unless he is so satisfied, he is not to commit. *Ramgopal Ganpatrai Ruia* v. *State of Bombay*, AIR 1958 SC 97: 1958 SCR 618: 1958 Cri LJ 244, 251.

Bench Strength **3**. Coram: **B.P. Sinha**, *P. Govinda Menon* and *J.L. Kapur*, JJ. [Date of decision: 8-10-1957]

[8308] — Ss. 209 and 210 — Committal Proceedings — Words "Sufficient grounds" in the section — Interpretation of — *Scope of the section — As explained in decided cases — Conflicting observations in the cases — The observations in various decisions on the point have to be read in the light of the facts and circumstances disclosed in those cases*

The High Courts in India, have, in some cases, held that the duty of the committing court, is only to satisfy itself that there are sufficient grounds for committing the accused for trial in the sense that there is prima facie evidence, which if believed by the Court of Sessions may lead to the conviction of the accused. There are also cases to the effect that the Magistrate holding the preliminary enquiry is empowered to weigh the evidence led on behalf of the prosecution and to decide for himself whether there is a probability of the trial ending in the conviction of the accused. An examination of the rulings shows that though it is not easy to say that a Magistrate should if he is satisfied that sufficient grounds for doing so have been made out, it is difficult to apply those crucial words "sufficient grounds" to individual cases. In the reported cases conflicting observations about the powers of a committing Magistrate have been made, but these observations have to be read in the light of the facts and circumstances disclosed in the case there before the Court. *Ramgopal Ganpatrai Ruia* v. *State of Bombay*, AIR 1958 SC 97: 1958 SCR 618: 1958 Cri LJ 244, 251.

Bench Strength **3**. Coram: **B.P. Sinha**, *P. Govinda Menon* and *J.L. Kapur*, JJ. [Date of decision: 8-10-1957]

See also AIR 1962 SC 876: (1962) 1 Cri LJ 770

***Distinguished in** Sarabjit Rick Singh v. Union of India, (2008) 2 SCC 417*

[8309] — S. 209(1) — Scope — Express order of discharge — When necessary

If Magistrate is of opinion that no ground for committing the accused for trial exists the Magistrate can, after recording his reasons, discharge the accused. If, however, it appears to the Magistrate that such person should be tried by himself or some other Magistrate he must proceed accordingly. The contingency will arise if the Magistrate forms an opinion that no case exclusively triable by a Court of Sessions is disclosed but a less serious offence which it is within the competence of the Magistrate to try is disclosed. In that case the Magistrate has to proceed to try the accused himself or send him for trial before another Magistrate.

It is apparent from the language of S. 209(1), Criminal Procedure Code that an express order of discharge is only contemplated in a case where the Magistrate comes to the conclusion that the allegations against the accused do not amount to an offence at all and, therefore no question arises of trying him either by himself or by any other court. But the section does not contemplate that an express order of discharge should be made in a case where upon the same facts it is possible to say that though no offence exclusively triable by a Court of Sessions is made out, an offence triable by a Magistrate is nevertheless made out and the Magistrate thereafter proceeds with the trial of that offence.

Chapter XVIII CrPC relates to enquiries into cases triable by the Court of Sessions or High Court. The primary object of S. 209 is to make provision for the procedure in such cases. If in the opinion of the Magistrate, there is no evidence to warrant a charge for an offence exclusively triable by a Court of Sessions, he may discharge the accused in respect of the alleged offence and, having done so, may proceed as regards the minor offence or offences under Ch. XXI or other appropriate chapter. In fact, a Magistrate cannot proceed to act under the latter part of sub-section (1) of S. 209 until he has discharged the accused under the former part of the sub-section.

Also where under S. 209(1) a Magistrate finds that there are not sufficient grounds for committing the accused for trial and directs such person to be tried before himself or some other Magistrate, the revisional powers under S. 437, Criminal Procedure Code can be exercised by the Sessions Court. *Ramekbal Tiwary* v. *Madan Mohan Tiwary*, AIR 1967 SC 1156: (1967) 2 SCR 368: 1967 Cri LJ 1076, 78-80.

Bench Strength **5**. Coram: *K. Subba Rao, C.J.* and *J.C. Shah, S.M. Sikri*, **V. Ramaswami** and *C.A. Vaidialingam*, JJ. [Date of decision: 17-1-1967]

Krishna Reddi v. Subbamma, (1900) ILR 24 Mad 136 (FB) and In re, Nalla Balingadu, AIR 1953 Mad 801 (FB) approved

[8310] — S. 209(1) — Committal proceedings — Sufficiency of evidence — *Whether necessary for the Magistrate to examine the whole evidence*

All that a Magistrate has to consider is whether under S. 209(1) CrPC there are sufficient grounds for committing the accused for trial and not whether on an appreciation of the whole evidence and other material in the case including witness for the defence, the charge against him is proved. *Tara Singh* v. *State*, AIR 1951 SC 441: 1951 SCR 729: (1951) 52 Cri LJ 1491.

Bench Strength **4**. Coram: **Fazl Ali**[1], **Patanjali Sastri**[2], **S.R. Das**[3] and **Vivian Bose**[4], JJ. [Date of decision: 1-6-1951]

— S. 210 *See* Ch. XVIII (Ss. 206 to 220)

See also Ss. 208, 209, 210 and 347(1)

See also Ss. 209 and 210

[8311] — Ss. 210, 417(3) and 423(1) — Framing of charge for commitment — Complaint under Ss. 420, 486, 468, 465/67 IPC — *Offence under S. 467 IPC being prima facie established by the evidence — Magistrate not framing any charge under S. 467 IPC and acquitting the accused under Ss. 420, 486, 467, 466/471 IPC after trial — Improper for the Magistrate to drop the charge under S. 467 IPC over which he had no jurisdiction — He was bound to frame charge under S. 467 IPC and commit the case to the Court of Sessions — High Court justified in remanding the case for retrial after framing charge under S. 467 IPC. Matukdhari Singh* v. *Janardan Prasad*, AIR 1966 SC 356: (1966) 1 SCR 255: 1966 Cri LJ 307.

Bench Strength **3**. Coram: *A.K. Sarkar*, **M. Hidayatullah** and *V. Ramaswami*, JJ. [Date of decision: 20-7-1965]

[8312] — Ss. 210 and 254 — Court can frame charges against an accused only if there is some material before him to prima facie prove the case against the accused

It is true that at the stage when the Court drew up charges and decided to proceed with the case on the footing of a conspiracy to defraud the Government, he had only to see that there was a prima facie case against the respondents. That could also be the basis upon which the High Court has to try the revision petitions of the respondents. Even so, there has to be some material before the Court which could point towards a conspiracy in which the respondents had joined. Such of the statements which the investigating officer could procure did not point to such a conspiracy. When a prima facie case was not made out charges should not have been framed against the respondents. *Union of India* v. *Major J.S. Khanna*, (1972) 3 SCC 873: 1973 SCC (Cri) 94: 1972 Cri LJ 849.

Bench Strength **3**. Coram: **J.M. Shelat**, *I.D. Dua* and *S.C. Roy*, JJ. [Date of decision: 21-10-1971]

— Ss. 211 to 213 *See* Ch. XVIII (Ss. 206 to 220)

[8313] — Ss. 213(1) and 441 — Presidency Magistrate — Power of — *Can pass an order or commitment without recording reasons — Is permitted under S. 441 to supplement the order when it is called in question before the High Court*

Under the Code, a Presidency Magistrate may pass an order without recording the reasons for such an order, for example, an order under S. 213(1) committing the accused for trial. If such an order is called in question before the High Court, the Presidency Magistrate concerned, unlike other Magistrates, is permitted by the Code to supplement the record by a statement setting forth the grounds of his decision or order, so that the High Court may have before it not only the order of decision in question but also a statement of the reasons therefor. *Ramgopal Ganpatrai Ruia* v. *State of Bombay*, AIR 1958 SC 97: 1958 SCR 618: 1958 Cri LJ 244, 251.

Bench Strength **3**. Coram: **B.P. Sinha**, *P. Govinda Menon* and *J.L. Kapur*, JJ. [Date of decision: 8-10-1957]

[8314] — Ss. 213(2), 437 and 439 — Held, High Court rightly set aside the discharge and committed the appellant to Court of Session — *Supreme Court would not interfere with the finding of fact by the High Court that a prime facie case existed justifying commitment. M.R. Dhawan* v. *Delhi Admn.*, (1978) 2 SCC 184: 1978 SCC (Cri) 186: AIR 1978 SC 1011: 1978 Cri LJ 769.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 13-3-1978]

— S. 214 *See* Ch. XVIII (Ss. 206 to 220)

— S. 215 *See* Ch. XVIII (Ss. 206 to 220)

See also Ss. 207-A(6) and 215

[8315] — S. 215 — High Court can quash committal only on point of law — *High Court, on facts, ignored this limitation when basing on the first acquittal it quashed the committal in the second case arising in similar situation. S.P.E.* v. *K.V. Sundravelu*, (1978) 2 SCC 514: 1978 SCC (Cri) 211: AIR 1978 SC 1017: 1978 Cri LJ 775.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and **P.N. Shinghal**, JJ. [Date of decision: 8-3-1978]

[8316] — S. 215 — Quashing of commitments by High Court — Scope — *High Court not competent to quash commitment if there was no reliable evidence and no point of law involved*

Under S. 215 Code of Criminal Procedure it is only on a question of law that the order of commitment can be reversed. There is not even a trace of point of law in the case on which jurisdiction under S. 215 could have been validly invoked.

If it could be said with justification that there was no legal evidence at all in support of the prosecution case, it may lead to the inference that the commitment was bad in that it was not based on any legal evidence at all. However, the distinction must always be drawn between absence of legal evidence and absence of reliable evidence.

The matter in the present proceedings is directly covered by S. 215. Therefore the High Court was clearly in error in allowing their inherent power to be invoked under S. 561-A and in setting aside order of commitment.

Applying the test laid down in S. 215 the order of commitment could not and should not have been set aside. *Khushi Ram* v. *Hashim*, AIR 1959 SC 542: 1959 Cri LJ 658.

Bench Strength **3**. Coram: *N.H. Bhagwati*, *J.L. Kapur* and **P.B. Gajendragadkar**, JJ. [Date of decision: 6-2-1958]

[8317] — S. 215 — Order of commitment — Becomes final and can only be quashed by the High Court on a point of law — Order cannot be challenged in appeal before Supreme Court. *Mohinder Singh* v. *State of Punjab*, AIR 1965 SC 79: (1965) 1 Cri LJ 112.

Bench Strength **3**. Coram: *A.K. Sarkar*, **M. Hidayatullah** and *J.C. Shah*, JJ. [Date of decision: 31-7-1963]

[8318] — Ss. 215, 561-A and 207 — Quashing the proceedings before completion of commitment enquiry by the committing Magistrate, held, improper. *Supdt. and Remembrancer of Legal Affairs* v. *Ashutosh Ghosh*, (1979) 4 SCC 381: 1979 SCC (Cri) 991: AIR 1979 SC 1195.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 16-1-1979]

[8319] — Ss. 215 and 207-A — Commitment quashed — Offences committed before filing of complaint and those after to be investigated separately — No interference justified — *All other points of law and fact left open to the parties. Narendra Swarup Bhatnagar* v. *State of Rajasthan*, (1974) 4 SCC 257: AIR 1975 SC 122.

Bench Strength **2**. Coram: **M.H. Beg** and *Y.V. Chandrachud*, JJ. [Date of decision: 10-12-1973]

— Ss. 216 to 219 *See* Ch. XVIII (Ss. 206 to 220)

[8320] — S. 219 — Scope — Power to call supplementary witnesses

The power to summon supplementary witnesses and take their evidence is merely a supplementary power for recording evidence and no more. This supplementary power does not postulate the continuance of jurisdiction in the committing magistrate to deal with the case. It is significant that this power can be exercised even by a Magistrate other than the committing Magistrate, provided he is empowered by or under S. 206 and clearly, the case covered by the commitment order passed by one magistrate cannot be said to be pending before another magistrate who may be empowered to summon supplementary witnesses. *R.R. Chari* v. *State of U.P.*, AIR 1962 SC 1573, 1579: (1963) 1 SCR 121, 133: (1962) 2 Cri LJ 510: ILR (1962) 2 All 904.

Bench Strength **2**. Coram: **P.B. Gajendragadkar** and *K.N. Wanchoo*, JJ. [Date of decision: 28-3-1962]

— **S. 220** *See* Ch. XVIII (Ss. 206 to 220)

— **S. 221** *See* Ss. 222 and 221

See also Ss. 223, 221, 222 and 225

See also Ss. 225, 221, 537 and 535

[8321] — S. 221 — Absence of prejudice — Facts supporting conviction under S. 420 whereas charge under S. 420 r/w S. 34 IPC

The actual findings support a conviction of the appellant under S. 420 itself, such a conviction would be valid though the charge is under S. 420 read with S. 34 of the Penal Code, unless prejudice is shown to have concurred. *Mobarik Ali Ahmed* v. *State of Bombay*, AIR 1957 SC 857, 866: 1958 SCR 328, 346: 1957 Cri LJ 1346.

Bench Strength **3**. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 6-9-1957]

See (1955) 2 SCR 1140: AIR 1956 SC 116

[8322] — S. 221 — Form of charge — Charge under S. 120-B IPC — *Reference to sections of the IPC merely to clarify object of conspiracy — There is no jumbling up of several offences in the charge — Charge is properly framed*

The charge by referring to various sections of the Indian Penal Code merely makes it clear that the object of the conspiracy was to forge railway receipts, which were valuable securities, to commit forgeries for the purpose of cheating and to use forged documents as genuine. What was meant by the charge was apparently fully understood by the appellants because they never complained at the appropriate stage that they were confused or bewildered by the charge. The charge is therefore in proper form and there is no jumbling of several offences in it. *Tulsi Ram* v. *State of U.P.*, AIR 1963 SC 666: 1963 Supp (1) SCR 382: (1963) 1 Cri LJ 623: ILR (1963) 1 All 840.

Bench Strength **4**. Coram: *Syed Jafer Imam*, *K. Subba Rao*, *N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 27-9-1962]

[8323] — S. 221 — Imperfection in the charge curable if no prejudice caused

The imperfection in the charge is curable provided no prejudice has been shown to have resulted because of it. *B.N. Srikantiah* v. *State of Mysore*, AIR 1958 SC 672, 675: 1959 SCR 496, 504: 1958 Cri LJ 1251.

Bench Strength **3**. Coram: *N.H. Bhagwati*, **J.L. Kapur** and *A.K. Sarkar*, JJ. [Date of decision: 14-4-1958]

[8324] — S. 221 — Object of

The object of the charge is not to introduce a provision that goes to the root of jurisdiction but to enable the accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. But there are other ways of conveying this information.

The sections following S. 223 detail the different situations. *Willie (William) Slaney* v. *State of M.P.*, AIR 1956 SC 116, 124: (1955) 2 SCR 1140, 115: 1956 Cri LJ 291.

Bench Strength **5**. Coram: *S.R. Das*[1], **Vivian Bose**[1], *B. Jagannadhadas*[2], **Syed Jafer Imam**[3] and **N. Chandrasekhara Aiyar**[2], JJ. [Date of decision: 31-10-1955]

[8325] — S. 221 — Omission to mention S. 34 IPC

The omission to mention S. 34 of the Indian Penal Code in the charge cannot affect the case unless prejudice is shown to have resulted in consequence thereof. *B.N. Srikantiah* v. *State of Mysore*, AIR 1958 SC 672, 675: 1959 SCR 496, 502: 1958 Cri LJ 1251.

Bench Strength **3**. Coram: *N.H. Bhagwati*, **J.L. Kapur** and *A.K. Sarkar*, JJ. [Date of decision: 14-4-1958]

[8326] — S. 221 — Specificity of charge an important requirement

The object of a charge is to warn the accused person of the case he is to answer. It cannot be treated as if it was a part of a ceremonial. *B.N. Srikantiah* v. *State of Mysore*, AIR 1958 SC 672, 675: 1959 SCR 496, 503: 1958 Cri LJ 1251.

Bench Strength **3**. Coram: *N.H. Bhagwati*, **J.L. Kapur** and *A.K. Sarkar*, JJ. [Date of decision: 14-4-1958]

[8327] — Ss. 221, 222, 223 and 225 — Mistake in framing of charge — Omission to mention the manner of commission of offence as required under S. 223 — *The omissions are not material unless the accused was misled or there was failure of justice*

The charge as framed fulfils the requirements of S. 221, Criminal Procedure Code, because it has mentioned the name of the offence, namely, criminal breach of trust and specified S. 409, Indian Penal Code, which impliedly gives notice to the accused of every legal condition required by law to be fulfilled in order to constitute the offence of criminal breach of trust. It has also fulfilled the requirements of S. 222(1) of the Code in so far as it has specified the securities in respect of which and the Cooperative Bank against which a criminal breach of trust had been committed. Those particulars, in our opinion, were sufficient to give the accused notice of the matter which he was charged. It is true that the manner of the commission of the offence as required by S. 223 of the Code has not been set out. But that had to be set out only when the nature of the case is such that the particulars required by Ss. 221 and 222 had not given the accused sufficient notice of the matter with which he is charged. Even assuming that there were certain omissions in the charge, they cannot be regarded as material unless in terms of S. 225 of the Code it is shown by the accused that he had in fact been misled by such omission or that there had been a failure of justice as a result of such error or omission.

In this case from the long written statement filed on behalf of the appellant it is clear that he was aware of the gravamen of the charge against him and that he tried to meet it in all its bearings. It is not a case in which it can be said that the omission in the charge has materially affected the trial of the case or prejudiced the appellant in his defence or has occasioned a failure of justice. *Jaswantrai Manilal Akhaney* v. *State of Bombay*, AIR 1956 SC 575: 1956 SCR 483: 26 Comp Cas 340: 1956 Cri LJ 1116, 1125: (1956) 2 MLJ (SC) 49.

Bench Strength **3**. Coram: *Vivian Bose*, *B. Jagannadhadas* and **B.P. Sinha**, JJ. [Date of decision: 4-5-1956]

— S. 222 *See* Ss. 221, 222, 223 and 225
See also Ss. 223, 221, 222 and 225

[8328] — S. 222 — Charge for criminal breach of trust specifying 13-7-1957 as the date on which the accused was in employment — Implication of — *Finding by High Court that misappropriation took place on 30-6-1957 does not amount to making out a new case different from the charge — Penal Code, 1860, S. 408*

The charge neither mentions the date of entrustment nor of its misappropriation but refers to July 13, 1957 as the date on which the appellant was in the employment. The implication of the charge is that it is on or about that date that the entrustment and the misappropriation took place.

As the funds were in the charge of the appellant the instructions given by him to the accountant to make a wrong cross entry are only susceptible of the inference that he wanted to misappropriate the amount. *Kantilal Gandalal Shah* v. *State of Gujarat*, (1974) 3 SCC 587: 1974 SCC (Cri) 65: AIR 1974 SC 222: 1974 Cri LJ 310.

Bench Strength **2**. Coram: *S.N. Dwivedi* and **Y.V. Chandrachud**, JJ. [Date of decision: 15-11-1973]

[8329] — S. 222 — Charge — Irregularity in framing — *Charge under S. 120-B IPC stating details of the offences committed in pursuance of conspiracy — Is irregular — No objection taken at proper stage — Trial not vitiated — In the absence of proof of prejudice trial saved by S. 225 CrPC*

Where the Magistrate in framing a charge for an offence under S. 120-B IPC mentions the acts done in pursuance of criminal conspiracy his intention is nothing more than to describe the conspiracy. The trial is not vitiated simply because the charge embraces within it all the offences said to have been committed by the accused.

The object in saying what has been set out in the first charge was only to give notice to the accused as to the ambit of the conspiracy to which they will have to answer and nothing more. Even assuming for a moment that this charge is cumbersome, in the absence of any objection by the accused at the proper time and in the absence of any material from which one could infer prejudice, they are precluded by the provisions of S. 225 from complaining about it at any rate after their conviction by the trial Court. *State of A.P.* v. *Cheemalapati Ganeswara Rao*, AIR 1963 SC 1850: (1964) 3 SCR 297: (1963) 2 Cri LJ 671.

Bench Strength **3**. Coram: *K. Subba Rao*, *Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 23-4-1963]

[8330] — Ss. 222 and 221 — Criminal conspiracy

Rule of prudence of mentioning specifically — S. 222 which requires the particulars of the offence to be stated does not in terms further require that in an offence like conspiracy the names of the co-conspirators should also be mentioned.

Though the statute law in India does not make it obligatory that the persons concerned in the crime of criminal conspiracy should be specifically named along with the person or persons charged in a particular trial, it is always advisable to give those particulars also in order to give a reasonable notice to the accused that he has been charged with having conspired with so and so (persons named), as also persons unnamed, to commit a certain offence. *Bimbadhar Pradhan* v. *State of Orissa*, AIR 1956 SC 469, 473: 1956 SCR 206, 216: 1956 Cri LJ 831: (1956) 2 MLJ (SC) 13.

Bench Strength **3**. Coram: **B.P. Sinha**, *Syed Jafer Imam* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 13-3-1956]

[8331] — S. 222(1) — Contents of a charge — Dates of offence — *Not specified in a charge under S. 376 IPC — Approximate idea of time specifying a period of 5-6 days given — The charge is not invalid — Requirements of valid charge explained*

It is conceded that in almost every charge to which S. 222(1) applies, it is usual to state that the particular offence was committed on or about a certain date and that the specified date and specific time need not necessarily be stated in the charge in every case. If it is permissible to say in a charge that a particular offence was committed on or about a specified time, without specifying the particular time, it is not correct to say that because a period of 5-6 days is indicated in the charge within which the offence is alleged to have been committed S. 222(1) has been contravened.

The requirements of S. 222(1) is that the accused person must have a reasonably sufficient notice as to the case against him. The basic requirement in every criminal trial, therefore, is that the charge must be so framed as to give the accused person a fairly reasonable idea as to the case which he is to face. The criminal courts should take the precaution of framing charges with precision and particularity in order to ensure a fair trial; but it is not correct to say that a charge is invalid solely for the reason that it does not specify the particular date and time at which any offence is alleged to have been committed.

Where the provisions prescribed by the law of procedure are intended to be mandatory, the Legislature indicates its intention in that behalf clearly and contravention of such mandatory provisions may introduce a serious infirmity in the proceedings themselves; but where the provisions made by the law of procedure are not of vital importance, but are, nevertheless, intended to be observed, their breach may not necessarily vitiate the trial unless it is shown that the contravention in question has caused prejudice to the accused.

In dealing with the question as to whether the charge framed in a criminal trial has contravened S. 222(1), the Court will have to examine all the relevant facts and if it appears to the court that having regard to them, the charge could and ought to have been framed more precisely, the court may reach that conclusion and then enquire whether the defective charge has led to the prejudice of the accused. *Chittaranjan Das* v. *State of W.B.*, AIR 1963 SC 1696: (1964) 3 SCR 237: (1963) 2 Cri LJ 534, 37.

Bench Strength 3. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 22-4-1963]

— S. 222(2) *See* Ss. 225 and 222(2)
See also Ss. 537 and 222(2)

[8332] — Ss. 222(2) proviso, 225 and 537 — Charge inconsistent with proviso to S. 222(2) — Defect is curable by S. 225 and 537 provided no prejudice caused

Where the form of charge is inconsistent with the proviso to S. 222(2) CrPC there is only one irregularity which can be cured under S. 225 and S. 537 of CrPC provided no prejudice is caused to the accused. *Kadiri Kunhahammad* v. *State of Madras*, AIR 1960 SC 661: 1960 Cri LJ 1013, 16, 17.

Bench Strength 3. Coram: **P.B. Gajendragadkar**, *A.K. Sarkar* and *K. Subba Rao*, JJ. [Date of decision: 27-1-1959]

[8333] — Ss. 222(2), 233, 234 and 235 — Nature & Scope

Sections 222(2), 234 & 235 are enabling provisions — Normal rule of separate charge for each district offence as provided in S. 233. *Ranchhod Lal* v. *State of M.P.*, AIR 1965 SC 1248: (1965) 2 SCR 283: (1965) 2 Cri LJ 253.

Bench Strength 3. Coram: *K. Subba Rao*, **Raghubar Dayal** and *N. Rajagopala Ayyangar*, JJ. [Date of decision: 27-11-1964]

[8334] — Ss. 222(2), 233, 234 and 235 — Scope — *Accused separately tried for several offences under S. 409 IPC — Acts of criminal breach of trust committed within few months — All acts said to be committed in the course of same transaction — Separate trials are not illegal. Ranchhod Lal* v. *State of M.P.*, AIR 1965 SC 1248: (1965) 2 SCR 283: (1965) 2 Cri LJ 253.

Bench Strength 3. Coram: *K. Subba Rao*, **Raghubar Dayal** and *N. Rajagopala Ayyangar*, JJ. [Date of decision: 27-11-1964]

[8335] — Ss. 222(2), 235(1) and 537 — Charge under S. 406 IPC contravening S. 222(2) CrPC — Could have been split into two charges and tried together under S. 235(1) CrPC — *No prejudice caused and the defect curable under S. 537 CrPC*

Where the charge for criminal breach of trust having been framed with respect to the gross sum embezzled within a period of more than 12 months, was in contravention of the provisions of S. 222(2) CrPC they could be split up into two charges, the total period being less than two years, and could have been tried together, in view of S. 235(1) CrPC as the offences were said to have been committed in pursuance of the criminal conspiracy entered into by the accused. No prejudice was, therefore, caused to the accused by the defect in the charge and the same is curable under S. 537 CrPC. *State of Bombay* v. *Umarsaheb Buransaheb Inamdar*, AIR 1962 SC 1153: 1962 Supp (2) SCR 711: (1962) 2 Cri LJ 259, 60.

Bench Strength 3. Coram: *S.K. Das*, *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 23-1-1962]

— S. 223 *See also* Ss. 221, 222, 223 and 225

[8336] — Ss. 223, 221, 222 and 225 — Provisions of S. 223 obligatory when details under Ss. 221 & 222 not sufficient — *In any case prejudice to be shown under S. 225*

It is true that the manner of the commission of the offence as required by S. 223 of the Code has not been set out. But that has to be set out only when the nature of the case is such that the particulars required by Ss. 221 and 222 had not given the accused sufficient notice of the matter with which he is charged.

Even assuming that there were certain omissions in the charge, they cannot be regarded as material unless in terms of S. 225 of the Code it is shown by the accused that he had in fact been misled by such omission or that there had been a failure of justice as a result of such error or omission. *Jaswantrai Manilal Akhaney* v. *State of Bombay*, AIR 1956 SC 575, 585: 1956 SCR 483, 504: 26 Comp Cas 340: 1956 Cri LJ 1116: (1956) 2 MLJ (SC) 49.

Bench Strength **3**. Coram: *Vivian Bose*, *B. Jagannadhadas* and **B.P. Sinha**, JJ. [Date of decision: 4-5-1956]

[8337] — Ss. 223, 535 and 537 — Charge — Defect in — Prejudice — *Appellant knowing what the case against him was — All the details of the offence and the incident indicated in the charge — Prejudice in trial cannot be inferred*

The appellant knew that the case against him was that he is the one who is said to have struck the fatal blow, and as he was told in the charge that the offence he is said to have committed was that of murder and was informed of the date and place and person we find it impossible to infer prejudice. *Willie (William) Slaney* v. *State of M.P.*, AIR 1956 SC 116: (1955) 2 SCR 1140: 1956 Cri LJ 291.

Bench Strength **5**. Coram: *S.R. Das*[1], **Vivian Bose**[1], *B. Jagannadhadas*[2], **Syed Jafer Imam**[3] and **N. Chandrasekhara Aiyar**[2], JJ. [Date of decision: 31-10-1955]

[8338] — Ss. 223, 535 and 537 — Charges — Prejudice — *Two accused charged under Ss. 302/34 IPC — One of them acquitted — The other's conviction under S. 302 IPC in the absence of a separate alternate charge is valid, in the absence of proof of any prejudice*

Two accused were charged under S. 302 IPC read with S. 34 IPC. The allegations in the charge were that both of them went to the house of a girl and in furtherance of a common intention committed the murder of the brother of the girl. One of the accused was acquitted. The other accused viz. the appellant was convicted under S. 302 IPC on the ground that he inflicted the fatal blow.

Per Chandrashekhara Aiyar, J.

In this case the appellant has been individually charged to the murder and there is proof that his hand caused the injury, the fact that his brother was also sought to be made liable owing to the existence of a common intention, is neither have nor there so far as the legality of the conviction is concerned, as there has been no prejudice by way of failure of justice.

Per Imam, J.

The appellant was charged with murder and nothing short of it, although it was stated in the charge that the offence was committed by him in furtherance of a common intention. If the evidence failed to prove that the offence committed by him was in furtherance of a common intention, it would be nonetheless his offence, namely, murder, if his act in law amounted to murder. The law does not require, in such a case that a separate charge for murder should be framed, because the charge of murder was already on the record. *Willie (William) Slaney* v. *State of M.P.*, AIR 1956 SC 116: (1955) 2 SCR 1140: 1956 Cri LJ 291.

Bench Strength **5**. Coram: *S.R. Das*[1], **Vivian Bose**[1], *B. Jagannadhadas*[2], **Syed Jafer Imam**[3] and **N. Chandrasekhara Aiyar**[2], JJ. [Date of decision: 31-10-1955]

— S. 225 *See* Ss. 221, 222, 223 and 225
See also Ss. 222(2) proviso, 225 and 537
See also Ss. 223, 221, 222 and 225
See also Ss. 233 and 225
See also Ss. 537 and 225

[8339] — S. 225 — All accused lumped together though charge specifying part played by each — Law applicable can be ascertained — *No prejudice*

The body of the charge set out the fact that the accused formed an unlawful assembly and stated the common object; and them the charge specified in detail the part that each accused had played. In the circumstances, each accused was in a position to know just what was charged against him because once the facts are enumerated the law that applies to them can easily be ascertained; and in this particular case it was just a matter of picking out the relevant sections from among the ten mentioned.

Section 225, Criminal Procedure Code, expressly covers this kind of case. *K.C. Mathew* v. *State of Travancore-Cochin*, AIR 1956 SC 241, 243: (1955) 2 SCR 1057, 105: 1956 Cri LJ 444.

Bench Strength **3**. Coram: **Vivian Bose**, *T.L. Venkatarama Aiyar* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 15-12-1955]

[8340] — S. 225 — Charge not specific but particulars and details known by the accused

The particulars and details were all on the record before the charges were framed and accused could not have been misled in any way. The fact that he had no difficulty in knowing what case he had to meet is fully proved by the fact that no grievance was made by him.

The irregularity complained of did not cause any real prejudice to the appellant and did not vitiate the trial. *K. Damodaran* v. *State of Travancore-Cochin*, AIR 1953 SC 462: 1953 Ker LJ 295: 1953 Cri LJ 1928.

Bench Strength 2. Coram: *M.C. Mahajan* and **S.R. Das**, JJ. [Date of decision: 20-3-1953]

[8341] — S. 225 — Charge under S. 5(2) r/w sub-sections (1) and (3), Prevention of Corruption Act — *Particulars of bribe and persons alleged to have given bribe not given — Charge not invalidated — It would be better if the particulars were given — Defect cured by the section. Ram Sagar Pandit* v. *State of Bihar*, 1963 Supp (2) SCR 652: (1964) 2 Cri LJ 65, 69.

Bench Strength 4. Coram: *Syed Jafar Imam*, **K. Subba Rao**, *N. Rajagopala Ayyangar* and *J.R. Mudholkar*, JJ. [Date of decision: 4-12-1962]

[8342] — S. 225 — Charge vague in an offence of cheating charge not specifying the manner and the mode in which cheating has been done — Charge is vague — Effect — *It is a mere irregularity and the trial is not vitiated unless accused materially prejudiced. K. Damodaran* v. *State of Travancore-Cochin*, AIR 1953 SC 462: 1953 Ker LJ 295: 1953 Cri LJ 1928.

Bench Strength 2. Coram: *M.C. Mahajan* and **S.R. Das**, JJ. [Date of decision: 20-3-1953]

[8343] — S. 225 — Defect in charge — S. 5(2), Prevention of Corruption Act, 1947 — Charge under not giving details — Effect of — *Charge not specifying the amounts of bribe taken and persons from whom bribe taken — Plea not taken in lower courts and case proceeding as if the appellant knew the case and producing all evidence — Held, charge not defective though better particulars could be demanded — Defect curable under S. 225, CrPC. Nani Gopal Mitra* v. *State of Bihar*, AIR 1970 SC 1636: (1969) 2 SCR 411: 1970 Cri LJ 1396.

Bench Strength 2. Coram: *J.C. Shah* and **V. Ramaswami**, JJ. [Date of decision: 15-10-1968]

[8344] — S. 225 — Defect in the charge — No prejudice to the accused — Conviction is not illegal

The charge framed against the appellant was not as clear as it might have been. No prejudice was, however, caused to the appellant by reason of the defect in the charge as to the intent of the appellant. He was fully aware of the case made by the prosecution and had full opportunity of rebutting the evidence given against him. The conviction was therefore not bad on that account. *Romesh Chandra Arora* v. *State*, AIR 1960 SC 154: (1960) 1 SCR 924: 1960 Cri LJ 177, 81.

Bench Strength 3. Coram: **S.K. Das**, *A.K. Sarkar* and *M. Hidayatullah*, JJ. [Date of decision: 6-10-1959]

[8345] — S. 225 — Delay in complaining prejudice detrimental

The court will be slow to entertain question of prejudice when details are not furnished; also the fact that the objection is not taken at an early stage will be taken into account. *Sukha* v. *State of Rajasthan*, AIR 1956 SC 513, 520: 1956 SCR 288, 302: 1956 Cri LJ 923.

Bench Strength 3. Coram: **Vivian Bose**, *B. Jagannadhadas* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 5-4-1956]

[8346] — S. 225 — No prejudice caused

The provisions of S. 225, Criminal Procedure Code, are clearly applicable to the facts and circumstances of the present case. It has not been shown to us how the omission to mention the name of the approver in the charge under S. 120-B, Penal Code, has misled the appellant or has occasioned a failure of justice. *Bimbadhar Pradhan* v. *State of Orissa*, AIR 1956 SC 469, 473: 1956 SCR 206, 217: 1956 Cri LJ 831: (1956) 2 MLJ (SC) 13.

Bench Strength 3. Coram: **B.P. Sinha**, *Syed Jafer Imam* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 13-3-1956]

[8347] — S. 225 — Plea about defective charge not taken in lower courts or special leave application — Cannot be allowed to be raised before Supreme Court. *Ram Sagar Pandit* v. *State of Bihar*, 1963 Supp (2) SCR 652: (1964) 2 Cri LJ 65, 69.

Bench Strength 4. Coram: *Syed Jafar Imam*, **K. Subba Rao**, *N. Rajagopala Ayyangar* and *J.R. Mudholkar*, JJ. [Date of decision: 4-12-1962]

[8348] — S. 225 — Supreme Court slow to entertain plea of prejudice when no details furnished. *Sukha* v. *State of Rajasthan*, AIR 1956 SC 513: 1956 SCR 288: 1956 Cri LJ 923.

Bench Strength 3. Coram: **Vivian Bose**, *B. Jagannadhadas* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 5-4-1956]

[8349] — Ss. 225, 221, 537 and 535 — Word "illegality" — Meaning of — *Appellants charged under Ss. 148 and 302 r/w S. 149, IPC, but convicted under S. 302 r/w S. 34 IPC — Whether the irregularity amounts to an illegality and vitiates the trial — "Illegality" meaning of in this context — Trial when vitiated — Test — CrPC, 1973, Ss. 215, 211, 465 and 464*

The Code does not use the word 'illegality', nor defines 'irregularity' and illegality can only mean an incurable illegality, incurable because of prejudice leading to a failure of justice.

The object of the charge is to give the accused notice of the matter he is charged with and does not touch jurisdiction. If, therefore, the necessary information is conveyed to him in other ways and there is no prejudice, the trial is not invalidated by the mere fact that the charge was not formally reduced to writing. The essential part of this part of the law is not any technical formula of words but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for. *Bhoor Singh* v. *State of Punjab*, (1974) 4 SCC 754: 1974 SCC (Cri) 664: AIR 1974 SC 1256: 1974 Cri LJ 929.

Bench Strength **2**. Coram: *V.R. Krishna Iyer* and **R.S. Sarkaria**, JJ. [Date of decision: 28-2-1974]

[8350] — Ss. 225, 226 and 227 — Error in the charge curable

No error or omission in the charge, and not even a total absence of a charge, cuts at the root of the trial. The proceedings up to the stage of the alteration, which, as we have seen can be at the very end of the trial, are not vitiated unless there is prejudice; they are good despite these imperfections. That is impossible when the error is so vital as to cut at the root of the trial. It follows that errors in the charge, and even a total absence of a charge, are not placed in the non-curable class. *Willie (William) Slaney* v. *State of M.P.*, AIR 1956 SC 116, 124: (1955) 2 SCR 1140, 115: 1956 Cri LJ 291.

Bench Strength **5**. Coram: *S.R. Das*[1], **Vivian Bose**[1], *B. Jagannadhadas*[2], **Syed Jafer Imam**[3] and **N. Chandrasekhara Aiyar**[2], JJ. [Date of decision: 31-10-1955]

[8351] — Ss. 225, 233, 337 and 537(b) — Error in charge — Ss. 149 & 34 IPC mixed up — Finding is not invalidated — *Plea of defect in charge cannot be heard in the absence of prejudice to the accused*

Any mere error, omission or irregularity in the charge will not invalidate the finding in this case as a matter of law. So far as the finding can be said to have travelled beyond the letters of the charge, the appellants have not proved any prejudice, and in the absence of prejudice no complaint can now be made of any defect in the charge. *Bharwad Mepa Dana* v. *State of Bombay*, AIR 1960 SC 289: (1960) 2 SCR 172: 1960 Cri LJ 424.

Bench Strength **3**. Coram: **S.K. Das**, *A.K. Sarkar* and *M. Hidayatullah*, JJ. [Date of decision: 10-11-1959]

[8352] — Ss. 225 and 222(2) — Breach of trust — Irregularity in the charge curable

The failure of the prosecution to split up the first court into two sub-courts cannot obviously be regarded as introducing a fatal infirmity in the validity of the trial. It would be noticed that this argument is not one of misjoinder. It is based on the formal requirement prescribed by the proviso to S. 222(2) as to how charges of breach of trust should be framed. There is no difficulty in holding that such an irregularity can be cured both under S. 225 and S. 537 of the Code, provided of course no prejudice has been thereby caused to the appellant's case. *Kadiri Kunhahammad* v. *State of Madras*, AIR 1960 SC 661: 1960 Cri LJ 1013.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *A.K. Sarkar* and *K. Subba Rao*, JJ. [Date of decision: 27-1-1959]

[8353] — Ss. 225 and 227 — Charge for an offence — Conviction for another offence — *Omission to frame alternative charge — Validity*

The appellant was charged and tried for the offence of abetting Mst Radha to cause abortion of the child in the womb of the deceased but curiously enough he was convicted for abetting the deceased to cause miscarriage. Throughout the trial the accused was asked to defend himself against the charge on which he was tried. At no stage he was notified that he would be tried for the offence of having abetted the deceased to cause miscarriage. It is now well settled that the absence of charge or an error or omission in it is not fatal to a trial unless prejudice is caused. Therefore the essential question is whether there is any reasonable likelihood of the accused having been prejudiced in view of the charge framed against him. From what has been stated above, one can reasonably come to the conclusion that the accused was likely to have been prejudiced by the charge on the basis of which he was tried. From the cross-examination of the prosecution witness, it is seen that the principal attempt made on behalf of the appellant was to show that he had nothing to do with co-accused, Mst Radha. He could not have been aware of the fact that he would be required to show that he did not in any manner abet the deceased to cause miscarriage. *Madan Raj Bhandari* v. *State of Rajasthan*, (1969) 2 SCC 385: AIR 1970 SC 436: 1970 Cri LJ 519: 1970 MLJ (Cri) 98.

Bench Strength **3**. Coram: *S.M. Sikri*, *G.K. Mitter* and **K.S. Hegde**, JJ. [Date of decision: 29-7-1969]

[8354] — Ss. 225 and 537 — Charge — Mere imperfection in — No prejudice to accused — Effect of

A mere imperfection in the charge cannot be used to overthrow a conviction unless prejudice can be shown. The irregularity is curable both under Ss. 225 and 537 of the Criminal Procedure Code. *Moti Das* v. *State of Bihar,* AIR 1954 SC 657: 1954 Cri LJ 1708.

Bench Strength **3**. Coram: *B.K. Mukherjea*, **Vivian Bose** and *Ghulam Hasan*, JJ. [Date of decision: 8-5-1954]

[8355] — Ss. 225 and 537 — Conviction under S. 165-A IPC — In appeal charge altered into one under Ss. 161/109 IPC — Legality — There was no illegality

The accused convicted under S. 165-A IPC, but in appeal the conviction was altered into one under Ss. 161/109 IPC by the High Court on the ground that the offence was alleged to have been committed on a date when the offence under S. 165-A was not even created.

The effect in law of Ss. 161/109 IPC, is precisely the same as that of S. 165-A, at least in so far as the abetment of an offence actually committed is concerned. There were no further facts needed to be brought to the notice of the appellant by the amended charge, and the punishment both under Ss. 161/109 and S. 165-A is the same. In fact, if S. 165-A could be regarded as a freshly created offence, it did nothing more than provide expressly what was already provided by the Code by the two other sections. The change was in respect of abetment of offences not committed, that is to say, S. 161 read with S. 116. In view of the provisions of Ss. 225 and 537 of the Code of Criminal Procedure, this error in the charge cannot be taken note of, particularly as the appellant himself could have raised this objection at a much earlier stage during the trial, and also as no prejudice has been suggested. *Om Prakash* v. *State of U.P.*, AIR 1960 SC 409: 1960 Cri LJ 544, 46.

Bench Strength **2**. Coram: *A.K. Sarkar* and **M. Hidayatullah**, JJ. [Date of decision: 15-9-1959]

— S. 226 *See also* Ss. 225, 226 and 227

[8356] — S. 226 — Charge — Total absence from start to the end of trial in the committal court and Sessions Court — Trial is illegal

Where there is no charge at all as required by the Code from start to finish — from the committing Magistrate's court to the end of the Sessions trial; the Code contemplates in S. 226 the possibility of a committal without any charge and it is not impossible to conceive of an extreme case where the Sessions trial also proceeds without any formal charge which has to be in writing and read out and explained to the accused [S. 210(2) and S. 251(A)(4) and S. 227].

The Code requires that there should be a charge and it should be in writing. A deliberate breach of this basic requirement cannot be cured by the assertion that everything was orally explained to the accused and the assessors or jurors, and there was no possible or probable prejudice. *Willie (William) Slaney* v. *State of M.P.*, AIR 1956 SC 116: (1955) 2 SCR 1140: 1956 Cri LJ 291.

Bench Strength **5**. Coram: *S.R. Das*[1], **Vivian Bose**[1], *B. Jagannadhadas*[2], **Syed Jafer Imam**[3] and **N. Chandrasekhara Aiyar**[2], JJ. [Date of decision: 31-10-1955]

— S. 227 *See* Ss. 225, 226 and 227

See also Ss. 225 and 227

[8357] — Ss. 227 and 439 — Charge — Direction by High Court for alteration in — *When can be given in revision*

In revision before High Court the direction to alter the charge so as to include an offence for which the appellant was not originally charged, could only be given if the trial Court itself had taken action under S. 227 of the Criminal Procedure Code before it pronounced judgment which could only be so if there were materials before it either in the complaint or in the evidence to justify such action. *Harihar Chakravarty* v. *State of W.B.*, AIR 1954 SC 266: 1954 Cri LJ 724.

Bench Strength **3**. Coram: *B.K. Mukherjea*, *Vivian Bose* and **N.H. Bhagwati**, JJ. [Date of decision: 22-10-1953]

AIR 1951 SC 196 affirmed

[8358] — Ss. 232, 233 to 250, 535 and 537 — Scope — Omission to frame a charge or error in the charge framed — Effect of — *Will depend on circumstances of different cases according to the applicability of the section — CrPC, 1973, Ss. 464 & 228*

Per Bose, J. and S. R. Das, acting C.J.

The cases contemplated by S. 237 are just as much a departure from S. 233 as are those envisaged in Ss. 225, 226, 227, 228, 535 and 537. Sections 236, 237 and 238 deal with joinder of charges and so does S. 233. The first condition is that there shall be a separate charge for each offence and the second is that each charge must be tried separately except in the cases mentioned in Ss. 234, 235 and 236.

So far as S. 233 is concerned, there can be no doubt that it requires a separate charge for each offence and does not envisage a situation in which there is either no charge at all or where, there being a charge for some other offence of which the accused is acquitted, he can be convicted instead of something else for which he was not charged. The Code has not regarded Ss. 237 and 238 as part of normal procedure.

Sections 225, 226, 227 and 228, 535 and 537 apply with equal force to 'every' kind of departure from that part of S. 233 that requires a separate charge for each offence. Section 237 is only a corollary to S. 236 and is there to emphasise that even when a number of charges could be joined together in the cases set out in S. 236 and one or more are not put in, even then, there can be convictions in respect of those offences despite the absence of a charge or charges.

All these sections are governed by the overriding rule about prejudice mentioned in one form or another in Ss. 225, 226, 227, 228 and 537. It would be monstrous to hold that a conviction cannot be set aside even when gross prejudice is proved in cases covered by S. 237 just because it does not speak of prejudice. Such cases can be envisaged where there would be grave prejudice under that section as clearly as we can see cases where there would be none under the others.

Sections 233 to 240 deal with joinder of charges and they must be read together and not in isolation. They all deal with the same subject-matter and set out different aspects of it. When they are read as a whole, it becomes clear that Ss. 237 and 238 cover every type of case in which a conviction can be sustained when there is no charge for that offence provided there is a charge to start with.

They do not deal with a case in which there is no charge at all, and anything travelling beyond that when there is a charge would be hit by Ss. 233, 234, 235 and 239 read as a whole.

The sections between them including Ss. 535 and 537 cover every possible case that relates to the charge and they place 'all' failures to observe the rules about the charge in the category of curable irregularities. Ch. XIX deals comprehensively with charges and Ss. 535 and 537 cover every case in which there is a departure from the rules set out in that chapter.

Such departures range from errors, omissions and irregularities in charges that are framed, down to charges that might have been framed and were not and include a total omission to frame a charge at all at any stage of the trial. In all these cases the only question is about prejudice.

Sections 225, 232, 535 and 537(*a*) between them, cover every conceivable type of error and irregularity referable to a charge that can possibly arise, ranging from cases in which there is a conviction with no charge at all from start to finish down to cases in which there is a charge but with errors, irregularities and omissions in it. The Code is emphatic that 'whatever' the irregularity it is not to be regarded as fatal unless there is prejudice.

Per Chandrasekhara Ayyar & Jagannadhadas, JJ.

A case of complete absence of a charge is covered by S. 535, whereas an error or omission in a charge is dealt with by S. 537. The consequences seem to be slightly different. Where there is no charge, it is for the Court to determine whether there is any failure of justice. But in the latter, where there is mere error or omission in the charge, the Court is also bound to have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

Sections 535 and 537 indicate that in the generality of cases the omission to frame a charge is not 'per se' fatal. The contention that where there is no charge the conviction will be illegal, prejudice or no prejudice is not sound. The wording of S. 535 of the Code of Criminal Procedure is sufficiently wide to cover every case of no charge.

Sections 225, 226 and 232 and the powers exercisable thereunder, are with reference to a trial which has already commenced or taken place. There would, therefore, normally relate to errors or omissions which occur in a trial that has validly commenced.

There is no reason to think that S. 535 of the Code of Criminal Procedure is not also to be understood with reference to the same context. There may be cases where, a trial which proceeds without any kind of charge at the outset can be said to be a trial wholly contrary to what is prescribed by the Code. In such cases the trial would be illegal without the necessity of a positive finding of prejudice.

The omission to frame a charge is a grave defect and should be vigilantly guarded against. In some cases, it may be so serious that by itself it would vitiate a trial and render it illegal, prejudice to the accused being taken for granted.

In the main, the provision of S. 535 would apply to cases of inadvertence to frame a charge induced by the belief that the matter on record is sufficient to warrant the conviction for a particular offence without express specification, and where the facts proved by the prosecution constitute a separate and distinct offence but closely relevant to and springing out of the same set of facts connected with the one charged. *Willie (William) Slaney* v. *State of M.P.*, AIR 1956 SC 116: (1955) 2 SCR 1140: 1956 Cri LJ 291.

Bench Strength **5**. Coram: *S.R. Das*[1], **Vivian Bose**[1], *B. Jagannadhadas*[2], **Syed Jafer Imam**[3] and **N. Chandrasekhara Aiyar**[2], JJ. [Date of decision: 31-10-1955]

Followed in Kammari Brahmaiah v. Public Prosecutor, (1999) 2 SCC 522

— S. 233 *See* Ss. 222(2), 233, 234 and 235

See also Ss. 225, 233, 337 and 537(b)

See also Ss. 232, 233 to 250, 535 and 537

See also Ss. 234 and 233

See also Ss. 234, 233 and 239

See also Ss. 239 and 233 to 236

[8359] — S. 233 — Framing of charge — Averment in complaint — *Penal Code, 1860, Ss. 120-B and 167*

Held, it is wrong to contend that because the defendant in his complaint has confined himself to the panchnamas made by the accused and had not stated that the endorsements were falsely made, the High Court could not go beyond the scope of that complaint and convict the accused of the offence under S. 167 in respect of the endorsements made by the accused for the simple reason that this complaint was filed before the investigating officer and that complaint focussed the point as to the panchnamas made by the accused with the assistance of his co-accused. That could not circumscribe the scope of the trial. For ascertaining the true scope of the trial, the appellate court has to turn to the charges framed by the Special Judge and because those charges in express terms mentioned not only panchnamas but also other "false documents" which on the facts averred by the prosecution must necessarily include the endorsement made by the accused. Moreover the accused had from the outset clear notice that he was being tried also in respect of those endorsements. *Krishna Govind Patil* v. *State of Maharashtra*, (1973) 3 SCC 706: 1973 SCC (Cri) 512: AIR 1973 SC 1388: 1973 Cri LJ 1130.

Bench Strength **2**. Coram: **J.M. Shelat** and *H.R. Khanna*, JJ. [Date of decision: 18-7-1972]

[8360] — S. 233 — Misjoinder of charges — *Same accused, not present at the time of the first incident, being tried with the accused of the second incident — Accused of the first incident acquitted while the accused of the second incident convicted — No misjoinder of charges*

The accused who were tried in connection with the first incident along with the appellants who were responsible for the second incident have been acquitted and there has been no prejudice so far as the appellants ae concerned. It cannot also be said that there were two isolated incidents. The second incident was an offshoot of the first incident and being a consequence of the latter incident in which some of the accused were common, it could legitimately be held that the offence had been committed in the course of the transaction. There was no misjoinder of charges and the trial was not vitiated. *Jai Narain Mishra* v. *State of Bihar*, (1971) 3 SCC 762: 1972 SCC (Cri) 40: AIR 1972 SC 1764: 1972 Cri LJ 469.

Bench Strength **2**. Coram: *A.N. Ray* and **D.G. Palekar**, JJ. [Date of decision: 3-11-1971]

[8361] — S. 233 — Separate charge for distinct offence — *Accused B and C, partners of a firm, supplying wood and receiving payment from Railway against different bills — Supply against same contract — Bills signed by either B or C — B and C could be charged under S. 420 IPC jointly for all the payments irrespective of only one of them signing a particular bill*

Both the accused as partners conspired to cheat the Government. The bills were presented on behalf of the firm and therefore both the partners would be responsible for obtaining money against each bill irrespective of the bill having been signed by any of the two partners. *Banwarilal Jhunjhunwala* v. *Union of India*, AIR 1963 SC 1620: 1963 Supp (2) SCR 338: (1963) 2 Cri LJ 529, 533.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 21-11-1962]

[8362] — S. 233 — Separate charges for distinct offences — "Distinct offences" — Meaning of — *Offences are distinct if not inter-related — Accused B and C supplying wood to the railway and receiving payment on submitting a number of bills — Recurring payment against each bill is not a separate offence under S. 420 IPC — The transaction of the receipt of the entire amount against all the bills is one offence — Framing of one charge about all the transactions is legal and was not in contravention of the section*

The expression 'every distinct offence' must have a different content from the expressions 'every offence' or 'each offence'. A separate charge is required for every distinct offence and not necessarily for each separate offence. 'Distinct' means 'not identical'. It stresses characteristics that distinguish while the word 'separate' would stress the 'two things not being the same'. Two offences would be distinct if they be not in any way interrelated. If there be some inter-relation, there would be no distinctness and it would depend on the circumstances of the case in which the offences were committed whether there be separate charges for those offences or not.

Accused *B* and *C* were the partners of a firm *S*. The firm according to a contract supplied wood to the Central Railway and received payments against a number of bills submitted by it. The accused were prosecuted on the ground that the wood supplied was of an inferior quality and that certain officers of Railway issued false inspection notes about the quality of the wood. It was contended that in view of S. 233 CrPC one single charge should have been framed for the payment against each bill; the charge as framed is a combination of a number of charges with respect to several offences of cheating committed by obtaining money on the presentation of several bills and was therefore against the provisions of S. 233 CrPC.

The object of the conspiracy was to obtain the full contract price from the Government on supplying material inferior in quality from that undertaken to be supplied under the contract. Naturally, the entire supply could not be made at the same time even if it was to be made at one place. Actually the supply was to be made at three places. The wood inspected at a particular place of inspection could be distributed to the various places of supply. The bills could be for the supply made at the particular time by the firm to one place along or to places more than one. It is therefore obvious that the conspiracy entered into by the appellants was not for obtaining diverse amounts by cheating but to obtain the entire contract money by cheating. This circumstance justifies the conclusion that the offence of cheating contemplated by the conspirators was one offence and that was of obtaining, by cheating, the full amount due under the contract for the material supplied. The charge framed for the offence under S. 420 does not contravene S. 233 of the Code.

The obtaining of money for each bill supported by false inspection note, amounted to the offence of cheating in pursuance of the conspiracy. All such individual offences, on the basis of the various bills, were of the same kind as the single offence of obtaining the total amount as a result of the presentation of the various bills and in view of S. 71, IPC, the accused could not be punished for more than one of such offences it being provided that 'where anything which is an offence is made up of parts any of which is itself an offence, the offender shall not be punished for more than one such offences unless it be so expressly provided'.

A single charge for the offence of cheating in the circumstances of the case, does not contravene the provisions of S. 233 of the Code. *Banwarilal Jhunjhunwala* v. *Union of India*, AIR 1963 SC 1620: 1963 Supp (2) SCR 338: (1963) 2 Cri LJ 529, 533.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 21-11-1962]

[8363] — S. 233 — Separate trials in a case where joint trial is possible — There is no illegality or irregularity

There is no illegality or irregularity in holding separate trial of the same accused persons even in cases where a single trial could have been permissible under the Code of Criminal Procedure. *Chhutanni* v. *State of U.P.*, AIR 1956 SC 407: 1956 Cri LJ 797.

Bench Strength **3**. Coram: *N.H. Bhagwati*, *T.L. Venkatarama Aiyar* and **B.P. Sinha**, JJ. [Date of decision: 3-11-1955]

[8364] — Ss. 233, 234(2), 235(1) and 239(d) — Joinder of charges — Conspiracy — Specific offence committed by accused — *All persons party to the conspiracy and concerned in the specific offences can be jointly tried at the same trial*

Whereas S. 239(*d*) allows a joinder of persons at a criminal trial, S. 235(1) allows joinder of charges subject to the conditions mentioned respectively in the said two provisions. In other words, these provisions constitute an exception to the provisions of S. 233 as well as those under S. 234(2). There is, therefore, no doubt that, in a case of conspiracy, if specific offences are committed in pursuance of the said conspiracy, all persons who are parties to that conspiracy and are also concerned in the specific offences thus committed can be lawfully tried jointly at the same trial. *Kadiri Kunhahammad* v. *State of Madras*, AIR 1960 SC 661: 1960 Cri LJ 1013, 16, 17.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *A.K. Sarkar* and *K. Subba Rao*, JJ. [Date of decision: 27-1-1959]

[8365] — Ss. 233, 239 and 537 — Charge under Ss. 120-B and 409 IPC — *Conviction under S. 409 simpliciter, the charges under S. 120-B having failed, is valid*

If the charge of conspiracy to commit criminal breach of trust is followed by a substantive charge of criminal breach of trust in pursuance of such conspiracy there is nothing to prevent the Court convicting an accused under the second charge even if the prosecution fails to establish conspiracy. In any event, there was no prejudice caused to him as he was aware that there was a substantive charge under S. 409 against him.

Therefore the contention that the prosecution having failed to establish conspiracy the appellant could not be convicted of the offence under S. 409, IPC simpliciter is without substance. *Madan Lal* v. *State of Punjab*, AIR 1967 SC 1590: (1967) 3 SCR 439: 1967 Cri LJ 1401, 3 to 5.

Bench Strength 2. Coram: *R.S. Bachawat* and **J.M. Shelat**, JJ. [Date of decision: 5-4-1967]

[8366] — Ss. 233 and 225 — Charges — Defect in framing of — Each accused not told separately what offences he is being tried for — *All the accused lumped together in one charge — The defect is not fatal and is curable under S. 225 CrPC*

No prejudice was and could be caused. The body of the charge set out the fact that the accused 1-29 formed an unlawful assembly and stated the common object; and then the charge specified in detail the part that each accused had played. In the circumstances, each accused was in a position to know just what was charged against him because once the facts are enumerated the law that applies to them can easily be ascertained; and in this particular case it was just a matter of picking out the relevant sections from among the ten mentioned. Section 225 CrPC expressly covers this kind of case. *K.C. Mathew* v. *State of Travancore-Cochin*, AIR 1956 SC 241: (1955) 2 SCR 1057: 1956 Cri LJ 444.

Bench Strength 3. Coram: **Vivian Bose**, *T.L. Venkatarama Aiyar* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 15-12-1955]

[8367] — Ss. 233 and 234 — Specific and distinct charge

The framing of a specific and distinct charge in respect of every district head of criminal liability constituting an offence, is the foundation for a conviction and sentence therefor. *Suraj Pal* v. *State of U.P.*, AIR 1955 SC 419, 422: (1955) 1 SCR 1332: 1955 Cri LJ 1004.

Bench Strength 3. Coram: *Vivian Bose*, **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 1-3-1955]

[8368] — Ss. 233 and 235 — Distinct charges and distinct trials — *Trial for offence under S. 420 IPC for submitting false claims by a contractor — Twenty claims filed with one covering letter — Claims relating to different works — Representation in respect of each different work or each different supply of material amounts to separate and distinct representation — Splitting of cases into ten different trials grouped together according to same transaction is justified — Representation made in respect of work done and materials supplied at the same place amount to one single representation.* *Bakhshish Singh Dhaliwal* v. *State of Punjab*, AIR 1967 SC 752: (1967) 1 SCR 211: 1967 Cri LJ 656.

Bench Strength 3. Coram: *V. Ramaswami*, **V. Bhargava** and *Raghubar Dayal*, JJ. [Date of decision: 31-8-1966]

[8369] — Ss. 233 and 235 — Joinder of charges — Scope and object of — Exceptions to

Section 233 embodies the general law as to the joinder of charges and lays down a rule that for every distinct offence there should be a separate charge and every such charge should be tried separately. There is no doubt that the object of S. 233 is to save the accused from being embarrassed in his defence if distinct offences are lumped together in one charge or in separate charges and are tried together but the Legislature has engrafted certain exceptions upon this rule contained in Ss. 234, 235, 236 and 239.

As the series of acts attributed to the accused constituted one transaction in which the offences of murder, attempt to murder, extortion and wrongful confinement were committed, the case fell squarely within the purview of S. 235. The fact that the offence of extortion was committed at a different place and at a different time does not anytheless make the act as one committed in the course of the same transaction, and therefore the misjoinder of the above mentioned offences was permitted by the exception embodied in S. 235 CrPC. *Aftab Ahmad Khan* v. *State of Hyderabad*, AIR 1954 SC 436: (1955) 1 SCR 588: 1954 Cri LJ 1155.

Bench Strength 3. Coram: *B.K. Mukherjea*, *Vivian Bose* and **Ghulam Hasan**, JJ. [Date of decision: 6-5-1954]

[8370] — Ss. 233 and 537 — Separate charges not framed as required by S. 233 — Cure of irregularity — *Counsel for the accused opposing public prosecutor's objection on this ground and asserting that the charges were properly framed — No prejudice caused — S. 537 cures the irregularity*

It is true that no separate charges were framed under Ss. 120-B, 221/109 IPC and S. 5(2) of Prevention of Corruption Act, 1947, although separate charges should have been framed as required by S. 233 CrPC. It is, however, to be noticed that when the Public Prosecutor raised this objection the Advocate for the accused opposed and said that the charge, as framed, was correct. It cannot, therefore, be now urged that the appellants were prejudiced by the charge as framed. The irregularity committed, in this case was thus cured by S. 537. *Kanta Prashad* v. *Delhi Admn.*, AIR 1958 SC 350: 1958 SCR 1218: 1958 Cri LJ 698.

Bench Strength 2. Coram: *B.P. Sinha* and **Syed Jafer Imam**, JJ. [Date of decision: 6-2-1958]

[8371] — Ss. 233 to 236 and 239 — Joinder of charges and trials — Scope and object — *Gun shots causing death to Lauwa and to other persons — Trial Court treating murder of other persons separately from that of Lauwa — whether all incidents coming under same transaction — If S. 235(1) followed. Chandra Bhal* v. *State of U.P.*, (1971) 3 SCC 983: 1972 SCC (Cri) 290.

Bench Strength 2. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 19-2-1970]

[8372] — Ss. 233 to 239 — Joint trial

The normal rule under the Criminal Procedure Code is to try each accused separately when the offence committed by him is distinct and separate. The provisions of Ss. 233 to 239 would indicate that joint trial is the exception. *V.N. Kamdar* v. *Municipal Corpn.*, (1973) 2 SCC 207: 1973 SCC (Cri) 783: AIR 1973 SC 2246: (1974) 1 SCR 157: 1973 Cri LJ 1453.

Bench Strength 2. Coram: **K.K. Mathew** and *I.D. Dua*, JJ. [Date of decision: 1-5-1973]

[8373] — Ss. 233 to 239 — Ss. 19(2), 20 and 21-A of Prevention of Food Adulteration Act, 1954 do not derogate from provisions for separate or joint trials

The special provisions under Ss. 19(2), 20 and 21-A of the Act do not take away or derogate from the effect of the ordinary provisions of the law which enable separate as well as joint trials of accused persons in accordance with the provisions of the old Ss. 233 to 239 of the Criminal Procedure Code, 1898 (corresponding to Ss. 218 to 224 of the 1973 Code). On the other hand, there seems no logically sound reason why, if a distributor or a manufacturer can be subsequently impleaded under S. 20-A of the Act, he cannot be joined as co-accused initially in a joint trial if the allegations made justify such a course. *Bhagwan Das Jagdish Chander* v. *Delhi Admn.*, (1975) 1 SCC 866: 1975 SCC (Cri) 410: AIR 1975 SC 1309: 1975 Cri LJ 1091.

Bench Strength 3. Coram: **M.H. Beg**[1], **A. Alagiriswami**[2] and *N.L. Untwalia*[1], JJ. [Date of decision: 25-3-1975]

[8374] — Ss. 233 to 239 and 537 — Misjoinder of charge — High Court is incompetent to set aside conviction unless there is failure of justice

Assuming that there has been a misjoinder of charges in violation of the provisions of Ss. 233 to 239 of the Code, the High Court was incompetent to set aside the conviction of the respondents without coming to the definite conclusion that misjoinder had occasioned failure of justice. Merely because the accused persons are charged with a large number of offences and convicted at the trial the conviction cannot be set aside by the appellate court unless it in fact came to the conclusion that the accused persons were embarrassed in their defence with the result that there was a failure of justice. *State of A.P.* v. *Cheemalapati Ganeswara Rao*, AIR 1963 SC 1850: (1964) 3 SCR 297: (1963) 2 Cri LJ 671.

Bench Strength 3. Coram: *K. Subba Rao*, *Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 23-4-1963]

— S. 234 *See* Ss. 222(2), 233, 234 and 235
See also Ss. 232, 233 to 250, 535 and 537
See also Ss. 233 and 234
See also Ss. 233 to 236 and 239
See also Ss. 233 to 239
See also Ss. 233 to 239 and 537
See also Ss. 239 and 233 to 236

[8375] — S. 234 — Nature — Only an enabling provision — Not incumbent on prosecution to resort to this provision. *Jai Dev* v. *State of Punjab*, *Cri. A. No. 57 of 1965*
[Date of decision: 15-11-1967]

[8376] — Ss. 234, 233 and 239 — Joint trial and joinder of charges — *Offence committed in the course of the same transaction by more than one person — All the accused can be tried together in respect of all the offences irrespective of S. 234(1)*

The limitation placed by S. 234(1) CrPC that not more than three offences of the same kind committed by an accused person within the space of 12 months can be tried at the same trial cannot operate if in any one series of act so connected together as to form the same transaction more offences than one are committed by the same person, and he may be charged with and tried at one trial for every such offence in view of the provisions of S. 235(1) CrPC. If the offence has been committed not by just one person but by all the accused all of them can be jointly tried in respect of all the offences in view of the provisions of S. 239(1). It would however be desirable to split up the charge suitably so that the accused persons be not prejudiced in answering the charges and defending themselves. *State of A.P.* v. *Kandimalla Subbaiah*, AIR 1961 SC 1241: (1962) 1 SCR 194: (1961) 2 Cri LJ 302.

Bench Strength 3. Coram: *B.P. Sinha, C.J.* and **J.R. Mudholkar** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 8-3-1961]

[8377] — Ss. 234, 235, 236 and 239 — Scope and meaning — Misjoinder of charges — Meaning — Charge defined — *There is misjoinder of charges if the joinder of charges is in contravention of the sections*

A charge is not an accusation made or information given in abstract but an accusation made against a person in respect of an act committed or omitted in violation of a penal law forbidding or commanding it. In other words it is an accusation made against a person in respect of an offence alleged to have been committed by him. Sections 234 to 236 permit joinder of charges and trial of different offences against a single accused in the circumstances mentioned in those sections and S. 239 provides for the joinder of charges and the trial of several persons. The scheme of the said section also indicates that a charge is not a mere abstraction but a concrete accusation against a person in respect of an offence and that their joinder is permitted under certain circumstances whether the joinder of charges is against one person or different persons. If the joinder of such charges is made in contravention of the said provisions, it will be misjoinder of charges. *Birichh Bhujan* v. *State of Bihar*, AIR 1963 SC 1120: 1963 Supp (2) SCR 328: (1963) 2 Cri LJ 190, 192.

Bench Strength **4**. Coram: *Syed Jafer Imam*, **K. Subba Rao**, *N. Rajagopala Ayyangar* and *J.R. Mudholkar*, JJ. [Date of decision: 20-11-1962]

[8378] — Ss. 234, 235 and 537 — Charge for three offences under S. 409 IPC and one under S. 477-A IPC — Offences arising out of the same acts and form part of the same transaction — *There is no violation of S. 234 CrPC — Case is governed by S. 234 — Case is also saved by S. 537 as no prejudice is shown*

There has not been a violation of S. 234 CrPC in that the appellant had been charged with three offences under S. 409 and one under S. 477-A. But the case is governed by S. 235 as the several offences form part of the same transaction. Moreover, the appellant has failed to show any prejudice as required by S. 537. *Chandi Prasad Singh* v. *State of U.P.*, AIR 1956 SC 149: (1955) 2 SCR 1035: 1956 Cri LJ 322, 325: (1956) 1 MLJ (SC) 88: 1956 ALJ 153.

Bench Strength **2**. Coram: *Vivian Bose* and **T.L. Venkatarama Aiyar**, JJ. [Date of decision: 7-12-1955]

[8379] — Ss. 234 and 233 — Charge and offences — Accused firing single shot at two persons with the intention of causing their death — *Held, only one offence is committed for the purposes of the section and not two though the lives of two persons were put in danger. Bhagat Singh* v. *State*, AIR 1952 SC 45: 1952 SCR 371: 1952 Cri LJ 323, 324.

Bench Strength **3**. Coram: **Fazl Ali**, *M.C. Mahajan* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 19-12-1951]

[8380] — Ss. 234 and 239 — Joint trial — *Accused B and R being tried for offences under S. 302 for committing 2 murders of deceased L and B and also under S. 307 — Offences are of the same kind committed within 12 months — Joint trial is justified under Ss. 234 and 239*

Accused *B* and *R* armed with gun and axe respectively were going together. *B* fired shots and killed *L* and *B* the same day within a space of a very short time at different places. When chased by villagers accused *B* fired several shots. There separate cases were registered and the Magistrate passed there separate committal orders, two under S. 302 against *B* and under S. 302/34 against *A*, and the third under S. 307/34 against both the accused. The Sessions Judge recorded evidence in one trial for all the three trials and decided the three trials by one judgment.

Section 234 allows the trial of a person accused of three or less number of offences of the same kind committed within the space of twelve months, and provides that offences of the same kind are those which are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any special or local law. The two offences under S. 302 with respect to the murder of *L* and *B* are punishable under the same section of the Indian Penal Code with the same amount of punishment. In view of the proviso to S. 234 an offence of attempting to commit an offence is of the same kind as that other offence. Thus the offence under S. 307, IPC, is of the same kind as the offence under S. 302. The three offences of which the appellants were charged, therefore, are of the same kind and one joint trial of those offences would therefore be justified under S. 234 of the Code.

Section 239 lays down the joinder of persons at one trial and provides that persons accused of more than one offence of the same kind within the meaning of S. 234 committed by them jointly within a period of twelve months could be charged and tried together. Therefore, the trial of both *B* and *R* for the aforesaid three offences each of which was alleged to have been committed by them jointly within twelve months, would have been justified. *Banwari* v. *State of U.P.*, AIR 1962 SC 1198: 1962 Supp (3) SCR 180: (1962) 2 Cri LJ 278, 283.

Bench Strength **3**. Coram: *J.L. Kapur*, *A.K. Sarkar* and **Raghubar Dayal**, JJ. [Date of decision: 14-2-1962]

[8381] — Ss. 234 and 239 — Sessions Judge not purporting to consolidate separate committal orders — *Recorded evidence in one case, examined the accused once and delivered one common judgment — Amounts to joint trial permissible under the* *sections — Amalgamation or consolidation of trial is not involved — Trial is not vitiated by any procedural error when no prejudice caused. Banwari* v. *State of U.P.*, AIR 1962 SC 1198: 1962 Supp (3) SCR 180: (1962) 2 Cri LJ 278, 283.

Bench Strength 3. Coram: *J.L. Kapur*, *A.K. Sarkar* and **Raghubar Dayal**, JJ. [Date of decision: 14-2-1962]

[8382] — Ss. 234 and 239 — Several committal orders — *Sessions Judge is competent to hold one trial if covered by the sections and no prejudice is caused to the accused*

The committal order does not bind the Sessions Judge to try those persons alone at one trial, who have been committed by the particular committal order. The question of the trial of the various committed persons does not depend on the number of committal orders, but on the provisions of Ss. 233 to 239 of the Code. If one trial can be justified under those provisions and there is no prejudice to the accused, the Sessions Judge can certainly consolidate the committal orders in those cases and try the accused at one trial. He may, for the purpose of the trial, frame a fresh charge with appropriate counts against the accused, in substitution of the charges framed by the Magistrate in the different committal proceedings.

Though a Sessions Judge cannot try at one trial persons committed under different committal orders with respect to distinct offences whose joint trial is not warranted by the provisions of Ss. 234 to 239 of the Code, he is competent to try at one trial persons who can be tried at one trial under the provisions of those sections even if there had been separate committal orders. *Banwari* v. *State of U.P.*, AIR 1962 SC 1198: 1962 Supp (3) SCR 180: (1962) 2 Cri LJ 278, 283.

Bench Strength 3. Coram: *J.L. Kapur*, *A.K. Sarkar* and **Raghubar Dayal**, JJ. [Date of decision: 14-2-1962]

— S. 234(2) *See* Ss. 233, 234(2), 235(1) and 239(d)

— S. 235 *See* Ss. 177, 235 and 239
See also Ss. 222(2), 233, 234 and 235
See also Ss. 232, 233 to 250, 535 and 537
See also Ss. 233 and 235
See also Ss. 233 to 236 and 239
See also Ss. 233 to 239
See also Ss. 233 to 239 and 537
See also Ss. 234, 235, 236 and 239
See also Ss. 234, 235 and 537
See also Ss. 239 and 233 to 236
See also Ss. 239 and 235

[8383] — S. 235 — Joint trial — Three charge-sheets being submitted and Magistrate passing three commitment orders — *Joint trial by Sessions Court not justified under S. 235*

The fact that three charge-sheets were submitted and that the Magistrate made three commitment orders indicate that the prosecution did not come to court with the allegation that the three offences were committed in the course of the same transaction. Therefore, the provisions of S. 235 CrPC could not have justified one trial for all these offences. *Banwari* v. *State of U.P.*, AIR 1962 SC 1198: 1962 Supp (3) SCR 180: (1962) 2 Cri LJ 278, 283.

Bench Strength 3. Coram: *J.L. Kapur*, *A.K. Sarkar* and **Raghubar Dayal**, JJ. [Date of decision: 14-2-1962]

[8384] — S. 235 — Misjoinder — Defect in procedure does not mean that the Court has acted without jurisdiction — *Difference between want of jurisdiction and illegal and irregular exercise of jurisdiction*

It is sufficient to point out that even if there was some defect in the procedure followed at the trial, it does not follow that trial acted without jurisdiction. There is a basic difference between want of jurisdiction and an illegal or irregular exercise of jurisdiction, and our attention has not been drawn to any authority in which mere non-compliance with the rules of procedure has been made a ground for granting one of the writs prayed for. In either case, the defect, if any, can according to the procedure established by law be corrected only by a court of appeal or revision. Here, the appellate Court which was competent to deal with the matter has pronounced its judgement against the petitioners, and the matter having been finally decided is not one to be reopened in a proceeding under Art. 32 of the Constitution. *Janardhan Reddy* v. *State of Hyderabad*, AIR 1951 SC 217: 1951 SCR 344: (1951) 52 Cri LJ 736.

Bench Strength 5. Coram: **Fazl Ali**, *M.C. Mahajan*, *B.K. Mukherjea*, *S.R. Das* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 16-3-1951]

— S. 235(1) *See* Ss. 222(2), 235(1) and 537
See also Ss. 233, 234(2), 235(1) and 239(d)

[8385] — S. 235(1) — Joinder of charges — Conspiracy is one transaction — Single individual charged with conspiracy — *Can be tried with the aid of the section for all acts committed in pursuance of the conspiracy in one trial. State of A.P.* v. *Cheemalapati Ganeswara Rao*, AIR 1963 SC 1850: (1964) 3 SCR 297: (1963) 2 Cri LJ 671.

Bench Strength 3. Coram: *K. Subba Rao*, *Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 23-4-1963]

[8386] — S. 235(1) — Same trial of offences committed in one transaction — *Several offences under S. 406, CrPC committed in pursuance of criminal conspiracy — Can be tried together in view of S. 235(1)*

The two offences of criminal breach of trust could have been tried together as the offences were said to have been committed in pursuance of a criminal conspiracy entered into by the accused. All the offences committed in pursuance of criminal conspiracy are committed in the course of the same transaction and therefore can be tried together at one trial in view of sub-section (1) of S. 235 CrPC. *State of Bombay* v. *Umarsaheb Buransaheb Inamdar*, AIR 1962 SC 1153: 1962 Supp (2) SCR 711: (1962) 2 Cri LJ 259, 60.

Bench Strength **3**. Coram: *S.K. Das*, *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 23-1-1962]

— S. 236 *See* Ss. 232, 233 to 250, 535 and 537
See also Ss. 233 to 236 and 239
See also Ss. 233 to 239
See also Ss. 233 to 239 and 537
See also Ss. 234, 235, 236 and 239
See also Ss. 237 and 236
See also Ss. 239 and 233 to 236
See also Ss. 537, 236 and 237
See also Ss. 537, 236 and 337

[8387] — S. 236 — Alternative charges — Accused charged for committing an offence of forgery and to use the forged document and in the alternative for using fraudulently or dishonestly forged documents — *Not a case of two alternative conspiracies — Charge is justified by the provision of 236*

In the charge the particular offence to be committed was described in the alternative. One was to commit an offence of forgery and to use the forged document and the other was the offence of fraudulently or dishonestly using the license containing the forged certificates and endorsements. It was contended that the appellant was charged with two conspiracies in the alternative which is unwarranted in law.

The expression 'and/or' in first charge simply meant that the offences they had conspired to commit consisted either of the offence to commit forgery and subsequently to use the forged document as genuine or the object was merely to use the licence with forged endorsements even though there was not any conspiracy to commit forgeries in the licences. In other words, the charge was that the appellant and '*K*' entered into a conspiracy to commit offences punishable with rigorous imprisonment for two years or upwards and that the offences contemplated to include the offence of using the licence with forged endorsement and may also include the offence of forging the licence. Thus there was no case of two alternative conspiracies. The conspiracy was one and it being doubtful what the facts proved would establish about the nature of offences to be committed by the conspirators, the charge illustrated the offence in this form. Such a charge is justified by the provisions of S. 236 of the Code. *Purushottamdas Dalmia* v. *State of W.B.*, AIR 1961 SC 1589: (1962) 2 SCR 101: (1961) 2 Cri LJ 728: (1961) 2 MLJ (SC) 137.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 19-4-1961]

See (1962) 2 SCR 116: AIR 1961 SC 1601: (1961) 2 Cri LJ 736

[8388] — S. 236 — Alternative charges — When do not vitiate trial — *Object of charge — Held, on facts of the case, framing of alternative charge not proper. Kahan Singh* v. *State of Haryana*, (1971) 3 SCC 226: 1971 SCC (Cri) 426: AIR 1971 SC 983: 1971 Cri LJ 806.

Bench Strength **3**. Coram: *G.K. Mitter*, **K.S. Hegde** and *P. Jaganmohan Reddy*, JJ. [Date of decision: 24-2-1971]

[8389] — Ss. 236, 237 and 403 — Plea of autrefois acquit

A plea of autrefois acquit which is statutorily recognised in India under S. 403 of the Code of Criminal Procedure arises when a person is tried again for the same offence or on the same facts for any other offence for which a different charge from the one made against him might have been made under S. 236 or for which he might have been convicted under S. 237. *Kharkan* v. *State of U.P.*, AIR 1965 SC 83, 86: (1964) 4 SCR 673: (1965) 1 Cri LJ 116.

Bench Strength **3**. Coram: *S.K. Das*, **M. Hidayatullah** and *K.C. Das Gupta*, JJ. [Date of decision: 29-8-1963]

[8390] — Ss. 236, 237 and 423 — Disposal of appeal — Powers of the appellate court to convict for an offence for which accused not charged

The provisions of Ss. 236 and 237 are clear enough to enable a court to convict an accused person even of an offence with which he had not been charged if the Court is of the opinion that the provisions of S. 236 apply, that is to say, if a single act is or a series of acts are of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, then the accused can be charged with having committed all or any of such offences, and any number of such charges can be tried at once; or he may be charged in the alternative with having committed some one of the said offences and by virtue of the provisions of S. 237 the accused although charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of S. 236, can be convicted of the offences which he is shown to have committed, although he was not charged with it.

The High Court should therefore have instead of ordering a retrial decided the case on the evidence before it, whether any offence had been committed by the appellants. *G.D. Sharma* v. *State of U.P.*, AIR 1960 SC 400: 1960 Cri LJ 541.

Bench Strength 4. Coram: **Syed Jafer Imam**, *J.L. Kapur*, *A.K. Sarkar* and *K.N. Wanchoo*, JJ. [Date of decision: 1-9-1959]

[8391] — Ss. 236, 237 and 423 — High Court in appeal against acquittal can convict for another offence exercising power under Ss. 236, 237 & 238. *Ramaswamy Nadar* v. *State of Madras*, AIR 1958 SC 56, 59: 1958 SCR 739, 746: 1958 Cri LJ 228.

Bench Strength 3. Coram: **B.P. Sinha**, *P. Govinda Menon* and *J.L. Kapur*, JJ. [Date of decision: 11-10-1957]

[8392] — Ss. 236 and 237 — On acquittal under S. 302 IPC conviction for offence under S. 201 IPC without any further charge not illegal — *Penal Code, 1860 — Ss. 302 and 201*

Even though no separate charge under S. 201 was filed, a conviction can be recorded under that section upon acquittal of charge under S. 302 by virtue of S. 237, CrPC, 1898, if the accused was associated with the disposal of the dead body of a person. *Kashmira Singh* v. *State of M.P.*, AIR 1952 SC 159: 1952 SCR 526: 1952 Cri LJ 839, 845.

Bench Strength 3. Coram: *Fazl Ali*, *B.K. Mukherjea* and **Vivian Bose**, JJ. [Date of decision: 4-3-1952]

For similar situation, see 1952 Cri LJ 644: AIR 1952 SC 105.

In Palvinder Kaur v. State of Punjab, 1953 Cri LJ 154: AIR 1952 SC 354, it was stated that if it is not proved that the death was as a result of an offence, mere disposal of dead body is not enough for finding a conviction under S. 201.

[8393] — Ss. 236 and 237 — Accused charged under Ss. 148, 302/149 and 307/149, IPC and no charge framed under Ss. 302 and 307 IPC — *Conviction under Ss. 302 and 307 IPC is illegal*

A charge against a person as a member of an unlawful assembly in respect of an offence committed by one or other of the members of that assembly in prosecution of its common object is a substantially different one from a charge against any individual for an offence directly committed by him while being a member of such assembly. The liability of a person in respect of the latter is only for acts directly committed by him, while in respect of the former, the liability is for acts which may have been done by any one of the other members of the unlawful assembly, provided that it was in prosecution of the common object of the assembly or was such as the members knew to be likely to be so committed. A charge under S. 149, IPC puts the person on notice only of two alleged facts viz. (1) that the offence was committed by one or other of the members of the unlawful assembly of which he is one, and (2) that the offence was committed in prosecution of the common object or is such that was known to be likely to be so committed.

Section 149, IPC creates a distinct offence. There can, therefore, be no doubt that the direct individual liability of a person can only be fixed upon him with reference to a specific charge in respect of the particular offence. Such a case is not covered by Ss. 236 and 237, CrPC. The framing of a specific and distinct charge in respect of every distinct head of criminal liability constituting an offence, is the foundation for a conviction and sentence therefor. *Suraj Pal* v. *State of U.P.*, AIR 1955 SC 419: (1955) 1 SCR 1332: 1955 Cri LJ 1004.

Bench Strength 3. Coram: *Vivian Bose*, **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 1-3-1955]

[8394] — Ss. 236 and 237 — Conviction of an offence not included in the charge — *Case not covered by Ss. 236 and 237 — Trial is illegal and the defect is not curable — CrPC, 1973, Ss. 464, 211, 216 & 228*

Where the conviction is for a totally different offence from the one charged and not covered by Ss. 236 and 237 of the Code. On a charge for a minor offence, there can be no conviction for a major offence e.g. grievous hurt or rioting and murder. The omission to frame a separate and specific charge in such cases will be an incurable irregularity amounting to an illegality. *Willie (William) Slaney* v. *State of M.P.*, AIR 1956 SC 116: (1955) 2 SCR 1140: 1956 Cri LJ 291.

Bench Strength 5. Coram: *S.R. Das*[1], **Vivian Bose**[1], *B. Jagannadhadas*[2], **Syed Jafer Imam**[3] and **N. Chandrasekhara Aiyar**[2], JJ. [Date of decision: 31-10-1955]

[8395] — Ss. 236 and 237 — Scope and meaning — Provisions of S. 236 can apply only in cases where there is no doubt about the facts which can be proved but a doubt arises as to which of several offences have been committed on the proved facts

Section 237 CrPC is entirely dependent on the provisions of S. 236 of that Code. The provisions of S. 236 can apply in cases where there is no doubt about the facts which can be proved but a doubt arises as to which of several offences have been committed on the proved facts in which case any number of charges can be framed. In these circumstances if there had been an omission to frame a charge, then under S. 237, a conviction could be arrived at on the evidence although no charge had been framed. In the present case there is no doubt about the facts and if the allegation against the appellant that he had caused the injuries to the deceased with takwa was established by evidence, then there could be no doubt that the offence of murder had been committed. There was no room for the application of S. 236 CrPC. *Nanak Chand* v. *State of Punjab*, AIR 1955 SC 274: (1955) 1 SCR 1201: 1955 Cri LJ 721, 724.

Bench Strength 3. Coram: *S.R. Das, N.H. Bhagwati* and **Syed Jafer Imam**, JJ. [Date of decision: 25-1-1955]

[8396] — Ss. 236 and 237 — Charge under S. 409 — Allegations in charge-sheet justified a charge under S. 420 as well — *Trial Court and appellate Court competent to record a conviction under S. 420, IPC — Penal Code, 1860, Ss. 409 and 430*

The framing of a charge under S. 236, is, in the nature of things, earlier than the stage when it can be said what facts have been proved, a stage which is reached when the Court delivers its judgment. The power of the Court to frame various charges contemplated by S. 236, CrPC therefore arises when it cannot be said with any definiteness, either by the prosecutor or by the Court, that such and such facts would be proved. The Court had at the time of framing the charges, therefore to consider what different offences could be made out on the basis of the allegations made by the prosecution in the complaint or in the charge submitted by the investigating agency or by the allegations made by the various prosecution witnesses examined prior to the framing of the charge. All such possible offences could be charged in view of the provisions of S. 236, CrPC as it can be reasonably said that it was doubtful as to which of the offences the facts which could be ultimately proved would constitute.

The appellant was charged under S. 409, IPC but on the facts disclosed in the charge the appellant could also be charged under S. 420 IPC. When a charge under S. 420, IPC could have been framed by the trial Court by virtue of S. 236 CrPC that Court or the appellate Court can, in law, convict the appellant of this offence instead of an offence under S. 409, IPC, if it be of the view that the offence of cheating had been established. This would be in accordance with the provisions of S. 237, CrPC. *Sunil Kumar Paul* v. *State of W.B.*, AIR 1965 SC 706: (1964) 7 SCR 70: (1965) 1 Cri LJ 630.

Bench Strength 3. Coram: *K. Subba Rao, K.C. Das Gupta* and **Raghubar Dayal**, JJ. [Date of decision: 6-3-1964]

See also AIR 1958 SC 56: 1956 Cri LJ 228

[8397] — Ss. 236 and 237(1) — Attracted only where offence would fall under either of the alternative charges and not where offence would fall under both the charges — *CrPC, 1973, S. 221(1). V.K. Agarwal, Asstt. Collector of Customs* v. *Vasantraj Bhagwanji Bhatia*, (1988) 3 SCC 467: 1988 SCC (Cri) 679: AIR 1988 SC 1106: (1988) 16 ECC 164: (1988) 64 Comp Cas 664.

Bench Strength 2. Coram: **M.P. Thakkar** and *K.N. Singh*, JJ. [Date of decision: 7-4-1988]

— S. 237 *See* Ss. 232, 233 to 250, 535 and 537
See also Ss. 233 to 239
See also Ss. 233 to 239 and 537
See also Ss. 236 and 237
See also Ss. 236, 237 and 403
See also Ss. 236, 237 and 423
See also Ss. 537, 236 and 237

[8398] — S. 237 — Accused charged S. 307 IPC under may be convicted under S. 326 IPC even though he was not charged under S. 326, if he could on facts be charged alternatively under S. 307 and S. 326 — *Penal Code, 1860, Ss. 307 and 326. Bejoy Chand Patra* v. *State of W.B.*, AIR 1952 SC 105: 1952 SCR 202: 1952 Cri LJ 644.

Bench Strength 2. Coram: **Fazl Ali** and *Vivian Bose*, JJ. [Date of decision: 14-12-1951]

Begu v. Emperor, 52 IA 191: 26 Cri LJ 1059, followed
See also 1952 Cri LJ 839, 845: AIR 1952 SC 159

[8399] — S. 237 — Accused charged under S. 302 r/w S. 149, IPC convicted under S. 302 r/w S. 34, IPC — Legality of conviction

If the common object which is the subject-matter of the charge under S. 149 does not necessarily involve a common intention, then the substitution of S. 34 for S. 149 might result in prejudice to the accused and ought not therefore to be permitted. But if the facts to be proved and the evidence to be adduced with reproved and the evidence to be adduced with reference to the charge under S. 34, then the failure to charge the accused under S. 34 could not result in any prejudice and in such cases the substitution of S. 34 for S. 149 must be held to be a formal matter.

Held :

On facts of the case that there could be no difference between the object and the intention with which the offence was committed. Therefore the conviction of the accused under S. 302 read with S. 34, when they had been charged only under S. 302 read with S. 149 was not illegal. *Kartar Singh* v. *State of Punjab*, AIR 1961 SC 1787: (1962) 2 SCR 395: (1961) 2 Cri LJ 853.

Bench Strength **3**. Coram: *K. Subba Rao*, **Raghubar Dayal** and *J.R. Mudholkar*, JJ. [Date of decision: 26-4-1961]

Karnail Singh v. *State of Punjab*, AIR 1954 SC 204: 1954 SCR 904: 1954 Cri LJ 580.

Bench Strength **3**. Coram: *N.H. Bhagwati*, *B. Jagannadhadas* and **T.L. Venkatarama Aiyar**, JJ. [Date of decision: 29-1-1954]

Jagir Singh v. *State of Punjab*, AIR 1968 SC 43: (1967) 3 SCR 256: 1968 Cri LJ 89.

Bench Strength **2**. Coram: **R.S. Bachawat** and *J.M. Shelat*, JJ. [Date of decision: 21-3-1967]

[8400] — Ss. 237 and 236 — Charges and conviction — Accused charged and convicted under S. 299, Calcutta Municipalities Act — *High Court can alter the sentence to one under S. 300 of the Act*

The alteration of the conviction from S. 299, Calcutta Municipalities Act to S. 300 of the Act read with S. 488 of the Act, was no alteration in the substance of the acquisition but only in the section more properly applicable to the facts found.

Sections 236 and 337 of Criminal Procedure Code authorise the Court to alter the conviction and the sentence to be passed in respect of the offence made out in the evidence.

In this case it is manifest that the facts sought to be proved and found by the Courts below remained the same even after the alteration of the conviction from S. 299 to S. 300 read with S. 488 of the Calcutta Municipalities Act. There was, therefore, no illegality in the alteration of the conviction under one section to the other. *Nani Gopal Biswas* v. *Municipality of Howrah*, AIR 1958 SC 141: 1958 SCR 774: 1958 Cri LJ 271, 272.

Bench Strength **2**. Coram: **B.P. Sinha** and *Vivian Bose*, JJ. [Date of decision: 29-10-1957]

[8401] — Ss. 237 and 537 — Omission to mention S. 34 IPC in the charge — No prejudice alleged or shown — Curable — Matter also not agitated in trial Court or High Court — Conviction with the aid of S. 34 IPC is permissible

It would have been better if in the charge S. 34 Penal Code would have been specified. But the mere omission to specify it cannot in the circumstances of the case have any effect as no prejudice has been alleged or shown. This matter was also not agitated in either of the Courts below. The irregularity is curable under S. 537 CrPC. *B.N. Srikantiah* v. *State of Mysore*, AIR 1958 SC 672: 1959 SCR 496: 1958 Cri LJ 1251.

Bench Strength **3**. Coram: *N.H. Bhagwati*, **J.L. Kapur** and *A.K. Sarkar*, JJ. [Date of decision: 14-4-1958]

— S. 237(1) *See* Ss. 236 and 237(1)

— S. 238 *See* Ss. 232, 233 to 250, 535 and 537

See also Ss. 233 to 239

See also Ss. 233 to 239 and 537

[8402] — S. 238 — Charge under S. 302 IPC — Conviction under S. 326 IPC — Permissibility — *Sharp-edged weapon used — Death caused by stab injuries inflicted by knife while the co-accused had caught hold of the victim — On facts, though common intention to cause death doubtful an intention to cause grievous hurt, held, clear — Conviction altered to that under Ss. 326/34, IPC though originally charged under Ss. 302/149 and Ss. 307/149 IPC — No prejudice caused by such alteration — CrPC, 1973, S. 222 — Criminal Trial — Wounds and Weapons*. *State of U.P.* v. *Ram Kishun*, (1976) 3 SCC 449: 1976 SCC (Cri) 443: AIR 1976 SC 2016: (1976) 3 SCR 379: 1976 Cri LJ 1559.

Bench Strength **2**. Coram: *P.N. Bhagwati* and **P.K. Goswami**, JJ. [Date of decision: 13-2-1976]

[8403] — S. 238 — Misjoinder of charges in a case of conspiracy and cheating — *Single conspiracy spread over a number of years to cheat people — Several instances of cheating taking place — Instances of cheating were in pursuance of the conspiracy and were therefore parts of the same transaction — Single charge was not improper and there was no misjoinder of charges*

The charge, as framed, discloses one single conspiracy, although spread over several years. There was only one object of the conspiracy and that was to cheat members of the public. The fact that in the course of years others joined the conspiracy or that several incidents of cheating took place in pursuance of the conspiracy did not change the conspiracy and did not split up a single conspiracy into several conspiracies. The instances of cheating were in pursuance of the conspiracy and were therefore parts of the same transaction. Therefore there has been no misjoinder of charges. *S. Swamirathnam* v. *State of Madras*, AIR 1957 SC 340: 1957 Cri LJ 422, 426.

Bench Strength **3**. Coram: *N.H. Bhagwati*, **Syed Jafer Imam** and *P. Govinda Menon*, JJ. [Date of decision: 14-9-1956]

— **S. 239** *See* Ss. 177, 180 and 239
See also Ss. 177, 235 and 239
See also Ss. 232, 233 to 250, 535 and 537
See also Ss. 233 to 236 and 239
See also Ss. 233 to 239
See also Ss. 233 to 239 and 537
See also Ss. 234, 233 and 239
See also Ss. 234 and 239
See also Ss. 234, 235, 236 and 239

[8404] — S. 239 — "And"

Section 239 does not read as if its various clauses can be applied only alternatively. One the other hand at the end of cl. (*f*) there is a conjunction 'and'. If the intention of the Legislature was that the provisions of these clauses should be available only alternatively it would have used the word "or" and not "and" which has the opposite effect. Grammatically, therefore, it would appear that the provisions of the various clauses are capable of being applied cumulatively. The opening words of the section show that it is an enabling provision and, therefore, the Court has a discretion to avail itself cumulatively of two or more clauses.

Of course a court has the power to depart from the grammatical construction if it finds that strict adherence to the grammatical construction will defeat the object the Legislature had in view. *State of A.P.* v. *Cheemalapati Ganeswara Rao*, AIR 1963 SC 1850: (1964) 3 SCR 297: (1963) 2 Cri LJ 671.

Bench Strength **3**. Coram: *K. Subba Rao*, *Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 23-4-1963]

[8405] — S. 239 — Scope and application — Clauses cannot be applied only alternatively — *To be applied cumulatively*

From the grammatical interpretation of S. 239, CrPC it is clear that its various clauses are not to be applied alternatively, but are to be applied cumulatively. The section is an enabling provision and, therefore, the Court has a discretion to avail itself cumulatively of two or more clauses for the purpose of framing charges and the charges so framed by it will not be in violation of the law, the provisions of Ss. 233, 234 and 235 notwithstanding. *State of A.P.* v. *Cheemalapati Ganeswara Rao*, AIR 1963 SC 1850: (1964) 3 SCR 297: (1963) 2 Cri LJ 671.

Bench Strength **3**. Coram: *K. Subba Rao*, *Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 23-4-1963]

[8406] — Ss. 239 and 233 to 236 — Object of S. 239 — Is to avoid multiplicity of trials — "Same transaction" occurring in cls. (a) and (d) of Ss. 239 and 235(1) — Has same meaning — *S. 239 is not subject to Ss. 233 to 236 — Ss. 233 to 236 to be applied to S. 239 without detracting from its provisions*

The object of enacting S. 239 was to avoid multiplicity of trials and the only limitation which could properly be placed on the trial of several persons for the same kind of or different offences would be that which considerations of justice and fairness would require. No doubt, such a construction would also give rise to the result that whereas so far as the trial of a single accused person is concerned the charges must be limited to three offences committed by him within the space of 12 months from the first to the last of such offences, there would be no such limitation when along with that accused person there are one or more persons who have jointly committed those offences. The reason for this possibly is that the Legislature did not want to differentiate between cases where any number of different offences were committed jointly by a group of persons from cases where any number of offences of the same kind were committed by a group of persons.

The expression "same transaction" occurring in cls. (*a*), (*c*)(*sic*) and (*d*) of S. 239 as well as that occurring in S. 235(1) ought to be given the same meaning according to the normal rule of construction of statutes. Looking at the matter in that way, it is pointless to inquire further whether the provisions of S. 239 are subject to those of S. 235(1). The provisions of sub-sections (2) and (3) of S. 235 are enabling provisions and quite plainly can have no overriding effect. But it would be open to the court to resort to those provisions even in the case of a joint trial of several persons permissible under S. 239.

Bearing in mind the fact that the provisions in the "former part" of Ch. XIX are applicable to charges made with the aid of S. 239 only "so far as may be" it would not be right to construe S. 239 as being subject to the provisions of Ss. 235 to 236. It is a rule of construction that all the provisions of a statute are to be read together and given effect to and that it is, therefore, the duty of the Court to construe a statute harmoniously. This, while it is clear that the sections preceding S. 239 have no overriding effect on that section, the Courts are not to ignore them but apply such of them as can be applied without detracting from the provisions of S. 239. Indeed, the very expression 'so far as may be' emphasises the fact that applying S. 239 it is not those provisions but the latter which is to have an overriding effect. *State of A.P.* v. *Cheemalapati Ganeswara Rao*, AIR 1963 SC 1850: (1964) 3 SCR 297: (1963) 2 Cri LJ 671.

Bench Strength **3**. Coram: *K. Subba Rao*, *Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 23-4-1963]

[8407] — S. 239 — Joint trial — "Committed in the course of the same transaction" — Meaning of — *Series of acts with proximity of time or place or unity of purpose and design or continuity of action form part of same transaction*

Where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction. *State of A.P. v. Cheemalapati Ganeswara Rao*, AIR 1963 SC 1850: (1964) 3 SCR 297: (1963) 2 Cri LJ 671.

Bench Strength 3. Coram: *K. Subba Rao, Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 23-4-1963]

[8408] — S. 239 — Misjoinder — Ss. 408 and 477-A IPC — Misjoinder of charges — Joint trial of six persons for the offences under — Conviction of only one — Legality of trial and conviction

Charges under S. 408 and S. 477-A, Penal Code, could, in the circumstances of this case, be tried together and the joint trial of all the accused was proper and lawful. Our attention was not drawn to any provision of law against the legality of the joint trial. *Sushil Kumar Gupta v. Joy Shanker Bhattacharyya*, (1970) 1 SCC 504: 1970 SCC (Cri) 210: AIR 1971 SC 1543.

Bench Strength 2. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 23-2-1970]

[8409] — S. 239 — Misjoinder of charges

Where the circumstances of the case show that the accused jointly committed the offences with which they were charged and that those offences were committed in the course of same transaction, they could be charged and tried together as such a course is permitted by S. 239 of the Code of Criminal Procedure. *Ayodhya Singh v. State of Rajasthan*, (1972) 3 SCC 885: 1972 SCC (Cri) 786: AIR 1972 SC 2501: (1973) 1 SCR 880: 1972 Cri LJ 1696.

Bench Strength 3. Coram: *J.M. Shelat, I.D. Dua* and **H.R. Khanna**, JJ. [Date of decision: 17-8-1972]

[8410] — S. 239 — Six items of cheating combined in one charge — All the items part and parcel of the same transaction — Trial permissible by the section. *Shivanarayan Kabra v. State of Madras*, AIR 1967 SC 986: (1967) 1 SCR 138: (1967) 1 MLJ (SC) 159: 1967 Cri LJ 946, 49, 50.

Bench Strength 3. Coram: **V. Ramaswami**, *V. Bhargava* and *Raghubar Dayal*, JJ. [Date of decision: 23-8-1966]

[8411] — S. 239 — Words "same transaction"

Regarding the fact whether the sale by the vendor and that by the distributor to the vendor being part of the "same transaction" under S. 233, CrPC, 1973, it is practically impossible as well as undesirable to attempt a definition of the concept of "same transaction" which has to be necessarily elastic.

It is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. *Bhagwan Das Jagdish Chander v. Delhi Admn.*, (1975) 1 SCC 866: 1975 SCC (Cri) 410: AIR 1975 SC 1309: 1975 Cri LJ 1091.

Bench Strength 3. Coram: **M.H. Beg**[1], **A. Alagiriswami**[2] and *N.L. Untwalia*[1], JJ. [Date of decision: 25-3-1975]

[8412] — Ss. 239 and 235 — A private businessman can be tried with Army Officers — *Criminal Law (Amendment) Act, 1952, S. 6*

There can be no objection to a businessman being tried with two Army Officers under S. 5(2) of the Prevention of Corruption Act and Ss. 120-B and 420, IPC. *Union of India v. Maj. I.C. Lala*, (1973) 2 SCC 72: 1973 SCC (Cri) 738: AIR 1973 SC 2204: (1973) 3 SCR 818: 1973 Cri LJ 1190.

Bench Strength 3. Coram: **A. Alagiriswami**, *I.D. Dua* and *C.A. Vaidialingam*, JJ. [Date of decision: 29-3-1973]

[8413] — S. 239(b) — Joint trial of person accused of an offence and person accused of abetment thereof — "Accused of an offence" — Also means "Accused of several offences" — *Person accused to several offences and person accused of abetment of such several offences can be tried jointly*

The entire tenor of the provisions of S. 239 CrPC indicates that several persons could be tried together for several offences committed in the circumstances mentioned therein. Clause (*b*) of S. 239 CrPC cannot mean that in one trial any number of persons could be tried for a single offence alongwith any number of persons accused of abetment of that offence. The words "an offence" in cl. (*b*) do not mean a single offence. Having regard to S. 13 of General Clauses Act singular includes the plural and the clause means that persons accused of several offences and persons accused of abetment thereof could be tried together at one trial. *K. Satwant Singh v. State of Punjab*, AIR 1960 SC 266: (1960) 2 SCR 89: 1960 Cri LJ 410.

Bench Strength 5. Coram: *B.P. Sinha, C.J.*[1] and **Syed Jafer Imam**[1], **J.L. Kapur**[1], *K.N. Wanchoo*[1] and *K.C. Das Gupta*[1], JJ. [Date of decision: 28-10-1959]

— **S. 239(d)** *See also* Ss. 233, 234(2), 235(1) and 239(d)

[8414] — S. 239(d) — Joint trial — Scope and applicability — *Nature of the accusations made by the prosecution is the test of the applicability of the clause*

Section 239(*d*) authorises a joint trial of persons accused of different offences committed in the course of the same transaction; and there can be no doubt that in deciding the question whether or not more persons than one can be tried together under the said section; the criminal Court has to consider the nature of the accusation made by the prosecution. It would be unreasonable to suggest that though the accusation made by the prosecution would justify a joint trial of more persons than one the validity of such a trial could be effectively challenged if the said accusation is not established according to law. It is true that, in framing the charge against more persons than one and directing their joint trial, courts should carefully examine the nature of the accusation, but if they are satisfied that prima facie the accusation made shows that several persons are charged of different offences and that the said offences prima facie appear to have been committed in the course of the same transaction, their joint trial can and should be ordered. The point of time in the proceedings at which it is to be determined whether the condition that the offences alleged had been committed in the course of the same transaction has been fulfilled or not is at the time when the accusation is made and not when the trial is concluded and the result known. *Kadiri Kunhahammad* v. *State of Madras*, AIR 1960 SC 661: 1960 Cri LJ 1013, 16, 17.

Bench Strength 3. Coram: **P.B. Gajendragadkar**, *A.K. Sarkar* and *K. Subba Rao*, JJ. [Date of decision: 27-1-1959]

— **S. 240** *See* Ss. 232, 233 to 250, 535 and 537

— **S. 241** *See also* Ss. 232, 233 to 250, 535 and 537

[8415] — Ss. 241 and 537 — Offence triable as a summons case tried as a warrant case — Trial not vitiated — Defect curable under S. 537 CrPC. *Gopal Das Sindhi* v. *State of Assam*, AIR 1961 SC 986: (1961) 2 Cri LJ 39.

Bench Strength 3. Coram: **Syed Jafer Imam**, *K. Subba Rao* and *Raghubar Dayal*, JJ. [Date of decision: 20-1-1961]

— **S. 242** *See* Ss. 232, 233 to 250, 535 and 537

— **S. 243** *See also* Ss. 232, 233 to 250, 535 and 537

[8416] — Ss. 243 and 362(2-A) — Relative Scope, nature and applicability — Accused pleading guilty — *Admission of guilt not recorded in the words used by the accused — Magistrate simply recording "pleads guilty" — Requirements of S. 243 violated — These requirements are mandatory — Violation vitiates the trial and renders the conviction legally invalid*

The requirements of S. 243 of the Criminal Procedure Code are mandatory in character and a violation of these provisions vitiates the trial and renders the conviction legally invalid. The requirement of the section is not a mere empty formality but is a matter of substance intended to secure proper administration of justice.

Section 362(2-A) of the Criminal Procedure Code has no application in a case where the accused pleads guilty and the special provision of S. 243 of the Criminal Procedure Code would be attracted in such a case. Section 243 of the Criminal Procedure Code is a provision of a special character and according to well-established rule of interpretation that special provision will take precedence and override the general provision of S. 362(2-A) of the Criminal Procedure Code.

Where the particulars of the offence were explained to the accused by the interpreter; the accused pleaded guilty and the plea was also interpreted to the Magistrate by the interpreter and the Magistrate did not record the admission of guilt as nearly as possible in the words used by the accused but simply recorded "pleads guilty" there has been a violation of S. 243, CrPC which vitiates the trial and renders the conviction legally invalid. *Mahant Kaushalya Das* v. *State of Madras*, AIR 1966 SC 22: (1966) 1 SCR 229: 1966 Cri LJ 66, 68.

Bench Strength 3. Coram: *A.K. Sarkar*, *M. Hidayatullah* and **V. Ramaswami**, JJ. [Date of decision: 7-5-1965]

— **S. 244** *See also* Ss. 232, 233 to 250, 535 and 537

[8417] — Ss. 244 and 286 — Accused's conduct of silence — When does not become substitute for proof of guilt — Prosecution's duty

If the prosecution evidence as a whole is unreliable and cannot be accepted as correct for specific reasons the conduct of the accused can be of no avail to the prosecution, for such conduct of silence can never be permitted to become a substitute for proof by the prosecution. The substantive prosecution evidence being rejected as unworthy of credit, the alleged conduct must be referable to some innocent reason. Different persons react in different ways in similar circumstances and in the absence of satisfactory evidence the Court ought not to treat the case as positively proved beyond reasonable doubt only by reason of the accused's failure to put up his defence immediately when he was confronted. *Zwinglee Ariel* v. *State of M.P.*, AIR 1954 SC 15: 1954 Cri LJ 230.

Bench Strength **3**. Coram: *M.C. Mahajan*, **S.R. Das** and *N.H. Bhagwati*, JJ. [Date of decision: 3-12-1952]

— Ss. 245 to 247 *See* Ss. 232, 233 to 250, 535 and 537

[8418] — Ss. 247 and 259 — Complainant — Meaning of — Complaint by a company — *Complainant would be the person who represents such company in the court — Different persons may represent such company at different times — Only Magistrate's permission necessary — Magistrate cannot insist that the person whose statement was taken on oath at the first instance alone can represent the company — Position under old Code same — Penal Code, 1860, S. 11 — CrPC, 1973, Ss. 256, 249, 2(y) and Ch. XV. Associated Cement Co. Ltd.* v. *Keshvanand*, (1998) 1 SCC 687: 1998 SCC (Cri) 475: AIR 1998 SC 596: (1998) 91 Comp Cas 361: 1998 Cri LJ 856: (1998) 1 KLT 179.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 16-12-1997]

Associated Cement v. Keshav Nand, 1997 Cri LJ 3898 (J&K), reversed

[8419] — Ss. 247 and 259 — Non-appearance of complainant — *Magistrate not justified in acquitting the accused unless presence of complainant on that date found necessary — Discretion to acquit the accused or proceed with the trial must be exercised judicially and fairly — On facts, held, Magistrate not justified in acquitting the accused particularly when the complainant and another witness had already been examined — CrPC, 1973, Ss. 256 and 249. Associated Cement Co. Ltd.* v. *Keshvanand*, (1998) 1 SCC 687: 1998 SCC (Cri) 475: AIR 1998 SC 596: (1998) 91 Comp Cas 361: 1998 Cri LJ 856: (1998) 1 KLT 179.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 16-12-1997]

Associated Cement v. Keshav Nand, 1997 Cri LJ 3898 (J&K), reversed

— S. 248 *See also* Ss. 232, 233 to 250, 535 and 537

[8420] — S. 248 — High Court finding case not triable as warrant case but as summons case — *Direction to Magistrate but Magistrate discharging accused*

Under S. 248, CrPC, the Magistrate has ample jurisdiction to permit the complainant to withdraw the complaint. In fact under S. 248, CrPC, the Magistrate should acquit the accused, once he permits the complaint to be withdrawn. Even if the order of discharge is to be treated as passed in a case where summons case procedure is to be followed, it was within the jurisdiction of the Magistrate and hence it cannot be characterised as either illegal or not justified. *Cricket Assn. of Bengal* v. *State of W.B.*, (1971) 3 SCC 239: 1971 SCC (Cri) 446: AIR 1971 SC 1925: 1971 Cri LJ 1432.

Bench Strength **2**. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 24-3-1971]

— S. 249 *See* Ss. 232, 233 to 250, 535 and 537

— S. 250 *See* Ss. 232, 233 to 250, 535 and 537

[8421] — Ss. 251, 251-A, 252, 253 and 254 — Scope

These sections throw some light as to the meaning to be given to the words "charged with and tried for an offence".

Under S. 251-A(2), CrPC, if, upon consideration of all the documents referred to in S. 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge him. This provision that the Magistrate may discharge the accused where the charge against the accused appears to be groundless indicates that the words "charged with" cannot be said to mean framing of a charge. It is because the charge or the allegation or accusation against the accused is groundless that he is discharged.

Again, in S. 252 it will appear that the Magistrate in any case instituted otherwise than on a police report shall proceed to hear the complainant and take evidence in support of the prosecution. Under S. 253, if, upon taking the evidence referred to in S. 252, and making such examination of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out, the Magistrate shall discharge him. The provisions contained in Ss. 252 and 253 are cases where the Magistrate deals with warrant case instituted not on a police report but upon a complaint.

These three sections i.e. Ss. 251-A, 252 and 253 indicate that an accused can be discharged by the Magistrate if the charge appears to be groundless. Charge is framed under S. 254 of the Code of Criminal Procedure when the Magistrate upon evidence and examination is of opinion that there is ground for presuming that the accused has committed an offence which the Magistrate is competent to try and which could be ordinarily punished by them that he shall frame in writing a charge against the accused. The charge under S. 255 of the Code of Criminal Procedure is read and explained to the accused and he shall be asked whether he is guilty or has any defence to make. *Lt. Col. S.K. Kashyap* v. *State of Rajasthan*, (1971) 2 SCC 126: 1971 SCC (Cri) 452: AIR 1971 SC 1120: 1971 Cri LJ 832.

Bench Strength 2. Coram: *C.A. Vaidialingam* and **A.N. Ray**, JJ. [Date of decision: 2-3-1971]

— **S. 251-A** *See* Ss. 173, 190, 251-A and 252

See also Ss. 173 and 251-A

See also Ss. 190, 252 and 251-A

See also Ss. 251, 251-A, 252, 253 and 254

See also Ss. 548 and 251-A

[8422] — S. 251-A — Police Officer investigating an offence under S. 9(a), Opium Act, 1878 seizing opium and submitting a complaint to Magistrate — *Trial to be held in accordance with the procedure laid down in S. 251-A, CrPC, 1898 — Opium Act, 1878, Ss. 9(a) and 20-G. Ashiq Miyan* v. *State of M.P.*, AIR 1969 SC 4: (1969) 1 SCR 188: 1968 Cri LJ 239.

Bench Strength 2. Coram: *V. Ramaswami* and **C.A. Vaidialingam**, JJ. [Date of decision: 1-5-1968]

[8423] — Ss. 251-A and 173 — Report by police officer under S. 11, Essential Commodities Act, 1955 — *Held, can included in a charge-sheet under S. 173, CrPC, 1898 — Trial under S. 251-A not improper — Essential Commodities Act, 1955, Ss. 11 & 7*

The enquiry was an integrated one, being based on the same set of facts. Even if the offence under the Essential Commodities Act may not be cognizable the police officer would be competent to include it in the charge-sheet under S. 173, CrPC, 1898 with respect to a cognizable offence.

Both the offences if cognizable could be investigated together under Chapter XIV of the Code and also if one of them was a non-cognizable offence. *Pravin Chandra Mody* v. *State of A.P.*, AIR 1965 SC 1185, 1187: (1965) 1 SCR 269: (1965) 2 Cri LJ 250.

Bench Strength 3. Coram: *K. Subba Rao*, **M. Hidayatullah** and *J.R. Mudholkar*, JJ. [Date of decision: 15-9-1964]

[8424] — S. 251-A — Cases not started by police report — Procedure

Section 251-A prescribes a special procedure for warrant cases, instituted upon police reports. In a case started otherwise than on a police report, the old procedure of examining witnesses and framing a charge on which the accused is to be tried continues to apply. *Ramnarayan Mor* v. *State of Maharashtra*, AIR 1964 SC 949, 954: (1964) 5 SCR 1064, 1077: (1964) 2 Cri LJ 44.

Bench Strength 5. Coram: *B.P. Sinha, C.J.*[1] and *K. Subba Rao*[1], *M. Hidayatullah*[2], **J.C. Shah**[1] and **N. Rajagopala Ayyangar**[2], JJ. [Date of decision: 16-12-1963]

[8425] — S. 251-A — Cognizance by Magistrate

Once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence. *Raghubans Dubey* v. *State of Bihar*, AIR 1967 SC 1167, 1169: (1967) 2 SCR 423: 1967 Cri LJ 1081.

Bench Strength 3. Coram: *M. Hidayatullah*, **S.M. Sikri** and *C.A. Vaidialingam*, JJ. [Date of decision: 19-1-1967]

[8426] — S. 251-A — Scope and applicability — *Court should apply its judicial mind for considering whether or not there is ground for presuming the commission of the offence by the accused. Century Spg. & Mfg. Co. Ltd.* v. *State of Maharashtra*, (1972) 3 SCC 282: 1972 SCC (Cri) 495: AIR 1972 SC 545: 1972 Cri LJ 329.

Bench Strength 3. Coram: *J.M. Shelat*, **I.D. Dua** and *S.C. Roy*, JJ. [Date of decision: 13-10-1971]

[8427] — S. 251-A — Scope and applicability — If the charge is found groundless on the face of the record, the accused is entitled for an order of discharge. *Century Spg. & Mfg. Co. Ltd.* v. *State of Maharashtra*, (1972) 3 SCC 282: 1972 SCC (Cri) 495: AIR 1972 SC 545: 1972 Cri LJ 329.

Bench Strength 3. Coram: *J.M. Shelat*, **I.D. Dua** and *S.C. Roy*, JJ. [Date of decision: 13-10-1971]

[8428] — S. 251-A — Supreme Court Rules, Or. 4 R. 30 — Procedure under S. 251-A can be followed. *M, an Advocate, Re*, AIR 1957 SC 149: 1956 SCR 811: 1957 Cri LJ 300.

Bench Strength 3. Coram: **B. Jagannadhadas**, *T.L. Venkatarama Aiyar* and *B.P. Sinha*, JJ. [Date of decision: 17-10-1956]

[8429] — Ss. 251-A, 252, 253 and 537 — Offence under S. 16(1)(a), Prevention of Food Adulteration Act — Accused charged with selling articles of food without a licence — *Procedure prescribed for warrant by Ss. 251-A, 252 and 253 not followed — Charge framed and accused convicted — Opportunity to plead that it was a case of failure to renew* *licence not given — Held, no prejudice caused to the accused because the licence was not renewed before its expiry and even an application for renewal was not made — Conviction not bad for failure to adopt procedure applicable to warrant cases. Gurmukh Singh* v. *State of Punjab*, (1972) 4 SCC 805: AIR 1972 SC 824: 1972 Cri LJ 654.

Bench Strength 2. Coram: **P. Jaganmohan Reddy** and *D.G. Palekar*, JJ. [Date of decision: 14-12-1971]

[8430] — S. 251-A(1) — Failure to give copies of statements in respect of separate trial

Where there are two different trials and two different accused are tried in those trials, copies of statements of witnesses recorded in connection with one accused cannot be furnished to the accused in the other trial. Where the accused person considers that the statements of witnesses recorded in connection with the other case are necessary for cross-examination, it is open to him to inspect the record of the other case and if necessary with the permission of the Court obtain copy of those statements or secure certified copies in accordance with law and use them. *State of Assam* v. *Krishna Rao*, (1973) 3 SCC 227: 1973 SCC (Cri) 222: AIR 1973 SC 28: (1973) 2 SCR 239: 1973 Cri LJ 169.

Bench Strength 2. Coram: **I.D. Dua** and *H.R. Khanna*, JJ. [Date of decision: 15-9-1972]

[8431] — Ss. 251-A(2) and 190(1)(b) — Magistrate taking cognizance of an offence under S. 332 IPC — Discharging him under S. 251-A(2) *— Magistrate can nevertheless proceed to try the accused under S. 323 IPC as a summons case*

When a magistrate takes cognizance of offences under S. 190(1)(*b*) CrPC he takes cognizance of all offences constituted by the facts reported by the police officer and not only of some of such offences. Therefore when the Magistrate took cognizance under S. 190(1)(*b*) CrPC of the offence under S. 332 IPC, cannot but have taken cognizance also of the minor offence under S. 323 IPC. Consequently even after the order of discharge was made under S. 251-A(2) CrPC in respect of the offence under S. 332 IPC, the minor offence under S. 323 of which he had also taken cognizance remained for trial as there was no indication to the contrary. That being an offence triable as a summons case the Magistrate could proceed to try the offence under Ch.XX CrPC and a fresh complaint was not necessary. *Pramatha Nath Mukherjee* v. *State of W.B.*, AIR 1960 SC 810: (1960) 3 SCR 245: 1960 Cri LJ 1165.

Bench Strength 2. Coram: **K.C. Das Gupta** and *J.C. Shah*, JJ. [Date of decision: 11-3-1960]

— S. 252 *See* Ss. 173, 190, 251-A and 252
See also Ss. 190, 252 and 251-A
See also Ss. 208, 252 and 286
See also Ss. 251, 251-A, 252, 253 and 254
See also Ss. 251-A, 252, 253 and 537
See also Ss. 252 to 258

[8432] — S. 252 — Scope

Section 252, Criminal Procedure Code, can only apply to those cases which are instituted otherwise than on a police report, that is to say, upon complaints which are not reports of a police officer or upon information received from persons other than a police officer. *Pravin Chandra Mody* v. *State of A.P.*, AIR 1965 SC 1185, 1187: (1965) 1 SCR 269, 273: (1965) 2 Cri LJ 250.

Bench Strength 3. Coram: *K. Subba Rao*, **M. Hidayatullah** and *J.R. Mudholkar*, JJ. [Date of decision: 15-9-1964]

[8433] — S. 252 — Examination of material witnesses — Prosecution's duty *— Non-examination of material witnesses — Implications of*

It is the bounden duty of the prosecution to examine a material witness — particularly when no allegation has been made that if produced, he would not speak the truth and in any case, the Court would have been well advised to exercise its discretionary powers to examine such witness. Not only does an adverse inference arise against the prosecution case from his non-production as a witness in view of Illustration (*g*) to S. 114 of the Indian Evidence Act, but the circumstance of his being withheld from the Court casts a serious reflection on the fairness of the trial. The accused is considerably prejudiced in his defence by reason of such omission on the part of the prosecution and on part of the Court. *Habeeb Mohd.* v. *State of Hyderabad*, AIR 1954 SC 51: 1954 SCR 475: 1954 Cri LJ 338.

Bench Strength 3. Coram: **M.C. Mahajan**, *B.K. Mukherjea* and *B. Jagannadhadas*, JJ. [Date of decision: 5-10-1953]

Distinguished in Ramjee Rai v. State of Bihar, (2006) 13 SCC 229: (2007) 2 SCC (Cri) 626

[8434] — S. 252 — Non-examination of prosecution witnesses

The examination of those witnesses whose evidence does not unfold the prosecution case is not necessary. *Makan Jivan* v. *State of Gujarat*, (1971) 3 SCC 297: 1971 SCC (Cri) 587: AIR 1971 SC 1797: 1971 Cri LJ 1310.

Bench Strength 2. Coram: **K.S. Hegde** and *A.N. Grover*, JJ. [Date of decision: 30-4-1971]

[8435] — Ss. 252 to 258 — Nature of safeguard provided in procedure under — *CrPC, 1973, Ss. 244 to 247. A.R. Antulay* v. *Ramdas Sriniwas Nayak*, (1984) 2 SCC 500: 1984 SCC (Cri) 277: AIR 1984 SC 718: 1984 Cri LJ 647: 1984 Bom LR 228.

Bench Strength 5. Coram: **D.A. Desai**, *R.S. Pathak, O. Chinnappa Reddy, A.P. Sen* and *V. Balakrishna Eradi*, JJ. [Date of decision: 16-2-1984]

— S. 253 *See* Ss. 251, 251-A, 252, 253 and 254

See also Ss. 251-A, 252, 253 and 537

See also Ss. 252 to 258

[8436] — Ss. 253, 254-A & 258 and 439 & 403 — Trial of warrant cases — Held, 'discharge' and 'acquittal' are distinct concepts — *After framing of charge there cannot be a 'discharge' but only an 'acquittal' based on a finding of not guilty turning on the merits of the case — Hence, High Court could rightfully interfere in revision under S. 439 with an order of discharge passed after the framing of the charge and order retrial — High Court was not barred by plea of autrefois acquit under S. 403(1) — CrPC, 1973, Ss. 239 to 249 and 401 & 300. Ratilal Bhanji Mithani* v. *State of Maharashtra*, (1979) 2 SCC 179: 1979 SCC (Cri) 405: AIR 1979 SC 94: 1979 Cri LJ 41.

Bench Strength 3. Coram: **R.S. Sarkaria**, *O. Chinnappa Reddy* and *A.P. Sen*, JJ. [Date of decision: 28-9-1978]

Followed in Bharat Parikh v. CBI, (2008) 10 SCC 109: (2008) 3 SCC (Cri) 609

[8437] — S. 253(2) — Prima facie case — Discharge under S. 253(2), CrPC, not proper — *Penal Code, 1860, Ss. 447/379 and 428/34*

Where a prima facie case is made out regarding alleged criminal trespass, etc. discharge of the accused person by bringing in a discussion of title to property is improper. *Mahant Abhey Dass* v. *S. Gurdial Singh*, (1972) 4 SCC (N) 44: 1971 SCC (Cri) 244: AIR 1971 SC 834: 1971 Cri LJ 691.

Bench Strength 3. Coram: *S.M. Sikri, C.J.* and *P.Jaganmohan Reddy* and *I.D. Dua*, JJ. [Date of decision: 11-2-1971]

[8438] — S. 253(2) — Scope and power under section — *Chief Presidency Magistrate issuing summons against accused persons under Ss. 337 and 338, r/w S. 114 of IPC — Complainant conceding that no offence made out — Complaints withdrawn subsequently — Magistrate discharging all accused under S. 253(2) — Action justified*

After the concession of the counsel for the complainant and the categorical finding of the learned Judge that no offence under Ss. 337 and 338, IPC, is made out and that an investigation is to be made only in respect of an offence under S. 336, IPC, it is idle to expect the Magistrate to ignore these clear directions and proceed with the trial again for an offence under Ss. 337 and 338, IPC, as if nothing has happened.

Assuming that the Chief Presidency Magistrate has still to proceed with the trial for offences under Ss. 337 and 338, IPC, it is no doubt true that he has to follow the warrant case procedure. Even under such circumstances, the Magistrate has got ample jurisdiction to discharge the accused under S. 253(2), CrPC, S. 253 deals with the discharge of accused.

Sub-section (2) of S. 253, CrPC, gives ample jurisdiction to the Magistrate to discharge an accused in the circumstances mentioned therein and the order of discharge can be passed at any previous stage of the case. Sub-section (1), under those circumstances, will not operate as a bar to the exercise of jurisdiction by the Magistrate under sub-section (2). It is under sub-section (2) of S. 253 that the Magistrate has discharged the accused. He has given good reasons in the order for discharging the accused.

There is no controversy that at the material time, the Sen Commission was inquiring into the identical matter which was the subject of the criminal complaint. Under those circumstances, it cannot be said that the discharge of the accused by the Magistrate is either illegal or not justified.

Even on the basis that the inquiry has to proceed for an offence under S. 336, IPC, the position will be that the summons case procedure will have to be followed. *Cricket Assn. of Bengal* v. *State of W.B.*, (1971) 3 SCC 239: 1971 SCC (Cri) 446: AIR 1971 SC 1925: 1971 Cri LJ 1432.

Bench Strength 2. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 24-3-1971]

[8439] — S. 253(2) — Second complaint — Entertained in exceptional circumstances — *Held, not an abuse of the process of the Court. Mohan Lal Ganguly* v. *Jayanarayan Chaudhury, Cri. A. No. 24 of 1967*

[Date of decision: 12-12-1968]

— S. 254 *See* Ss. 210 and 254

See also Ss. 251, 251-A, 252, 253 and 254

See also Ss. 252 to 258

[8440] — Ss. 254, 438 and 439 — Magistrate's order framing charges under S. 254 when not open to interference by High Court in exercise of its revisional jurisdiction under S. 439 — *CrPC, 1973, Ss. 246(1) and 401*

The Magistrate on consideration of evidence formed an opinion that there was ground for presuming that the accused had committed an offence triable by him and accordingly framed a charge under S. 254, CrPC, 1898 against him in each of four matters. Four revisional applications filed under S. 435 of the Code by the accused against the Magistrate's order framing the charges were rejected by the Sessions Judge. However, in one of the revisional applications the Sessions Judge formed the opinion that the Magistrate's order was not legal and proper and made a report to the High Court under S. 438. The High Court in an elaborate judgment allowed the applications, accepted the opinion of the Sessions Judge and quashed the charge framed against the accused.

Allowing the State's special leave appeals Supreme Court,

Held :

Since the Magistrate had formed the opinion that there were grounds to presume that the accused had committed the offence and since it cannot be said that the prosecution was false, frivolous or vexatious or one which was by way of abuse of the process of law, the High Court should not have quashed the charge in exercise of the revisional and reference powers. *State of U.P.* v. *Man Mohan*, (1986) 2 SCC 587: 1986 SCC (Cri) 214: AIR 1986 SC 1652: 1986 Cri LJ 1245.

Bench Strength **2**. Coram: **M.P. Thakkar** and *G.L. Oza*, JJ. [Date of decision: 23-4-1986]

Man Mohan v. State of U.P., 1975 Cri LJ 1241 (All), reversed

— S. 254-A *See* Ss. 253, 254-A & 258 and 439 & 403

— S. 255 *See* Ss. 252 to 258

— S. 256 *See also* Ss. 252 to 258

[8441] — S. 256 — Defence cannot rely in the Supreme Court on evidence not produced in the lower courts

It was the bounden duty of the appellant if he wanted to prove his defence to adduce evidence in support of his contentions and if he did not do so, he had only to thank himself for it. The prosecution could not be blamed for that lacuna and if both the courts below went on the record as it stood and came to the conclusion, finding it as a fact, that the prosecution had established its case, it could not be urged, as was sought to be done in the judgment delivered by the learned Chief Justice in the petition for leave to appeal to this Court, that that evidence, if forthcoming, would have demolished the case of the prosecution. *Haripada Dey* v. *State of W.B.*, AIR 1956 SC 757, 760: 1956 SCR 639, 643: (1956) 2 MLJ (SC) 65: 1957 ALJ 70.

Bench Strength **3**. Coram: **N.H. Bhagwati**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 5-9-1956]

[8442] — S. 256 — Written statement by accused cannot be filed before the Sessions Court. *Sidheswar Ganguly* v. *State of W.B.*, AIR 1958 SC 143: 1958 SCR 749: 1958 Cri LJ 273.

Bench Strength **2**. Coram: **B.P. Sinha** and *J.L. Kapur*, JJ. [Date of decision: 24-10-1957]

See also (1965) 2 SCR 235: AIR 1966 SC 97

[8443] — S. 256(1) — Opportunity to defend — Denied to the accused — Conviction cannot be sustained

Where the accused has been denied the fullest opportunity to defend himself or in other words where a conviction has been arrived at without affording opportunity to the defence to lead whatever evidence it wanted to produce, conviction cannot be sustained. *Habeeb Mohd.* v. *State of Hyderabad*, AIR 1954 SC 51: 1954 SCR 475: 1954 Cri LJ 338.

Bench Strength **3**. Coram: **M.C. Mahajan**, *B.K. Mukherjea* and *B. Jagannadhadas*, JJ. [Date of decision: 5-10-1953]

[8444] — S. 256(2) — Written statement by accused — *There is no general rule that the written statement should not receive Court's attention on the ground that it is likely to have been influenced by legal advice*

In many cases, the accused person would prefer to file a written statement and give a connected answer to the questions raised by the prosecution evidence. Indeed, S. 256(2) of the CrPC, provides that if an accused person puts in a written statement, the Magistrate shall file it with the record. If the written statement is filed after a long delay and contains pleas which can otherwise be legitimately regarded as matters of after-thought, that no doubt would affect the value of the pleas taken in the written statement. But it would not be possible to lay down a general rule that the written statement filed by an accused person should not receive the attention of the Court because it is likely to have been influenced by legal advice. Such a distrust of legal advice would be entirely unjustified.

Where the written statement filed by the accused is an elaborate document and it gives the version of the appellant in great detail, the appellant at the very commencement of the proceedings gave a list of 328 witnesses and called for a large number of documents, the witnesses examined and some of the documents produced, tend to show that the appellant had received information at the relevant time which supported his plea that the allegation made by him appeared to him to be true, the allegations made in the written statement could not be dismissed as not more than an after-thought. *Harbhajan Singh* v. *State of Punjab*, AIR 1966 SC 97: (1965) 2 SCR 235: 1966 Cri LJ 82.

Bench Strength 3. Coram: **P.B. Gajendragadkar**, **C.J.** and *Raghubar Dayal* and *V. Ramaswami*, JJ. [Date of decision: 2-3-1965]

— S. 257 *See also* Ss. 252 to 258

[8445] — S. 257 — Accused's application to summon defence witnesses — When may be refused — *Hyderabad Criminal Procedure Code, 1313 F, S. 216*

Accused's application to summon defence witnesses may be refused on the ground of it being made for the purpose of vexation or delay or for defeating the ends of justice.

Held :

On facts that the ground did not exist in the case. *Habeeb Mohd.* v. *State of Hyderabad*, AIR 1954 SC 51: 1954 SCR 475: 1954 Cri LJ 338.

Bench Strength 3. Coram: **M.C. Mahajan**, *B.K. Mukherjea* and *B. Jagannadhadas*, JJ. [Date of decision: 5-10-1953]

[8446] — S. 257 — Court declining to issue process for examination of witnesses — Effect of

The evidence on record may tend to establish a strong case against the accused. But that is a case which they are entitled to rebut and if any documents would furnish good material for rebutting that case, the Court, by declining to issue process for the examination of the witnesses connected with those documents would deprive the accused of an opportunity of rebutting it. They cannot be convicted without an opportunity being given to them to present their evidence, and that having been denied to them, there has been no fair trial, and this conviction cannot stand. The result may be unfortunate. But it is essential that rules of procedure designated to ensure justice should be scrupulously followed, and Courts should be jealous in seeing that there is no breach of them. *Ronald Wood Mathams* v. *State of W.B.*, AIR 1954 SC 455: (1955) 1 SCR 216: 1954 Cri LJ 1161.

Bench Strength 5. Coram: *M.C. Mahajan, C.J.* and *S.R. Das, N.H. Bhagwati, B. Jagannadhadas* and **T.L. Venkatarama Aiyar**, JJ. [Date of decision: 22-4-1954]

[8447] — S. 257 — Power of court to decline to summon a witness after recording reasons therefor — *Refusal to summon a witness and police diary — Whether an illegality*

It was open to the trial Court to decline to summon a witness after recording its reasons for the refusal.

There is no legal infirmity made out and certainly no failure of justice is shown from the record. *Kishan* v. *State of Maharashtra*, (1970) 3 SCC 35: 1970 SCC (Cri) 385.

Bench Strength 2. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 18-3-1970]

[8448] — Ss. 257 and 510 — Report of Public Analyst — Application of accused to summon Public Analyst for cross-examination — *Refusal of — Conviction based on report — Legality — Prevention of Food Adulteration Act, 1954, S. 13*

It will be open to the party against whom certificates which are declared to be sufficient evidence either to rebut the facts stated therein by his own or other evidence or to require the expert to be produced for cross-examination which prayer the Court is bound to consider on merits in granting or rejecting it. There is no presumption that the contents are true or correct though such a certificate is evidence without formal proof. In any case, where there is evidence to the contra, the Court is bound to consider that evidence along with such a certificate with or without the evidence of the expert who gave it being called and having come to his own conclusion. The certificate under S. 13(3) of the Act supersedes the Public Analyst's certificate and is conclusive and final under sub-section (5). But nothing contained in these sub-sections relating to certificate of the Director of the Central Food Laboratory in any way limits the right of the accused under S. 257, CrPC to require the Public Analyst to be produced. The Court may reject the prayer for good and sufficient reasons. *Ram Dayal* v. *Municipal Corpn. of Delhi*, (1969) 3 SCC 35: AIR 1970 SC 366: 1970 Cri LJ 515.

Bench Strength 3. Coram: *S.M. Sikri*, *G.K. Mitter* and **P. Jaganmohan Reddy**, JJ. [Date of decision: 7-10-1969]

[8449] — S. 257(1) — Reported destruction of important documents required by accused — Procedure open to accused

Where important documents required by the accused are reported to be destroyed or not available, curious though it may be, held, the Court is not called upon to make investigation into the question whether the replies from different officers as to what documents were destroyed or were not available were correct or not. It was open to the Counsel for the accused whenever any such report came, to challenge the statement and at that stage the Court might have been in a position to ask the prosecution to support their replies by affidavits or otherwise. *Habeeb Mohd.* v. *State of Hyderabad*, AIR 1954 SC 51: 1954 SCR 475: 1954 Cri LJ 338.

Bench Strength 3. Coram: **M.C. Mahajan**, *B.K. Mukherjea* and *B. Jagannadhadas*, JJ. [Date of decision: 5-10-1953]

— S. 258 *See* Ss. 252 to 258

See also Ss. 253, 254-A & 258 and 439 & 403

[8450] — Ss. 258, 419, 410 and 423 — Maintainability of joint appeal by State against order of acquittal against several persons in a joint trial *— Bombay High Court Appellate Side Rules, 1960, Ch. XXVI — R. 6*

Section 419, CrPC, does not prohibit a joint appeal from an order of acquittal. Nor are Ss. 258, 410 and 423 CrPC a bar. *State of Gujarat* v. *Ramprakash P. Puri*, (1969) 3 SCC 156: 1970 SCC (Cri) 29.

Bench Strength 2. Coram: *V. Ramaswami* and **I.D. Dua**, JJ. [Date of decision: 16-10-1969]

[8451] — S. 258 — Wrongful acquittal — High Court ordering retrial — Upheld. *Matukdhari Singh* v. *Janardan Prasad*, AIR 1966 SC 356: (1966) 1 SCR 255: 1966 Cri LJ 307.

Bench Strength 3. Coram: *A.K. Sarkar*, **M. Hidayatullah** and *V. Ramaswami*, JJ. [Date of decision: 20-7-1965]

[8452] — S. 258(1) — Accused found not guilty of offence charged with *— Acquittal necessary to be recorded*

Once a charge is framed and the accused is found not guilty of that charge an acquittal must be recorded under S. 258(1), Criminal Procedure Code. There is no option in this matter. *Harihar Chakravarty* v. *State of W.B.*, AIR 1954 SC 266: 1954 Cri LJ 724.

Bench Strength 3. Coram: *B.K. Mukherjea*, *Vivian Bose* and **N.H. Bhagwati**, JJ. [Date of decision: 22-10-1953]

— S. 259 *See* Ss. 247 and 259

— S. 267 *See* Ss. 439, 561-A, 526 & 267

[8453] — S. 268 — Nature of Jury

In substance it may be said that the jury forms part of the Court which tries the accused while the assessors only aid the Court in its trial of the accused. This distinction appears to be clearly brought out by the very language used in S. 268, CrPC. Notwithstanding this fundamental difference it cannot be doubted that the participation of the assessors in the trial as prescribed by law, is an essential feature of the trial in Courts of Sessions for certain offences, and that a trial in violation of the substance of the procedure so prescribed is an illegal trial. *Prem Nath* v. *State of Delhi*, AIR 1956 SC 4, 7: 1956 Cri LJ 121.

Bench Strength 3. Coram: *B.K. Mukherjea*, *N.H. Bhagwati* and **B. Jagannadhadas**, JJ. [Date of decision: 17-12-1953]

[8454] — S. 269 — Jury trial under the Code — Scope of — Its revocation — Method of *— Notification denying to certain individuals the right to be tried by jury while retaining that right in the case of other individuals who have committed the same or similar offences — Validity of*

Section 269(1) of the Code of Criminal Procedure is an enabling section and empowers the State Government to direct that the trial of all offences or of any particular class of offences before any Court of Sessions shall be by jury. It has the further power to revoke or alter such on order. There is nothing wrong if the State discontinues trial by jury in any district with regard to all or any particular class of offences, but the question is whether it can direct that the trial of a particular case or of a particular accused shall be in the Court of Sessions by jury while in respect of other cases involving the same offence the trial shall be by means of assessors. The section does not empower the State Government to direct that trial of a particular case or of a particular accused person shall be by jury while the trial of other persons accused of the same offence shall not be by jury. It does not take notice of individual accused or of individual cases. It only speaks of offences or of a particular class of offences, and does not direct its attention to particular cases or classes of cases and it does not envisage that persons accused of the same offence but involved in different cases can be tried by the Court of Sessions by a different procedure, namely, some of them by jury and some of them with the help of assessors.

The ambit of the power of revocation or alteration is co-extensive with the power conferred by the opening words of the section and cannot go beyond those words. In exercise of the power of revocation also the State Government cannot pick out a particular case or set of cases and revoke the notification qua these cases only and leave cases or other persons charged with the same offence triable by the Court of Sessions by jury.

Where the notification denies to certain individuals the right to be tried by jury while retaining that right in the case of other individuals who have committed the same or similar offences and in this respect it travels beyond the power conferred on the State Government by S. 269(1) of the Code of

Criminal Procedure, and is thus void and inoperative. Further the notification is also bad as contravening Art. 14 of the Constitution. *Dhirendra Kumar* v. *Superintendent and Remembrancer of Legal Affairs, Govt. of W.B.*, AIR 1954 SC 424: (1955) 1 SCR 224: (1954) 2 MLJ 128: 1954 Cri LJ 1036.

Bench Strength 5. Coram: **M.C. Mahajan** and *B.K. Mukherjea, Vivian Bose, N.H. Bhagwati* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 20-4-1954]

— S. 270-A *See* Ss. 162, 270-A and 510

— S. 271 *See also* Ss. 207-A and 271

[8455] — Ss. 271 and 537 — Charge framed by the Magistrate not read over and explained to the accused in sessions trial — *Defect is curable under S. 537 if no prejudice is caused to the accused. Banwari* v. *State of U.P.*, AIR 1962 SC 1198: 1962 Supp (3) SCR 180: (1962) 2 Cri LJ 278, 283.

Bench Strength 3. Coram: *J.L. Kapur, A.K. Sarkar* and **Raghubar Dayal**, JJ. [Date of decision: 14-2-1962]

[8456] — Ss. 278(g) and 297 — Jury trial — Two of five jurors not having sufficient knowledge of English — *Large number of documents relied upon in English — Held, a case of mistrial*

The effect of incompetence of a juror is to deny to the accused an essential part of protection accorded to him by law and the result of trial where some jurors did not know sufficient English was a clear miscarriage of justice.

When the jury had returned a unanimous verdict of not guilty or the objection was for the first time raised in the High Court, the trial will be nonetheless bad because the question of prejudice does not arise, because the fact that some jurors did not know English was not a mere irregularity but it was a case of "mistrial". The conviction should therefore be set aside. *Kapil Deo Shukla* v. *State of U.P.*, AIR 1958 SC 121: 1958 SCR 640: 1958 Cri LJ 262, 265.

Bench Strength 3. Coram: **B.P. Sinha**, *P. Govinda Menon* and *J.L. Kapur*, JJ. [Date of decision: 14-10-1957]

[8457] — Ss. 284 and 285 — Scope and applicability — *A, B and C summoned for appointment as assessors at the date of commencement of the trial — A and B appeared and C absented — Court chose A, B and D as assessors — D though on list of assessors was not summoned — Trial held on 22-3-1952 with A, B and D as assessors — On June 6, 1952 trial held with A, B, and E (a new person) as assessors — On June 23, 1952 trial again held with A, B and E as assessors — On June 27, 1953 trial held with A, B, D and E as assessors — Later trial daily held with A, B, D, and E as assessors — All these four assessors gave their opinion — Held, trial not held in accordance with the procedure laid down in the Code and hence illegal, inasmuch as the Court was not empowered to substitute E for D on 6-6-1962 and permit the trial with E as assessor on subsequent dates and take the opinion of all the four assessors. Magga* v. *State of Rajasthan*, AIR 1953 SC 174: 1953 SCR 973: 1953 Cri LJ 892.

Bench Strength 2. Coram: **M.C. Mahajan** and *S.R. Das*, JJ. [Date of decision: 16-2-1953]

[8458] — Ss. 284 and 285 — Scope and interpretation — *Effect of the sections is that a trial cannot be validly commenced with less than three assessors validly chosen in accordance with the sections — Once validly commenced the trial can be continued to a finish even if only some of the persons originally appointed as assessors attend throughout — Addition in the number of assessors or change or substitution in the personnel of assessors not permissible by the Code — Procedure prescribed in S. 285(2) is mandatory. Magga* v. *State of Rajasthan*, AIR 1953 SC 174: 1953 SCR 973: 1953 Cri LJ 892.

Bench Strength 2. Coram: **M.C. Mahajan** and *S.R. Das*, JJ. [Date of decision: 16-2-1953]

(Sections repealed by Act 26 of 1955)

— S. 285 *See also* Ss. 284 and 285

[8459] — S. 285 — Scope and interpretation — *Court not ascertaining before proceeding further with the trial whether an appointed assessor who was absent due to sufficient cause and whether it was practicable to enforce his attendance — Omission curable under S. 537 CrPC. Magga* v. *State of Rajasthan*, AIR 1953 SC 174: 1953 SCR 973: 1953 Cri LJ 892.

Bench Strength 2. Coram: **M.C. Mahajan** and *S.R. Das*, JJ. [Date of decision: 16-2-1953]

(Section repealed by Act 26 to 1955)

— S. 286 *See* Ss. 208, 252 and 286

See also Ss. 244 and 286

[8460] — S. 286 — Prosecution — Non-examination of a very material witness — Effect — *Criminal Trial — Prosecution*

The non-examination of a very material witness would give rise to an inference that, if examined, he would not have supported the prosecution evidence. *Khatri Hemraj Amulakh* v. *State of Gujarat*, (1972) 3 SCC 671: 1972 SCC (Cri) 715: AIR 1972 SC 922: 1972 Cri LJ 626.

Bench Strength 2. Coram: *J.M. Shelat* and **H.R. Khanna**, JJ. [Date of decision: 7-2-1972]

[8461] — S. 286 — Application by prosecution that witness has been won over — *Not conclusive*

The mere presentation of an application to the effect that a witness had been won over was not conclusive of the question that the witness had been won over. *State of U.P.* v. *Jaggo*, (1971) 2 SCC 42: 1971 SCC (Cri) 401: AIR 1971 SC 1586: 1971 Cri LJ 1173.

Bench Strength **2**. Coram: *C.A. Vaidialingam* and **A.N. Ray**, JJ. [Date of decision: 30-3-1971]

[8462] — S. 286 — Calling of witnesses by prosecution

Witnesses essential to the unfolding of the narrative on which the prosecution is based, must, of course, be called by prosecution. *(Seneviratne* v. *King,* AIR 1936 PC 289.)

The test whether a witness is material for the present purpose is not whether he would have given evidence in support of the defence. The test is whether he is a witness "essential to the unfolding of the narrative on which the prosecution is based". Whether a witness is so essential or not would depend on whether he could speak to any part of the prosecution case or whether the evidence led disclosed that he was so situated that he would have been able to give evidence of the facts on which the prosecution relied. It is not however that the prosecution is bound to call all witnesses who may have seen the occurrence and so duplicate the evidence. But apart from this, the prosecution should call all material witnesses. *Narain* v. *State of Punjab*, AIR 1959 SC 484, 487: 1959 Supp (1) SCR 724: 61 Punj LR 509: 1959 Cri LJ 537.

Bench Strength **2**. Coram: *P.B. Gajendragadkar* and **A.K. Sarkar**, JJ. [Date of decision: 4-12-1958]

[8463] — S. 286 — Discretion of prosecution in the production of witnesses — Nature and extent of — *Non-production of a witness not an eyewitness — Inference — Evidence Act, 1872, S. 114, Ill(g)*

It is not as if every witness who has something to do with some part of the prosecution story should pass through the witness-box. There is a discretion in the public prosecutor to pick and choose but to be fair to the Court and to truth. If 'D' were essential to unfold the prosecution story and had been suspiciously suppressed from the Court, the Court would and should have drawn an adverse inference but in the circumstances 'D' does not seem to be an eyewitness to the actual attack and his absence from the witness-box is not, therefore, fatal to the prosecution. No sinister motive can be imputed to his not being examined. *Shivaji Sahabrao Bobade* v. *State of Maharashtra*, (1973) 2 SCC 793: 1973 SCC (Cri) 1033: AIR 1973 SC 2622: 1973 Cri LJ 1783.

Bench Strength **3**. Coram: *P. Jaganmohan Reddy, H.R. Khanna* and **V.R. Krishna Iyer**, JJ. [Date of decision: 27-8-1973]

[8464] — S. 286 — Examination of all prosecution witnesses

It is no doubt very important that, as a general rule, all Crown witnesses should be called to testify at the hearing of a prosecution, but important as it is, there is no obligation compelling counsel for the prosecution to call all witnesses who speak to facts which the Crown desire to prove. Ultimately it is a matter for the discretion of Counsel for the prosecution and though a Court ought, and no doubt will, take into consideration the absence of witnesses whose testimony would be expected, it must adjudge the evidence as a whole and arrive at its conclusion accordingly taking into consideration the persuasiveness of the testimony given in the light of such criticism as may be levelled at the absence of possible witnesses. (*Malak Khan* v. *Emperor,* AIR 1946 PC 16). *Abdul Gani* v. *State of M.P.*, AIR 1954 SC 31: 1954 Cri LJ 323.

Bench Strength **4**. Coram: *Patanjali Sastri, C.J.* and **M.C. Mahajan**, *S.R. Das* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 3-3-1952]

[8465] — S. 286 — Failure of investigating officer to take prompt action — *No adverse inference against accused*

The defence of the accused before the trial Judge was that while he was working in his field the deceased with one other person started plying a tractor in the same field. On his protests the deceased fired a shot from a gun described as carbine. The gun developed a defect immediately after the first shot was fired, whereupon the deceased hit the accused by the butt end of the gun. The Investigating Officer took the gun and cartridges etc. in his possession 11 days after the incident, with the result that it could not be sent to the ballistic expert in time to find out the correctness or otherwise of the allegation that the gun had become defective. On these facts the High Court drew an adverse inference against the defence for not getting the gun examined for any alleged defect. *Held,* it was the duty of the prosecution in the circumstances of the case to have taken the carbine and cartridges, etc., into custody and to have obtained the opinion of the ballistic expert on material points. This not having been done no adverse inference could have been drawn from the omission on the part of the defence to get the carbine tested for any alleged defect in it. *Tarachand* v. *State of Haryana*, (1971) 2 SCC 579: 1971 SCC (Cri) 593: AIR 1971 SC 1891: 1971 Cri LJ 1411.

Bench Strength **2**. Coram: *K.S. Hegde* and **A.N. Grover**, JJ. [Date of decision: 21-7-1971]

[8466] — S. 286 — Failure to examine material witnesses — Right and duty of prosecution — Material witness — Meaning of

Although it is the duty of the prosecution to examine all material witnesses essential to the unfolding of the narrative on which the prosecution is based, whether in the result the effect of that testimony is for or against the case of the prosecution, but there may exist peculiar circumstances in which the non-examination of such witnesses will have no adverse effect, for instance, where such witnesses have filed affidavits before the committing Magistrate that they had not seen the incident and it would serve no purpose to insist on the prosecution examining them as witnesses. Similarly, the non-examination of a witness whose evidence would not carry the matters further would not affect the evidence of other witnesses. Where the evidence of a witness is not essential to the unfolding of the prosecution case, he cannot be considered to be a material witness. (Paras 23 and 24). *State of U.P.* v. *Iftikhar Khan*, (1973) 1 SCC 512: 1973 SCC (Cri) 384: AIR 1973 SC 863: (1973) 3 SCR 328: 1973 Cri LJ 636.

Bench Strength **3**. Coram: *A. Alagiriswami*, *I.D. Dua* and **C.A. Vaidialingam**, JJ. [Date of decision: 15-1-1973]

[8467] — S. 286 — Non-examination by prosecution of those witnesses who came to the spot of the crime or saw the incident from a distance — No oblique motive suggested for such lapse by prosecution — *Held, failure of prosecution not material*

The prosecution had examined the best informed witnesses whose evidence was necessary to unfold the narrative and to establish the identity of the victim's assailant and the manner in which the victim was assaulted. It was not necessary for it to examine all those persons, who had come to the spot at one stage or the other, or who had seen the occurrence from a distance. There is nothing on the record to suggest that the production of those witnesses was withheld by the prosecution from any oblique motive. So there is no infirmity in the prosecution case. *Bhagwan Tana Patil* v. *State of Maharashtra*, (1974) 3 SCC 536: 1974 SCC (Cri) 11: AIR 1974 SC 21: 1974 Cri LJ 145.

Bench Strength **2**. Coram: *H.R. Khanna* and **R.S. Sarkaria**, JJ. [Date of decision: 9-10-1973]

[8468] — S. 286 — Non-production of material witness by prosecution

It is true that all the witnesses of the prosecution need not be called but it is important to notice that the witness whose evidence is essential to the "unfolding of the narrative" should be called whether the effect of his testimony is for or against the case for the prosecution. Failure to examine such a witness might affect a fair trial. Presentation of an application to the effect that a witness had been won over was not conclusive to the question that the witness had been won over. In such a case the witness could have been produced for cross-examination by the accused which would have elicited correct facts. *State of U.P.* v. *Jaggo*, (1971) 2 SCC 42: 1971 SCC (Cri) 401: AIR 1971 SC 1586: 1971 Cri LJ 1173.

Bench Strength **2**. Coram: *C.A. Vaidialingam* and **A.N. Ray**, JJ. [Date of decision: 30-3-1971]

[8469] — S. 286 — Non-production of witness mentioned in dying declaration — That he was won over accepted

The non-production of 'S' who is stated in the dying declaration and in the statement of PW 12 to have witnessed the occurrence was commented upon by counsel as a very serious omission. The Public Prosecutor stated at the trial that he was giving up 'S' as he had been won over. Therefore, if produced, 'S' would have been no better than a suborned witness. He was not a witness "essential to the unfolding of the narrative on which the prosecution was based" and if examined the result would have been confusion, because the prosecution would have automatically proceeded to discredit him by cross-examination. No oblique reason for his non-production was alleged, least of all proved. There was therefore no obligation on the part of the prosecution to examine his witness. *Bakhshish Singh* v. *State of Punjab*, AIR 1957 SC 904, 907: 1958 SCR 409, 417: 1957 Cri LJ 1459.

Bench Strength **3**. Coram: *B.P. Sinha*, *P. Govinda Menon* and **J.L. Kapur**, JJ. [Date of decision: 17-9-1957]

[8470] — S. 286 — Production of witnesses not mentioned in FIR and non-production of witness mentioned — *Inference — Former witnesses were not present at the scene of occurrence. State of U.P.* v. *Jaggo*, (1971) 2 SCC 42: 1971 SCC (Cri) 401: AIR 1971 SC 1586: 1971 Cri LJ 1173.

Bench Strength **2**. Coram: *C.A. Vaidialingam* and **A.N. Ray**, JJ. [Date of decision: 30-3-1971]

[8471] — S. 286 — Prosecution duty to produce all material witnesses

If a material witness has been deliberately or unfairly kept back, then a serious reflection is cast on the propriety of the trial itself and the validity of the conviction resulting from it may be open to challenge. *Narain* v. *State of Punjab*, AIR 1959 SC 484, 487: 1959 Supp (1) SCR 724: 61 Punj LR 509: 1959 Cri LJ 537.

Bench Strength **2**. Coram: *P.B. Gajendragadkar* and **A.K. Sarkar**, JJ. [Date of decision: 4-12-1958]

[8472] — S. 286 — Prosecution not bound to call all the witnesses — *Choosing of witnesses — Adverse inference when to be drawn*

It is no doubt, true that the prosecution is bound to produce witnesses who are essential to the unfolding of the narrative on which the prosecution is based. Apart from that, it cannot be laid down as a rule that if a large number of persons are present at the time of the occurrence, the prosecution is bound to call and examine each and every one of these persons. The answer to the question as to what is the effect of the non-examination of a particular witness would depend upon the facts and circumstances of each case. In case enough number of witnesses have been examined with regard to the actual occurrence and their evidence is reliable and sufficient to base the conviction of the accused thereon, the prosecution may well decide to refrain from examining the other witnesses. Likewise, if any of the witnesses is won over by the accused party and as such is not likely to state the truth, the prosecution would have a valid ground for not examining him in court. The prosecution would not, however, be justified in not examining a witness on the ground that his evidence even though not untrue would go in favour of the accused. It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on the record so that there may be no miscarriage of justice. The discharge of such a duty cannot be affected by the consideration that some of the facts if brought on the record would be favourable to the accused. In case the Court finds that the prosecution has not examined witnesses for reasons not tenable or not proper, the Court would be justified in drawing an inference adverse to the prosecution. *Ram Prasad* v. *State of U.P.*, (1974) 3 SCC 388: 1973 SCC (Cri) 953: AIR 1973 SC 2673: 1973 Cri LJ 1807: (1974) 1 SCR 650.

Bench Strength 2. Coram: **H.R. Khanna** and *A. Alagiriswami*, JJ. [Date of decision: 17-9-1973]

[8473] — S. 286 — Prosecution not bound to produce all the evidence when best evidence available.

Aftab Ahmad Khan v. *State of Hyderabad*, AIR 1954 SC 436: (1955) 1 SCR 588: 1954 Cri LJ 1155.

Bench Strength 3. Coram: *B.K. Mukherjea*, *Vivian Bose* and **Ghulam Hasan**, JJ. [Date of decision: 6-5-1954]

[8474] — S. 286 — Selection of witnesses from among the eyewitnesses

The duty of the prosecutor is to assist the Court in reaching a proper conclusion in regard to the case which is brought before it for trial. It is no doubt open to the prosecutor not to examine witnesses who, in his opinion, have not witnessed the incident, but, normally he ought to examine all the eyewitnesses in support of his case. It may be that a large number of persons have witnessed the incident, it would be open to the prosecutor to make a selection of those witnesses, but the selection must be made fairly and honestly and not with a view to suppress inconvenient witnesses from the witness-box. If at the trial it is shown that persons who had witnessed the incident have been deliberately kept back, the Court may draw an inference against the prosecution and may, in a proper case, regard the failure of the prosecutor to examine the said witnesses as constituting a serious infirmity in the proof of the prosecution case. In such a case if the ends of justice require, the Court may even examine such witnesses by exercising its powers under S. 540. *Darya Singh* v. *State of Punjab*, AIR 1965 SC 328, 333: (1964) 3 SCR 397, 408: (1965) 1 Cri LJ 350.

Bench Strength 3. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 25-4-1963]

See also (1968) 3 SCR 774: AIR 1968 SC 1402 (1407): 1968 Cri LJ 1655

[8475] — S. 286 — Witness if won over need not be called

If the prosecutor honestly and bona fide believes that some of his witnesses have been won over, it would be unreasonable to insist that he must tender such witnesses before the Court. It is undoubtedly the duty of the prosecution to lay before the Court all material evidence available to it which is necessary for unfolding its case; but it would be unsound to lay down as a general rule that every witness must be examined even though his evidence may not be very material or even if it is known that he has been won over or terrorised. In such a case, it is always open to examine such witnesses as their witnesses and the Court can also call such witnesses in the box in the interest of justice under S. 540, CrPC. *Masalti* v. *State of U.P.*, AIR 1965 SC 202, 209: (1964) 8 SCR 133, 144: (1965) 1 Cri LJ 226.

Bench Strength 4. Coram: **P.B. Gajendragadkar**, **C.J.** and *K.N. Wanchoo*, *K.C. Das Gupta* and *Raghubar Dayal*, JJ. [Date of decision: 4-5-1964]

[8476] — S. 286(2) — Non-examination of non-material witness by prosecution, held, inconsequential — *CrPC, 1973, S. 231*.

Boya Ganganna v. *State of A.P.*, (1976) 1 SCC 584: 1976 SCC (Cri) 102: AIR 1976 SC 1541: 1976 Cri LJ 1158.

Bench Strength 2. Coram: **P.N. Bhagwati** and *R.S. Sarkaria*, JJ. [Date of decision: 7-11-1975]

[8477] — S. 286(2) — Prosecution not producing witnesses won over by opposite party — *It would be unreasonable to insist tendering such witnesses before Court — CrPC, 1973, S. 231*

It is undoubtedly the duty of the prosecution to lay before the Court all material evidence available to it which is necessary for unfolding its case, but it would be unsound to lay down as a general rule that every witness must be examined even though his evidence may not be very material or even if it is known that he has been won over or terrorized. *Bava Haji Hamsa* v. *State of Kerala*, (1974) 4 SCC 479: 1974 SCC (Cri) 515: AIR 1974 SC 902: 1974 Cri LJ 755.

Bench Strength 3. Coram: *M.H. Beg*, *Y.V. Chandrachud* and **R.S. Sarkaria**, JJ. [Date of decision: 21-2-1974]

[8478] — S. 287 — Charge to Jury — Charge not amounting to a complete misdescription of the whole bearing of the evidence or any failure of justice — *There is no misdirection*

There is nothing in the Judge's charge to the jury which would, to use the words of Their Lordships of the Privy Council, "amount to a complete misdescription of the whole bearing of the evidence" or that "there is any failure of justice". The charge was therefore, not grossly unfair or contained any serious misdirection or non-direction such as to vitiate the verdict of the jury. *Ramkishan Mithanlal Sharma* v. *State of Bombay*, AIR 1955 SC 104: (1955) 1 SCR 903: 1955 Cri LJ 196.

Bench Strength 3. Coram: **N.H. Bhagwati**[1], **B. Jagannadhadas**[2] and *T.L. Venkatarama Aiyar*[1], JJ. [Date of decision: 22-10-1954]

— S. 288 *See also* Ss. 33 and 288

[8479] — S. 288 — Tendering of a witness for cross-examination without there being any examination-in-chief not permissible — *It amounts to giving up of the witness — Even under old Code recourse to such a practice was inconsistent with S. 138, Evidence Act — Under new CrPC recording of evidence in committal proceedings having been dispensed with, tendering of witness for cross-examination only no more relevant or available — Evidence Act, 1872, S. 138. Sukhwant Singh* v. *State of Punjab*, (1995) 3 SCC 367: 1995 SCC (Cri) 524: AIR 1995 SC 1601: (1995) 2 An LT(Cri) 201.

Bench Strength 2. Coram: **Dr. A.S. Anand** and *Faizan Uddin*, JJ. [Date of decision: 28-3-1995]

Veera Koravan v. Emperor, AIR 1929 Mad 906: ILR 53 Mad 69; Sadeppa Gireppa Mutgi v. Emperor, AIR 1942 Bom 37: ILR 1942 Bom 115; Emperor v. Kasamalli Mirzalli, AIR 1942 Bom 71: ILR 1942 Bom 384; Kesar Singh v. State, AIR 1954 Punj 286: 56 Cri LJ 86; Dhirendra Nath v. State, AIR 1952 Cal 621: 53 Cri LJ 1427; Chhota Singh Hira Singh v. State, AIR 1964 Punj 120: (1964) 1 Cri LJ 350; Thazhathethil Hamsa v. State of Kerala, AIR 1967 Ker 16: 1967 Cri LJ 73; Manzurul Haque v. State of Bihar, AIR 1958 Pat 422: 1958 Cri LJ 931, approved

State of U.P. v. Jaggo, (1971) 2 SCC 42: 1971 SCC (Cri) 401: AIR 1971 SC 1586, explained and distinguished

[8480] — S. 288 — S. 145, Evidence Act, 1872 — Relative Scope and applicability

There is no reason why S. 145 should be excluded when S. 288 of Criminal Procedure Code states that the previous statements are to be "subject to the provisions of the Indian Evidence Act". Section 145 falls fairly and squarely within the plain meaning of these words. It is a fair and proper provision and is in accord with the sense of fair play to which courts are accustomed. On giving effect to the plain meaning of these words, the evidence in the Committal Court cannot be used in the Sessions Court unless the witness is confronted with his previous statement as required by S. 145. If the prosecution wishes to use the previous testimony to the contrary as substantive evidence, then it must confront the witness with those parts of it which are to be used for the purpose of contradicting him. Then only can the matter be brought in as substantive evidence under S. 288, CrPC. *Tara Singh* v. *State*, AIR 1951 SC 441, 446: 1951 SCR 729: (1951) 52 Cri LJ 1491.

Bench Strength 4. Coram: **Fazl Ali**[1], **Patanjali Sastri**[2], **S.R. Das**[3] and **Vivian Bose**[4], JJ. [Date of decision: 1-6-1951]

[8481] — S. 288 — Witness turning hostile in trial court — *His statement before committing court being on record under S. 288 — No objection by the defence counsel on the ground of inadmissibility of evidence — Objection, whether can be raised in appeal — Compliance of the provisions of S. 145, Evidence Act — How far. State of Rajasthan* v. *Kartar Singh*, (1970) 2 SCC 61: 1970 SCC (Cri) 297: AIR 1970 SC 1305: 1970 Cri LJ 1144.

Bench Strength 3. Coram: **M. Hidayatullah, C.J.** and *A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 18-3-1970]

[8482] — S. 288 — Admissibility of evidence given in committing Court where accused resiled from it in the Sessions Court — *Held, can be relied upon where there are cogent reasons and intrinsic circumstances supporting the inference that the statement made before the committing Court was true and correct. State of U.P.* v. *Boota Singh*, (1979) 1 SCC 31: 1979 SCC (Cri) 115: AIR 1978 SC 1770: 1979 MLJ (Cri) 290: (1979) 1 SCR 298: 1978 ALJ 1156.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 22-8-1978]

[8483] — S. 288 — Evidence given at preliminary enquiry — Admissibility — *Statement of a witness recorded at preliminary enquiry not transferred specifically to the record of sessions trial — The accused examined about the statement and told that the statement was marked under S. 288 — Technical requirements not complied with — No prejudice caused to the accused — Statement rightly used as substantive evidence*

There is no order specifying the transfer of the statement of the witness recorded at the time of preliminary hearing to the record of Sessions Court under S. 288. It is highly desirable that the Court should, before the transfer of the earlier statement to the record of the Sessions case under S. 288 indicate in a brief order why the earlier deposition was being transferred to the record of the trial. This will make it quite clear to the accused that the earlier statement is likely to be used as substantive evidence against him. However, the accused was questioned with reference to the statement of the solitary eyewitness made before the committing Magistrate which, the Judge informed him, was marked under S. 288 of the Code of Criminal Procedure, and he was asked what he had to say about it. Therefore, although the technical requirement of the section, namely, that an order should be passed to indicate that the statement is transferred so as to be read as substantive evidence, was not complied with, there does not appear to be any substantial departure from the requirements of the law. There is also no likelihood of any prejudice to the accused since he was informed, while he was being examined that the statement was being used under S. 288, Criminal Procedure Code, and was invited to say what he wished to say in defence. The High Court and the Court below were, therefore, right in using the statement as substantive evidence which undoubtedly the Code of Criminal Procedure does allow. *Periyasami* v. *State of Madras*, AIR 1967 SC 1027: (1967) 2 SCR 122: 1967 Cri LJ 975, 77.

Bench Strength **2**. Coram: **M. Hidayatullah** and *G.K. Mitter*, JJ. [Date of decision: 25-11-1966]

[8484] — S. 288 — Evidentiary value of — Witness resiling from his statement of the committal Court — *Evidence accepted under S. 288 — Satisfaction of the evidence being true and reliable necessary — Unsatisfactory evidence not to be relied without corroboration*

Where a person has made two contradictory statements on oath it is plainly unsafe to rely implicitly on his evidence. In other words, before one decides to accept the evidence brought in under S. 288 of the Code of Criminal Procedure as true and reliable one has to be satisfied that this is really so. In most cases this satisfaction can come only if there is such support in extrinsic evidence as to give a reasonable indication that not only what is said about the occurrence in general but also what is said against the particular accused sought to be implicated in the crime is true. If there be a case and there is such infinite variety in facts and circumstances of the cases coming before the Courts that it cannot be dogmatically said that there can never be such a case where even without such extrinsic support the Judge of facts, after bearing in mind the intrinsic weakness of the evidence, in that two different statements on oath have been made, is satisfied that the evidence is true and can be safely relied upon, the Judge will be failing in his duty not to do so. Again, witness resiling from her statement on oath given for the committing Magistrate in the Court of Sessions. Her previous statement admitted in evidence under S. 288, CrPC. The statement so admitted not satisfactory because it left many points unexplained.

Held: such statement admitted in evidence under S. 288, CrPC should not be accepted in the absence of corroboration. *Sharnappa Mutyappa Halke* v. *State of Maharashtra*, AIR 1964 SC 1357: (1964) 4 SCR 589: (1964) 2 Cri LJ 359, 361: 66 Bom LR 250.

Bench Strength **3**. Coram: *S.K. Das*, *M. Hidayatullah* and **K.C. Das Gupta**, JJ. [Date of decision: 27-8-1963]

[8485] — S. 288 — Previous statement of witness made in committal court not transferred to the Sessions record — *Held, could not be used as substantive evidence in the case. Jit Singh* v. *State of Punjab*, (1976) 2 SCC 836: 1976 SCC (Cri) 341: AIR 1976 SC 1421: 1976 Cri LJ 1162.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *P.N. Shinghal*, JJ. [Date of decision: 24-3-1976]

[8486] — S. 288 — Prosecution witnesses making statements before committing court and later retracting — *Can be treated as substantive evidence by Sessions Court under S. 288. Har Prasad* v. *State of M.P.*, (1971) 3 SCC 455: 1971 SCC (Cri) 703: AIR 1971 SC 1450: 1971 Cri LJ 1135.

Bench Strength **2**. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 6-4-1971]

[8487] — S. 288 — Witness making two inconsistent statements — *Normally not reliable, but if court is satisfied about veracity of the earlier statement, it can act upon such testimony — While deposing before Sessions Court, witness resiling from his earlier statement made before committing court — But at the same time he admitting his earlier statement to be correct and not alleging that*

that statement was given under police pressure — Earlier statement corroborated by testimony of another witness as well as by recovery evidence and also believed to be true by the courts — In the circumstances held, Supreme Court will not reappraise that testimony in appeal by special leave — Constitution of India, Art. 139 — Evidence Act, 1872, S. 155(3). Zile Singh v. *State (Delhi Admn.)*, 1980 Supp SCC 690: 1981 SCC (Cri) 622.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 30-1-1979]

[8488] — S. 288 — Scope — Witness supporting the prosecution in the examination-in-chief and resiling in the cross-examination — *During cross-examination by the prosecution he admitting to have made the statement under S. 161, CrPC — Judge relying on the statement under S. 161, CrPC — Held, not necessary to use the statement under S. 161, CrPC as substantive evidence — Evidence deemed to have been treated as corroboration of what was said in examination-in-chief*

That statement cannot be used as substantive evidence unless S. 288 of the Criminal Procedure Code is called in aid. But even without S. 288 a court would be entitled to say in such a case, 'basing on the evidence in chief, which is substantive evidence', that what the witness said to the police or to the Committing Magistrate, is the true version, not because those statements form substantive evidence but because they tally with the evidence in chief which 'is' substantive. *Bhagwan Singh* v. *State of Punjab*, AIR 1952 SC 214: 1952 SCR 812: 1952 Cri LJ 1131.

Bench Strength 2. Coram: *Fazl Ali* and **Vivian Bose**, JJ. [Date of decision: 30-4-1952]

[8489] — S. 288 — Scope and applicability — *The section can be used to make the former statement substantive evidence whether it is used to contradict what was said in the cross-examination or to corroborate what was said in the chief*

The prosecution had a choice because of the two conflicting versions given in chief in cross-examination. It was entitled to use the former statement either to contradict what was said in cross-examination or to corroborate what was said in chief. In either event, S. 233 of the CrPC could be used to make the former statement substantive evidence because what the section says is "subject to the provisions of the Indian Evidence Art", and not subject to any particular section in it. Section 157 is as such a provision of the Indian Evidence Act as S. 145 and if the former statement can be brought in under S. 157 it can be transmuted into substantive evidence by the application of S. 288. *Bhagwan Singh* v. *State of Punjab*, AIR 1952 SC 214: 1952 SCR 812: 1952 Cri LJ 1131.

Bench Strength 2. Coram: *Fazl Ali* and **Vivian Bose**, JJ. [Date of decision: 30-4-1952]

[8490] — S. 288 — Sessions Court has discretion to use as substantive evidence a statement of witness recorded in committing court — *Compliance with S. 145, Evidence Act, necessary. Ashok Kumar* v. *State (Delhi Admn.)*, (1977) 2 SCC 233: 1977 SCC (Cri) 303: AIR 1977 SC 1304: (1977) 3 SCR 143: 1977 Cri LJ 814.

Bench Strength 2. Coram: **P.K. Goswami** and *P.S. Kailasam*, JJ. [Date of decision: 7-3-1977]

[8491] — S. 288 — Solitary witness resiling from his earlier statement — *Evidentiary value*

It is no doubt true that the evidence of a solitary witness who has resiled from his earlier statement has to be treated with caution but where there is other independent corroboration in the form of the first information report and the report of the ballistic expert to support his earlier statement, reliance can be placed on the earlier statement of such a witness. *Bansilal* v. *State of Rajasthan*, (1971) 3 SCC 203: 1971 SCC (Cri) 376: AIR 1971 SC 1116: 1971 Cri LJ 828.

Bench Strength 2. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 18-3-1971]

[8492] — S. 288 — Statement of a witness becomes substantive evidence, if it is read in extenso to the witness and the witness admits having made it in the committal Court — *No need to read passage by passage — Procedure under, has to be followed where the witness makes a statement under S. 164 to which he sticks in the committal enquiry but from which he resiles in the Session Court — Statement of one witness under can corroborate that of another under — Evidence Act, 1872, S. 145*

The statement under S. 164, CrPC has the endorsement of the Magistrate that it had been made by the witness. The mere fact that the police had reasons to suspect that the witness might be gained over and that it was expedient to have his statement recorded by the Magistrate, would not make the statement tainted. If the witness resiles from his statement made under Section 164, he can be cross-examined. But if he sticks to it before the committal enquiry and resiles from it in the Sessions Court, the procedure prescribed under S. 288, CrPC will have to be observed. It is for the Court to consider taking into account all the circumstances including the fact that the witness had resiled in coming to the conclusion as to whether the witness should be believed or not. The fact that the police had S. 164 statement recorded by the Magistrate, would not by itself make his evidence suspect.

Though the statements made under S. 164 is not evidence it is corroborative of what has been stated earlier in the committal Court. Therefore, the High Court was right in relying on the statement of the witnesses under S. 164 as corroborating their subsequent evidence before the committal Court.

The High Court was also right in observing that a statement recorded under S. 288 of one witness can corroborate the statement of another witness under S. 288 as such statements are treated as substantive evidence in law. *Dhanabal* v. *State of T.N.*, (1980) 2 SCC 84: 1980 SCC (Cri) 340: AIR 1980 SC 628: 1980 Cri LJ 439: (1980) 17 ACC 115.

Bench Strength **3**. Coram: *S. Murtaza Fazal Ali*, **P.S. Kailasam** and *A.D. Koshal*, JJ. [Date of decision: 13-12-1979]

[8493] — S. 288 — Statement recorded in committal proceedings — Can be used in session trials — *Evidence Act, 1872 — S. 145 — Whether excluded by S. 288, CrPC — Sessions trials*

The other line of reasoning is that S. 288 makes no exception of any provision in the Evidence Act and therefore S. 145 cannot be excluded. As the section is one of the provisions of the Act, the statements are subject to its provisions as well. All that S. 288 does is to import into the law of Evidence Act, namely, to make a statement of this kind substantive evidence, but only when all the provisions of the Evidence Act have been duly complied with. Supreme Court sees no reason why S. 145, Evidence Act, should be excluded when S. 288 states that the previous statements are to be "subject to the provisions of the Indian Evidence Act". Section 145 falls fairly and squarely within the plain meaning of these words. More than that, this is a fair and proper provision and is in accord with the sense of fairplay to which Courts are accustomed. Even the learned Judges who take the view consider for the most part that though it is not obligatory to confront a witness with his former statement when S. 288 is resorted to, it is always desirable that, that should be done if only for the reason that an omission to do so weakens the value of the testimony. The evidence in the committal Court cannot be used in the Sessions Court unless the witness is confronted with his previous statement as required by S. 145, Evidence Act.

If the prosecution wishes to go further and use the previous testimony to the contrary as substantive evidence, then it must, in my opinion, confront the witness with those parts of it which are to be used for the purpose of contradicting him. Then only can the matter be brought in as substantive evidence under S. 288. *Tara Singh* v. *State*, AIR 1951 SC 441: 1951 SCR 729: (1951) 52 Cri LJ 1491.

Bench Strength **4**. Coram: **Fazl Ali**[1], **Patanjali Sastri**[2], **S.R. Das**[3] and **Vivian Bose**[4], JJ. [Date of decision: 1-6-1951]

[8494] — Ss. 288 and 297 — Previous statement put to a witness in criminal trial — *Its primary object is to contradict the witness — Judge telling jury that the previous contradictory evidence may help the defence to show that the witness is unreliable — Is statement of true legal position — S. 145 Evidence Act*

It is clear that when a previous statement is put to a witness in cross-examination under S. 145 of the Indian Evidence Act, its primary purpose is to contradict the witness by reference to the evidence he gives at the trial, and so, it cannot be said that the learned Judge was wrong in law in telling the jury that the previous statement on which the defence relied may help the defence to contend that the girl was not a straightforward witness and was changing her story from time to time, but the said previous statement cannot be treated as substantive evidence at the trial. That is the true legal position and no grievance can be made against the charge for stating the said position in the terms adopted by the learned Session Judge. *Chittaranjan Das* v. *State of W.B.*, AIR 1963 SC 1696: (1964) 3 SCR 237: (1963) 2 Cri LJ 534, 37.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 22-4-1963]

[8495] — Ss. 289 and 342 — Examination of accused — Question regarding the defence evidence — When to be put to the accused

Section 289 requires that if the trial Judge comes to the conclusion that there is evidence to show that the accused has committed the offence, then the accused should be called upon to enter upon his defence.

After putting the questions that are required to be put under S. 342, CrPC, the accused was asked whether he had any defence evidence. We do not think that that procedure in any way conflicts with S. 289, CrPC. *Pati Ram* v. *State of U.P.*, (1970) 3 SCC 703.

Bench Strength **2**. Coram: *V. Bhargava* and **K.S. Hegde**, JJ. [Date of decision: 24-9-1969]

[8496] — S. 290 — Right of the accused — Prosecution case not accepted — New prosecution case cannot be made to imperil defence

The core of prosecution case was that Brijlal and Nathu carried guns and were present at the busstand and that Nathu shouted that the enemies should be attacked and that Nathu fired the gun. This story of the prosecution was disbelieved by the trial court. If the pivot of the prosecution case is not accepted, a new prosecution case cannot be made to imperil defence. When those two persons are found both by the Sessions Court and the High Court not to have been present, the whole prosecution case changed colour and became unworthy of belief. *Devi Lal* v. *State of Rajasthan*, (1971) 3 SCC 471: 1971 SCC (Cri) 719: AIR 1971 SC 1444: 1971 Cri LJ 1132.

Bench Strength **2**. Coram: *C.A. Vaidialingam* and **A.N. Ray**, JJ. [Date of decision: 8-4-1971]

— S. 297 *See* Ss. 154 and 297
See also Ss. 278(g) and 297
See also Ss. 288 and 297

[8497] — S. 297 — Charge to Jury — Duty of the Judge — To lay down the law and to sum up the evidence for the prosecution and defence. *Ramkishan Mithanlal Sharma* v. *State of Bombay*, AIR 1955 SC 104: (1955) 1 SCR 903: 1955 Cri LJ 196.

Bench Strength **3**. Coram: **N.H. Bhagwati**[1], **B. Jagannadhadas**[2] and *T.L. Venkatarama Aiyar*[1], JJ. [Date of decision: 22-10-1954]

[8498] — S. 297 — Charge to Jury — Duty of the Judge — To lay down the law and to sum up the evidence for the prosecution and defence. *Nagindra Bala Mitra* v. *Sunil Chandra Roy*, AIR 1960 SC 706: (1960) 3 SCR 1: 1960 Cri LJ 1020.

Bench Strength **3**. Coram: **S.K. Das**[1], *A.K. Sarkar*[1] and **M. Hidayatullah**[2], JJ. [Date of decision: 12-2-1960]

[8499] — S. 297 — Judge to decide admissibility of evidence before letting it pass to the Jury. *Sardul Singh* v. *State of Bombay*, AIR 1957 SC 747, 760: 1958 SCR 161, 193: 60 Bom LR 691: 1957 Cri LJ 1325.

Bench Strength **3**. Coram: **B. Jagannadhadas**, *B.P. Sinha* and *P.B. Gajendragadkar*, JJ. [Date of decision: 23-5-1957]

[8500] — S. 297 — Misdirection — Judge admitting evidence inadmissible under S. 162 CrPC in his charge to Jury — *That evidence being of minor nature — Verdict of jury is not vitiated on this ground and there is no misdirection. Nagindra Bala Mitra* v. *Sunil Chandra Roy*, AIR 1960 SC 706: (1960) 3 SCR 1: 1960 Cri LJ 1020.

Bench Strength **3**. Coram: **S.K. Das**[1], *A.K. Sarkar*[1] and **M. Hidayatullah**[2], JJ. [Date of decision: 12-2-1960]

[8501] — S. 297 — Misdirection — Judge asking the Jury to take into consideration the probabilities of a case, where no definite evidence in connection with an incidental matter exists — *Judge was justified in so doing and there was no misdirection. Purushottamdas Dalmia* v. *State of W.B.*, AIR 1961 SC 1589: (1962) 2 SCR 101: (1961) 2 Cri LJ 728, 32: (1961) 2 MLJ (SC) 137.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 19-4-1961]

[8502] — S. 297 — Misdirection — Judge expressing his opinion about the effects of certain pieces of evidence — *Also stating that jury was not bound by his opinion — No misdirection. Purushottamdas Dalmia* v. *State of W.B.*, AIR 1961 SC 1589: (1962) 2 SCR 101: (1961) 2 Cri LJ 728, 32: (1961) 2 MLJ (SC) 137.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 19-4-1961]

[8503] — S. 297 — Misdirection — Judge indicating a possibility — *Letter addressed to shop No. 16 giving correct locality while the correct No. of the shop was 19 — Letter not returned to Dead Letter Office — Postman expected to know the correct place of the addressee — Circumstances indicating that the letter delivered to the addressee — Judge expressing that the letter would have reached the addressee — No misdirection. Purushottamdas Dalmia* v. *State of W.B.*, AIR 1961 SC 1589: (1962) 2 SCR 101: (1961) 2 Cri LJ 728, 32: (1961) 2 MLJ (SC) 137.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 19-4-1961]

[8504] — S. 297 — Misdirection — Judge introducing a highly prejudicial document in charge to Jury — *This amounted to misdirection causing prejudice to the accused. State of Bombay* v. *Rusy Mistry*, AIR 1960 SC 391: 1960 Cri LJ 532.

Bench Strength **3**. Coram: *S.R. Das, C.J.* and *P.B. Gajendragadkar* and **K. Subba Rao**, JJ. [Date of decision: 24-9-1959]

[8505] — S. 297 — Misdirection — Judge not telling the Jury that the accused could be held guilty under S. 323, IPC instead of S. 325, IPC in case it was proved that a blow was given but it did not cause fracture — *Omission does not amount to misdirection*

The failure to direct the jury that it was open to them to return a verdict of guilty on a minor offence occasioned any failure of justice. If the eyewitnesses for the prosecution were believed, it would be undoubtedly a case under S. 325, Penal Code; if on the contrary, the eyewitnesses were not believed and the defence version was accepted that the victim sustained the injuries by a fall, then there would be no case even under S. 323, Indian Penal Code. *Nagindra Bala Mitra* v. *Sunil Chandra Roy*, AIR 1960 SC 706: (1960) 3 SCR 1: 1960 Cri LJ 1020.

Bench Strength **3**. Coram: **S.K. Das**[1], *A.K. Sarkar*[1] and **M. Hidayatullah**[2], JJ. [Date of decision: 12-2-1960]

[8506] — S. 297 — Misdirection — Judge telling the Jury that even if the endorsements were made by the proper departmental officer and they were ante-dated forgery would have been committed — *Held, no misdirection. Purushottamdas Dalmia* v. *State of W.B.*, AIR 1961 SC 1589: (1962) 2 SCR 101: (1961) 2 Cri LJ 728, 32: (1961) 2 MLJ (SC) 137.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 19-4-1961]

[8507] — S. 297 — Misdirection — Judge while dealing with S. 325, IPC described the meaning of word "voluntarily" as "of one's free will" and did not refer to S. 39, IPC — *Lapse is minor and there was no failure of justice. Nagindra Bala Mitra* v. *Sunil Chandra Roy*, AIR 1960 SC 706: (1960) 3 SCR 1: 1960 Cri LJ 1020.

Bench Strength **3**. Coram: **S.K. Das**[1], *A.K. Sarkar*[1] and **M. Hidayatullah**[2], JJ. [Date of decision: 12-2-1960]

[8508] — S. 297 — Misdirection — There is no misdirection where upon a general view the case has been fairly left within the jury's province — *Appellate Court will interfere when something gross amounting to a complete misdescription of the evidence has happened. Nagindra Bala Mitra* v. *Sunil Chandra Roy*, AIR 1960 SC 706: (1960) 3 SCR 1: 1960 Cri LJ 1020, 25, 26.

Bench Strength **3**. Coram: **S.K. Das**[1], *A.K. Sarkar*[1] and **M. Hidayatullah**[2], JJ. [Date of decision: 12-2-1960]

[8509] — S. 297 — Misdirection — Trial by Jury under Ss. 302 & 326 IPC — *Defence of accident under S. 80, IPC — Charge to jury not explaining Ss. 304-A & 338, IPC — There is no misdirection. Shibraj Singh* v. *State of W.B.*, AIR 1959 SC 1173: 1959 Cri LJ 1488: 1960 All Cri R 28.

Bench Strength **3**. Coram: *B.P. Sinha*, *P.B. Gajendragadkar* and **K.N. Wanchoo**, JJ. [Date of decision: 14-4-1959]

[8510] — S. 297 — Misdirection and non-direction — Prosecution under S. 409, IPC — *Judge telling the jury that the evidence about payment of the price for which the goods were disposed of is useless — Jury not told that it indicated absence of motive collapsing strongest part of the prosecution case — Amounts to non-direction. Shreekantiah Ramayya Munipalli* v. *State of Bombay*, AIR 1955 SC 287: (1955) 1 SCR 1177: 1955 Cri LJ 857, 860.

Bench Strength **3**. Coram: *B.K. Mukherjea* and *S.R. Das*, **Vivian Bose**, JJ. [Date of decision: 22-12-1954]

[8511] — S. 297 — Misdirection to Jury — Judge asking the Jury to piece together the various pieces of a jigsaw puzzle by use of their ingenuity in the matter without reference to evidence of prosecution — *Judge in the charge placing his own conjectures before the jury — Held, there was a misdirection. Mushtak Hussein* v. *State of Bombay*, AIR 1953 SC 282: 1953 SCR 809: 1953 Cri LJ 1127.

Bench Strength **3**. Coram: **M.C. Mahajan**, *Vivian Bose* and *B. Jagannadhadas*, JJ. [Date of decision: 30-3-1953]

[8512] — S. 297 — Trial by Jury — *Appellant in order to succeed would have to establish that there were misdirections or non-directions in the charge. Ramkishan Mithanlal Sharma* v. *State of Bombay*, AIR 1955 SC 104: (1955) 1 SCR 903: 1955 Cri LJ 196.

Bench Strength **3**. Coram: **N.H. Bhagwati**[1], **B. Jagannadhadas**[2] and *T.L. Venkatarama Aiyar*[1], JJ. [Date of decision: 22-10-1954]

[8513] — Ss. 297, 298 and 299 — Charge to Jury — Judge cannot pronounce on the reliability of witnesses and thus usurp the function of the Jury. *Chittaranjan Das* v. *State of W.B.*, AIR 1963 SC 1696: (1964) 3 SCR 237: (1963) 2 Cri LJ 534.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 22-4-1963]

[8514] — Ss. 297, 298 and 299 — Misdirection — Age of prosecutrix in a case under S. 376, IPC — *Judge, while explaining the ingredients of S. 376 telling the jury that prosecution had to prove that the prosecutrix was less than 16 years of age — Not telling this while discussing oral and expert evidence about the age — No misdirection. Chittaranjan Das* v. *State of W.B.*, AIR 1963 SC 1696: (1964) 3 SCR 237: (1963) 2 Cri LJ 534, 37.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 22-4-1963]

[8515] — Ss. 297, 423 and 537 — Misdirection to the Jury by admitting inadmissible evidence — Appellate Court should exclude the inadmissible evidence and consider whether the balance of

evidence is sufficient to maintain the conviction. *Ramkishan Mithanlal Sharma* v. *State of Bombay*, AIR 1955 SC 104: (1955) 1 SCR 903: 1955 Cri LJ 196.

Bench Strength 3. Coram: **N.H. Bhagwati**[1], **B. Jagannadhadas**[2] and *T.L. Venkatarama Aiyar*[1], JJ. [Date of decision: 22-10-1954]

[8516] — Ss. 297 and 298 — Misdirection or non-direction — *Legal concept underlying S. 34, IPC could have been expressed by the Judge in the charge to Jury in more lucid terms but no patent mistake — There is no misdirection or non-direction. Moseb Kaka Chowdhry* v. *State of W.B.*, AIR 1956 SC 536: 1956 SCR 372: 1956 Cri LJ 940, 43, 44.

Bench Strength 2. Coram: **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 18-4-1956]

[8517] — Ss. 297 and 537 — Misdirection — Judge admitting in evidence and including in the charge admissions not admissible under S. 160, CrPC — *There is clear misdirection. K.M. Nanavati* v. *State of Maharashtra*, AIR 1962 SC 605: 1962 Supp (1) SCR 567: (1962) 1 Cri LJ 521.

Bench Strength 3. Coram: *S.K. Das*, **K. Subba Rao** and *Raghubar Dayal*, JJ. [Date of decision: 24-11-1961]

[8518] — Ss. 297 and 537(2) — Misdirection — Judge not reading to the Jury some letters effecting the credibility of witnesses and not telling them the said effect — Is misdirection affecting verdict. *K.M. Nanavati* v. *State of Maharashtra*, AIR 1962 SC 605: 1962 Supp (1) SCR 567: (1962) 1 Cri LJ 521.

Bench Strength 3. Coram: *S.K. Das*, **K. Subba Rao** and *Raghubar Dayal*, JJ. [Date of decision: 24-11-1961]

[8519] — Ss. 297 and 537(b) — Misdirection — Judge telling the Jury that the question of grave and sudden provocation on the wife confessing to the accused as to her adultery is a question of fact to be decided by them — There is no misdirection. *K.M. Nanavati* v. *State of Maharashtra*, AIR 1962 SC 605: 1962 Supp (1) SCR 567: (1962) 1 Cri LJ 521.

Bench Strength 3. Coram: *S.K. Das*, **K. Subba Rao** and *Raghubar Dayal*, JJ. [Date of decision: 24-11-1961]

[8520] — Ss. 297 and 537(b) — Misdirection — Judge telling the Jury to apple the rule of circumstantial evidence to extra-judicial confession — *Is grave misdirection and correctness of the verdict is affected. K.M. Nanavati* v. *State of Maharashtra*, AIR 1962 SC 605: 1962 Supp (1) SCR 567: (1962) 1 Cri LJ 521.

Bench Strength 3. Coram: *S.K. Das*, **K. Subba Rao** and *Raghubar Dayal*, JJ. [Date of decision: 24-11-1961]

[8521] — Ss. 297 and 537(d) — Misdirection — Judge in charge to Jury mixing up the ingredients of the offence with exceptions in S. 80, IPC — *Not placing the distinction in the matter of burden of proof between the ingredients of the offence and those of the exception — Omissions are grave — Amount to misdirection — Vitiates the verdict of jury. K.M. Nanavati* v. *State of Maharashtra*, AIR 1962 SC 605: 1962 Supp (1) SCR 567: (1962) 1 Cri LJ 521.

Bench Strength 3. Coram: *S.K. Das*, **K. Subba Rao** and *Raghubar Dayal*, JJ. [Date of decision: 24-11-1961]

[8522] — Ss. 297 and 537(d) — Misdirection — Meaning of — *It is so when a judge tells the jury and is wrong, or misleads them or an omission to mention matters essential to the case — Effect of misdirection — Verdict to be set aside only when there is failure of justice. K.M. Nanavati* v. *State of Maharashtra*, AIR 1962 SC 605: 1962 Supp (1) SCR 567: (1962) 1 Cri LJ 521.

Bench Strength 3. Coram: *S.K. Das*, **K. Subba Rao** and *Raghubar Dayal*, JJ. [Date of decision: 24-11-1961]

— S. 298 *See* Ss. 297 and 298

See also Ss. 297, 298 and 299

— S. 299 *See* Ss. 297, 298 and 299

[8523] — S. 302 — Dismissal of complaint — Magistrate's duty — *Whether Magistrate is barred from going into merits of evidence — Whether Magistrate at the stage of issue of process should determine correctness of probabilities of individual evidence — Some facts discovered contrary to allegations in complaint — Whether demolishes the entire case*

What the Magistrate has to determine at the stage of issue of process, is not the correctness or the probabilities or improbability of individual items of evidence on disputable grounds, but the existence or otherwise of a prima facie case, on the assumption that what was stated in the complaint could be true.

The Magistrate is not debarred at this stage, from going into the merits of the evidence produced by the complainant. But the object of such consideration of the merits of the case, at that stage, could only be to determine whether there are sufficient grounds for proceeding further or not.

The mere existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. Such grounds may indicate the need for proceeding further in order to discover the truth after a full and proper investigation.

Whether the Magistrate dismissed the complaint, merely because one or two names of the former employees of the Company were mentioned in the pay sheets, this does not mean other fictitious payments were not made. The whole case cannot be held to have been demolished by that. *D.N. Bhattacharjee* v. *State of W.B.*, (1972) 3 SCC 414: 1972 SCC (Cri) 564: AIR 1972 SC 1607: 1972 Cri LJ 1037.

Bench Strength **2**. Coram: *A.N. Grover* and **M.H. Beg**, JJ. [Date of decision: 22-3-1972]

— S. 305(3) *See* Ss. 307(1) and 305(3)

[8524] — S. 306 — Verdict of Jury — Causing disagreeable surprise to the Judge — *Is no justification for characterising the verdict as perverse. Chittaranjan Das* v. *State of W.B.*, AIR 1963 SC 1696: (1964) 3 SCR 237: (1963) 2 Cri LJ 534.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 22-4-1963]

[8525] — Ss. 306 and 307 — Disagreement with Jury — Scope of sections — *In his charge to the jury the Judge indicating an opinion favourable to the accused — Jury returning verdict of guilty — It is desirable, but not imperative for the Judge to give reasons for accepting the verdict of the jury*

It may be that in a case when the Judge in his charge to the jury has clearly and definitely expressed himself for acquittal, it would be very desirable, though not imperative, that he should give his reasons why he changed his view and accepted the verdict of jury. But where, as in this case, the Judge in his charge did not reject the prosecution evidence and arrived at a clear and categorical conclusion in his own mind that the appellant were not guilty, there is no basis for any such contention. *Moseb Kaka Chowdhry* v. *State of W.B.*, AIR 1956 SC 536: 1956 SCR 372: 1956 Cri LJ 940, 43, 44.

Bench Strength **2**. Coram: **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 18-4-1956]

— S. 307 *See also* Ss. 306 and 307

[8526] — S. 307 — Failure by High Courts to consider entire evidence — Supreme Court declining to do that — Case remanded — *Proper for High Court to consider the entire evidence — Constitution of India, Art. 136. Ramyed Rai* v. *State of Bihar*, AIR 1957 SC 373, 376: 1957 SCR 273: 1957 ALJ 470: 1957 Cri LJ 557.

Bench Strength **3**. Coram: **N.H. Bhagwati**, *B.P. Sinha* and *J.L. Kapur*, JJ. [Date of decision: 30-1-1957]

[8527] — S. 307 — Reference in a case tried with the aid of Jury — *Trial in which some of the offences are triable by assessors and some with the aid of jury — Whole case should not be referred under S. 307*

The accused was prosecuted for offences under Ss. 409 and 477-A, Penal Code. The trial under S. 477-A was held with the aid of jury, while trial under S. 409, IPC was held with the aid of assessor. Both jury and assessor returned a verdict of not guilty. The Sessions Judge referred the case under S. 377-A, IPC to the High Court under S. 307, CrPC and himself convicted the accused under S. 409, IPC. The appellant appealed against his conviction under S. 409, IPC and the reference under S. 307, CrPC and appeals were heard together. It was argued that the Sessions Judge should have referred both the cases under S. 307, CrPC.

Held :

The only provision of law dealing with the matter of reference in the case of trial by jury is S. 307, CrPC. But that section applies in terms only to trials with the aid of jury. There is therefore no power in the Sessions Court to refer cases triable with the aid of assessor for decision of the High Court under that section. Therefore the Sessions Judge had contravened no provision of law, and had committed no illegality in deciding the case in so far as it related to the charge under S. 409 himself. *Chandi Prasad Singh* v. *State of U.P.*, AIR 1956 SC 149: (1955) 2 SCR 1035: 1956 Cri LJ 322, 325: (1956) 1 MLJ (SC) 88: 1956 ALJ 153.

Bench Strength **2**. Coram: *Vivian Bose* and **T.L. Venkatarama Aiyar**, JJ. [Date of decision: 7-12-1955]

[8528] — S. 307 — Reference in Jury trial — Scope — *Evidence being such as would support the verdict of guilty or not guilty — Jury taking one view of evidence and Judge thinking that they should have taken other view — Jury's view to prevail — Reference not justified — High Court thinking that upon the evidence no reasonable body of men could reach the conclusions arrived at by the Jury — Reference will be justified and verdict of jury to be disregarded*

In a reference under S. 307 of the Code of Criminal Procedure if the evidence is such that it can properly support a verdict of guilty or not guilty, according to the view taken of the evidence by the trial Court, and if the jury take one view of the evidence and the Judge is of the opinion that they should have taken the other, the view of the jury must prevail, for they are the judges of fact. In such a case reference under S. 307 of the CrPC is not justified. But if the High Court holds that upon the evidence no reasonable body of men could have reached the conclusion arrived at by the jury, the reference will be justified and the verdict of the jury will be disregarded. *Sekendar Sheikh* v. *State of W.B.*, (1964) 1 SCR 852: (1964) 1 Cri LJ 733, 35.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.* and *P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah* and **J.C. Shah**, JJ. [Date of decision: 8-2-1963]

[8529] — S. 307 — Reference to High Court on disagreement with Jury — Scope — *Charge to jury indicating Sessions Judge's opinion in favour of acquittal — Jury returning a verdict of guilty — Sessions Judge not bound to refer the case to the High Court under S. 307*

Even assuming that the charge to the jury can be read as being indication of a definite opinion reached by the Sessions Judge in favour of the appellants, it does not follow that merely on that account he is obliged to make a reference under S. 307, CrPC. What is required under that section is not merely disagreement with the verdict of the jury but the additional factor that the Sessions Judge "is clearly of the opinion that it is necessary for the ends of justice to submit the case to the High Court". A Sessions Judge even if he disagrees with the verdict of the jury must normally give effect to that verdict unless he is prepared to hold the further and clear-opinion "that no reasonable body of men could have given the verdict which the jury did". *Moseb Kaka Chowdhry* v. *State of W.B.*, AIR 1956 SC 536: 1956 SCR 372: 1956 Cri LJ 940, 43, 44.

Bench Strength **2**. Coram: **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 18-4-1956]

[8530] — S. 307 — Reference under the section — Powers and duties of High Court — *High Court must consider the entire evidence and come to its own conclusions if the evidence was such that it could properly support the verdict of guilty against the accused — Opinion of jury should be accepted if it finds that the evidence was such that it could properly support the verdict of guilty even if the High Court thought that High Court should have taken another view — If High Court concluded that no reasonable body of men could have reached the conclusion arrived at by the jury the verdict should be disregarded*

In a reference under S. 307, CrPC it was incumbent on the High Court when the reference was heard by it to consider the entire evidence and come to its own conclusion whether the evidence was such that it could properly support the verdict of guilty against the appellants. If the High Court came to the conclusion that the evidence was such that it was possible for the jury to take the view that it did even though the Judge thought that they should have taken another view the reference would not have been justified and the High Court should have accepted the opinion of jury. If the High Court was however of opinion upon the evidence that no reasonable body of men could have reached the conclusion arrived at by the jury the reference would have been quite justified and the ends of justice required that the verdict should be disregarded.

Where the High Court only considered the arguments in regard to the defect in the charge to the jury addressed before it by the learned Counsel for the appellants did not consider the entire evidence which was on the record before it violated the provisions of S. 307(3), CrPC. *Ramyed Rai* v. *State of Bihar*, AIR 1957 SC 373: 1957 SCR 273: 1957 ALJ 470: 1957 Cri LJ 557.

Bench Strength **3**. Coram: **N.H. Bhagwati**, *B.P. Sinha* and *J.L. Kapur*, JJ. [Date of decision: 30-1-1957]

[8531] — S. 307 — References under S. 307, CrPC — Correct method of approach in — *Underlying principle — Jury's verdict — Interference with — When justified*

The proper method of approach in the matters of reference under S. 307, CrPC is that the High Court will only interfere with the verdict of the jury if it finds the verdict "perverse in the sense of being unreasonable", "manifestly wrong" or "against the weight of evidence".

The section was intended to guard the danger that the introduction of trial by jury in the Mofussil would be experimental, and might lead to miscarriages of justice through jurors, in their ignorance and inexperience, returning erroneous verdicts, and not to enable the Sessions Judge and the High Court to deprive jurors, acting properly within their powers, of the right to determine the facts conferred upon them by the Code.

If the facts and circumstances of the case are such that a reasonable body of men could arrive at the one conclusion or the other, it is not competent to the Sessions Judge or the High Court to substitute their verdict in place of the verdict which has been given by the jury. The jury are the sole judges of the facts and it is the right of the accused to have the benefit of the verdict of the jury. Even if the Sessions Judge or the High Court would if left to themselves have arrived at a different verdict it is not competent to the Sessions Judge to make a reference nor the High Court to accept the same and substitute their own verdict for the verdict of the jury provided the verdict was such as could be arrived at by a reasonable body of men on the facts and circumstances of the case. *Akhlakali Hayatalli* v. *State of Bombay*, AIR 1954 SC 173: 1954 SCR 435: 1954 Cri LJ 451.

Bench Strength **2**. Coram: *B.K. Mukherjea* and **N.H. Bhagwati**, JJ. [Date of decision: 9-12-1953]

[8532] — Ss. 307(1) and 305(3) — Trial with assessors and by Jury

A trial with the aid of assessors differs from a trial by jury in two fundamental respects. The assessors are to give only their individual opinions and the Judge is not bound to conform to them, while the jury gives its combined verdict either unanimously or by a majority through its foreman and the Judge has no power to ask for the opinions of the individual jurors. He is normally bound to follow the verdict of the jury excepting where he adopts the course allowed to him under Ss. 305(3) and (4) or S. 307(1), CrPC. *Prem Nath* v. *State of Delhi*, AIR 1956 SC 4, 7: 1956 Cri LJ 121.

Bench Strength **3**. Coram: *B.K. Mukherjea, N.H. Bhagwati* and **B. Jagannadhadas**, JJ. [Date of decision: 17-12-1953]

[8533] — S. 307(2) — Reference to High Court *— Trial Judge accepting a part of jury's verdict of not guilty and passing an order of acquittal and disagreeing with a part of verdict of guilty and making a reference under S. 307 — Reference violates sub-section (2) and is illegal*

The case to be submitted to the High Court is the whole case against the accused and not a part of it. This appears to us to be clearly the effect of the provisions of Ss. 306 and 307 when read together. Section 307(2) specifically prohibits the Judge, when he considers it necessary to submit the case by way of reference to the High Court, from recording any judgment of acquittal or of conviction on any of the charges on which the accused had been tried. This prohibition is mandatory and a judge, who records a judgment of acquittal or of conviction on any of the charges on which the accused had been tried contravenes the provisions of S. 307(2) and the judgment so recorded is illegal. The Judge's action in recording a judgment is not a mere irregularity. *Sashi Mohan Debnath* v. *State of W.B.*, AIR 1958 SC 194: 1958 SCR 962: 1958 Cri LJ 303, 306, 30.

Bench Strength **5**. Coram: *N.H. Bhagwati, B.P. Sinha*, **Syed Jafer Imam**, *J.L. Kapur* and *P.B. Gajendragadkar*, JJ. [Date of decision: 19-11-1957]

— S. 307(3) *See also* Ss. 418 and 307(3)

[8534] — S. 307(3) — Power of the High Court to interfere in a reference under S. 307 *— High Court not to disregard the verdict of jury on questions of fact*

Ordinarily, jury's verdict on questions of fact would not easily be disregarded by the High Court because the basic principle of a trial by jury is that the jury are masters of fact. The verdict of the jury would not be reversed by the High Court merely because it disagreed with it. If the High Court, after considering the entire evidence, came to the conclusion that no reasonable body of men could have reached the conclusion arrived at by the jury, then the High Court would be entitled to disregard the verdict. *Sashi Mohan Debnath* v. *State of W.B.*, AIR 1958 SC 194: 1958 SCR 962: 1958 Cri LJ 303, 306, 30.

Bench Strength **5**. Coram: *N.H. Bhagwati, B.P. Sinha*, **Syed Jafer Imam**, *J.L. Kapur* and *P.B. Gajendragadkar*, JJ. [Date of decision: 19-11-1957]

[8535] — S. 307(3) — Reference to the High Court illegal *— The High Court is not competent to deal with it under sub-section (3) of S. 307*

Before the High Court could exercise the powers conferred on it under S. 307(3) it was necessary that the reference under S. 307 should have been according to law. This was, in our opinion, a condition precedent to the exercise of such power by the High Court. The words "with the case so submitted" make it quite clear that a reference under S. 307(1) must be of the whole case against the accused and not a part of it. In order that the High Court may be in a position to properly exercise its powers under S. 307(3), it was necessary for it to consider the entire evidence in the case, which obviously it could not do if the trial Judge had already recorded a judgment. By recording a judgment the trial Judge prevents the High Court from properly exercising its powers under S. 307(3) as the reference made thereafter is not of the entire case with respect to the accused. Indeed, in the present case the Judge having accepted the jury's verdict and having recorded a judgment of acquittal under Ss. 304/149, Indian Penal Code, in the case of each accused, took it out of the hands of the High Court to deal with the case of each accused with reference to the other charges framed against him. *Sashi Mohan Debnath* v. *State of W.B.*, AIR 1958 SC 194: 1958 SCR 962: 1958 Cri LJ 303, 306, 30.

Bench Strength **5**. Coram: *N.H. Bhagwati, B.P. Sinha*, **Syed Jafer Imam**, *J.L. Kapur* and *P.B. Gajendragadkar*, JJ. [Date of decision: 19-11-1957]

[8536] — Ss. 307(3), 418 and 423 — Scope — High Court's power under S. 307(3) *— Is wider than the power under S. 418 — There is essential difference between High Court's power to dispose of appeal against order of acquittal or conviction in jury trial and a case submitted by Sessions Judge* *under S. 307 — High Court's power under S. 307(3) in different — Circumstances summarized*

There is an essential difference between the scope of the jurisdiction of the High Court in disposing of an appeal against a conviction or acquittal, as the case may be, in a jury trial and that in a case submitted by the Sessions Judge when he differs from the verdict of the jury: in the former the acceptance of the verdict of the jury by the Sessions Judge, is considered to be sufficient guarantee against its perversity and therefore an appeal is provided only on questions of law, whereas in the latter the absence of such agreement necessitated the conferment of a larger power on the High Court in the matter of interfering with the verdict of the jury.

The Legislature designedly conferred in larger power on the High Court under S. 307(3) of the Code than that conferred under S. 418 thereof, as in the former case the Sessions Judge differs from the jury while in the latter he agrees with the jury.

The competency of a reference made by a Sessions Judge depends upon the existence of two conditions, namely: (*i*) that he disagrees with the verdict of the jurors, and (*ii*) that he is clearly of the opinion that the verdict is one which no reasonable body of men could have reached on the evidence; after reaching that opinion, in the case submitted by him he shall record the grounds of his opinion. If the case submitted shows that the conditions have not been complied with or that the reasons for the opinion are not recorded, the High Court may reject the reference as incompetent: the High Court can also reject it if the Sessions Judge has contravened sub-section (2) of S. 307. If the case submitted shows that the Sessions Judge has disagreed with the verdict of the jury and that he is clearly of the opinion that no reasonable body of men could have reached the conclusion arrived at by the jury, and he discloses his reasons for the opinion, sub-section (3) of S. 307 of the Code comes into play, and thereafter the High Court has an obligation to discharge its duty imposed thereunder. Under sub-section (3) of S. 307 of the Code the High Court has to consider the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict the accused. The High Court may deal with the reference in two ways, namely: (*i*) if there are misdirections vitiating the verdict, it may, after going into the entire evidence, disregard the verdict of the jury and come to its own conclusion and (*ii*) even if there are no misdirections, the High Court can interfere with the verdict of the jury if it finds the verdict "perverse in the sense of being unreasonable", "manifestly wrong", or "against the weight of evidence", or in other words, if the verdict is such that no reasonable body of men could have reached on the evidence. In the disposal of the said reference, the High Court can exercise any of the procedural powers appropriate to the occasion, such as issuing of notice, calling for records, remanding the case, ordering a retail, etc. *K.M. Nanavati* v. *State of Maharashtra*, AIR 1962 SC 605: 1962 Supp (1) SCR 567: (1962) 1 Cri LJ 521. Bench Strength 3. Coram: *S.K. Das*, **K. Subba Rao** and *Raghubar Dayal*, JJ. [Date of decision: 24-11-1961]

[8537] — S. 309 — Object and Scope — Number of offences committed — Taking opinion on each charge

The requirement as to the opinion of the assessors having to be taken on all the charges on which the accused has been tried was specifically inserted in S. 309 by amendment of the Criminal Procedure Code in the year 1923. Prior to this amendment the Court was merely enjoined, at the conclusion of the trial, to require each of the assessors to state his opinion orally and to record such opinions. Even this requirement, reasonably construed could certainly indicate the ascertainment of the opinion in respect of all the charges, for that is the only intelligible way of ascertaining their opinion on the entire case.

Where, however, a joint trial in respect of a number of offences is held under circumstances falling under S. 235 or 239, CrPC, that is, where the various acts constituting the offences form one transaction or are committed in the course of the same transaction, the position may conceivably be different.

In such a case the truth or the falsity of one portion of the prosecution case may well have a reasonable bearing on the other. The non-ascertainment of the opinion of the assessors on all such charges which form an integrally connected portion of the transaction may cause prejudice. Consistent opinions of an individual assessor on all such interconnected charges are likely to carry greater weight with the Judge. On the other hand, if the individual opinions so expressed, appear to be somewhat contradictory to each other, it may be the duty of the Judge to exercise his powers of questioning under S. 309, CrPC, and to ascertain the real opinions.

In such a case, if a judge acts on the opinion expressed on a portion of the case covered only by one of the charges without the benefit of the opinions on the other integrally connected charges, it may well turn out that he has not had the benefit of the real opinion in respect of the material charge upon which he convicts. In view of these considerations, the legal position appears to be as follows.

The not taking of the opinion of the assessors in respect of all the charges for which the accused was tried is certainly a grave violation of an imperative provision of the Code.

A conviction in respect of a charge on which the opinion of the assessors was not at all taken would be clearly illegal. But whether the conviction in respect of any other charge for which he was jointly tried but in respect of which the opinion was in fact taken is bad or not, would depend on the facts of each case. The question in each case would be whether there is reason to think that the not taking of the opinion in respect of the other charges was likely to have prejudiced a consideration of the charge in respect of which the opinion was taken.

In a case where the charges are so inter-connected that the truth or otherwise of the one would reasonably react on the truth or otherwise of the other, such prejudice has to be presumed and the conviction would be illegal. *Prem Nath* v. *State of Delhi*, AIR 1956 SC 4, 8, 9: 1956 Cri LJ 121.

Bench Strength **3**. Coram: *B.K. Mukherjea*, *N.H. Bhagwati* and **B. Jagannadhadas**, JJ. [Date of decision: 17-12-1953]

[8538] — S. 309(2) — Opinion of assessor not binding on the Sessions Judge — This cannot mean that the Judge is entitled to ignore the very existence of the assessors

The provision in the Code that the opinion of the assessor is not binding on the Sessions Judge cannot lend support to the contention that the Sessions Judge is entitled to ignore their very existence. As already pointed out, though he may not be bound to accept their opinions, he is certainly bound to take them into consideration. The weight to be attached to such opinions may well vary with the number of assessors. *Magga* v. *State of Rajasthan*, AIR 1953 SC 174: 1953 SCR 973: 1953 Cri LJ 892.

Bench Strength **2**. Coram: **M.C. Mahajan** and *S.R. Das*, JJ. [Date of decision: 16-2-1953]

[8539] — S. 310 — Penal Code, 1860, Ss. 75 & 303 — *Distinction*

Per majority

There is a distinction between the conviction of a person under S. 310, CrPC and a person being under a sentence of imprisonment under S. 303, IPC. The conviction by a court may be followed either by the sentence being remitted under the provisions of the Code or the sentence may have been served out. In such cases though the person concerned could still be spoken of as having been convicted, he cannot be said to be under a sentence. Under S. 310, CrPC also it is enough that the person concerned has been earlier convicted. It is not necessary that the sentence should be in force. But under S. 303, IPC the person's sentence must be in force if the person is to be dealt with for a subsequent offence of murder under that section. If the previous sentence of life imprisonment had been remitted or had been served out when the subsequent murder was committed, S. 303, will not apply. Section 75, IPC and S. 310 of the Code of Criminal Procedure deal with persons with previous conviction — the previous sentence need not necessarily be in force when the subsequent offence is committed. It could be clear that the latter section is intended to be applicable only to cases to which S. 75 of the Penal Code applies. Section 75, IPC will be applicable as often as the necessity arises and in respect of any of the offences subsequently, whereas S. 303 of the Penal Code will be applicable only in one circumstance, that is, of the accused committing murder while he is under sentence of imprisonment and not any other offence either. S. 303 is like a proviso to S. 302. *Pratap* v. *State of U.P.*, (1973) 3 SCC 690: 1973 SCC (Cri) 496: AIR 1973 SC 786: 1973 Cri LJ 565.

Bench Strength **3**. Coram: **A. Alagiriswami**[1], *C.A. Vaidialingam*[1] and **I.D. Dua**[2], JJ. [Date of decision: 22-12-1972]

[8540] — S. 326 — Confirmation of death sentence — High Court's power in proceedings of — *High Court must consider the evidence carefully and record its conclusions clearly — Penal Code, 1860 — S. 302*

In dealing with confirmation cases, the High Court should consider the evidence carefully and record its conclusions clearly after dealing with all the points urged before it by the counsel for the defence. Judicial approach both at the trial and in appeal has to be careful and thorough and so it is of utmost importance that no room should be left for any legitimate complaint by the defence that important points were argued before the High Court and were not considered by it. *Gurcharan Singh* v. *State of Punjab*, AIR 1963 SC 340: (1963) 3 SCR 585: (1963) 1 Cri LJ 323.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.C. Das Gupta* and *J.R. Mudholkar*, JJ. [Date of decision: 10-8-1962]

[8541] — S. 336 — Trial — Even on the basis that the inquiry has to proceed for an offence under S. 336, IPC, the position will be that the summons case procedure will have to be followed. *Cricket Assn. of Bengal* v. *State of W.B.*, (1971) 3 SCC 239: 1971 SCC (Cri) 446: AIR 1971 SC 1925: 1971 Cri LJ 1432.

Bench Strength **2**. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 24-3-1971]

—S. 337 *See* Ss. 225, 233, 337 and 537(b)
See also Ss. 435, 337 and 338
See also Ss. 529(g), 337 and 338
See also Ss. 537, 236 and 337
See also Ss. 540, 337 and 338

[8542] — S. 337 — Discretionary power unguided — Exception — Held valid — *Accomplice evidence — Constitution of India — Art. 14*

Unrestrained power of selection without guidelines offends Art. 14. But the case of the accomplice evidence is different. Section 337 of the Code of Criminal Procedure has already been held not to offend Art. 14 and the matter of taking accomplice evidence outside S. 337 by using S. 494 or otherwise is not very different. *Laxmipat Choraria* v. *State of Maharashtra*, AIR 1968 SC 938: (1968) 2 SCR 624: 1968 Cri LJ 1124.

Bench Strength 2. Coram: **M. Hidayatullah** and *C.A. Vaidialingam*, JJ. [Date of decision: 14-12-1967]

[8543] — S. 337 — Amendment of — Not retrospective

The amendment to S. 337 of the Code, which came into effect in January, 1956, spoke of an offence punishable with imprisonment which may extend to seven years, but this amendment could have no application to a pardon tendered on 1-12-1955. *Kanta Prashad* v. *Delhi Admn.*, AIR 1958 SC 350, 352: 1958 SCR 1218: 1958 Cri LJ 698.

Bench Strength 2. Coram: *B.P. Sinha* and **Syed Jafer Imam**, JJ. [Date of decision: 6-2-1958]

[8544] — S. 337 — Approver not admitting any active participation in the crime but admitting to be a privy to or an abettor in the commission of the offence — *S. 337, held, not violated — CrPC, 1973, S. 306. Maghar Singh* v. *State of Punjab*, (1975) 4 SCC 234: 1975 SCC (Cri) 479: AIR 1975 SC 1320: 1975 Cri LJ 1102.

Bench Strength 2. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 16-4-1975]

[8545] — S. 337 — Approver's evidence — *Approver's statement that the accused called the deceased, both went together and thereafter the deceased was not seen alive corroborated — Jury entitled to rely for concluding that the circumstances connected or tended to connect the accused with the crime. Jnanendra Nath Ghose* v. *State of W.B.*, AIR 1959 SC 1199: (1960) 1 SCR 126: 1959 Cri LJ 1492, 94, 95.

Bench Strength 2. Coram: **Syed Jafer Imam** and *J.L. Kapur*, JJ. [Date of decision: 8-5-1959]

[8546] — S. 337 — Approver's evidence — Corroboration — *Approver's evidence that while committing murder the accused received injuries corroborated by medical evidence — Jury entitled to accept this evidence as sufficient corroboration in material particulars connecting or tending to connect the accused with the crime. Jnanendra Nath Ghose* v. *State of W.B.*, AIR 1959 SC 1199: (1960) 1 SCR 126: 1959 Cri LJ 1492, 94, 95.

Bench Strength 2. Coram: **Syed Jafer Imam** and *J.L. Kapur*, JJ. [Date of decision: 8-5-1959]

[8547] — S. 337 — Approver's evidence — Must be corroborated in material particulars — *Such corroboration must be concerning the crime and approver's story connecting the accused with crime*

The moment there is corroborative evidence which connects or tends to connect an accused with the crime such corroborative evidence relates to the identity of the accused in connection with that crime. It is the approver's evidence which is the direct evidence of the crime. There should be corroboration in material particulars not only concerning the crime but corroboration of the approver's story by evidence which connects or tends to connect an accused with the crime. It is this corroborative evidence which determines the mind of the Court or a jury that the approver's evidence that the accused committed the crime is true. *Jnanendra Nath Ghose* v. *State of W.B.*, AIR 1959 SC 1199: (1960) 1 SCR 126: 1959 Cri LJ 1492, 94, 95.

Bench Strength 2. Coram: **Syed Jafer Imam** and *J.L. Kapur*, JJ. [Date of decision: 8-5-1959]

[8548] — S. 337 — Approver's evidence — Reliability of — Must be shown that he is a reliable witness

The approver's evidence must show that he is a reliable witness and that is the test which is common to all witnesses. *Jnanendra Nath Ghose* v. *State of W.B.*, AIR 1959 SC 1199: (1960) 1 SCR 126: 1959 Cri LJ 1492, 94, 95.

Bench Strength 2. Coram: **Syed Jafer Imam** and *J.L. Kapur*, JJ. [Date of decision: 8-5-1959]

[8549] — S. 337 — Pardon to an approver — Tender of, by District Magistrate in a case triable by Special Judge under Criminal Law (Amendment) Act, 1952 — *Is valid and legal*

The provisions of S. 337, CrPC enable a District Magistrate inter alia, to tender a pardon in the case of any offence triable exclusively by the High Court or a Court of Sessions. Although a Special Judge is a court constituted under the Criminal Law (Amendment) Act, yet for the purposes of the Code of Criminal Procedure and that Act, it is a Court of Sessions. Accordingly although the offence was triable exclusively by the Court of Special Judge the District Magistrate had authority to tender a pardon under S. 337, CrPC as the Court of Special Judge was, in law, a Court of Sessions.

The District Magistrate is empowered to tender a pardon even after a commitment if the Court so directs. Under S. 8(2) of the Criminal Law (Amendment) Act, 1952 the Special Judge has also been granted power to tender pardon. The conferment of this power on the Special Judge in no way deprives the District Magistrate of his power to grant a pardon under S. 337 of the Code. *Kanta Prashad* v. *Delhi Admn.*, AIR 1958 SC 350: 1958 SCR 1218: 1958 Cri LJ 698.

Bench Strength **2**. Coram: *B.P. Sinha* and **Syed Jafer Imam**, JJ. [Date of decision: 6-2-1958]

[8550] — S. 337 — Taking accomplice evidence outside S. 337 by using S. 494 does not offend Art. 14. *Laxmipat Choraria* v. *State of Maharashtra*, AIR 1968 SC 938: (1968) 2 SCR 624: 1968 Cri LJ 1124.

Bench Strength **2**. Coram: **M. Hidayatullah** and *C.A. Vaidialingam*, JJ. [Date of decision: 14-12-1967]

[8551] — Ss. 337 and 338 — Power of District Magistrate to tender pardon after commitment *— Inquiry Magistrate or trial Magistrate refusing to tender pardon*

The powers conferred on the District Magistrate and the other Magistrates under S. 337 are concurrent, and that a District Magistrate, even after commitment, has power to tender pardon. The proviso to S. 337(1) makes it clear that the District Magistrate, in addition to the Magistrate referred to therein, has power to tender pardon during inquiry into or trial of the offence. As the power conferred by sub-section (1) of S. 337 on the different classes of Magistrates is concurrent and is of the same character, it follows that the power to tender pardon can be exercised by every one of the authorities mentioned therein subject to the limitations specified in the section itself. The mere fact that a Magistrate of the First Class enquiring into the offence has declined to grant pardon, does not take away the power or jurisdiction of the District Magistrate to entertain a further application for grant of pardon. Though the District Magistrate has got power to consider a further application, he should have due regard to the views expressed by the Magistrate for refusing to grant pardon, because judicial propriety requires that if a higher authority had declined to tender pardon, a lower authority should not grant pardon except on fresh facts. Even if pardon has been refused on one occasion, a further request may be made before the same Magistrate or the District Magistrate if fresh or additional facts are placed by the party concerned. *State of U.P.* v. *Kailash Nath Agarwal*, (1973) 1 SCC 751: 1973 SCC (Cri) 698: AIR 1973 SC 2210: 1973 Cri LJ 1196.

Bench Strength **3**. Coram: *A. Alagiriswami*, *I.D. Dua* and **C.A. Vaidialingam**, JJ. [Date of decision: 16-3-1973]

[8552] — Ss. 337 and 339 — Tender of pardon to approver — Examination of approver in committing court as well as in trial court mandatory even if he resiles from his earlier statement or does not make full and true disclosure of facts within his knowledge *— However, his examination not necessary if Public Prosecutor certifies that he is wilfully concealing facts or giving false evidence contrary to condition of pardon — State cannot withdraw nor can approver cast away the pardon granted to him — CrPC, 1973, Ss. 306 and 308*

The power to grant pardon carries with it the right to impose a condition limiting the operation of such a pardon. Hence a pardoning power can attach any condition, precedent or subsequent so long as it is not illegal, immoral or impossible of performance. Section 306 clearly enjoins that the approver who was granted pardon had to comply with the condition of making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other concerned whether as principal or abettor, in the commission thereof. It is because of this mandate, the State cannot withdraw the pardon from the approver nor the approver can cast away the pardon granted to him till he is examined as a witness by the prosecution both in the Committing Court as well as in the trial court. The approver may have resiled from the statement made before the Magistrate in the Committing Court and may not have complied with the condition on which pardon was granted to him, still the prosecution has to examine him as a witness in the trial court. It is only when the Public Prosecutor certifies that the approver has not complied with the conditions on which the tender was made by wilfully concealing anything essential or by giving false evidence, he may be tried under S. 308 of the Code of Criminal Procedure not only for the offence in respect of which pardon was granted but also in respect of other offences. In these circumstances, the question of casting away the pardon granted to an approver and his claim not to be examined by the prosecution as a witness before the trial court is without any substance. *State (Delhi Admn.)* v. *Jagjit Singh*, 1989 Supp (2) SCC 770: 1990 SCC (Cri) 133: AIR 1989 SC 598: 1989 Cri LJ 986.

Bench Strength **2**. Coram: **B.C. Ray** and *N.D. Ojha*, JJ. [Date of decision: 16-12-1988]

Arusami Goundan, In re, AIR 1959 Mad 274: ILR 1954 Mad 320: 1959 Cri LJ 852, explained

Emperor v. Shahdino Dhaniparto, AIR 1940 Sind 114: 41 Cri LJ 747, approved

[8553] — Ss. 337 and 339(1) — Tender of pardon to an accomplice — Effect if the pardon tendered is not accepted by the accomplice — *S. 339(1) does not apply and the accomplice can be tried with the other accused irrespective of the provisions of S. 339(1)*

One of the appellants made a confessional statement. At the request of the police he was also tendered pardon under S. 337, CrPC, but he did not accept the pardon and stated before the trial Court that he made the confessional statement as he had been assaulted by the police and that he did not want to become an approver. After the completion of the enquiry he with two others was committed to the Court of Session. Before the Supreme Court it was contended that the trial was vitiated because provisions of S. 339 were not complied with.

The provisions of sub-section (1) of S. 339, CrPC clearly presuppose that the pardon which had been tendered to a person had been accepted by him and that thereafter that person had wilfully concealed anything essential or had given false evidence and therefore had not complied with the conditions on which the tender was made to him. Sub-section (2) of S. 337 requires that every person who has accepted a tender shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any. A mere tender of pardon, therefore does not attract the provisions of S. 339. There must be an acceptance of it and the person who has accepted the pardon must be examined as a witness. It is thereafter that S. 339 comes into play and the person who accepted the pardon may be tried for the offence in respect of which the pardon was granted, if the Public Prosecutor certifies that in his opinion he has either wilfully concealed anything essential or had given false evidence and had not complied with the conditions on which the tender was made. Provisions of S. 339 can only come into operation if there is in existence an effective pardon under S. 337.

On the facts of the case there was no valid pardon and hence S. 339 did not apply, the confessing accused could be tried with others and the trial was not vitiated. *Bipin Behari Sarkar* v. *State of W.B.*, AIR 1959 SC 13: 1959 SCR 1324: 1959 Cri LJ 102.

Bench Strength 3. Coram: **Syed Jafer Imam**, *S.K. Das* and *J.L. Kapur*, JJ. [Date of decision: 19-9-1958]

[8554] — Ss. 337 and 342 — Tender of pardon — Whether presumption of discharge arises — *Formal order of release — Whether necessary*

Where the accused admitted before the District Magistrate that the confessional statement made by him at Bombay, a copy of which was read over to him, was voluntarily made by him and that he accepted it as true statement of all that transpired in connection with the conspiracy and also about the murder and disposal of the dead body of the deceased and the District Magistrate thereupon passed the order that it was a fit case for tendering pardon to him under S. 337(1) of the Criminal Procedure Code.

Held :

That the objection that the tender of pardon was illegal in the absence of a formal order releasing the accused was never raised before the Courts below. Apart from this there was no merit in this objection. The moment the pardon was tendered to the accused he must be presumed to have been discharged whereupon he ceased to be an accused and became a witness. *A.J. Peiris* v. *State of Madras*, AIR 1954 SC 616: 1954 Cri LJ 1638.

Bench Strength 3. Coram: *M.C. Mahajan, C.J.* and *Vivian Bose* and **Ghulam Hasan**, JJ. [Date of decision: 18-3-1954]

[8555] — Ss. 337 and 343 — Accomplice testimony — Prohibitions against use of

The only prohibition against the use of accomplice testimony exists in the rule of caution about corroboration and the interdiction of influence in any form by S. 343 of the Code. *Laxmipat Choraria* v. *State of Maharashtra*, AIR 1968 SC 938, 943: (1968) 2 SCR 624: 1968 Cri LJ 1124.

Bench Strength 2. Coram: **M. Hidayatullah** and *C.A. Vaidialingam*, JJ. [Date of decision: 14-12-1967]

[8556] — Ss. 337 and 494 — Accomplice evidence — *Constitution of India — Art. 14*

Unrestrained power of selection without guidelines offends Art. 14. But the case of the accomplice evidence is different. Section 337 of the Code of Criminal Procedure has already been held not to offend Art. 14 and the matter of taking accomplice evidence outside S. 337 by using S. 494 or otherwise is not very different. *Laxmipat Choraria* v. *State of Maharashtra*, AIR 1968 SC 938-947: (1968) 2 SCR 624: 1968 Cri LJ 1124.

Bench Strength 2. Coram: **M. Hidayatullah** and *C.A. Vaidialingam*, JJ. [Date of decision: 14-12-1967]

[8557] — S. 337 and S. 8(2), Criminal Law (Amendment) Act, 1952 — Pardon to an accused — How to be granted by Special Judge

— Before granting pardon Judge must have material before him to show what the nature of approver's testimony is likely to be — When accused making a request directly to the Judge must refer the request to the prosecution — Power to be exercised only when the prosecution joins accused's request

To determine whether the accused's testimony as an approver is likely to advance the interest of justice, the Special Judge must have material before him to show what the nature of that testimony will be. Ordinarily it is for the prosecution to ask that a particular accused, out of several, may be tendered pardon. But even where the accused directly applies to the Special Judge he must first refer the request to the prosecuting agency. It is not for the Special Judge to enter the ring as a veritable director of prosecution. The power which the Special Judge exercises is not on his own behalf but on behalf of the prosecuting agency, and must, therefore, be exercised only when the prosecution joins in the request. *Lt. Commander Pascal Fernandes* v. *State of Maharashtra*, AIR 1968 SC 594: (1968) 1 SCR 695: 1968 Cri LJ 550, 554.

Bench Strength 3. Coram: **M. Hidayatullah**, *V. Bhargava* and *C.A. Vaidialingam*, JJ. [Date of decision: 28-9-1967]

[8558] — S. 337(1) — Application for grant of pardon rejected — *Fresh application, held, could only be entertained if new and additional facts were adduced — Pointing out the advantages to prosecution by grant of pardon, held, not sufficient. State of W.B.* v. *R.S. Adiseshan*, (1979) 4 SCC 558: 1980 SCC (Cri) 127.

Bench Strength 3. Coram: **Y.V. Chandrachud, C.J.** and *R.S. Sarkaria* and *O. Chinnappa Reddy*, JJ. [Date of decision: 15-9-1978]

[8559] — S. 337(1) — Offences covered — Ss. 409 & 120-B, IPC are covered — *Pardon can be tendered to an approver charged under these sections of IPC*

Since the offence under S. 409 was not merely punishable with transportation for life but alternatively also punishable with imprisonment which could extend to 10 years, S. 337(1) would apply. This section does not expressly say that the only punishment provided for the offence should be imprisonment not exceeding 10 years. For these very reasons S. 337(1) would apply to an offence under S. 120-B, IPC also because the punishment for it is the same as that for the offence under S. 409 *State of A.P.* v. *Cheemalapati Ganeswara Rao*, AIR 1963 SC 1850: (1964) 3 SCR 297: (1963) 2 Cri LJ 671.

Bench Strength 3. Coram: *K. Subba Rao*, *Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 23-4-1963]

[8560] — S. 337(1) — Pardon tendered to approver — Validity of — *Is to be determined with reference to the offence alleged against the approver alone and not with reference to the offences for which his associates were convicted. State of A.P.* v. *Cheemalapati Ganeswara Rao*, AIR 1963 SC 1850: (1964) 3 SCR 297: (1963) 2 Cri LJ 671.

Bench Strength 3. Coram: *K. Subba Rao*, *Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 23-4-1963]

[8561] — Ss. 337(1), 10(2), 529 and Sch. III, Part V, Entry 7(a) — Power to tender pardon — *Additional District Magistrate means a District Magistrate occurring in proviso to S. 337(1) — Can grant pardon — Pardon thus granted bona fide — Is protected by S. 529*

The power to grant pardon in a case pending before another Magistrate is no doubt conferred by the proviso only on the District Magistrate. But Entry 7(*a*) in Part V of Sch. III when it refers to the power of a District Magistrate under S. 337(1) does not exclude the power under the proviso. There is, therefore, no warrant for drawing a distinction between the powers of "the District Magistrate". The power of a District Magistrate to grant pardon has been specifically conferred on Additional District Magistrates as would appear from Sl. No. 37 of Sch. III of the Government Order. It is clear from the other part of the Government order that this refers to the Additional District Magistrate (Independent). This was and is being regarded as a direction of Government falling under S. 10(2), CrPC. In any view of the matter there is no doubt that the action of the Additional District Magistrate (Independent) in granting a pardon to the approver though it was pending enquiry before the District Magistrate (Judicial) was bona fide and a pardon granted bona fide is fully protected by S. 529, CrPC. *State of A.P.* v. *Cheemalapati Ganeswara Rao*, AIR 1963 SC 1850: (1964) 3 SCR 297: (1963) 2 Cri LJ 671.

Bench Strength 3. Coram: *K. Subba Rao*, *Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 23-4-1963]

[8562] — Ss. 337(1) and 339 — Scope and application of S. 337 — Offences under S. 5, Official Secrets Act, read with S. 120-B, IPC — *S. 337(1) does not apply and pardon cannot be tendered*

Pardon can only be tendered under S. 337(1) Criminal Procedure Code, 1898 with respect to the three categories of offences mentioned therein. An offence under S. 5 Official Secrets Act, read with S. 120-B, Penal Code does not fall within any of these categories. So if the proceedings were with respect only to an offence under S. 5 of the Official Secrets Act, read with S. 120-B of the IPC, S. 337 of the Criminal Procedure Code would not apply and no pardon could be tendered to any person. The person to whom pardon has been tendered cannot therefore be examined as an approver.

The words used in S. 339, Criminal Procedure Code are of no help in construing S. 337 in deciding whether a pardon could be tendered for an offence under S. 5, Official Secrets Act, read with S. 120-B, Indian Penal Code. *State* v. *Hiralal Girdharilal Kothari*, AIR 1960 SC 360: (1960) 2 SCR 355: 1960 Cri LJ 524, 27: 1960 All Cr R 133.

Bench Strength 3. Coram: *Syed Jafer Imam*, *J.L. Kapur* and **K.N. Wanchoo**, JJ. [Date of decision: 30-11-1959]

[8563] — Ss. 337(1), proviso and 338 — Tender of pardon by District Magistrate after commitment — *Validity — Respective scopes of sections*

By S. 338, Criminal Procedure Code, power is no doubt given after the commitment to the Court to which the commitment is made to pardon person, before judgment is passed, to any person supposed to have been directly or indirectly concerned with any offence or order the Committing Magistrate or the District Magistrate to tender the pardon. The section vests the Court to which commitment is made, with power to tender pardon or order the Committing Magistrate or the District Magistrate to tender pardon during the trial of the case but it does not take away the power conferred under the proviso to S. 337(1). The proviso appended to S. 337(1), CrPC contains an additional provision which empowers the District Magistrate to tender pardon where the offences are under inquiry or trial. *Held* :

On facts that the case was covered by the proviso to S. 337 and not by S. 338 CrPC and, therefore, the tender of pardon by the District Magistrate was valid. *A.J. Peiris* v. *State of Madras*, AIR 1954 SC 616: 1954 Cri LJ 1638.

Bench Strength 3. Coram: *M.C. Mahajan, C.J.* and *Vivian Bose* and **Ghulam Hasan**, JJ. [Date of decision: 18-3-1954]

[8564] — S. 337(2) — Approver's evidence — Credibility — Should be determined by applying the usual tests about credibility of witness — *Principles to be applied explained*

Section 337 itself shows that the motivating factor for an approver to turn, what in England is called "King's evidence" is the hope of pardon and not any noble sentiment like contrition at the evil in which he has participated. Whether the evidence of the approver should in any given case be accepted or not will have to be determined by applying the usual tests such as the probability of the truth of what he has deposed to, the circumstances in which he has come to give evidence whether he has made a full and complete disclosure, whether his evidence is merely self-exculpatory and so on and so fourth. The Court has, in addition, to ascertain whether his evidence has been corroborated sufficiently in material particulars. What is necessary to consider is whether applying all these tests the evidence of the approver should be acted upon.

While it must be shown that the approver is a witness of truth the evidence adduced in a case cannot be considered in compartments and that even for judging the credibility of the approver the evidence led to corroborate him in material particulars would be relevant for consideration. *Chittaranjan Das* v. *State of W.B.*, AIR 1963 SC 1696: (1964) 3 SCR 237: (1963) 2 Cri LJ 534.

Bench Strength 3. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 22-4-1963]

[8565] — S. 337(2-B) — Approver granted pardon — Charge-sheet against accused filed before Special Judge for offences under Ss. 161, 165 and 165-A, Indian Penal Code and S. 5(2), Prevention of Corruption Act, 1947 — *Proceeding cannot be quashed on the ground that charge-sheet should have been filed before Magistrate to enable accused to cross-examine the approver twice, once before Magistrate and a second time before Special Judge if the case is committed to him. Sardar Iqbal Singh* v. *State (Delhi Admn.)*, (1977) 4 SCC 536: 1978 SCC (Cri) 1: AIR 1977 SC 2437: 1977 Cr LR (SC) 508: 1978 Cri LJ 192.

Bench Strength 2. Coram: **A.C. Gupta** and *P.S. Kailasam*, JJ. [Date of decision: 9-11-1977]

— S. 338 *See* Ss. 337 and 338
See also Ss. 337(1), proviso and 338
See also Ss. 435, 337 and 338
See also Ss. 529(g), 337 and 338
See also Ss. 540, 337 and 338

[8566] — S. 338 — Power to direct tender of pardon — Proceeding committed to the Court of Session — *Held, only that court to which commitment is made can grant pardon to the approver — Sessions Judge has no jurisdiction to direct the committing Magistrate or any other Magistrate to grant pardon — Sessions Judge not competent to make such direction even in exercise of power under S. 10(3) unless he himself is absent or unable to act and there is no Additional or Assistant Sessions Judge — Position under S. 338 CrPC, 1898 com-*

pared — Expression "trial" in S. 306(1), CrPC, 1973 — Meaning of — CrPC, 1973, Ss. 306, 307 and 10(3). A. Devendran v. *State of T.N.*, (1997) 11 SCC 720: AIR 1998 SC 2821.

Bench Strength **2**. Coram: *G.N. Ray* and **G.B. Pattanaik**, JJ. [Date of decision: 21-10-1997]

[8567] — S. 338 — Power of District Magistrate to tender pardon after commitment

The District Magistrate has power to grant pardon even after commitment, but if the Court of Session had declined to grant pardon, the District Magistrate will not on the same facts entertain an application for grant of pardon. *State of U.P.* v. *Kailash Nath Agarwal*, (1973) 1 SCC 751: 1973 SCC (Cri) 698: AIR 1973 SC 2210: 1973 Cri LJ 1196.

Bench Strength **3**. Coram: *A. Alagiriswami*, *I.D. Dua* and **C.A. Vaidialingam**, JJ. [Date of decision: 16-3-1973]

[8568] — S. 338, 339 and 339-A — Special Judge's power to grant pardon under S. 8(2), 1952 Act — Not circumscribed by condition other than those detailed in the clause — *Can be exercised at any time during the trial — Exercise of power possible without the request of prosecution and at the request of the accursed asking for pardon — Relation between S. 8(2) of 1952 Act and Ss. 338, 339 and 339-A CrPC detailed — Criminal Law (Amendment) Act, 1952, S. 8(2)*

The fiction in the latter part of S. 8(2) is only this that the tender of pardon is to be deemed to be one under S. 338 for purposes of applying Ss. 339 and 339-A. The whole of S. 338 is not applicable. The power to order the Committing Magistrate or the District Magistrate to tender pardon is not available to the Special Judge because the fiction does not cover that part of S. 338. Similarly, the opening words of S. 338 "at any time after the commitment" are inappropriate to trials before Special Judges because there is no commitment. It is obvious that the powers of the Special Judge commence only after he has taken cognizance of the case, and they are available to him throughout the trial.

The powers of the Special Judge are not circumscribed by any condition except one, namely, that the action must be with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to an offence. The pardon so tendered is also a condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor. The disclosure must be complete as a himself and as to any other person concerned as principal or abettor. There is no provision for the recording of reasons for so doing. Nor is the Special Judge required to furnish a copy to the accused. There is no provision for recording a preliminary statement of the person.

Section 8(2) is enabling and its terms are wide enough to enable the Special Judge to tender a pardon to any person who is supposed to have been directly or indirectly concerned in, or privy to, an offence. This must necessarily include a person arraigned before him, But it may be possible to tender pardon to a person not so arraigned. The power so conferred can also be exercised at any time after the case is received for trial and before its conclusion. There is nothing in the language of the section to show that the Special Judge must be moved by the prosecution. He may consider an offer by an accused as in this case. *Lt. Commander Pascal Fernandes* v. *State of Maharashtra*, AIR 1968 SC 594, 597, 59: (1968) 1 SCR 695, 700: 1968 Cri LJ 550.

Bench Strength **3**. Coram: **M. Hidayatullah**, *V. Bhargava* and *C.A. Vaidialingam*, JJ. [Date of decision: 28-9-1967]

— **S. 339** *See* Ss. 338, 339 and 339-A
See also Ss. 337 and 339
See also Ss. 337(1) and 339
— **S. 339(1)** *See* Ss. 337 and 339(1)
— **S. 339-A** *See* Ss. 338, 339 and 339-A

[8569] — S. 340 — Lawyer at State expense — Capital cases — *Constitution of India — Art. 22 (1)*

It cannot be laid down as a rule of law that in every capital case where the accused is unrepresented, the trial should be held to be vitiated. Besides a Court of appeal or revision is not powerless to interfere, if it is found that the accused was so handicapped for want of legal aid that the proceedings against him may be said to amount to negation of a fair trial. *Janardhan Reddy* v. *State of Hyderabad*, AIR 1951 SC 217, 222: 1951 SCR 344, 357: (1951) 52 Cri LJ 736.

Bench Strength **5**. Coram: **Fazl Ali**, *M.C. Mahajan*, *B.K. Mukherjea*, *S.R. Das* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 16-3-1951]

[8570] — S. 340 — Mandatory in nature — Expression "the court may engage counsel to defend the accused person" — Use of word "may" does not make it directory — *Rule 37 of 1957 High Court Rules is not in conflict with S. 340, CrPC, 1898 — Counsel so appointed should be given sufficient time to prepare the defence — Sufficiency of time depends upon circumstances of each case — Rule is a "law" within the meaning of Art.*

21 and hence its violation vitiates the conviction of an accused — Absence of prejudice to the accused in spite of non-compliance of the Rule will not validate the conviction — Allahabad High Court General Rules (Criminal), 1957, R. 37. Bashira v. *State of U.P.*, AIR 1968 SC 1313, 1316-1: (1969) 1 SCR 32: 1968 Cri LJ 1495.

Bench Strength 3. Coram: *S.M. Sikri, J.M. Shelat* and **V. Bhargava**, JJ. [Date of decision: 19-4-1968]

See also (1973) 3 SCC 690, 705

[8571] — S. 340 — Allahabad High Court General Rules (Criminal), 1957, R. 37 — Held, does not contravene S. 340, CrPC. *Bashira* v. *State of U.P.*, AIR 1968 SC 1313, 1317: (1969) 1 SCR 32: 1968 Cri LJ 1495.

Bench Strength 3. Coram: *S.M. Sikri, J.M. Shelat* and **V. Bhargava**, JJ. [Date of decision: 19-4-1968]

[8572] — S. 340 — Capital case — Whether representation by the lawyer necessary — Effect of *— Hyderabad Criminal Procedure Code, 1313 F, S. 271*

Section 271 of the Hyderabad CrPC corresponds to S. 340, CrPC. This provision must undoubtedly be construed liberally in favour of the accused and must be read along with the rules made by the High Courts and the Circular orders issued by them enjoining that where in capital cases the accused has no means to defend himself, a counsel should be provided to defend him. The proper view to be: (1) that it cannot be laid down as a rule of law that in every capital case where the accused is unrepresented, the trial should be held to be vitiated; and (2) that a Court of appeal or revision is not powerless to interfere, if it is found that the accused was so handicapped for want of legal aid that the proceedings against him may be said to amount to negation of a fair trial. *Janardhan Reddy* v. *State of Hyderabad*, AIR 1951 SC 217: 1951 SCR 344: (1951) 52 Cri LJ 736.

Bench Strength 5. Coram: **Fazl Ali**, *M.C. Mahajan, B.K. Mukherjea, S.R. Das* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 16-3-1951]

[8573] — S. 340 — No right to legal counsel

Section 340, CrPC by itself, does not cast any duty on a court to provide a counsel at State expense even when the offence triable is punishable with death. *Bashira* v. *State of U.P.*, AIR 1968 SC 1313, 1316: (1969) 1 SCR 32: 1968 Cri LJ 1495.

Bench Strength 3. Coram: *S.M. Sikri, J.M. Shelat* and **V. Bhargava**, JJ. [Date of decision: 19-4-1968]

[8574] — S. 340 — Right to counsel in grave cases — Amicus curiae — Adequate opportunity and facility to be given to counsel to prepare defence *— Constitution of India — Art. 22(1). Ranchod Mathur Wasawa* v. *State of Gujarat*, (1974) 3 SCC 581: 1974 SCC (Cri) 59: AIR 1974 SC 1143: (1974) 2 SCR 72: 1974 Cri LJ 799.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *R.S. Sarkaria*, JJ. [Date of decision: 15-10-1973]

[8575] — S. 340 — Time for preparation to amicus curiae

No hard and fast rule can be laid down as to the time which must elapse between the appointment of the counsel and the beginning of the trial; but, on the circumstances of each case, the Court of Session must ensure that the time granted to the counsel is sufficient to prepare for the defence. *Bashira* v. *State of U.P.*, AIR 1968 SC 1313, 1318: (1969) 1 SCR 32: 1968 Cri LJ 1495.

Bench Strength 3. Coram: *S.M. Sikri, J.M. Shelat* and **V. Bhargava**, JJ. [Date of decision: 19-4-1968]

[8576] — S. 340(1) — Right of accused to be defended by a legal practitioner of his choice — Interference with — Effect *— False criminal cases launched against lawyers appearing for defence — Attempt made by prosecution machinery to demoralise and scare the accused's senior counsel by scandalising his reputation and casting a slur on his character and conduct — On facts, held, defence lawyers could not perform their professional duty in a proper and dignified manner on account of hurdles created by the State machinery — It was bound to result in miscarriage of justice — Accused were seriously handicapped in defending themselves — CrPC, 1973, S. 303 — Constitution of India, Art. 22(1). Sri Jayendra Saraswathy Swamigal (II)* v. *State of T.N.*, (2005) 8 SCC 771.

Bench Strength 2. Coram: *R.C. Lahoti, C.J.* and **G.P. Mathur**, J. [Date of decision: 26-10-2005]

[8577] — S. 340(1) — Ingredients of offence under *— Duty of trial Court to act on evidence uninfluenced by opinions expressed in inquiry under S. 340(1) — Penal Code, 1860, S. 193. K. Karunakaran* v. *T.V. Eachara Warrier*, (1978) 1 SCC 18: 1978 SCC (Cri) 32: AIR 1978 SC 290: 1978 Cri LJ 339: 1978 MLJ (Cri) 237.

Bench Strength 2. Coram: **P.K. Goswami** and *V.D. Tulzapurkar*, JJ. [Date of decision: 16-11-1977]

[8578] — S. 340(1) — Nature of right conferred under — Whether extends to a right to provide the accused with a lawyer

The right conferred by S. 340(1), CrPC does not extend to a right in an accused person to be provided with a lawyer by the State or by the Police or the Magistrate. That is a privilege given to him and it is his duty to ask for a lawyer if he wants to engage one or get his relations to engage one for him. The only duty cast on the Magistrate is to afford him necessary opportunity. *Tara Singh* v. *State*, AIR 1951 SC 441: 1951 SCR 729: (1951) 52 Cri LJ 1491.

Bench Strength 4. Coram: **Fazl Ali**[1], **Patanjali Sastri**[2], **S.R. Das**[3] and **Vivian Bose**[4], JJ. [Date of decision: 1-6-1951]

[8579] — S. 340(1) — Lawyer not to be provided by State — *Constitution of India — Art. 22(1)*

It is the duty of the accused person to ask for a lawyer if he wants to engage one himself or get his relations engage one for him. The only duty cast on the Magistrate is to afford him the necessary opportunity. The right does not extend in an accused. Person to be provided with a lawyer by the State or by the police or by the Magistrate. *Tara Singh* v. *State*, AIR 1951 SC 441, 443: 1951 SCR 729: (1951) 52 Cri LJ 1491.

Bench Strength 4. Coram: **Fazl Ali**[1], **Patanjali Sastri**[2], **S.R. Das**[3] and **Vivian Bose**[4], JJ. [Date of decision: 1-6-1951]

[8580] — S. 341 — Plea of private defence — Not taken in the statement — Can be considered if necessary basis laid in the cross-examination by prosecution

It is true that the appellants in their statement under S. 342, CrPC, had not taken the plea of private defence but necessary basis for that plea had been laid in the cross-examination of the prosecution witnesses as well as by adducing defence evidence. It is well settled that even if an accused does not plead self-defence, it is open to the court to consider such a plea if the same arises from the material on record. The burden of establishing that plea is on the accused and that burden can be discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. *Munshi Ram* v. *Delhi Admn.*, AIR 1968 SC 702, 703: (1968) 2 SCR 455: 1968 Cri LJ 806.

Bench Strength 3. Coram: *S.M. Sikri*, *J.M. Shelat* and **K.S. Hegde**, JJ. [Date of decision: 27-11-1967]

— **S. 342** *See* Ss. 208, 209 and 342
See also Ss. 289 and 342
See also Ss. 337 and 342
See also Ss. 537 and 342

[8581] — S. 342 — Criminal appeal — New plea not allowed to be raised — *Plea of biased jury and inadequate examination under S. 342, CrPC not raised in High Court — Not permitted to be raised. Moseb Kaka Chowdhry* v. *State of W.B.*, AIR 1956 SC 536: 1956 SCR 372: 1956 Cri LJ 940.

Bench Strength 2. Coram: **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 18-4-1956]

[8582] — S. 342 — New plea — Plea that prejudice caused due to contravention of S. 342, CrPC, 1898 — Not taken before the lower Courts — *Supreme Court not to permit the question to be for the first agitated in Supreme Court — Constitution of India — Art. 136 — Pleadings/New plea/Additional plea. Radha Kishan* v. *State of U.P.*, AIR 1963 SC 822, 824: 1963 Supp (1) SCR 408: 1963 Cri LJ 809: (1963) 2 LLJ 667.

Bench Strength 3. Coram: *Syed Jafer Imam*, *N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 27-9-1962]

[8583] — S. 342 — Remand — Appeal before Supreme Court — Accused not properly examined under S. 342, CrPC — *The Supreme Court will not be justified in remanding the case for retrial and permit the prosecution to repair the effect of the omission — Constitution of India — Art. 136. Machander* v. *State of Hyderabad*, AIR 1955 SC 792: (1955) 2 SCR 524: 1955 Cri LJ 1644.

Bench Strength 3. Coram: **Vivian Bose**, *B. Jagannadhadas* and *B.P. Sinha*, JJ. [Date of decision: 27-9-1955]

[8584] — S. 342 — Circumstances in respect of which accused not examined under, cannot be used against him — *CrPC, 1973, S. 313*

Per Fazal Ali, J.

It is vital that any circumstance adverse to the accused must be put to him under S. 313, CrPC, 1973; otherwise it must be completely excluded from consideration because the appellant did not have any chance to explain them.

As many as 10 out of the 17 circumstances held against the accused were not put to him under S. 313, CrPC, 1973 and must therefore be excluded from consideration.

Per Varadarajan, J.

Since the circumstances not put to the appellant in his examination under S. 313 CrPC have to be completely excluded from consideration and since no question has been put to the appellant in this regard in the course of his examination under S. 313 CrPC, even if there is any evidence about any ill-treatment of the deceased by the appellant or his parents it has to be completely excluded from consideration. *Sharad Birdhichand Sarda* v. *State of Maharashtra*, (1984) 4 SCC 116: 1984 SCC (Cri) 487: AIR 1984 SC 1622: 1984 Cri LJ 1738.

Bench Strength 3. Coram: **S. Murtaza Fazal Ali**[1], **A. Varadarajan**[2] and **Sabyasachi Mukharji**[3], JJ. [Date of decision: 19-7-1984]

Hate Singh Bhagat Singh v. State of M.P., AIR 1953 SC 468: 1953 Cri LJ 1933; Shamu Balu Chaugule v. State of Maharashtra, (1976) 1 SCC 438: 1976 SCC (Cri) 56 and Harijan Megha Jesha v. State of Gujarat, 1979 SCC (Cri) 652, relied on

[8585] — S. 342 — On facts, offence under S. 302, Indian Penal Code not established — *High Court had misread the statement under S. 342, CrPC, 1898. Banamali Samal* v. *State of Orissa*, 1980 Supp SCC 718: 1979 SCC (Cri) 646: AIR 1979 SC 1414: 1979 Cri LJ 1086: (1979) 48 Cut LT 469.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *R.S. Sarkaria*, JJ. [Date of decision: 2-3-1979]

[8586] — S. 342 — Pledging of ornaments of deceased soon after the murder — *Evidence on record showing that appellant did not pledge the articles on his own but brought them at the instance of his father who was a goldsmith — Held, reversal of acquittal by High Court not justified — Statement of co-accused under S. 342, CrPC, 1898 taken into consideration — CrPC, 1973, S. 313 — Penal Code, 1860, Ss. 302 and 416*

When the receipt evidencing the pledging itself does not implicate the appellant, it would not be safe to base the conviction either for murder or under S. 411 of IPC. *Rajendra Prasad* v. *State of U.P.*, 1989 Supp (2) SCC 145: 1990 SCC (Cri) 32.

Bench Strength 2. Coram: *K. Jagannatha Shetty* and *K.N. Saikia*, JJ. [Date of decision: 3-1-1989]

[8587] — S. 342 — Burden of proof — *Prosecution proving concentration of alcohol in blood in excess of that mentioned in S. 66(2), Bombay Act, 1949 — Burden is on the accused to prove exception detailed in S. 66(2) — Burden in suitable cases can be discharged by accused's statement under S. 342 CrPC, 1898 — Bombay Prohibition Act, 1949 (25 of 1949), S. 66(1)(b) & (2)*

If the prosecution proves that the concentration of alcohol in the blood of an accused person is more than 0.05% as mentioned in S. 66(2) then under this section the burden was on him to show that the liquor which he had consumed was a medicinal or toilet preparation the consumption of which is not in contravention of Act or any Rules made thereunder.

Under S. 342 of the Criminal Procedure Code the Court has the power to examine the accused so as to enable him to explain any circumstance appearing in evidence against him. Under sub-section (3) of that section the answers given by an accused person may be taken into consideration in such enquiry or trial. The object of examination under S. 342 therefore is to give the accused an opportunity to explain the case made against him and that statement can be taken into consideration in judging the innocence or guilt of the person so accused. Therefore if the courts below have accepted this explanation it must be held that the respondent has discharged the onus which was placed on him by S. 66(2) of the Act. *State of Maharashtra* v. *Laxman Jairam*, AIR 1962 SC 1204: 1962 Supp (3) SCR 230: (1962) 2 Cri LJ 284.

Bench Strength 3. Coram: **J.L. Kapur**, *K.C. Das Gupta* and *Raghubar Dayal*, JJ. [Date of decision: 16-2-1962]

C.S. D. Swami v. State, AIR 1960 SC 60: (1960) 1 SCR 461: 1960 Cri LJ 131, explained

Applied in Ram Krishna Bedu Rane v. State of Maharashtra, (1973) 1 SCC 366: 1973 SCC (Cri) 335

[8588] — S. 342 — Generally — Opportunity to accused — Question of prejudice to be decided in each case on facts — *Penal Code, 1860*

The question of prejudice is ultimately one of inference from all the facts and circumstances of each case. The fact of the trial being with the jury may possibly also be an additional circumstance for consideration in an appropriate case. *Moseb Kaka Chowdhry* v. *State of W.B.*, AIR 1956 SC 536: 1956 SCR 372: 1956 Cri LJ 940, 943, 944.

Bench Strength 2. Coram: **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 18-4-1956]

[8589] — S. 342 — Generally — Plea of prejudice — Plea that the accused was prejudiced on account of a mistake in charge and irregularity in examination under S. 342, CrPC — *Plea not taken in grounds of appeal — Supreme Court not to permit such a plea to be raised — Penal Code, 1860*

The Supreme Court will be slow to entertain question of prejudice when details are not furnished; also the fact that the objection is not taken at an early stage will be taken into account. There is not a hint of prejudice in the petition filed by the appellant either in the High Court or Supreme Court. The only complaint about prejudice was on the score that there was no proper examination under S. 342, CrPC. This matter cannot be permitted to be raised. *Sukha* v. *State of Rajasthan*, AIR 1956 SC 513: 1956 SCR 288: 1956 Cri LJ 923.

Bench Strength 3. Coram: **Vivian Bose**, *B. Jagannadhadas* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 5-4-1956]

See also K.C. Mathew v. State of T.C., AIR 1956 SC 241: 1956 Cri LJ 444 and AIR 1956 SC 536: 1956 Cri LJ 940, 944

[8590] — S. 342 — Charge under Ss. 302/148/149 but conviction under Ss. 302/34 — Prior concert evidenced by examination under S. 342, CrPC — *No prejudice caused — Conviction not improper — Penal Code, 1860, Ss. 34/149. Bhoor Singh* v. *State of Punjab*, (1974) 4 SCC 754: 1974 SCC (Cri) 664: AIR 1974 SC 1256: 1974 Cri LJ 929.

Bench Strength 2. Coram: *V.R. Krishna Iyer* and **R.S. Sarkaria**, JJ. [Date of decision: 28-2-1974]

[8591] — S. 342 — Plea of private defence was not set up by the accused nor any suggestion made in the statements under S. 342, Criminal Procedure Code, 1898 — *Held, High Court was not justified in acquitting the accused — Plausibility of actions being in exercise of private defence, held, not borne out by the facts — Penal Code, 1860, Ss. 96-100. State of U.P.* v. *Mohd. Musheer Khan*, (1977) 3 SCC 562: 1977 SCC (Cri) 565: AIR 1977 SC 2226: 1977 Cri LJ 1897.

Bench Strength **2**. Coram: **N.L. Untwalia** and *P.N. Shinghal*, JJ. [Date of decision: 29-7-1977]

[8592] — S. 342 — Failure of prosecution to explain injuries on the accused — Conclusions possible out of such failure on the part of the prosecution — *Plea of self-defence not taken by accused in her statement under S. 342, CrPC, 1898 — Nor any basis laid in the cross-examination of the prosecution witnesses or by adducing any defence witnesses — On facts, the accused did not discharge the limited burden of showing preponderance of probabilities in favour of plea on the basis of the material on record — Penal Code, 1860, S. 97*

When the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:

(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self-defence.

(2) It makes the prosecution version of the occurrence doubtful, and the charge against the accused cannot be held to have been proved beyond reasonable doubt.

(3) It does not affect the prosecution case at all.

In the instant case not only the plea of private defence was not taken by the respondents in their statement under S. 342 but no basis for that plea was laid in the cross-examination of the prosecution witnesses or by adducing any defence evidence. In the opinion of the Supreme Court the burden of establishing that plea was not discharged in any manner by the respondents even applying the test of preponderance of probabilities in favour of that plea. There was absolutely no material in the records of the present case to lead to any such conclusion.

Hence in the instant case the failure of the prosecution to explain the injuries on the accused falls in the third category and does not affect the prosecution case at all. *State of Gujarat* v. *Bai Fatima*, (1975) 2 SCC 7: 1975 SCC (Cri) 384: AIR 1975 SC 1478: (1975) 12 ACC 243: 1975 Cri LJ 1079.

Bench Strength **2**. Coram: *A. Alagiriswami* and **N.L. Untwalia**, JJ. [Date of decision: 19-3-1975]

See also (1975) 4 SCC 518: 1975 SCC (Cri) 608

As an illustration of the third category see (1975) 4 SCC 241: 1975 SCC (Cri) 1494

See also (1976) 4 SCC 394: 1976 SCC (Cri) 671

[8593] — S. 342 — Presumption under S. 4(1) of 1947 Act — Rebuttal — *Extent of burden of proof on accused — Not of the same degree and character as under S. 101 of Evidence Act — Explanation under S. 342, CrPC, 1898 when enough — Prosecution story mitigating against facts presumed — Effect of — Penal Code, 1860, Ss. 161 and 165 and S. 4(1) of Prevention of Corruption Act, 1947. Trilok Chand Jain* v. *State of Delhi*, (1975) 4 SCC 761: 1975 SCC (Cri) 725: AIR 1977 SC 666: (1976) 1 SCR 348: 1977 Cri LJ 254.

Bench Strength **3**. Coram: *Y.V. Chandrachud, P.N. Bhagwati* and **R.S. Sarkaria**, JJ. [Date of decision: 19-8-1975]

[8594] — S. 342 — Accused charged for kidnapping a girl for the purposes of illicit intercourse — *Kidnapping not proved — Accused not examined under S. 342, CrPC about the evidence relating to abduction — Conviction under S. 366 on the ground of the proof of abduction for the purposes of illicit intercourse not possible — Penal Code, 1860, S. 366*

The accused cannot be convicted under S. 366, IPC by reason of his having abducted the girl for the purposes of illicit intercourse, because apart from the fact that, that was not the charge sought to be proved against the appellant, the evidence on the record did not warrant a conclusion that the girl was either compelled by force or induced by any deceitful means to go from her father's place by the appellant nor was any question put to the appellant in the examination under S. 342, CrPC in regard to her compelling or inducing the girl to leave her father's place. *Ram Devi* v. *State of U.P.*, AIR 1955 SC 574: 1955 Cri LJ 1296, 1297.

Bench Strength **3**. Coram: *S.R. Das*, **N.H. Bhagwati** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 22-2-1955]

[8595] — S. 342 — Accused charged under Ss. 302/149 but convicted under S. 302 simpliciter and sentenced to death — *No question as to his individual role put to him under S. 342, CrPC, 1898 — No grievance made out by the accused either in the trial Court or the High Court — On facts, held, no prejudice was caused to the accused — Penal Code, 1860 — S. 302 r/w Ss. 149 and 302 simpliciter. Ishwar Singh* v. *State of U.P.*, (1976) 4 SCC 355: 1976 SCC (Cri) 629: AIR 1976 SC 2423: 1976 Cri LJ 1883.

Bench Strength **2**. Coram: **A.C. Gupta** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 4-8-1976]

***Distinguished in** Aniruddha Singh v. State of M.P., (2008) 11 SCC 403*

[8596] — S. 342 — Confession — Not put to the accused in his examination under S. 342, CrPC in the court of Committing Magistrate — *Default does not show that the confession was involuntary — Penal Code, 1860 — S. 302*

No question under S. 342, CrPC was put to the accused in the court of the Committing Magistrate with regard to the confession. Even though the confession was not put in the forefront as a piece of evidence against the accused in the committing court, such a default, if it is one, would not in any way show that the confession was involuntary. *Subramania Goundan* v. *State of Madras*, AIR 1958 SC 66: 1958 SCR 428: 1958 Cri LJ 238.

Bench Strength 3. Coram: *B.P. Sinha*, **P. Govinda Menon** and *J.L. Kapur*, JJ. [Date of decision: 17-9-1957]

[8597] — S. 342 — Court can convict on confession made in the statement under S. 342, CrPC but not open to the Court to dissect the statement and pick out incriminating part — *Admission not to be used divorced from explanation — Penal Code, 1860 — S. 302*

Examination under S. 342 is primarily to be directed to those matters on which evidence has been led for the prosecution, to ascertain from the accused his version or explanation. If any, of the incident which forms the subject-matter of the charge and his defence. By sub-section (3), the answers given by the accused may "be taken into consideration" at the enquiry or the trial. If the accused person in his examination under S. 342 confesses to the commission of the offence charged against him the court may, relying upon that confession, proceed to convict him, but if he does not confess and in explaining circumstances appearing in the evidence against him sets up his own version and seeks to explain his conduct pleading that he has committed no offence the statement of the accused can only be taken into consideration in its entirety. It is not open to the Court to dissect the statement and to pick out a part of the statement which may be incriminative, and then to examine whether the explanation furnished by the accused for his conduct is supported by the evidence on the record. If the accused admits to have done an act which would but for the explanation furnished by him be an offence, the admission cannot be used against him divorced from the explanation. *Narain Singh* v. *State of Punjab*, (1963) 3 SCR 678: (1964) 1 Cri LJ 730.

Bench Strength 3. Coram: *Syed Jafar Imam*, **J.C. Shah** and *J.R. Mudholkar*, JJ. [Date of decision: 21-8-1962]

[8598] — S. 342 — Prejudice — Failure to examine accused — *Shoemaker identifying the shoes found at the spot as belonging to the accused — Circumstance not put to the accused in his statement under S. 342, CrPC, 1898 — Held, it is likely that the accused when questioned on the circumstance may have offered to demonstrate that the shoe did not fit his feet — The circumstance cannot be used against him — Penal Code, 1860 — S. 302. Sarwan Singh Rattan Singh* v. *State of Punjab*, AIR 1957 SC 637: 1957 SCR 953: 1957 Cri LJ 1014.

Bench Strength 3. Coram: *B. Jagannadhadas*, *B.P. Sinha* and **P.B. Gajendragadkar**, JJ. [Date of decision: 10-4-1957]

[8599] — S. 342 — Prejudice — Non-compliance with — *Effect — Every error or omission not in compliance with the Section does not vitiate the trial — Trial vitiated only when the error or omission causes prejudice to the accused*

Every error or omission not in compliance with the provisions of S. 342 does not necessarily vitiate a trial. Errors of this type, fall within the category of curable irregularities. The question whether the trial is vitiated, in each case depends upon the degree of the error and upon whether prejudice has been or is likely to have been caused to the accused. *Ajmer Singh* v. *State of Punjab*, AIR 1953 SC 76: 1953 SCR 418: 1953 Cri LJ 521.

Bench Strength 3. Coram: **M.C. Mahajan**, *S.R. Das* and *N.H. Bhagwati*, JJ. [Date of decision: 10-12-1952]

Rama Shankar Singh v. *State of W.B.*, AIR 1962 SC 1239: 1962 Supp (1) SCR 49: (1962) 2 Cri LJ 296.

Bench Strength 3. Coram: *K.N. Wanchoo*, *K.C. Das Gupta* and **J.C. Shah**, JJ. [Date of decision: 10-10-1961]

[8600] — S. 342 — Adverse inference if can be drawn from accused's failure to explain a piece of his conduct while under examination under S. 342, CrPC, 1898 — *Evidence Act, 1872, S. 114, Illustration (h)*

The appellant woman, *V*, along with her son and three other men, was tried in connection with the murder of one *K*. The deceased *K*, a practising lawyer was returning from the court on the fateful evening. When he approached the ill-fated spot the appellant woman is alleged to have shouted: "The vakil has come", whereupon her five companions armed with guns and hockey sticks surrounded the deceased who was then shot at point-blank range by one of them. Both the courts below convicted her under S. 302, read with S. 109, IPC.

Held, the fact that *V* gave the shout cannot be disturbed in view of the concurrent finding of the courts below.

Whether by so doing she intended to facilitate the murderer of *K* is another question. In order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of S. 107. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of S. 107.

No adverse inference can be drawn from appellant's failure to explain her conduct. Such an approach is impermissible. The burden is on the prosecution to establish its case. Moreover an accused cannot while being examined under S. 342, CrPC be subjected to cross-examination, and a bald assertion to explain a piece of conduct almost always fails to convince. *Shri Ram* v. *State of U.P.*, (1975) 3 SCC 495: 1975 SCC (Cri) 87: AIR 1975 SC 175: 1975 Cri LJ 240: 1976 MLJ (Cri) 78.

Bench Strength **2**. Coram: **Y.V. Chandrachud** and *P.N. Bhagwati*, JJ. [Date of decision: 6-11-1974]

[8601] — S. 342 — Extent of reliance on statement of accused

That the Court may rely on a portion of the accused's statement and considering the other evidence led by the prosecution, find him guilty. *Sampat Singh* v. *State of Rajasthan*, (1969) 1 SCC 367: AIR 1969 SC 956: 1969 Cri LJ 1430: (1969) 3 SCR 228.

Bench Strength **2**. Coram: *M. Hidayatullah, C.J.* and **G.K. Mitter**, J. [Date of decision: 2-1-1969]

[8602] — S. 342 — Appellant found in custody of gold bars with foreign makings — Statement of accused under S. 342, CrPC that the place of recovery was under his possession — *Conviction upheld — Sea Customs Act, 1878, S. 167(81) — Customs Act, 1962, S. 135. Jethamal Pithaji* v. *Asstt. Collector of Customs*, (1974) 3 SCC 393: 1973 SCC (Cri) 958: AIR 1974 SC 699: (1974) 1 SCR 645: 1974 Cri LJ 621.

Bench Strength **2**. Coram: **H.R. Khanna** and *A. Alagiriswami*, JJ. [Date of decision: 10-9-1973]

[8603] — S. 342 — Abscondence cannot be used against the accused if not put to him for explanation under — *Even an innocent person knowing to have been implicated for offence of murder would abscond. Shamu Balu Chaugule* v. *State of Maharashtra*, (1976) 1 SCC 438: 1976 SCC (Cri) 56: AIR 1976 SC 557: 1976 Cri LJ 492.

Bench Strength **2**. Coram: **M.H. Beg** and *P.K. Goswami*, JJ. [Date of decision: 13-11-1975]

[8604] — S. 342 — "Accused" — Meaning

The moment the pardon was tendered to the accused he must be presumed to have been discharged whereupon he ceased to be an accused and became a witness. *A.J. Peiris* v. *State of Madras*, AIR 1954 SC 616, 620: 1954 Cri LJ 1638.

Bench Strength **3**. Coram: *M.C. Mahajan, C.J.* and *Vivian Bose* and **Ghulam Hasan**, JJ. [Date of decision: 18-3-1954]

[8605] — S. 342 — Accused charged with murder not examined about his judicial confession made eight days after his arrest — High Court was justified in refusing to take into consideration the confession

The High Court excluded from evidence the judicial confession of the accused because the appellant was not questioned about it under S. 342, CrPC. It is gathered that the High Court thought that this occasioned prejudice to the accused. The confession of the accused was recorded 8 days after his arrest. Much might have happened between this period of 8 days. The High Court was therefore not unjustified in refusing to take into consideration the confession without hearing the appellant's side of the story. *Machander* v. *State of Hyderabad*, AIR 1955 SC 792: (1955) 2 SCR 524: 1955 Cri LJ 1644.

Bench Strength **3**. Coram: **Vivian Bose**, *B. Jagannadhadas* and *B.P. Sinha*, JJ. [Date of decision: 27-9-1955]

[8606] — S. 342 — Accused instead of explaining the fact situation set up by the prosecution setting up a false counterversion — *Held, this factor must be taken into account in deciding whether the circumstances set up by the prosecution are of a determinative character. State of Punjab* v. *Mukhtiar Singh*, (1975) 4 SCC 590: 1975 SCC (Cri) 625: AIR 1975 SC 2001: 1975 Cri LJ 1745.

Bench Strength **3**. Coram: *Y.V. Chandrachud*, *P.N. Bhagwati* and **R.S. Sarkaria**, JJ. [Date of decision: 30-7-1975]

[8607] — S. 342 — Accused not fully examined under the section — *Effect — Accused must also show that the omission has materially prejudiced him, before the Appellate Court can interfere on that ground. Bejoy Chand Patra* v. *State of W.B.*, AIR 1952 SC 105: 1952 SCR 202: 1952 Cri LJ 644.

Bench Strength **2**. Coram: **Fazl Ali** and *Vivian Bose*, JJ. [Date of decision: 14-12-1951]

[8608] — S. 342 — Accused not questioned about the presence of blood on his clothes — *No inference can be drawn on that account against the accused. Rahim Beg* v. *State of U.P.*, (1972) 3 SCC 759: 1972 SCC (Cri) 827: AIR 1973 SC 343: 1972 Cri LJ 1260.

Bench Strength **2**. Coram: *J.M. Shelat* and **H.R. Khanna**, JJ. [Date of decision: 20-4-1972]

[8609] — S. 342 — Accused not questioned by the Sessions Court about committing the offence — *He admitted that his statement recorded by the Committing Magistrate where he denied to have committed the offence was correct — His statement under S. 342 taken as a whole showed that the accused knew what the accusations against him were — There is no prejudice and the trial is not vitiated*

At the very commencement of the record of that statement, the Sessions Judge read out the appellant's statement under S. 342, CrPC, before the Committing Magistrate and enquired whether it was correct, to which the appellant replied in the affirmative.

The statement of the appellant before the Magistrate is admissible under S. 287, CrPC. The Magistrate pointedly asked the appellant as to whether he along with the other accused murdered the deceased and had taken his property to which the appellant replied in the negative. It was not necessary for the Sessions Judge to specifically repeat the same when the appellant admitted his statement before the Committing Magistrate as correct when read out to him.

A part from this, when the statement of the appellant to the Sessions Judge is read as a whole, it clearly shows that the appellant knew what the accusation against him was and he offered an explanation for the disappearance of deceased from his cart and for his possession of the deceased's goods. There is no justification for supposing that there had been any prejudice caused to the appellant on account of improper or insufficient recording of his statement by the Sessions Judge under S. 342, CrPC. *Wasim Khan* v. *State of U.P.*, AIR 1956 SC 400: 1956 SCR 191: 1956 Cri LJ 790, 792: (1956) 2 MLJ (SC) 9: 1956 ALJ 457.

Bench Strength 3. Coram: *B.P. Sinha*, **Syed Jafer Imam** and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 12-3-1956]

[8610] — S. 342 — Accused not told to enter witness-box if he so chose — Court not obliged to draw the attention of the accused to sub-section (4)

It was not the duty of the Court to draw the pointed attention of the accused to the provisions of sub-section (4) of S. 342 and tell them that they may, if they chose, enter the witness-box. *State of A.P.* v. *Cheemalapati Ganeswara Rao*, AIR 1963 SC 1850: (1964) 3 SCR 297: (1963) 2 Cri LJ 671.

Bench Strength 3. Coram: *K. Subba Rao*, *Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 23-4-1963]

[8611] — S. 342 — Admissibility of statement of accused — Statement under S. 342, CrPC in another case — *Accused admitting in his statement in a previous case facts amounting to admissions for the purposes of the subsequent case — The statement is admissible in evidence in the subsequent case to prove accused's admissions with respect to the facts mentioned in the statement. State of Gujarat* v. *Vinaya Chandra Chhota Lal Pathi*, AIR 1967 SC 778: (1967) 1 SCR 249: 1967 Cri LJ 668.

Bench Strength 3. Coram: *V. Ramaswami*, *V. Bhargava* and **Raghubar Dayal**, JJ. [Date of decision: 2-9-1966]

[8612] — S. 342 — Admissibility of statement of accused under the section against his statement at a time when he was not facing the charge — *Statement under the section cannot be accepted*

In view of the statements made by the accused at a time when he was not required to face a charge his statement made in the Court that he travelled in a separate compartment cannot be accepted. *Anant Chintaman Lagu* v. *State of Bombay*, AIR 1960 SC 500: (1960) 2 SCR 460: 1960 Cri LJ 682: 62 Bom LR 371.

Bench Strength 3. Coram: *S.K. Das*, **A.K. Sarkar**[2] and **M. Hidayatullah**[1], JJ. [Date of decision: 14-12-1959]

[8613] — S. 342 — Applicability in proceeding under S. 207-A — Court has discretion to examine the accused — *Failure to examine an accused under S. 342, CrPC does not amount to material irregularity. State of W.B.* v. *Tulsidas Mundhra*, 1963 Supp (1) SCR 1: (1964) 1 Cri LJ 443, 47.

Bench Strength 3. Coram: **P.B. Gajendragadkar**, *K.C. Das Gupta* and *J.R. Mudholkar*, JJ. [Date of decision: 11-9-1962]

[8614] — S. 342 — Bare denial — *Appellant making a bare denial in his statement in the committing proceedings about his meeting the deceased on a particular date — His statement before the Sessions Judge that he met the deceased on a different date is an afterthought. Deonandan Mishra* v. *State of Bihar*, AIR 1955 SC 801: (1955) 2 SCR 570: 1955 Cri LJ 1647, 48.

Bench Strength 3. Coram: *Vivian Bose*, **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 28-9-1955]

[8615] — S. 342 — Circumstances not put to accused not to be relied on

The Court should not rely upon those circumstances against the accused with regard to which no opportunity of explanation has been given to the accused in his statement under S. 342, CrPC. *Zwinglee Ariel* v. *State of M.P.*, AIR 1954 SC 15: 1954 Cri LJ 230.

Bench Strength 3. Coram: *M.C. Mahajan*, **S.R. Das** and *N.H. Bhagwati*, JJ. [Date of decision: 3-12-1952]

[8616] — S. 342 — Co-accused making statement — Cannot be used against the accused. *Narayan Swami* v. *State of Maharashtra*, AIR 1968 SC 609: (1968) 2 SCR 88: 1968 Cri LJ 657: (1968) 68 ITR 221, 225.

Bench Strength **2**. Coram: *V. Bhargava* and **C.A. Vaidialingam**, JJ. [Date of decision: 26-10-1967]

[8617] — S. 342 — Complex and complicated questions put to the accused — Procedure is irregular — Object of examination — *Is not an idle formality*

Where the Sessions Judge while examining an accused under S. 342, CrPC rolls up several distinct matters of evidence in single question he acts irregularly.

The object of S. 342, CrPC is to afford to the accused an opportunity of showing that the circumstance relied upon by the prosecution which may be prima facie against him, is not true or is consistent with his innocence. The opportunity must be real and adequate. Questions must be so framed as to the accused clear notice of the circumstances relied upon by the prosecution, and must give him an opportunity to render such explanation as he can of that circumstance. Each question must be so framed that the accused may be able to understand it and to appreciate what use the prosecution desires to make of the evidence against him. Examination of the accused under S. 342 is not intended to be an idle formality, it has to be carried out in the interest of justice and fairplay to the accused: by a slipshod examination which is the result of imperfect appreciation of the evidence, idleness or negligence the position of the accused cannot be permitted to be made more difficult than what it is in a trial for an offence. *Rama Shankar Singh* v. *State of W.B.*, AIR 1962 SC 1239: 1962 Supp (1) SCR 49: (1962) 2 Cri LJ 296, 99.

Bench Strength **3**. Coram: *K.N. Wanchoo, K.C. Das Gupta* and **J.C. Shah**, JJ. [Date of decision: 10-10-1961]

[8618] — S. 342 — Court can rely on a portion of the statement of the accused and find him guilty in consideration with the other evidence led against him by the prosecution — *Reconstruction of the incident with other evidence — CrPC, 1973, S. 313*

Where the commencement or genesis of the occurrence is not available because there was no witness to the occurrence available, the only direct version of the commencement of the occurrence would be found in the statement of the accused, if he chooses to give out his version of the occurrence. His statement has to be considered in the light of the evidence adduced by the prosecution and weighing his statement with the probabilities of the case either in his favour or against him.

Here though the dying declaration refers to assailants and those present, it throws no light on how the occurrence commenced or what was the genesis of the trouble. Taking the statement of the accused along with the remaining evidence a case of sudden fight on sudden quarrel is established. The conviction under S. 304, Part II was improper and should be under S. 304, Part I, Indian Penal Code. *State of H.P.* v. *Wazir Chand*, (1978) 1 SCC 130: 1978 SCC (Cri) 58: AIR 1978 SC 315: 1978 Cri LJ 347.

Bench Strength **3**. Coram: *P.K. Goswami, N.L. Untwalia* and **D.A. Desai**, JJ. [Date of decision: 16-11-1977]

[8619] — S. 342 — Defect in examination of an accused — Amounts to an irregularity — *Does not call for interference of Supreme Court in appeal by special leave. C.T. Muniappan* v. *State of Madras*, AIR 1961 SC 175: (1961) 1 Cri LJ 315.

Bench Strength **2**. Coram: **K.C. Das Gupta** and *J.C. Shah*, JJ. [Date of decision: 11-3-1960]

[8620] — S. 342 — Distinct and separate matters may be separated

With reference to the statement of the accused under S. 342, CrPC, it is true that if it is sought to be used as an admission it must be read as a whole; but where it consists of distinct and separate matters, there is no reason why an admission contained in one matter should not be relied on without reference to the statements relating to other matters. *Karnail Singh* v. *State of Punjab*, AIR 1954 SC 204, 206: 1954 SCR 904: 1954 Cri LJ 580.

Bench Strength **3**. Coram: *N.H. Bhagwati, B. Jagannadhadas* and **T.L. Venkatarama Aiyar**, JJ. [Date of decision: 29-1-1954]

[8621] — S. 342 — Duty of prosecution to enable the accused to explain each circumstance against him, specifically and separately

Section 342 of the Code of Criminal Procedure, 1898, casts a duty on the Court to put, at any enquiry or trial, questions to the accused for the purposes of enabling him to explain any circumstances appearing in the evidence against him. It follows as a necessary corollary therefore that each material circumstance appearing in evidence against the accused is required to be put to him specifically, distinctly and separately. Failure to do so amounts to a serious irregularity vitiating the trial if it is shown to have prejudiced the accused. If the irregularity does not, in fact, occasion a failure of justice, it is curable under S. 537 of the Code. *S. Harnam Singh* v. *State (Delhi Admn.)*, (1976) 2 SCC 819: 1976 SCC (Cri) 324: AIR 1976 SC 2140: 1976 Cri LJ 913.

Bench Strength 2. Coram: **R.S. Sarkaria** and *P.N. Shinghal*, JJ. [Date of decision: 23-3-1976]

[8622] — S. 342 — Effect of false explanation by accused. *Ram Narain* v. *State of Punjab*, AIR 1955 SC 322: 1955 Cri LJ 871.

Bench Strength 3. Coram: *S.R. Das*, **N.H. Bhagwati** and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 11-2-1955]

[8623] — S. 342 — Evidence of circumstances need not be put to accused — War diaries produced by prosecution as evidence of circumstances *— Diaries not put to the accused under S. 342, CrPC — No irregularity committed*

Under S. 342, CrPC questions are put to an accused to enable him to explain any circumstances appearing in the evidence against him, and for that purpose, the accused is also to be questioned generally on the case, after the witnesses for the prosecution have been examined and before he is called on for his defence. These War Diaries were not circumstances appearing in evidence against the appellant. They were, in fact, evidence of circumstances which were put to the accused when he was examined under S. 342, CrPC. It was not at all necessary that each separate piece of evidence in support of a circumstance should be put to the accused and he should be questioned in respect of it under that section; and consequently, the High Court committed no irregularity at all in treating these War Diaries as part of the evidence against the appellant. *Bakhshish Singh Dhaliwal* v. *State of Punjab*, AIR 1967 SC 752: (1967) 1 SCR 211: 1967 Cri LJ 656.

Bench Strength 3. Coram: *V. Ramaswami*, **V. Bhargava** and *Raghubar Dayal*, JJ. [Date of decision: 31-8-1966]

[8624] — S. 342 — Examination of accused in a trial with the aid of Jury — Inadequate examination of the accused — Prejudice cannot necessarily be presumed

The contention of the counsel for the appellant that the non-examination or inadequate examination under S. 342, Criminal Procedure Code, in a jury trial must be presumed to cause prejudice and that a conviction in jury trial should be set aside and retrial ordered, if there is no adequate examination under S. 342, Criminal Procedure Code, cannot be accepted as a matter of law. The question of prejudice is ultimately one of inference from all the facts and circumstances of each case. The fact of the trial being with the jury may possibly also be an additional circumstance for consideration in an appropriate case. In this case there is no reason to think that this would have made any difference. *Moseb Kaka Chowdhry* v. *State of W.B.*, AIR 1956 SC 536: 1956 SCR 372: 1956 Cri LJ 940, 43, 44.

Bench Strength 2. Coram: **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 18-4-1956]

[8625] — S. 342 — Examination of accused through pleader where personal attendance of accused dispensed with — Held, not sufficient compliance of the section

From the scheme, purpose and language of S. 342, CrPC, it is apparent that the examination under the section must be of the accused person and not his pleader even though the personal attendance of the accused has been dispensed with by the Court. Where the accused is a company or juridical person then alone it need not be examined because that is not possible. *Bibhuti Bhusan Das Gupta* v. *State of W.B.*, AIR 1969 SC 381: (1969) 2 SCR 104: 1969 Cri LJ 654, 55.

Bench Strength 3. Coram: *S.M. Sikri*, **R.S. Bachawat** and *K.S. Hegde*, JJ. [Date of decision: 16-9-1968]

See however (2000) 8 SCC 740 at 750

[8626] — S. 342 — Examination of the accused not as full or clear as it should be — No objection taken in the trial and the Appellate Courts or in grounds of appeal before the Supreme Court — *Plea is an afterthought and no prejudice having been caused is of no avail*

The examination of the accused under S. 342, CrPC, was not as full or as clear as it should have been. However there was no prejudice. The question of prejudice was not taken in either of the Courts below nor was it raised in the grounds of appeal. The point was taken for the first time in the arguments and even then the counsel for the accused was unable to say that his client had in fact been prejudiced; all he could urge was that there was a possibility of prejudice.

If the accused is not afforded the opportunity of full and clear examination under S. 342, CrPC, he is entitled to ask the Appellate Court to place him in the same position as he would have been in had he been asked. In other words, he is entitled to ask the Appellate Court, which is the ultimate court of fact, to take the explanation that he would have given in the first court into consideration when weighing the evidence just the same way as it would have done if it had been there all along.

Therefore, all he is entitled to say on appeal is "I was not asked to explain this matter. Here is my explanation: this is what I would have said: please consider it". But if he does not take up that position at the appellate stage and complains of prejudice for the first time before the Supreme Court, the inference is strong that the plea is an afterthought and that there was no prejudice. *K.C. Mathew* v. *State of Travancore-Cochin*, AIR 1956 SC 241: (1955) 2 SCR 1057: 1956 Cri LJ 444.

Bench Strength 3. Coram: **Vivian Bose**, *T.L. Venkatarama Aiyar* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 15-12-1955]

[8627] — S. 342 — "Explaining of circumstances appearing in evidence against the accused" — Meaning of — *Circumstances that the accused absconded used by the trial Court and the High Court against the accused — Accused not examined about this circumstance in his examination under the section — Held, the circumstance cannot be used against the accused. Hate Singh Bhagat Singh* v. *State of M.B.*, AIR 1953 SC 468: 1953 Cri LJ 1933.

Bench Strength 3. Coram: *Fazl Ali*, *M.C. Mahajan* and **Vivian Bose**, JJ. [Date of decision: 2-11-1951]

[8628] — S. 342 — Failure to ask questions on an important matter on which prosecution based its case — Effect of

It a point in the evidence is considered important against the accused and the conviction is intended to be based upon it, then it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it if he so desires. This is an important and salutary provision and Supreme Court cannot permit it to be slurred over. Whether the matter arises in the Sessions Court or in that of the Committing Magistrate, it is important that the provisions of S. 342 should be fairly and faithfully observed. *Tara Singh* v. *State*, AIR 1951 SC 441: 1951 SCR 729: (1951) 52 Cri LJ 1491.

Bench Strength 4. Coram: **Fazl Ali**[1], **Patanjali Sastri**[2], **S.R. Das**[3] and **Vivian Bose**[4], JJ. [Date of decision: 1-6-1951]

[8629] — S. 342 — Failure to comply with the provisions of the section — *Compliance with the provisions of S. 342 is not a mere idle formality — Examination of the accused neither full nor satisfactory — But no serious prejudice caused — Trial is not vitiated. Chikkarange Gowda* v. *State of Mysore*, AIR 1956 SC 731: ILR 1956 Mys 377: 1957 Ker LJ 25: 1956 Cri LJ 1365, 69-70.

Bench Strength 3. Coram: *S.R. Das, C.J.* and *N.H. Bhagwati* and **S.K. Das**, JJ. [Date of decision: 9-5-1956]

[8630] — S. 342 — Failure to comply with the provisions of S. 342 — Is an irregularity, curable if accused is not prejudiced

Failure to comply with the provision of S. 342 is an irregularity; and unless injustice is shown to have resulted therefrom a mere irregularity is by itself not sufficient to justify an order of retrial. The Appellate Court must always consider whether by reason of failure to comply with a procedural provision, which does not affect the jurisdiction of the Court, the accused have been materially prejudicated. In the present case, Supreme Court is of the view, having regard to the circumstances, that the appellants have not been prejudiced, because of failure to examine them strictly in compliance with the terms of S. 342 of the Code and that view is strengthened by the fact that the plea was not raised in the High Court by their counsel who had otherwise raised numerous questions in support of the case of the appellants. *Rama Shankar Singh* v. *State of W.B.*, AIR 1962 SC 1239: 1962 Supp (1) SCR 49: (1962) 2 Cri LJ 296, 99.

Bench Strength 3. Coram: *K.N. Wanchoo*, *K.C. Das Gupta* and **J.C. Shah**, JJ. [Date of decision: 10-10-1961]

[8631] — S. 342 — Failure to examine the accused properly — Disregard of — Provisions of S. 342 — *Whether vitiates the trial*

Where the examination of the accused under S. 342, CrPC was perfunctory both in the committal and the Sessions Court and he was questioned afresh as to additional evidence recorded at the instance of the High Court, held that in the circumstances the disregard of the provisions of S. 342 had caused grave prejudice to accused which vitiated the trial. *Bihari Singh Madho Singh* v. *State of Bihar*, AIR 1954 SC 692: 1954 Cri LJ 1742.

Bench Strength 3. Coram: *M.C. Mahajan, C.J.* and **Vivian Bose** and *Ghulam Hasan*, JJ. [Date of decision: 18-3-1954]

[8632] — S. 342 — Importance and purpose of examination — *High Court presuming that crop cut was green and unripe — On that basis informing that 'P', if he would have sown and tended the crop would not have cut unripe crop — Not put to the accused 'P' if the crop was green and unripe — Held, since the case that crop was green and unripe was not put to the accused, High Court was not justified in holding that 'P' would not have cut green and unripe crop had he grown it — CrPC, 1973, S. 313*

The real importance of S. 342 of the Criminal Procedure Code is that there is a duty cast upon the Courts to question the accused properly and fairly so that it is brought home to the accused in clear words the exact case that the accused will have to meet, and thereby an opportunity is given to the accused to explain any such point.

Where it was not put to 'P' the accused in the statement under S. 342, CrPC whether he had cut the tilli crop in green and unripe condition. The High Court was wrong in holding that 'P' would not have cut the tilli in green and unripe condition if tilli crop had been sown by him. *Parichhat* v. *State of M.P.*, (1972) 4 SCC 694: AIR 1972 SC 535: 1972 Cri LJ 322.

Bench Strength 2. Coram: **A.N. Ray** and *D.G. Palekar*, JJ. [Date of decision: 14-10-1971]

[8633] — S. 342 — Irregularity — Retrial — Test of prejudice

There has been no questioning under S. 342 of the Criminal Procedure Code of the two appellants, on this part of case, as regards any of these adverse circumstances which form the basis of the conclusion of the Courts below. There is a complete lack of any reference to these matters in the questions put to either of the appellants under S. 342, CrPC. This undoubtedly is a serious irregularity and cannot be lightly ignored.

If prejudice was thereby caused, such an irregularity would entail retrial in the circumstances of a case like this. But before a retrial can be ordered the Court must be clearly satisfied about prejudice having been caused. *Kedar Nath Bajoria* v. *State of W.B.*, AIR 1954 SC 660, 679: 1954 Cri LJ 1679.

Bench Strength 3. Coram: *S.R. Das*, *N.H. Bhagwati* and **B. Jagannadhadas**, JJ. [Date of decision: 23-4-1954]

[8634] — S. 342 — Irregularity in complying with S. 342 — *Trial when vitiated*

Every error or omission in complying with S. 342, Criminal Procedure Code, does not necessarily vitiate the trial. Unless injustice results from an irregularity in complying with S. 342, interference on this ground would not be justified. *Ajit Kumar Chaudhary* v. *State of Bihar*, (1972) 2 SCC 451: 1972 SCC (Cri) 748: AIR 1972 SC 2058: 1972 Cri LJ 1315: (1972) 9 ACC 280.

Bench Strength 2. Coram: **I.D. Dua** and *H.R. Khanna*, JJ. [Date of decision: 28-7-1972]

[8635] — S. 342 — Irregularity in examination of the accused — *Same questions relating to the details of the incident not specifically put to the accused — Omission not occasioning failure of justice — Conviction cannot be quashed on this ground. Ram Chandra Prasad* v. *State of Bihar*, AIR 1961 SC 1629: (1962) 2 SCR 50: (1962) 2 Cri LJ 811, 812.

Bench Strength 2. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 18-4-1961]

[8636] — S. 342 — Magistrate not examining accused regarding one aspect — Prosecution relying on that aspect in the Supreme Court — *Held, open to the accused to plead failure of Magistrate to examine him on that point — Fact that he did not complain earlier not material. Kaur Sain* v. *State of Punjab*, (1974) 3 SCC 649: 1974 SCC (Cri) 179: AIR 1974 SC 329: (1974) 2 SCR 393: 1974 Cri LJ 358.

Bench Strength 2. Coram: *M.H. Beg* and **Y.V. Chandrachud**, JJ. [Date of decision: 23-11-1973]

[8637] — S. 342 — Manner of examination of accused — *Accused asked only one question that "You have heard the charges made and evidence adduced against you. Now say what is your defence? What have you got to say?" — Evidence not specifically put to the accused — The examination is not in accordance with S. 342 and is perfunctory. Moseb Kaka Chowdhry* v. *State of W.B.*, AIR 1956 SC 536: 1956 SCR 372: 1956 Cri LJ 940, 43, 44.

Bench Strength 2. Coram: **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 18-4-1956]

[8638] — S. 342 — Manner of examination of accused — *Non-compliance of provision — Effect — Trial not vitiated*

It is not a compliance of the provisions of S. 342, CrPC, to merely read out the statements made by the accused in the committal Court and ask them as to what they have to say about the prosecution evidence recorded in their presence. This is not a satisfactory way of questioning the accused. The Trial Court ought to put to each of the accused the various circumstances appearing against them and further put the prosecution case generally for the purpose of affording the accused an opportunity to explain the circumstances appearing against them.

Every error or omission in compliance with S. 342 does not necessarily vitiate the trial. Errors of that type fall within the category of curable irregularity and the question whether the trial has been vitiated depends in each case upon the degree of error and upon whether prejudice has been or is likely to have been caused to the accused. *Makan Jivan* v. *State of Gujarat*, (1971) 3 SCC 297: 1971 SCC (Cri) 587: AIR 1971 SC 1797: 1971 Cri LJ 1310.

Bench Strength 2. Coram: **K.S. Hegde** and *A.N. Grover*, JJ. [Date of decision: 30-4-1971]

[8639] — S. 342 — Manner of examination of accused — *Question put embracing a number of matters — Better procedure is to put separate questions on each separate point — Answer showing that the accused understood the question and gave* *detailed answers — No prejudice is caused and trial not vitiated. State of A.P.* v. *Cheemalapati Ganeswara Rao*, AIR 1963 SC 1850: (1964) 3 SCR 297: (1963) 2 Cri LJ 671.

Bench Strength **3**. Coram: *K. Subba Rao, Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 23-4-1963]

[8640] — S. 342 — Manner of examination of accused — Specific questions on each material fact should be put in readily understandable manner — *Failure to comply — Effect of*

Section 342 requires the accused to be examined for the purpose of enabling him "to explain any circumstances appearing in the evidence against him". Now it is evidence that when the Sessions Court is required to make the examination under this section the evidence referred to is the evidence in the Sessions Court and the circumstances which appear against the accused in that Court. It is not therefore enough to read over the questions and answers put in the Committing Magistrate's Court and ask the accused whether he has anything to say about them.

Section 342(2) requires that the answers given by the accused may be taken into consideration. If the accused had been properly questioned and had given reasonable explanations and the Sessions Judge had omitted to take them into consideration, it is obvious that that would have constituted a grave defect in his judgment. How much graver is the defect when the accused is not questioned at all and is not given an opportunity of explaining the circumstances which are intended to be used against him. It is not a proper compliance to read out a long string of questions and answers made in the Committal Court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording.

Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. Errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. *Tara Singh* v. *State*, AIR 1951 SC 441: 1951 SCR 729: (1951) 52 Cri LJ 1491.

Bench Strength **4**. Coram: **Fazl Ali**[1], **Patanjali Sastri**[2], **S.R. Das**[3] and **Vivian Bose**[4], JJ. [Date of decision: 1-6-1951]

[8641] — S. 342 — Manner of examination of the accused — *Accused to be separately questioned about each material circumstance intended to be used against him — Questions to be put to be fair and in simple language*

Judge's duty is not discharged by merely reading over the questions and answers to the accused put in the committing magistrate's Court and by asking him whether he has to say anything about them. It is not sufficient compliance with S. 342, CrPC, to generally ask the accused that having heard the prosecution evidence what he has to say about it. The accused must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant of illiterate person will be able to appreciate and understand. *Ajmer Singh* v. *State of Punjab*, AIR 1953 SC 76: 1953 SCR 418: 1953 Cri LJ 521.

Bench Strength **3**. Coram: **M.C. Mahajan**, *S.R. Das* and *N.H. Bhagwati*, JJ. [Date of decision: 10-12-1952]

[8642] — S. 342 — Nature and scope — Duty of Court towards accused to offer him opportunity to explain every circumstance established against him — *Effect of failure by Court to do so — Burden on accused to show prejudice*

It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the Court must ordinarily eschew such material from consideration. It is also open to the appellate Court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate Court any plausible or reasonable explanation of such circumstances, the Court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial Court had relied for its conviction. In such a case, the Court proceeds on the footing that though a grave irregularity has occurred as regards compliance with S. 342, CrPC, the omission has not been shown to have caused prejudice to the accused.

Great care is expected of Sessions Judges who try grave cases to collect every incriminating circumstance and put it to the accused even though at the end of a long trial the Judge may be a little fagged out. *Shivaji Sahabrao Bobade* v. *State of Maharashtra*, (1973) 2 SCC 793: 1973 SCC (Cri) 1033: AIR 1973 SC 2622: 1973 Cri LJ 1783.

Bench Strength 3. Coram: *P. Jaganmohan Reddy*, *H.R. Khanna* and **V.R. Krishna Iyer**, JJ. [Date of decision: 27-8-1973]

[8643] — S. 342 — Nature and scope of — Examination of accused

The Magistrate and Judges must appreciate the importance of S. 342, Criminal Procedure Code and carry out the duty that is cast upon them of questioning the accused properly and fairly, bringing home to his mind in clear and simple language the exact case he has to meet and each material point that is sought to be made against him, and of affording him a chance to explain them if he can and so desires. *Machander* v. *State of Hyderabad*, AIR 1955 SC 792: (1955) 2 SCR 524: 1955 Cri LJ 1644.

Bench Strength 3. Coram: **Vivian Bose**, *B. Jagannadhadas* and *B.P. Sinha*, JJ. [Date of decision: 27-9-1955]

[8644] — S. 342 — Non-compliance of — Effect — Every error or omission not in compliance with the section does not vitiate the trial — *Trial vitiated only when the error or omission causes prejudice to the accused*

Every error or omission not in compliance with the provisions of S. 342 does not necessarily vitiate a trial. Errors of this type, fall within the category of curable irregularities. The question whether the trial is vitiated, in each case depends upon the degree of the error and upon whether prejudice has been or is likely to have been caused to the accused. *Ajmer Singh* v. *State of Punjab*, AIR 1953 SC 76: 1953 SCR 418: 1953 Cri LJ 521.

Bench Strength 3. Coram: **M.C. Mahajan**, *S.R. Das* and *N.H. Bhagwati*, JJ. [Date of decision: 10-12-1952]

[8645] — S. 342 — Non-examination or defective examination of the accused — Is no ground for interference unless prejudice to the accused is shown. *Bibhuti Bhusan Das Gupta* v. *State of W.B.*, AIR 1969 SC 381: (1969) 2 SCR 104: 1969 Cri LJ 654, 55.

Bench Strength 3. Coram: *S.M. Sikri*, **R.S. Bachawat** and *K.S. Hegde*, JJ. [Date of decision: 16-9-1968]

[8646] — S. 342 — Omission to draw attention to some evidence — Effect — *Accused not questioned about his having entered into conspiracy with the approver and the statement of a witness corroborating the statement of the approver — Compliance of S. 342, CrPC, depends on the facts of each case — The accused having not been prejudiced no interference is called for*

It was contended that the examination of the accused was not in full compliance of S. 342, Code of Criminal Procedure, because (1) though the other accused acquitted by the trial Court were questioned with reference to the conspiracy with the approver no such question was put to the appellant, and (2) the evidence of the witnesses which has been chiefly relied upon as corroborating the approver had not been specifically put to the appellant.

Held :

It is true that the Court questioned him about his "conspiracy with the other accused persons". Counsel for the parties before us did not agree as to the significance of the words "in conspiracy with the other accused persons." The contention on behalf of the appellant was that they referred only to the persons actually standing trial before the Court, whereas counsel for the State contented that they had reference to all the accused persons named in the petition of complaint including the approver.

It is not ordinarily necessary to put the evidence of each individual witness to the accused in his examination under S. 342, CrPC. The appellant was put the question "Have you got anything to say on the evidence of the witnesses?"

That is sufficient in the circumstances of this case to show that the attention of the accused was called to the prosecution evidence. As to what is or is not a full compliance with the provisions of that section of the Code must depend upon the facts and circumstances of each case. It cannot be said that the accused has been in any way prejudiced by the way he has been questioned under that section. *Bimbadhar Pradhan* v. *State of Orissa*, AIR 1956 SC 469: 1956 SCR 206: 1956 Cri LJ 831, 34, 36: (1956) 2 MLJ (SC) 13.

Bench Strength 3. Coram: **B.P. Sinha**, *Syed Jafer Imam* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 13-3-1956]

[8647] — S. 342 — Opportunity to be afforded to accused to explain circumstances against him and not the inferences flowing from such circumstances — *Accused is not to be cross-examined*

— Also his answers to be considered by the Court. State of H.P. v. *Wazir Chand*, (1978) 1 SCC 130: 1978 SCC (Cri) 58: AIR 1978 SC 315: 1978 Cri LJ 347.

Bench Strength **3**. Coram: *P.K. Goswami*, *N.L. Untwalia* and **D.A. Desai**, JJ. [Date of decision: 16-11-1977]

[8648] — S. 342 — Other statements made during examination of accused — *Prosecution evidence indicating that a godown was in accused's possession — Witness stating this point not having been cross-examined on the point — Accused admitting this in his statement under the section — Court justified in referring to this statement of the accused in the judgment. Vijendrajit Ayodhya Prasad Goel* v. *State of Bombay*, AIR 1953 SC 247: 1953 Cri LJ 1097.

Bench Strength **3**. Coram: **M.C. Mahajan**, *Vivian Bose* and *B. Jagannadhadas*, JJ. [Date of decision: 13-3-1953]

[8649] — S. 342 — Plea of denial simpliciter — Subsequent assertion of a new fact — *Effect*

The accused was convicted for an offence under S. 409, Penal Code. The prosecution case was that the accused had received Rs 946 but deposited a sum of Rs 810 only, thus misappropriating the balance amount of Rs 136. The accused made not even the slightest suggestion to the effect in his statement under S. 342, Code of Criminal Procedure, that he actually received only Rs 810.

Held :

The failure of the accused to mention this fact in his statement under S. 342, Code of Criminal Procedure, would go to show that the above plea is the result of an afterthought. *Bali Ram Prasad* v. *State of Mysore*, (1972) 3 SCC 681: 1972 SCC (Cri) 725: AIR 1973 SC 506: 1973 Cri LJ 3.

Bench Strength **2**. Coram: *P. Jaganmohan Reddy* and **H.R. Khanna**, JJ. [Date of decision: 4-2-1972]

[8650] — S. 342 — Prejudice as a ground for setting aside the trial — Examination of the accused under S. 342 perfunctory — *Trial is not vitiated unless prejudice and miscarriage of justice is established and judgment cannot be set aside*

It is true that there is very inadequate compliance of S. 342, CPC. It is however well recognised that a judgment is not to be set aside merely by reason of inadequate compliance with S. 342, CPC. It is settled that clear prejudice must be shown when the accused is represented by a counsel in trial and in appeal it is all the more necessary. It is up to the accused or his counsel in such cases to satisfy the Court that such inadequate examination has resulted in miscarriage of justice. If the counsel was unable to say that his client had in fact been prejudiced and if all that he could urge what that there was a possibility of prejudice, that was not enough. *Moseb Kaka Chowdhry* v. *State of W.B.*, AIR 1956 SC 536: 1956 SCR 372: 1956 Cri LJ 940, 43, 44.

Bench Strength **2**. Coram: **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 18-4-1956]

[8651] — S. 342 — Prejudice likely to occur by failure to frame a charge or if one omnibus question put to the accused without intimating him of the offence of which he was likely to be convicted — *Penal Code, 1860, S. 411 — CrPC, 1973, S. 313. Karnal Singh Uttam Singh* v. *State of Maharashtra*, (1976) 1 SCC 882: 1976 SCC (Cri) 204: AIR 1976 SC 1097: 1976 Cri LJ 842.

Bench Strength **2**. Coram: **M.H. Beg** and *P.K. Goswami*, JJ. [Date of decision: 19-11-1975]

[8652] — S. 342 — Presumption about possession of liquor manufacturing apparatus raised under S. 103, Bombay Prohibition Act — *Accused not questioned on the point and not given an opportunity to rebut the presumption — Accused under S. 342 stating that he did not know about the various parts of the apparatus — Accused's attitude indicates that no prejudice caused*

Various articles used for the purpose of manufacturing illicit liquor were recovered from the possession of the accused who was finally convicted by the High Court under S. 65(*f*), Bombay Prohibition Act having in possession apparatus for the purpose of manufacturing intoxicant other than Toddy. A presumption under S. 103 of the Act was raised against the accused. Accused was not questioned about the apparatus or presumption under S. 103 in his examination under S. 342, CrPC, and was not given an opportunity to rebut the presumption. It is contended that for these reasons the finding is vitiated and the conviction is bad.

Held :

When the appellant was examined under S. 342 of the Code of Criminal Procedure he had volunteered the statement that he did not know about the various contrabands seized by the police. Since this was his attitude in the matter, it is difficult to understand what further questions could have been put to him to explain the possession of the still and the various other articles found in the premises occupied by him. It is not possible to say in this particular case that this appellant had been prejudiced by the failure of the Magistrate to put to him any specific questions about the still and the other articles found in the premises occupied by him.

The presumption which arises under S. 103 of the Act is that an offence under the Act is committed where a person is found in mere possession, without further evidence, of any still, utensil, implement or apparatus, whatsoever, for the manufacture of any intoxicant as are ordinarily used in the manufacture of such intoxicant until the contrary is proved. It is difficult to conceive that the appellant could have given any satisfactory evidence to establish that the still and other articles found in the premises occupied by him could ordinarily be used for the manufacture of Toddy.

There was, therefore, no prejudice caused to the appellant, in the circumstances of the present case, when the High Court relied upon the presumption arising under S. 103 to uphold his conviction under S. 65(*f*) of the Act. *Keki Bejonji* v. *State of Bombay*, AIR 1961 SC 967: (1961) 2 SCR 515: (1961) 2 Cri LJ 37.

Bench Strength 3. Coram: **Syed Jafer Imam**, *K. Subba Rao* and *Raghubar Dayal*, JJ. [Date of decision: 18-11-1960]

[8653] — S. 342 — Record of observations by the Court about a fact seen during examination under S. 342 — Propriety of — *During examination under S. 342, CrPC, the accused wore shoes recovered from his house on a question from the Court — Accused complaining that they were too tight — The Court recorded its own remarks that they quite fitted his feet — The Court is not entitled to allow his view or observations to take the place of evidence — The observations taken together with the complaint of the accused admissible*

During the examination under S. 342, CrPC, the Court asked the accused to wear the shoes recovered from his house, which the accused deemed having belonging to him. The accused wore the shoes and complained that they were too tight for him. Nevertheless the Court remarked that to all appearance they quite fitted his feet.

Held :

The Judge was certainly not entitled to allow his view or observation to take the place of evidence because such view or observation of his could not be tested by cross-examination and the accused would certainly not be in a position to furnish any explanation in regard to the same.

The observations of the Judge could not carry the matter any further for the prosecution and the only fact which could be relied upon by the prosecution was that the shoes apparently fitted the feet of the accused and the Judge and the assessors were entitled only to take into account the fact that the shoes apparently fitted the feet of the accused though he complained that they were too tight for his feet. *Pritam Singh* v. *State of Punjab*, AIR 1956 SC 415: 1956 Cri LJ 805, 810.

Bench Strength 3. Coram: **N.H. Bhagwati**, *T.L. Venkatarama Aiyar* and *B.P. Sinha*, JJ. [Date of decision: 4-11-1955]

[8654] — S. 342 — Reliance on inculpatory portion of statement of accused

It is well settled that where a confession or an admission is separable there can be no objection to taking one part into consideration which appears to be true and reject the other part which is false. *Keshoram Bora* v. *State of Assam*, (1978) 2 SCC 407: 1978 SCC (Cri) 219: AIR 1978 SC 1096: 1978 Cri LJ 1089: (1978) 26 BLJR 8.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 1-2-1978]

[8655] — S. 342 — Removal of vagueness in the charge by questioning — *Accused specifically questioned in the Court of Session if he fired pistol shots at the victim — Whether this question removes prejudice caused by vagueness in the charge at sessions trial*

This cannot be said to remove any prejudice that would arise by virtue of the vagueness in the charge at the sessions trial, as to who was the author of the pistol fire. Normally in a sessions trial the accused has no right of examination after the questioning under S. 342, CrPC.

The very fact that in spite of such questioning the charges framed in the Magistrate's Court, with their vagueness, in so far as this feature therein is concerned, has been maintained, before the Sessions Court without any amendment, is likely to have been misleading. *Suraj Pal* v. *State of U.P.*, AIR 1955 SC 419: (1955) 1 SCR 1332: 1955 Cri LJ 1004, 1008.

Bench Strength 3. Coram: *Vivian Bose*, **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 1-3-1955]

[8656] — S. 342 — Scope — Circumstances and not their inferences to be put to accused

An accused is questioned under S. 342, CrPC, to explain any circumstances appearing in the evidence against him. It is not necessary to ask him to explain any inference that a Court may be asked to draw and be prepared to draw from the evidence on record. *R.K. Dalmia* v. *Delhi Admn.*, AIR 1962 SC 1821, 1876: (1963) 1 SCR 253: (1962) 2 Cri LJ 805: (1962) 32 Comp Cas 699.

Bench Strength 3. Coram: *S.K. Das*, *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 5-4-1962]

[8657] — S. 342 — Scope — Court not competent to accept inculpatory part and reject exculpatory part of the statement of the accused. *Yusufalli Esmail Nagree* v. *State of Maharashtra*, AIR 1968 SC 147: (1967) 3 SCR 720: 1968 Cri LJ 103, 05-06.

Bench Strength **3**. Coram: *M. Hidayatullah*, **R.S. Bachawat** and *C.A. Vaidialingam*, JJ. [Date of decision: 19-4-1967]

[8658] — S. 342 — Scope and nature of examination — Not proper either to put a few broad and general questions or detailed questions amounting to his cross-examination

Section 342 is undoubtedly intended to give him an opportunity to explain any circumstances appearing in the evidence against him. In exercising its powers under S. 342, the Court must take care to put all relevant circumstances appearing in the evidence to the accused person. It would not be enough to put a few general and broad questions to the accused, for by adopting such a course the accused may not get opportunity of explaining all the relevant circumstances. On the other hand, it would not be fair or right that the Court should put to the accused person detailed questions which may amount to his cross-examination.

The ultimate test in determining whether or not the accused has been fairly examined under S. 342 would be to enquire whether, having regard to all the questions put to him he did get an opportunity to say what he wanted to say in respect of prosecution case against him. *Jai Dev* v. *State of Punjab*, AIR 1963 SC 612: (1963) 3 SCR 489: (1963) 1 Cri LJ 495, 504.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.C. Das Gupta* and *J.R. Mudholkar*, JJ. [Date of decision: 30-7-1962]

[8659] — S. 342 — Statement of accused — Partial acceptance — *The court cannot split the statement made by the accused under S. 342 and accept a portion and reject the rest. The statement either has to be accepted as a whole or not to be relied at all. State of Gujarat* v. *Acharya D. Pandey*, (1970) 3 SCC 183: 1971 SCC (Cri) 1: AIR 1971 SC 866: 1971 Cri LJ 760.

Bench Strength **2**. Coram: *S.M. Sikri* and **K.S. Hegde**, JJ. [Date of decision: 12-10-1970]

[8660] — S. 342 — Non-compliance with — Effect — Suspicious circumstances prejudicial to the accused not disclosed

The High Court reversed the decision of the trial Court without noticing or giving due weight and consideration to important matters relied upon by that Court and its decision has to a large extent been influenced by suspicious circumstances disclosed at the trial which are undoubtedly prejudicial to the accused, but in regard to which no opportunity of explanation was given to him when he was examined under the provision of the Cochin Criminal Procedure Code which corresponds to S. 342 of the Indian Code. According to the principles which are recognised and acted upon by the Supreme Court in dealing with criminal appeals coming before it on special leave these would be considered adequate grounds justifying its interference with the decision of the High Court. *C.M. Narayan Ittiravi Nambudiri* v. *State of Travan- core-Cochin*, AIR 1953 SC 478, 484: 1954 Cri LJ 102: 1953 Ker LT 173.

Bench Strength **5**. Coram: *Patanjali Sastri, C.J.* and **B.K. Mukherjea**, *S.R. Das, Vivian Bose* and *Ghulam Hasan*, JJ. [Date of decision: 10-11-1952]

[8661] — S. 342 — Written statement — Accused not examined under S. 342, CrPC, at his own request and submitted a written statement — Written statement very exhaustive and afforded an answer to all possible questions — *No prejudice caused and interference in the order is not called for on this ground*

When the Court commenced the examination of the accused under S. 342, CrPC, the appellants stated that they would file written statements. These statements were very elaborate and furnished the answer of the appellants to all the points raised in the prosecution evidence.

Held :

It is no doubt that S. 342, CrPC, contemplates an examination in court and the practice of filing statements is to be deprecated. But this is not a ground for interference, unless prejudice is established. *Tilkeshwar Singh* v. *State of Bihar*, AIR 1956 SC 238: (1955) 2 SCR 1043: 1956 Cri LJ 441, 443.

Bench Strength **3**. Coram: *Vivian Bose*, **T.L. Venkatarama Aiyar** and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 8-12-1955]

Explained in (1965) 3 SCR 235: AIR 1966 SC 97: 1966 Cri LJ 82

[8662] — S. 342 — Written statement — Filing of — Not to be deprecated unless prejudice caused

It would be possible to lay down a general rule that the written statement filed by an accused person should not receive the attention of the Court because it is likely to have been influenced by legal advice. Such a distrust of legal advice would be entirely unjustified. *Harbhajan Singh* v. *State of Punjab*, AIR 1966 SC 97, 104: (1965) 2 SCR 235: 1966 Cri LJ 82.

Bench Strength 3. Coram: **P.B. Gajendragadkar, C.J.** and *Raghubar Dayal* and *V. Ramaswami*, JJ. [Date of decision: 2-3-1965]

Observations in (1955) 2 SCR 1043: AIR 1956 SC 238: 1956 Cri LJ 441, explained

[8663] — S. 342 — Written statement by accused cannot be permitted especially in a jury trial. *Sidheswar Ganguly* v. *State of W.B.*, AIR 1958 SC 143: 1958 SCR 749: 1958 Cri LJ 273.

Bench Strength 2. Coram: **B.P. Sinha** and *J.L. Kapur*, JJ. [Date of decision: 24-10-1957]

[8664] — Ss. 342 and 164 — Rejection of exculpatory part of the statement — Upheld where the inculpatory part not inextricably linked with the exculpatory part

Inculpatory part of the statement could be accepted even though the exculpatory part of the statement of the accused was rejected. In case, the Court finds the exculpatory part of the statement of the accused to be inherently improbable, there is no reason why the other part of the statement which implicates the accused and which the Court sees no reason to disbelieve, should not be accepted.

The present is not a case wherein the two parts of the statement are inextricably linked together and that it is not possible to accept one part without accepting the other part. *Jethamal Pithaji* v. *Asstt. Collector of Customs*, (1974) 3 SCC 393: 1973 SCC (Cri) 958: AIR 1974 SC 699: (1974) 1 SCR 645: 1974 Cri LJ 621.

Bench Strength 2. Coram: **H.R. Khanna** and *A. Alagiriswami*, JJ. [Date of decision: 10-9-1973]

[8665] — Ss. 342 and 342-A — Accused's statement — Statement under S. 342 is not strictly evidence, but may be taken into consideration — *Statement under S. 342-A can be read as statement proper*

Under the Code of Criminal Procedure the statement of an accused may be taken into consideration in an inquiry or trial but it is not strictly evidence in the case. An accused, when he makes his statement under S. 342, does not depose as a witness because no oath is administered to him, when he is examined under that section. The recent amendment of the Code, however, enables an accused to give evidence on his own behalf under S. 342-A and this is only when an accused offers in writing to give evidence his own behalf that his statement can be read as evidence proper. *State of Maharashtra* v. *Dr. R.B. Chowdhari*, AIR 1968 SC 110: (1967) 3 SCR 708: 1968 Cri LJ 95.

Bench Strength 2. Coram: **M. Hidayatullah** and *C.A. Vaidialingam*, JJ. [Date of decision: 19-4-1967]

[8666] — Ss. 342 and 537 — Questions put to the accused not strictly in compliance with S. 342 — Does not vitiate the trial if no injustice done — *Mere technical defect not enough. Labhchand Dhanpat Singh Jain* v. *State of Maharashtra*, (1975) 3 SCC 385: 1975 SCC (Cri) 11: AIR 1975 SC 182: 1975 Cri LJ 246.

Bench Strength 3. Coram: **M.H. Beg**, *Y.V. Chandrachud* and *A.C. Gupta*, JJ. [Date of decision: 3-12-1974]

[8667] — S. 342(3) — Accused admitting possession of primary gold but disclaiming its acquisition or ownership — *The answer being separable, the first part of the statement can be used against him — CrPC, 1973, S. 313(4). CCE* v. *V.P. Sayed Mohd.*, (1983) 1 SCC 370: 1983 SCC (Cri) 191: AIR 1983 SC 168: 1983 Cri LJ 225: (1983) 53 Comp Cas 377.

Bench Strength 2. Coram: **E.S. Venkataramiah** and *R.B. Misra*, JJ. [Date of decision: 12-1-1983]

— S. 342-A *See also* Ss. 342 and 342-A

[8668] — S. 342-A — Conviction cannot be sustained where the burden of proof was wrongly shifted on the accused — *No adverse inference can be drawn by failure of accused to examine himself under S. 342-A, CrPC, 1898 — Penal Code, 1860, Ss. 109/467. Baidyanath Prasad Srivastava* v. *State of Bihar*, AIR 1968 SC 1393: (1969) 1 SCR 172: 1968 Cri LJ 1650.

Bench Strength 3. Coram: *V. Ramaswami*, *G.K. Mitter* and **C.A. Vaidialingam**, JJ. [Date of decision: 30-4-1968]

[8669] — S. 342-A — Accused appearing as defence witness — Evidence recorded regarding communications between conspirators during continuance of the conspiracy — *Relevancy of evidence of the witness*

When a person, accused along with others, voluntarily steps in the witness-box as a witness in defence, he is in the same position as an ordinary witness and is, therefore, subject to cross-examination by the prosecution counsel and evidence brought out in such cross-examination can be used against his co-accused. If such a witness incriminates his co-accused, the other accused, jointly tried with him, has the right to cross-examine him if he wants so to do.

The same consequences must also flow after accused persons have been made competent witneses for the defence under S. 342-A of the Code of Criminal Procedure.

An accused person cannot be compelled to give evidence on "in disproof of the charges" in S. 342-A. But once his evidence as a witness for the defence is on record, under S. 10 of the Evidence Act, 1872, evidence, as to the communications between one conspirator and the other during the time that the conspiracy is going on and relating to implementing that conspiracy, is relevant evidence. The statements by one accused to another and the evidence as to the acts done by him disclosing participation by the other accused in the conspiracy are also relevant. As to whether they merit reliance or not is another question depending upon their credibility. *Tribhuvan Nath* v. *State of Maharashtra*, (1972) 3 SCC 511: 1972 SCC (Cri) 604: AIR 1973 SC 450: 1972 Cri LJ 1277.

Bench Strength **3**. Coram: **J.M. Shelat**, *H.R. Khanna* and *G.K. Mitter*, JJ. [Date of decision: 28-3-1972]

[8670] — **S. 342-A — Applicability to the proceeding pending on the date it came into force** — *Applies to the criminal proceedings pending before the Magistrate and in which the recording of evidence had commenced on the date on which the section came into force*

There is nothing in the amending Act or the amended Code which makes the provisions of S. 342-A inapplicable to criminal proceedings which are pending before a Magistrate and in which the recording of evidence has commenced. *Anant Gopal Sheorey* v. *State of Bombay*, AIR 1958 SC 915: 1959 SCR 919: 1958 Cri LJ 1429, 30.

Bench Strength **3**. Coram: *B.P. Sinha*, *Syed Jafer Imam* and **J.L. Kapur**, JJ. [Date of decision: 22-5-1958]

[8671] — **S. 342-A — No compulsion under the section to invite contravention of Art. 20(3)**

In a criminal trial any person accused of an offence is a competent witness for the defence under S. 342-A of the CrPC and may give evidence on oath in disproof of the charges made against him. It may be necessary for the accused person to enter the witness-box for substantiating his defence. But this is no reason for saying that the criminal trial compels him to be a witness against himself and is in violation of Art. 20(3). *Tukaram G. Gaokar* v. *R.N. Shukla*, AIR 1968 SC 1050, 1053: (1968) 3 SCR 422: 1968 Cri LJ 1234.

Bench Strength **5**. Coram: *M. Hidayatullah, C.J.* and **R.S. Bachawat**, *C.A. Vaidialingam*, *K.S. Hegde* and *A.N. Grover*, JJ. [Date of decision: 8-3-1968]

[8672] — **S. 342-A proviso — Scope and interpretation** — *High Court in an appeal against acquittal observing that the accused did not examine himself under the section and raising a presumption against him — High Court committed a breach of proviso to the section*

The High Court has really committed a breach of the proviso to S. 342-A, when it has commented upon the non-examination of D an accused who died during the pendency of appeal against acquittal that he has not examined himself, as a defence witness. Under cl. (*b*) of the proviso to S. 342-A, CrPC, it is specifically provided that the failure of an accused to give evidence, shall not be made the subject of any comment, by any of the parties, or the Court, or give rise to any presumption against himself, or any person charged, together with him, at the same time. High Court has also taken the view that the same reasons will apply to the appellant's defence also. That is, the failure of the appellant, to give evidence, has been commented upon, by the High Court, and it has also drawn a presumption, against him, both of which are illegal, under cl. (*b*) of the proviso to S. 342-A, CrPC. *Baidyanath Prasad Srivastava* v. *State of Bihar*, AIR 1968 SC 1393: (1969) 1 SCR 172: 1968 Cri LJ 1650.

Bench Strength **3**. Coram: *V. Ramaswami*, *G.K. Mitter* and **C.A. Vaidialingam**, JJ. [Date of decision: 30-4-1968]

— **S. 343** *See* Ss. 337 and 343

— **S. 344** *See also* Ss. 167(2) and 344

[8673] — **S. 344 — Writ of habeas corpus whether can challenge remand order under S. 344 CrPC** — *Constitution of India — Art. 32. A. Lakshmanarao* v. *Judicial Magistrate*, (1970) 3 SCC 501: 1971 SCC (Cri) 107: AIR 1971 SC 186: 1971 Cri LJ 253.

Bench Strength **3**. Coram: *S.M. Sikri*, *V. Bhargava* and **I.D. Dua**, JJ. [Date of decision: 24-11-1970]

[8674] — **S. 344 — Remand — Magistrate's jurisdiction** — *Accused arrested in Jamshedpur and remanded by S.DM, Jamshedpur — Accused transferred to Gaya jail — Magistrate at Gaya would have no jurisdiction to order further remand — CrPC, 1973, S. 309. Sandip Kumar Dey* v. *Officer-in-Charge, Sakchi P.S., Jamshedpur*, (1974) 4 SCC 273: 1974 SCC (Cri) 435: AIR 1974 SC 871: 1974 Cri LJ 740.

Bench Strength **2**. Coram: *M.H. Beg* and **Y.V. Chandrachud**, JJ. [Date of decision: 12-3-1974]

[8675] — **S. 344 — Remand — Order of remand passed without physical production of accused not invalid** — *However, orders of remand not to be passed mechanically and notwithstanding the*

above rule Magistrate should require physical production — CrPC, 1973, S. 309. Sandip Kumar Dey v. *Officer-in-Charge, Sakchi P.S., Jamshedpur,* (1974) 4 SCC 273: 1974 SCC (Cri) 435: AIR 1974 SC 871: 1974 Cri LJ 740.

Bench Strength **2**. Coram: *M.H. Beg* and **Y.V. Chandrachud**, JJ. [Date of decision: 12-3-1974]

[8676] — S. 344 — Must be strictly followed

Those who feel called upon to deprive other persons of their personal liberty in the discharge of what they conceive to be their duty, must strictly and scrupulously observe the forms and rules of the law. *Ram Narayan Singh* v. *State of Delhi*, AIR 1953 SC 277, 278: 1953 SCR 652: 1953 Cri LJ 1113.

Bench Strength **5**. Coram: **Patanjali Sastri, C.J.** and *B.K. Mukherjea, S.R. Das, Ghulam Hasan* and *N.H. Bhagwati*, JJ. [Date of decision: 12-3-1953]

[8677] — S. 344 — No fresh order of remand to accused on adjournment — Detention held illegal. *Ram Narayan Singh* v. *State of Delhi*, AIR 1953 SC 277: 1953 SCR 652: 1953 Cri LJ 1113.

Bench Strength **5**. Coram: **Patanjali Sastri, C.J.** and *B.K. Mukherjea, S.R. Das, Ghulam Hasan* and *N.H. Bhagwati*, JJ. [Date of decision: 12-3-1953]

[8678] — S. 344 — Preventive detention in Mizo District — Applicability of Criminal Procedure Code — *Strict compliance with S. 344 — Whether necessary — Constitution of India, Sch. VI*

The Criminal Procedure Code is not applicable by reason of the Sixth Schedule to the Constitution in this area. Only the spirit of the Criminal Procedure Code applies. In this view of the matter a strict compliance with the provisions of S. 344 of the Criminal Procedure Code cannot be insisted upon. The petitioner had to be kept at Dibrugarh for want of space at Aizwal. Long distance, difficult terrain and hostile country are considerations to take into account. The period each time was slightly longer than fifteen days but not so unconsciousably long so as to violate the spirit of the Code. Although the Armed Forces delayed somewhat the petitioner's surrender to the civil authorities, which is not the intention of the law, there is not too much delay. Now he is an undertrial prisoner and on a proper remand. It cannot be now held that his detention is illegal. *V.L. Rohlua* v. *Dy. Commr.*, (1970) 2 SCC 908: 1970 SCC (Cri) 587.

Bench Strength **5**. Coram: **M. Hidayatullah, C.J.** and *J.M. Shelat, G.K. Mitter, C.A. Vaidialingam* and *A.N. Ray*, JJ. [Date of decision: 29-9-1970]

[8679] — Ss. 344 and 167 — Scope of — Whether S. 344 applies even at the stage of investigation and collection of evidence

Section 167 operates at a stage when a person is arrested and either an investigation has started or is yet to start, but is such that it cannot be completed within 24 hours. Section 344, on the other hand, shows that investigation has already begun and sufficient evidence has been obtained raising a suspicion that the accused person may have committed the offence and further evidence may be obtained, to enable the police to do which, a remand to jail custody is necessary. The fact that S. 344 occurs in the chapter dealing with inquiries and trials does not mean that it does not apply to cases in which the process of investigation and collection of evidence is still going on. That is clear from the very language of sub-section (1-A) under which the Magistrate has the power to postpone the commencement of the inquiry or trial. That would be the stage prior to the commencement of the inquiry or trial which would be the stage of investigation.

The power under S. 344 can be exercised even before the submission of the charge-sheet. *Gouri Shankar Jha* v. *State of Bihar*, (1972) 1 SCC 564: 1972 SCC (Cri) 328: AIR 1972 SC 711: (1972) 3 SCR 129: 1972 Cri LJ 505.

Bench Strength **2**. Coram: **J.M. Shelat** and *H.R. Khanna*, JJ. [Date of decision: 20-1-1972]

[8680] — Ss. 344 and 167(2) — Habeas corpus application — *Remand order of Lucknow Magistrate expired when detenu in Delhi Jail custody — Can Lucknow Magistrate extend remand in the absence of accused — Validity of the orders of remand — S. 167(2), CrPC — Majority view upholding remand orders — Dissenting view, that remand is illegal*

The Lucknow Magistrate had done all he should under S. 344, CrPC. In the case of transferred custody, the Magistrate cannot recall the prisoner from the Court's custody. He is only required to intimate to the jail authorities, the prisoner and Court, that the original remand has been extended while adjourning the case. *Raj Narain* v. *Supdt., Central Jail*, (1970) 2 SCC 750: 1970 SCC (Cri) 543: AIR 1971 SC 178: 1971 Cri LJ 244.

Bench Strength **7**. Coram: **M. Hidayatullah, C.J.**[1] and *J.M. Shelat, V. Bhargava, G.K. Mitter*, **C.A. Vaidialingam**[2], *A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 11-9-1970]

[8681] — Ss. 344 and 344(1-A) — Personal presence of accused in case of remand — *Judicial power to adjourn under S. 344(1-A) — Explanation to S. 344 — Detention pursuant to an order of remand not open to challenge in habeas corpus*

The personal presence of accused persons before a Magistrate is not a necessary requirement for the purpose of his remand under S. 344, CrPC, at the instance of the police, though as a rule of caution it is highly desirable that the accused should be personally produced before the Magistrate, so that he may, if he so chooses, make a representation against his remand and for his release on bail.

The impugned sub-section vests in the Court seized of a criminal case power to postpone the commencement of or adjourn any inquiry or trial before him by order in writing stating the reasons therefor from time to time on such terms as the Court thinks fit and for such time as it considers reasonable. When the case is so postponed or adjourned the Court may also by a warrant remand the accused if in custody. This judicial power to postpone or adjourn the proceedings is to be exercised only if from the absence of witnesses or any other reasonable cause the Court considers it necessary or advisable to do so. Reasonable cause for remand according to explanation to this section covers a case where sufficient evidence is obtained to raise a suspicion about the complicity of an accused person in the offence and it appears likely that more evidence may be obtained by remand. The Court has in the exercise of its judicial discretion in granting or declining postponement or adjournment of the case and in ordering remand of the accused to keep in view all the relevant facts and circumstances of the case.

This discretion being vested in a Court of law has to be exercised judicially on well-recognised principles and is immune from challenge on the ground of arbitrariness or want of guidelines. Therefore, not only are the guidelines clearly contained in the statutes but the discretion being judicial is required to be exercised on general principles guided by rules of reason and justice on the facts of each case and not in any arbitrary or fanciful manner. It may also be remembered that if the discretion is exercised in an arbitrary or unjudicial manner remedy by way of resort to the higher Courts is always open to the aggrieved party.

Under sub-section (1-A) the commencement of the inquiry or trial can also be postponed. This clearly seems to refer to the stage prior to the commencement of the inquiry. The explanation makes it clear beyond doubt that reasonable cause as mentioned in sub-section (1-A) includes the likelihood of obtaining further evidence during investigation by securing a remand. The language of S. 344 is unambiguous and clear and the fact that this section occurs in Chapter 24 which contains general provisions as to inquiries and trials does not justify a strained construction. Indeed, postponement of an inquiry also seems to be within the contemplation of the general provisions as to inquiries and trials. *A. Lakshmanarao* v. *Judicial Magistrate*, (1970) 3 SCC 501: 1971 SCC (Cri) 107: AIR 1971 SC 186: 1971 Cri LJ 253.

Bench Strength **3**. Coram: *S.M. Sikri*, *V. Bhargava* and **I.D. Dua**, JJ. [Date of decision: 24-11-1970]

[8682] — Ss. 344 and 344(1-A) — Whether remand order ultra vires when made in absence of accused — *Whether S. 344(1-A), CrPC is unconstitutional — Whether Explanation to S. 344 extends the substantive provision in S. 344(1-A) — Whether order of remand under S. 344 open to challenge in habeas corpus proceedings — Constitution of India — Art. 14*

The personal presence of accused persons before a Magistrate is not a necessary requirement for the purpose of his remand under S. 344, CrPC, at the instance of the police, though as a rule of caution it is highly desirable that the accused should be personally produced before Magistrate, so that he may, if he so chooses, make a representation against his remand for his release on bail.

The challenge to the constitutional validity of S. 344(1-A), CrPC, is untenable. The judicial power thereunder to adjourn the proceedings is to be exercised only if from the absence of witnesses or any other reasonable cause the Court considers it necessary or advisable to do so. It is in no sense arbitrary power. Not only are the guidelines clearly contained in the statute but the discretion has to be used objectively by rules of reason and justice on the facts of each case. The aggrieved party has a right of appeal in case the discretion is arbitrarily exercised.

The contention that the Explanation to S. 344 could not extend the substantive provisions of sub-section (1-A) is baseless. The Explanation merely serves to explain the scope of the expression 'reasonable cause'.

The order of remand under S. 344 is subject to judicial discretion and further subject to review by Superior Courts. The power to remand cannot be said to be ultra vires. Detention pursuant to an order of remand under S. 344 is not open to challenge in habeas corpus. *A. Lakshmanarao* v. *Judicial Magistrate*, (1970) 3 SCC 501: 1971 SCC (Cri) 107: AIR 1971 SC 186: 1971 Cri LJ 253.

Bench Strength **3**. Coram: *S.M. Sikri*, *V. Bhargava* and **I.D. Dua**, JJ. [Date of decision: 24-11-1970]

— S. 344(1-A) *See also* Ss. 344 and 344(1-A)

[8683] — S. 344(1-A) — Undertrial prisoner — *Production before Magistrate not necessary for every remand. Saptawna* v. *State of Assam*, (1972) 4 SCC (N) 45: 1971 SCC (Cri) 247: AIR 1971 SC 813: 1971 Cri LJ 679.

Bench Strength **3**. Coram: *S.M. Sikri, C.J.* and *P.Jaganmohan Reddy* and *I.D. Dua*, JJ. [Date of decision: 5-2-1971]

[8684] — S. 345 — Compounding of offence — Offence under Ss. 323/34, IPC, compromised by victim — Injuries not proved and victim not appearing — *Held, conviction upheld by High Court to be set aside. Shyam Niranjan Dubey* v. *State of U.P.*, (1974) 3 SCC 771: 1974 SCC (Cri) 247: AIR 1974 SC 541: 1974 Cri LJ 475.

Bench Strength **2**. Coram: **M.H. Beg** and *Y.V. Chandrachud*, JJ. [Date of decision: 18-12-1973]

[8685] — S. 345 — Compounding of offences — Compromise in case of non-compoundable offence — *Effect on sentence*

Held, the major offence for which the appellants have been convicted is no doubt non-compoundable but the fact of compromise can be taken into account in determining the quantum of sentence. As the parties who belong to one family have settled their dispute, it is not necessary to keep the appellants in jail for a longer period. *Ram Pujan* v. *State of U.P.*, (1973) 2 SCC 456: 1973 SCC (Cri) 870: AIR 1973 SC 2418: 1973 Cri LJ 1612.

Bench Strength **3**. Coram: *P. Jaganmohan Reddy*, **H.R. Khanna** and *V.R. Krishna Iyer*, JJ. [Date of decision: 25-7-1973]

Held, in *Surendra Nath Mohanty* v. *State of Orissa*, (1999) 5 SCC 238 in para 8 that that the course adopted in this case was not in accordance with law.

[8686] — S. 345 — Compounding of offences — Permission — When to be refused

Where circumstances in which the offence is committed was not commensurate with the absolute necessity of maintenance of discipline within the university campus compounding of such offences not desirable. *Satyabhan Kishore* v. *State of Bihar*, (1972) 3 SCC 350: 1972 SCC (Cri) 540: AIR 1972 SC 1554.

Bench Strength **3**. Coram: **J.M. Shelat**, *P. Jaganmohan Reddy* and *H.R. Khanna*, JJ. [Date of decision: 23-2-1972]

[8687] — S. 345 — Compounding of offences — Permission relating to both compoundable and uncompoundable offences — *Validity — Whether severable*

Where the Court has given one indivisible permission for an offence which can be compounded with the permission of the Court and an offence which cannot be compounded even with the permission of the Court, such permission of the Court is invalid in its entirety. It is not permissible in such an event to sever the permission into two parts and to uphold it so far as the offence under one section is concerned and hold it to be invalid in respect of the offence under other section. *Ramesh Chandra J. Thakkar* v. *Assandas Parmanand Jhaveri*, (1973) 3 SCC 884: 1973 SCC (Cri) 566: AIR 1973 SC 84: 1973 Cri LJ 201: 1973 Bom LR 364.

Bench Strength **2**. Coram: **H.R. Khanna** and *Y.V. Chandrachud*, JJ. [Date of decision: 13-10-1972]

[8688] — S. 345 — Distinction between S. 62, Assam Forest Regulation and S. 345 CrPC — *Compounding of offences — Offence compounded under S. 345(6), CrPC amounts to acquittal — Offence compounded under S. 62, Regulation 7 of 1891 does not amount to acquittal — Amounts to acceptance by the accused of the truth of the charge — Does not have the effect of clearing his character or vindicating his conduct — Assam Forest Regulation, 1891 (7 of 1891), Ss. 62 & 3(5)*

To have the effect the offence compounded must be one specified either under sub-section (1) or sub-section (6) of S. 345, CrPC. The principle behind the scheme seems to be that wrongs of certain classes which affect mainly a person in his individual capacity or character may be sufficiently redressed by composition with or without the leave of the court as the case may be but any such composition would have the effect of an acquittal.

It must be borne in mind that although the marginal note to S. 62 of the Assam Regulation is "power to compound offences" the word "compounding" is not used in sub-section (1), clause (*a*) of that section. That provision only empowers a forest officer to accept compensation for a forest offence from a person suspected of having committed it. The person so suspected can avoid being proceeded with for the offence by rendering compensation. He may think that he was being unjustly suspected of an offence and he ought to defend himself or he may consider it prudent on his part to pay such compensation in order to avoid the harassment of a prosecution even when he is of the view that he had not committed the offence. By adopting the latter course he does not remove the suspicion of having committed the offence unless he is to have such benefit conferred on him by some provision of law.

Effect of S. 62 of the Assam Regulation was not the same as that of S. 345(6) of the Criminal Procedure Code. *Biswabhan Das* v. *Gopen Chandra Hazarika*, AIR 1967 SC 895, 897: (1967) 1 SCR 447: 1967 Cri LJ 828.

Bench Strength **3**. Coram: *K.N. Wanchoo*, *J.M. Shelat* and **G.K. Mitter**, JJ. [Date of decision: 21-9-1966]

[8689] — S. 345(5) — Composition of offence before appellate court — *Permitted where the offence of S. 420, IPC, between two traders was compounded and affidavit filed to that effect by the complainant. Mohd. Jamil Khan* v. *State of W.B.*, (1975) 3 SCC 305: 1974 SCC (Cri) 913.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *R.S. Sarkaria*, JJ. [Date of decision: 22-1-1974]

— S. 347 *See also* Ss. 437, 347, 206 and 207-A

[8690] — S. 347 — Not affected by S. 21 of Prevention of Food Adulteration Act, 1954. *State of U.P.* v. *Khushi Ram*, AIR 1960 SC 905: (1960) 3 SCR 427: 1960 Cri LJ 1378.

Bench Strength **2**. Coram: *Syed Jafer Imam* and **A.K. Sarkar**, JJ. [Date of decision: 1-4-1960]

[8691] — Ss. 347 and 403(1) — Power under S. 347 — Committal can be ordered before the judgment is signed

Where an accused person is being tried before a Magistrate in respect of an offence triable by that Magistrate it appears to the Magistrate that the act of the accused amounts to an offence which is triable either exclusively or concurrently by a Court of Session he has the power to order his committal. This power, however, has to be exercised only before signing the judgment. It cannot obviously be exercised thereafter because of the provisions of S. 403(1) which bar the trial of the person again not only for the same offence but also for any other offence based on the same facts. *Thakur Ram* v. *State of Bihar*, AIR 1966 SC 911: (1966) 2 SCR 740: 1966 Cri LJ 700, 703.

Bench Strength **3**. Coram: **J.R. Mudholkar**, *R.S. Bachawat* and *P. Satyanarayana Raju*, JJ. [Date of decision: 26-11-1965]

— S. 347(1) *See also* Ss. 208, 209, 210 and 347(1)

[8692] — S. 347(1) — Words — "under the provisions hereinbefore contained" — Meaning of — *Magistrate deciding at some stage of the trial to commit — He must inform the accused and comply with the provision of Ch. XVIII so far as not complied with up to that stage*

The words "under the provisions hereinbefore contained" in S. 347(1) CrPC are quite clear. They lay down that if the Magistrate comes to the conclusion that the accused ought to be committed for trial he shall commit in accordance with the provisions contained in the earlier part of the Code, namely, in Ch. XVIII. This of course does not mean that the Magistrate must begin over from the beginning. All that he has to do when he decides that the case ought to be committed is to inform the accused and see that the provisions of Ch. XVIII are complied with so far as they have not been complied with up to the stage at which he decides that there ought to be a commitment. The procedure under Ch. XVIII is laid down in Ss. 208 to 213 of the Code. *Chhadamilal Jain* v. *State of U.P.*, AIR 1960 SC 41: (1960) 1 SCR 736: 1960 Cri LJ 145, 149.

Bench Strength **4**. Coram: *Syed Jafer Imam*, *J.L. Kapur*, *A.K. Sarkar* and **K.N. Wanchoo**, JJ. [Date of decision: 14-9-1959]

[8693] — Ss. 347(1), 208 and 537 — Commitment after the commencement of trial — Effect of non-compliance of S. 208 before committing the case — *Prejudice to the accused must be presumed — Defect is not curable by S. 537*

Magistrate started the case as a trial and finally committed the case without affording an opportunity to the accused to produce defence i.e. without complying with the provisions of S. 208. Question came up for consideration as to what was the effect of non-compliance with S. 208 of the CrPC and whether it is curable under S. 537 of the Code.

Held :

What we have to see is whether the breach of S. 208 which has occurred in this case is such that the Court will presume prejudice to the accused by the mere fact of the breach. If such presumption can be made, the breach would obviously be not curable under S. 537 of the Code, even assuming that, that section applies. The question, therefore, which eventually emerges is whether this breach of S. 208 is of such a character that the Court will presume that there has been prejudice to the accused by the mere fact of the breach. Now the accused has a right under S. 208 to produce evidence in defence, if any, before the Magistrate proceeds to decide whether a charge should be framed or not. The Magistrate's decision whether the charge should be framed or not is bound to be affected one way or the other if evidence is produced by the accused, for the Magistrate would then be bound to consider the effect of that evidence on the question of framing the charge. If the accused is denied the opportunity of leading that evidence which he has a right to do under S. 208, it seems that the denial of such right is sufficient to cause prejudice to the accused and S. 537 would have no application to a case of this kind. *Chhadamilal Jain* v. *State of U.P.*, AIR 1960 SC 41: (1960) 1 SCR 736: 1960 Cri LJ 145, 149.

Bench Strength 4. Coram: *Syed Jafer Imam, J.L. Kapur, A.K. Sarkar* and **K.N. Wanchoo**, JJ. [Date of decision: 14-9-1959]

— S. 350 *See also* Ss. 537 and 350

[8694] — S. 350 — Special Judge deciding the case on transfer of his predecessor on the basis of the evidence recorded by the predecessor — *S. 350, CrPC did not apply to the trial before the Special Judge — The trial is illegal — Criminal Law (Amendment) Act, 1952, S. 8(1)(3) (Before amendment making S. 350 CrPC applicable to the proceedings under the Act)*

Under the Criminal Law (Amendment) Act, 1952, as it stood before it amendment expressly making S. 350 CrPC applicable to proceedings before a Special Judge S. 350 of the Code was not available when one Special Judge succeeded another. The successor Judge had no authority under the law to proceed with the trial of the case from the stage at which his predecessor left it. The proceedings before him were clearly incompetent and the conviction of the accused could not be supported on the Judge recording the conviction had not heard the evidence in the case himself. *Pyare Lal* v. *State of Punjab*, AIR 1962 SC 690, 693: (1962) 3 SCR 328, 335-36: (1962) 1 Cri LJ 688, 690: (1962) 1 LLJ 637.

Bench Strength 3. Coram: *B.P. Sinha, C.J.* and **A.K. Sarkar** and *J.R. Mudholkar*, JJ. [Date of decision: 30-8-1961]

[8695] — S. 350 — Criminal Law (Amendment) Act, 1952 — S. 3 (Before Amendment Act 2 of 1956) and S. 3(a) (added by Amendment Act 2 of 1956) — *Trial commencing before the Special Judge up to 26-10-1956 — Another Special Judge continuing the part, heard trial from 20-12-1956 and convicted the appellant — S. 3 (before amendment of 1956) did not contemplate that S. 350 CrPC becomes applicable to proceedings before a Special Judge — S. 3(a) (Added by Amendment Act 2 of 1956) was not retrospective in effect. Krishan Lal Dhawan* v. *Delhi Admn.*, 1962 Supp (3) SCR 209: (1964) 1 Cri LJ 572-73.

Bench Strength 3. Coram: **J.L. Kapur**, *K.C. Das Gupta* and *Raghubar Dayal*, JJ. [Date of decision: 15-2-1962]

[8696] — S. 350 — Scope — Not applicable to Court of Session

The general principle of law is that a Judge or Magistrate can decide a case only on evidence taken by him. Section 350 of the Code is a statutory departure from this principle. Section 350 of the Code is applicable only to magistrates and not to a Court of Session and cannot therefore be applied to a Special Judge under sub-section (3) as it makes only those provisions of the Code applicable to him which would apply to a Court of Session. *Pyare Lal* v. *State of Punjab*, AIR 1962 SC 690, 692: (1962) 3 SCR 328: (1962) 1 Cri LJ 688: (1962) 1 LLJ 637.

Bench Strength 3. Coram: *B.P. Sinha, C.J.* and **A.K. Sarkar** and *J.R. Mudholkar*, JJ. [Date of decision: 30-8-1961]

[8697] — S. 350 — Part-heard trial — *Evidence partly recorded by one Magistrate/Judge and partly by other — Magistrate/Judge can re-summon a witness already examined only for further examination — Fresh examination of such witnesses for fresh trial not permissible — Accused has no right to claim de novo trial — Effect of amendment of S. 350 of 1898 Code by amending Act of 1955 — CrPC, 1973, S. 326. Ranbir Yadav* v. *State of Bihar*, (1995) 4 SCC 392: 1995 SCC (Cri) 728: AIR 1995 SC 1219: 1995 Cri LJ 2665.

Bench Strength 2. Coram: *Dr. A.S. Anand* and **M.K. Mukherjee**, JJ. [Date of decision: 21-3-1995]

Payare Lal v. State of Punjab, (1962) 3 SCR 328: AIR 1962 SC 690, distinguished

[8698] — S. 352 — Power of High Court to hold trial in camera

The power to hold a trial in camera must include the power to hold a part of the trial in camera, or to prohibit excessive publication of a part of the proceedings at such trial. What would meet the ends of justice will always depend upon the facts of each case and the requirements of justice. *Naresh Shridhar Mirajkar* v. *State of Maharashtra*, AIR 1967 SC 1, 10: (1966) 3 SCR 744.

Bench Strength 9. Coram: **P.B. Gajendragadkar, C.J.**[1] and **A.K. Sarkar**[2], *K.N. Wanchoo*[1], **M. Hidayatullah**[3], **J.C. Shah**[4], *J.R. Mudholkar*[1], *S.M. Sikri*[1], **R.S. Bachawat**[5] and *V. Ramaswami*[1], JJ. [Date of decision: 3-3-1966]

[8699] — S. 353 — Evidence to be taken before accused or his pleader

In every criminal trial the accused is entitled to have the witnesses examined in his presence and if a departure is made and witnesses cannot be brought to Court for one reason or the other whether due to the action of the accused or the inaction or want of diligence on the part of the prosecution, and they have to be examined on commission beyond the frontiers of this country, it is incumbent upon the prosecution and the Court in ensuring a fair and impartial trial to afford to the accused the same facilities for employment of a lawyer, the payment of his to and fro air fare to the place where the Commission will examine witnesses and his daily expenses while he is engaged in the work of the Commission. *Ratilal Bhanji Mithani* v. *State of Maharashtra*, (1971) 1 SCC 523: 1971 SCC (Cri) 231: AIR 1971 SC 1630: 1971 Cri LJ 1188.

Bench Strength **2**. Coram: *S.M. Sikri, C.J.* and **P. Jaganmohan Reddy**, J. [Date of decision: 4-2-1971]

[8700] — Ss. 356(1) and 537 — Compliance with — Deposition signed by witness but not signed by Judge — *Same deposition read over and opportunity for cross-examination given — Accused declines — Applicability of S. 537, CrPC can be invoked*

Whether the deposition taken in the presence of the Special Judge, signed by the witness but not signed by the Judge who had in the meantime passed away, could be read over to the witnesses by the successor Judge who also allowed cross-examination, thereon.

Held :

That this did not vitiate the trial. Section 537 of the Code of Criminal Procedure can be invoked as the irregularity did not go to the root of the matter and there was no failure of justice at all. The offer to cross-examine the witness was declined by the accused appellant who also did not object at the time when the depositions were read over to the witness. The rule in S. 356(1) should be considered as directory. *L.D. Healy* v. *State of U.P.*, (1969) 1 SCC 149.

Bench Strength **2**. Coram: **J.C. Shah** and *A.N. Grover*, JJ. [Date of decision: 27-11-1968]

[8701] — S. 356(2-A) — Applicability of — Applies to only oral evidence — Does not apply to documentary evidence. *State of A.P.* v. *Cheemalapati Ganeswara Rao*, AIR 1963 SC 1850: (1964) 3 SCR 297: (1963) 2 Cri LJ 671.

Bench Strength **3**. Coram: *K. Subba Rao*, *Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 23-4-1963]

[8702] — Ss. 360 and 537 — Statement not read over to the witness — Defect is a curable irregularity in the absence of proof of prejudice — *Object of the section is to ensure that the record faithfully and accurately embodies the gist of what the witness actually said — Before prejudice can be substantiated it must be disclosed by affidavit where the accuracy lies*. *Bhagwan Singh* v. *State of Punjab*, AIR 1952 SC 214: 1952 SCR 812: 1952 Cri LJ 1131.

Bench Strength **2**. Coram: *Fazl Ali* and **Vivian Bose**, JJ. [Date of decision: 30-4-1952]

— S. 361 *See also* Ss. 537 and 361

[8703] — Ss. 361 and 537 — Applicability of — Witnesses being examined in English and Tamil — Accused not knowing any of the languages being represented by eminent lawyers conversant with both the languages — *Plea not raised when witnesses were being examined — Violation of S. 361 merely an irregularity — No prejudice caused to the accused — Irregularity curable by S. 537 — Trial not vitiated*

Even if it is assumed that the appellant did not know English or Tamil the violation of S. 361(1), Criminal Procedure Code, was merely an irregularity and it is not shown in this case that there is any prejudice caused to the appellant on this account. It is pointed out by the Sessions Judge that the appellant did not make any objection at the time the evidence was given and it appears that he was represented by two eminent advocates, in the trial Court who knew both these languages and who would not have allowed the interest of the appellant to be jeopardised even to the smallest extent. The irregularity has not resulted in any injustice and the provisions of S. 537, Criminal Procedure Code, are applicable to cure the defect. *Shivanarayan Kabra* v. *State of Madras*, AIR 1967 SC 986: (1967) 1 SCR 138: (1967) 1 MLJ (SC) 159: 1967 Cri LJ 946, 49, 50.

Bench Strength **3**. Coram: **V. Ramaswami**, *V. Bhargava* and *Raghubar Dayal*, JJ. [Date of decision: 23-8-1966]

— S. 362(2-A) *See* Ss. 243 and 362(2-A)

[8704] — S. 363 — Remarks respecting demeanour of witness — Omission to record remarks by trial Judge during or at close of examination of witness — *Recording later in judgment is to be taken into consideration — Appellate Court not obliged to give weight to remarks which directly relate to obliging other persons by witness and how that demeanour obliged them is not obvious*. *Ganeshbhai Sankarbhai* v. *State of Gujarat*, (1972) 2 SCC 73: 1972 SCC (Cri) 647: AIR 1972 SC 1618: 1972 Cri LJ 1029.

Bench Strength **3**. Coram: **P. Jaganmohan Reddy**, *K.K. Mathew* and *G.K. Mitter*, JJ. [Date of decision: 3-5-1972]

— S. 364 *See* Ss. 164 and 364

See also Ss. 465, 364 and 365

— S. 364(3) *See* Ss. 164(2) and 364(3)

See also Ss. 164(2), 364(3) and 533(1)

[8705] — Ss. 364(3) and 164(3) — Scope — Recording of confessions

It is unnecessary to emphasise that the safeguards provided by S. 164(3) and S. 364(3) are valuable safeguards intended to protect the interest of innocent persons. The recording of a confession is a solemn and serious act, and so any Magistrate who records confessions must see to it that a tone of casualness does not enter in the transaction. *Babu Singh* v. *State of Punjab*, (1963) 3 SCR 749: (1964) 1 Cri LJ 566.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.C. Das Gupta* and *J.R. Mudholkar*, JJ. [Date of decision: 28-8-1962]

[8706] — Ss. 364(3) and 533 — Irregularity in recording confession

If a confession is recorded not by the Magistrate himself as required by S. 364(1) it is necessary that the Magistrate should make a memorandum as the examination proceeds and the memorandum should be signed by him.

Unless it is shown that prejudice has been caused to the accused the irregularity committed by the Magistrate in not complying with S. 364(3) will not vitiate the confessions nor will it make them inadmissible. *Babu Singh* v. *State of Punjab*, (1963) 3 SCR 749: (1964) 1 Cri LJ 566.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.C. Das Gupta* and *J.R. Mudholkar*, JJ. [Date of decision: 28-8-1962]

— S. 365 *See* Ss. 465, 364 and 365

[8707] — Ss. 366 and 369 — "Judgment" — Meaning and scope — Form and essence of judgment — Draft judgment — Nature

The final operative act is that which is formally declared in open court with the intention of making it the operative decision of the Court. That is what constitutes the "judgment".

A judgment is the final decision of the Court intimated to the parties and to the world at large by formal "pronouncement" or "delivery" in open court. It is a judicial act which must be performed in a judicial way. Small irregularities in the manner of pronouncement or the mode of delivery do not matter that the substance of the thing must be there: that can neither be blurred nor left to inference and conjecture nor can it be vague. All the rest — the manner in which it is to be recorded, the way in which it is to be authenticated, the signing and the sealing, all the rules designed to secure certainty about its content and matter — can be cured; but not the hard core, namely, the formal intimation of the decision and its contents formally declared in a judicial way in open Court. The exact way in which this is done does not matter.

Now up to the moment the judgment is delivered Judges have the right to change their mind. There is a sort of 'locus poenitentiae' and indeed last minute alterations often do occur. Therefore, however much a draft judgment may have signed beforehand, it is nothing but a draft till formally delivered as the judgment of the Court. Only then does it crystallise into a full fledged judgment and become operative. It follows that the Judge who "delivers" the judgment, or causes it to be delivered by a brother Judge, must be in existence as a member of the Court at the moment of delivery so that he can, if necessary, stop delivery and say that he has changed his mind. There is no need for him to be physically present in court but he must be in existence as a member of the Court and be in a position to stop delivery and effect an alteration should there be any last minute change of mind on his part. If he hands in a draft and signs it and indicates that he intends that to be the final expository of his views it can be assumed that those are still his views at the moment of delivery if he is alive and in a position to change his mind but takes no steps to arrest delivery.

As soon as the judgment is delivered, that becomes the operative pronouncement of the Court. The law then provides for the manner in which it is to be authenticated and made certain. The rules regarding this differ but they do not form the essence of the matter and if there is irregularity in carrying them out it is curable. Thus, if a judgment happens not to be signed and is inadvertently acted on and executed, the proceedings consequent on it would be valid because the judgment, if it can be shown to have been validly delivered, would stand good despite defects in the mode of its subsequent authentication. *Surendra Singh* v. *State of U.P.*, AIR 1954 SC 194, 196, 19: 1954 SCR 330: 1954 Cri LJ 475.

Bench Strength **3**. Coram: *B.K. Mukherjea*, **Vivian Bose** and *N.H. Bhagwati*, JJ. [Date of decision: 16-11-1953]

[8708] — S. 366(1) — Instead of trial Judge conveying result of the trial, Sheristedar translating to the accused the concluding part of the judgment — *Held, procedure introducing no infirmity in the instant case*. *Iqbal Ismail Sodawala* v. *State of Maharashtra*, (1975) 3 SCC 140: 1974 SCC (Cri) 764: AIR 1974 SC 1880: (1975) 1 SCR 710: 1974 Cri LJ 1291: (1975) 12 ACC 27.

Bench Strength **2**. Coram: **H.R. Khanna** and *Y.V. Chandrachud*, JJ. [Date of decision: 13-8-1974]

— S. 367 *See also* Ss. 368 and 367

[8709] — S. 367 — Contents of judgment — *CrPC, 1973, S. 354*

Where the High Court dealt with the case in a very superficial manner and statement of reasons was not elaborate enough, held, the judgment did not comply with S. 367 of CrPC, 1898. (Para 19).

Jamuna Chaudhary v. *State of Bihar*, (1974) 3 SCC 774: 1974 SCC (Cri) 250: AIR 1974 SC 1822: (1974) 2 SCR 609: 1974 Cri LJ 890.

Bench Strength 2. Coram: **M.H. Beg** and *Y.V. Chandrachud*, JJ. [Date of decision: 7-12-1973]

[8710] — S. 367 — Constitutionality of the discretionary power in courts to award death sentence or life imprisonment — Criteria and considerations for the award of death sentence — *Regard to latest trends world over in this area — Effect of changes made by new S. 354(3), Criminal Procedure Code, 1973 and the earlier change in S. 367, Criminal Procedure Code, 1898 — The "special reasons" necessary for award of death sentence in the light of fundamental rights in Arts. 14, 19 and 21 — Exceptional situations where death sentence may still be justified, pointed out — Procedure for awarding sentence in accordance with S. 235(2), Criminal Procedure Code, 1973 elaborated upon — Stress on the criminal and not his crimes — Fact that the appellants were not a public menace but were activated by overpowering feelings against the victims only, held, relevant — Number of deaths caused, in the totality of facts, held, not decisive — Constitution of India — Art. 136 — Nature and limits of Supreme Court's jurisdiction on question of sentence — Penal Code, 1860 — S. 302. Rajendra Prasad* v. *State of U.P.*, (1979) 3 SCC 646: 1979 SCC (Cri) 749: AIR 1979 SC 916: 1979 Cri LJ 792.

Bench Strength 3. Coram: **V.R. Krishna Iyer**[1], *D.A. Desai*[1] and **A.P. Sen**[2], JJ. [Date of decision: 9-2-1979]

See also (1979) 3 SCC 714: 1979 SCC (Cri) 817; (1979) 3 SCC 727: 1979 SCC (Cri) 830 and (1979) 3 SCC 745: 1979 SCC (Cri) 848

See comment at (1980) 2 SCC 684, 749

[8711] — S. 367 — Appreciation of evidence — Court's duty

It is the obvious duty of the Court to give a summary of the evidence of material witnesses and appraise the evidence with a view to arriving at the conclusion whether testimony of the witness should be believed.

The practice of writing judgments having copious quotations verbatim from the evidence of the witnesses without the Judges' full and detailed comment as might be expected, though seems fairly general in Hyderabad was held not to be commended. *Aftab Ahmad Khan* v. *State of Hyderabad*, AIR 1954 SC 436: (1955) 1 SCR 588: 1954 Cri LJ 1155.

Bench Strength 3. Coram: *B.K. Mukherjea*, *Vivian Bose* and **Ghulam Hasan**, JJ. [Date of decision: 6-5-1954]

[8712] — S. 367 — Awarding death sentence not the general rule — *There should be some reasons for not awarding life imprisonment. Asgar* v. *State of U.P.*, (1977) 3 SCC 283: 1977 SCC (Cri) 489: AIR 1977 SC 2000: 1977 Cri LJ 1604.

Bench Strength 2. Coram: **N.L. Untwalia** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 18-7-1977]

[8713] — S. 367 — Jury trial not different

There is no difference between a trial with the help of the jury and a trial by a Judge in so far as the appraisement of evidence is concerned. The value of the evidence in each case must necessarily be the same. *Anant Chintaman Lagu* v. *State of Bombay*, AIR 1960 SC 500, 522: (1960) 2 SCR 460: 1960 Cri LJ 682: 62 Bom LR 371.

Bench Strength 3. Coram: *S.K. Das*, **A.K. Sarkar**[2] and **M. Hidayatullah**[1], JJ. [Date of decision: 14-12-1959]

[8714] — S. 367 — Language of judgment — Disapproval of witness no ground for intemperate language

Where the testimony of a defence witness did not impress the courts below, they should have expressed their opinion in temperate language usually associated with and reflecting the impersonal dignity of judicial restraint. The strong language used in condemning him and otherwise aspersions on him which were unnecessary is uncalled for and we cannot approve of those observations. *Nageshwar Shri Krishna Ghobe* v. *State of Maharashtra*, (1973) 4 SCC 23: 1973 SCC (Cri) 664: AIR 1973 SC 165: 1973 Cri LJ 235: 1973 Bom LR 483: (1973) 2 SCR 377.

Bench Strength 3. Coram: *J.M. Shelat*, **I.D. Dua** and *H.R. Khanna*, JJ. [Date of decision: 19-9-1972]

[8715] — S. 367 — Personal views or observations not to be included

It was not quite legitimate for the learned Additional Sessions Judge to do so because it would be substituting his view and observations in the place of evidence which could be tested by cross-examination and in respect of which it would be open also to the accused to furnish an explanation if such an explanation was asked for in his examination under S. 342, CPC. *Pritam Singh* v. *State of Punjab*, AIR 1956 SC 415, 425: 1956 Cri LJ 805.

Bench Strength 3. Coram: **N.H. Bhagwati**, *T.L. Venkatarama Aiyar* and *B.P. Sinha*, JJ. [Date of decision: 4-11-1955]

[8716] — S. 367 — Statutory burden of proof on the accused — Nature and extent — *Prevention of Corruption Act, 1947, S. 4(1)*

Where the burden of an issue lies upon the accused he, is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under S. 4(1) of the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so the burden is shifted to the prosecution which still has to discharge its original onus that never shifts i.e. that of establishing on the whole case the guilt of the accused beyond a reasonable doubt. *V.D. Jhingan* v. *State of U.P.*, AIR 1966 SC 1762, 1764: (1966) 3 SCR 736: 1966 Cri LJ 1357.

Bench Strength 3. Coram: *K. Subba Rao*, **V. Ramaswami** and *J.M. Shelat*, JJ. [Date of decision: 3-3-1966]

[8717] — Ss. 367(1) and 537 — Non-compliance with procedural requirement in the matter of signing of judgment — *Sessions Judge failing to append his signature to the judgment because judgment had not till then been transcribed — Judgment ultimately transcribed and signed by Sessions Judge and copy of judgment thereafter, supplied to accused — Accused filing appeal against judgment of trial court — Appeal dismissed by High Court — Sessions Judge's failure to sign the judgment did not occasion failure to justice. Iqbal Ismail Sodawala* v. *State of Maharashtra*, (1975) 3 SCC 140: 1974 SCC (Cri) 764: AIR 1974 SC 1880: (1975) 1 SCR 710: 1974 Cri LJ 1291: (1975) 12 ACC 27.

Bench Strength 2. Coram: **H.R. Khanna** and *Y.V. Chandrachud*, JJ. [Date of decision: 13-8-1974]

[8718] — S. 367(2) — Award of lesser sentence without stating reasons

The trial Court awarded the sentence of imprisonment for life without giving any reasons at all for adopting that course. It is true that the appellants were not convicted in the present case for the offence of murder simpliciter under S. 302, IPC but that is immaterial. The conviction of the appellants under S. 396, IPC was not based on constructive liability as members of the gang of dacoits. There was clear finding by the Court of Session which has been upheld by the High Court that each of these appellants committed a cold-blooded murder by shooting two inmates of the house simply with the object of facilitating commission of dacoity by them. Those persons were shot and killed even though they had not even tried to put up any resistance. The offence under S. 396, IPC, was therefore, no less heinous than an offence under S. 302, IPC. In these circumstances, when the Court of Session gave no reason at all for not awarding the sentence of death and for sentencing them to imprisonment for life only, it cannot be held that the High Court was not justified in interfering with that order. *Iman Ali* v. *State of Assam*, AIR 1968 SC 1464, 1465: (1968) 3 SCR 610: 1969 Cri LJ 23.

Bench Strength 3. Coram: *V. Ramaswami, J.M. Shelat* and **V. Bhargava**, JJ. [Date of decision: 28-3-1968]

[8719] — S. 367(5) — Award of death sentence — Reasons for, must be given — *Change in law effected by the new Code — Occurrence taking place after the coming into force of the new Code — Failure to record special reasons for the award of death sentence in preference to life imprisonment vitiating the award of sentence — Application of rule of absence of extenuating circumstances evolved under the old Code improper — CrPC, 1973, S. 354(3). Balwant Singh* v. *State of Punjab*, (1976) 1 SCC 425: 1976 SCC (Cri) 43: AIR 1976 SC 230: (1976) 2 SCR 684: 1976 Cri LJ 291.

Bench Strength 2. Coram: *P.K. Goswami* and **N.L. Untwalia**, JJ. [Date of decision: 11-11-1975]

[8720] — S. 367(5) — Justification for — *Held, under the new CrPC normal punishment for murder is imprisonment for life and death penalty is an exception — Only special facts and circumstances will warrant the passing of the death sentence — A just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised — Historical developments since 1955 traced — CrPC, 1973, S. 354(3) — Criminal Procedure Code (Amendment) Act, 1955 — Penal Code, 1860 — S. 302. State of Rajasthan* v. *Kheraj Ram*, (2003) 8 SCC 224: 2003 SCC (Cri) 1979.

Bench Strength 2. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 22-8-2003]

Ediga Anamma v. State of A.P., (1974) 4 SCC 443: 1974 SCC (Cri) 479; Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580; Machhi Singh v. State of Punjab, (1983) 3 SCC 470: 1983 SCC (Cri) 681, relied on

[8721] — S. 367(5) — Amendment introduced by Act 26 of 1955 — *Effect of*

After the amendment of S. 367(5), CrPC by Act 26 of 1955 the discretion of the Court in deciding whether to impose the sentence of death or of imprisonment for life has become wider. In view of the peculiar facts and circumstances of this case the sentence of imprisonment for life would seem to meet the ends of justice. *Raghubir Singh* v. *State of U.P.*, (1972) 3 SCC 79: 1972 SCC (Cri) 399: AIR 1971 SC 2156: 1971 Cri LJ 1468.

Bench Strength **3**. Coram: *J.M. Shelat*, **I.D. Dua** and *S.C. Roy*, JJ. [Date of decision: 11-8-1971]

[8722] — Ss. 368 and 367 — Discretion of Court either to award capital sentence or life imprisonment — *If reasonable and in the public interest*

The Criminal Procedure Code lays down a detailed procedure for determining whether the sentence of death or something less is appropriate in the case. The accused who is charged for murder knows that he is liable to sentence of death in the committing Court itself. He knows what the evidence is. He further knows that if after trial in the Sessions Court he is found guilty of murder, he is liable to be sentenced to the extreme penalty. Apart from the cross-examination of the witnesses, the Criminal Procedure Code requires that the accused must be questioned with regard to the circumstances appearing against him in the evidence. He is also questioned generally on the case and there is an opportunity for him to say whatever he wants to say. He has a right to examine himself as a witness, thereafter, and give evidence on the material facts. He and his counsel are at liberty to address the Court not merely on the question of guilt but also on the question of sentence, and so on and so forth. After the prosecution and the accused have had their full say, the Court is principally concerned with the facts and circumstances; whether aggravating or mitigating, which are connected with the particular crime under inquiry. Unless it can be shown that all the aforesaid provisions of law are invalid, they must be regarded as valid and death sentence imposed after trial in accordance with the procedure established by law cannot be said to be unconstitutional under Art. 21.

The policy of the law in giving a very wide discretion in the matter of punishment to the Judge has its origin in the impossibility of laying down standards.

The impossibility of laying down standards is at the very core of the criminal law as administered in India which invests the Judges with a very wide discretion in the matter of fixing the degree of punishment. The discretion in the matter of sentence is, as already pointed out, liable to be corrected by superior courts. Laying down of standards to the limited extent possible as was done in the Model Judicial Code would not serve the purpose. The exercise of judicial discretion on well-recognised principles is, in the final analysis, the safest possible safeguard for the accused. *Jagmohan Singh* v. *State of U.P.*, (1973) 1 SCC 20: 1973 SCC (Cri) 169: AIR 1973 SC 947: 1973 Cri LJ 370: (1973) 2 SCR 541.

Bench Strength **5**. Coram: *S.M. Sikri, C.J.* and *A.N. Ray, I.D. Dua*, **D.G. Palekar** and *M.H. Beg*, JJ. [Date of decision: 3-10-1972]

— S. 369 *See* Ss. 366 and 369
See also Ss. 417 and 369
See also Ss. 424 and 369
See also Ss. 439(6), 369 and 430

[8723] — Ss. 369, 424, 430 and 561-A — No alteration in judgment after signature — Scope — Not affected by provisions of Ss. 424, 430 and 561-A — *High Court with its original as well as appellate criminal jurisdiction also comes within the purview of the general prohibition in S. 369 — Hence, High Court has no power to alter or review its own judgment — CrPC, 1973, S. 362*

Section 369 is general in its application. The words 'no court' would include all courts and apply in respect of all judgments. Though the section appears in Chap. 26, its application is not limited to trial courts alone. The reference to the High Court in the section would indicate that the High Court is also covered by the provisions of the section subject to the exception provided for. The application of the section cannot be restricted to judgments delivered by the High Court only in criminal trials. The criminal jurisdiction as conferred by the Letters Patent on the High Court covers not only the original criminal jurisdiction but also appellate powers. *State of Orissa* v. *Ram Chander Agarwala*, (1979) 2 SCC 305: 1979 SCC (Cri) 462: AIR 1979 SC 87: 1979 Cri LJ 33.

Bench Strength **2**. Coram: *Jaswant Singh* and **P.S. Kailasam**, JJ. [Date of decision: 5-10-1978]

[8724] — Ss. 369 and 424 — Scope — No alteration in judgment

Section 369, read with S. 424 of the Code, makes it clear that the Appellate Court is not to alter or review the judgment once signed, except for the purpose of correcting a clerical error. *Sankatha Singh* v. *State of U.P.*, AIR 1962 SC 1208, 1209: 1962 Supp (2) SCR 817: (1962) 2 Cri LJ 288.

Bench Strength **3**. Coram: *S.K. Das*, *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 25-1-1962]

[8725] — Ss. 369 and 439(6) — Finality of judgment — S. 369 prescribes for the finality of judgments of the trial Court and does not apply to judgment of the Appellate Court — *S. 439(6) is not controlled by S. 369*

Per Das, J.

The finality embodied in S. 369 is only in relation to the Court which pronounces the judgment, for it forbids the Court, after it has signed "its" judgment to alter or review the same. In other words after pronouncing of the judgment the Court that pronounces it becomes "functus officio". These is indication in the Code of Criminal Procedure itself that the purpose of S. 369 is not to prescribe a general rule of finality of all judgments of all criminal courts but is only to prescribe finality for the judgments of the trial Court so far as the trial Court is concerned. Section 369 does not in any manner control S. 439(6). *U.J.S. Chopra* v. *State of Bombay*, AIR 1955 SC 633: (1955) 2 SCR 94: 1955 Cri LJ 1410.

Bench Strength **3**. Coram: **S.R. Das**[1], **N.H. Bhagwati**[2] and *Syed Jafer Imam*, JJ. [Date of decision: 25-3-1955]

[8726] — Ss. 369(6) and 423(2) — Accused is entitled to show cause against his conviction under S. 369(6) subject to the limitations of S. 423(2) in the case of trial by jury

Per Bhagwati, J.

In the case of trials by jury where an accused person has been convicted on the verdict of a jury and is called upon under S. 439(2) of the Criminal Procedure Code to show cause why his sentence should not be enhanced he is entitled under S. 439(6) to show cause against his conviction but only so far as S. 423(2) of the Code allows and has not an unlimited right of impugning the conviction on the evidence. *U.J.S. Chopra* v. *State of Bombay*, AIR 1955 SC 633: (1955) 2 SCR 94: 1955 Cri LJ 1410.

Bench Strength **3**. Coram: **S.R. Das**[1], **N.H. Bhagwati**[2] and *Syed Jafer Imam*, JJ. [Date of decision: 25-3-1955]

[8727] — S. 371(1) — Words "without delay" — Meaning of — *Delay of nine months unjustified — Consequence of inordinate delay in supply of copy of judgment to accused*

The provisions of the Code of Criminal Procedure contemplate that the judgment should be complete in all other respects by the time it is pronounced and all that need be done is that the presiding officer should insert the date and append his signature to it at the time of the pronouncement. The words "without delay" in S. 37(1) emphasise the fact that there should not be much time-lag between the pronouncement of the judgment and the supply of its copy to the accused. Where a judgment is merely dictated and not transcribed and as such not signed at the time of its pronouncement, a delay of more than nine months in the supply of the copy of judgment is wholly unjustified.

If the supply of the copy of the judgment is inordinately delayed, the consequence would inevitably be that the accused would not be able to file and appeal and obtain an order for his release on bail within a reasonable time even though it be a fit case for his release on bail. Another result of the above would be that a convicted person who is sentenced to undergo imprisonment for a short period would undergo the entire sentence of imprisonment by the time the copy of the judgment is supplied to him. The right of appeal for such a convicted person would be thus rendered illusory even though he may have a good arguable case in appeal. *Iqbal Ismail Sodawala* v. *State of Maharashtra*, (1975) 3 SCC 140: 1974 SCC (Cri) 764: AIR 1974 SC 1880: (1975) 1 SCR 710: 1974 Cri LJ 1291: (1975) 12 ACC 27.

Bench Strength **2**. Coram: **H.R. Khanna** and *Y.V. Chandrachud*, JJ. [Date of decision: 13-8-1974]

— S. 374 *See also* Ss. 376, 375, 374 and 423

[8728] — S. 374 — Non-compliance with provisions of S. 374 by High Court — Supreme Court can go into merits of the case — *Powers of Supreme Court — Penal Code, 1860 — S. 302*

In an appeal, the Supreme Court has the same power as the High Court has and it is entitled to go into the merits of the case.

It cannot be said that the High Court was wrong in awarding death sentence and the case is not a fit one for interfering with the order of the High Court. *Pal Singh* v. *State of Punjab*, (1969) 3 SCC 196: 1970 SCC (Cri) 53.

Bench Strength **3**. Coram: **S.M. Sikri**, *R.S. Bachawat* and *K.S. Hegde*, JJ. [Date of decision: 7-2-1969]

[8729] — S. 374 — Appeal against conviction and sentence of death pending before High Court — Proceedings for confirmation of death sentence also pending — *Duty of the High Court to decide the case as appeal or to reassess the evidence independently — Not decided*

It was contended that though the appellants had appealed against their conviction and sentence, there was before the Court a proceeding for the confirmation of the death sentence and in such a case, the High Court must reassess the evidence under S. 374 and not merely dispose of the case as an appeal. No opinion as to which is the correct mode of approach be expressed for even on reappreciation of the evidence, the conclusion would have been same. *Sultan* v. *State of Haryana*, (1972) 3 SCC 211: 1972 SCC (Cri) 286: AIR 1972 SC 811: 1972 Cri LJ 527.

Bench Strength **2**. Coram: *P. Jaganmohan Reddy* and **D.G. Palekar**, JJ. [Date of decision: 5-1-1972]

[8730] — S. 374 — Capital sentence — Duty of the High Court while confirming capital sentence

While confirming capital sentence, it is the duty of the High Court to itself consider what sentence should be imposed and not be content with the trial Court's decision on the point. It should come to an independent conclusion of its own on the question of sentence. *Neti Sreeramulu* v. *State of A.P.*, (1974) 3 SCC 314: 1973 SCC (Cri) 940: AIR 1973 SC 2551: 1973 Cri LJ 1775: (1973) 3 SCR 844.

Bench Strength **2**. Coram: *K.K. Mathew* and **I.D. Dua**, JJ. [Date of decision: 2-4-1973]

[8731] — S. 374 — Confirmation by High Court of death sentence passed by Sessions Court — *In such confirmation proceedings the High Court cannot arbitrarily refuse to hear the accused either in person or through counsel or other agent. State of Maharashtra* v. *Sindhi*, (1975) 1 SCC 647: 1975 SCC (Cri) 283: AIR 1975 SC 1665: 1975 Cri LJ 1475: (1975) 12 ACC 179.

Bench Strength **2**. Coram: *V.R. Krishna Iyer* and **R.S. Sarkaria**, JJ. [Date of decision: 19-2-1975]

[8732] — S. 374 — Duty of High Court to reappreciate the evidence and come to an independent finding — *High Court making only a general reference to the evidence of the eyewitness and observing that all witnesses examined by the prosecution inspire full confidence — Held, improper — Case not remanded — Supreme Court reappreciating evidence in the interest of justice to prevent further delay. Charan Singh* v. *State of Punjab*, (1975) 3 SCC 39: 1974 SCC (Cri) 735: AIR 1975 SC 246: (1975) 1 SCR 561: 1974 Cri LJ 1253.

Bench Strength **2**. Coram: **H.R. Khanna** and *Y.V. Chandrachud*, JJ. [Date of decision: 26-7-1974]

[8733] — S. 374 — High Court giving the accused benefit of doubt and acquitting them — *Supreme Court finding that High Court entered into speculation and its findings could not be supported by the evidence on record — Case remanded for reconsideration. State of U.P.* v. *Buddha*, (1977) 1 SCC 632: 1977 SCC (Cri) 568: AIR 1977 SC 1799: 1977 Cri LJ 1445.

Bench Strength **2**. Coram: *P.N. Bhagwati* and **A.C. Gupta**, JJ. [Date of decision: 24-11-1976]

[8734] — S. 374 — Reference for confirmation of death sentence — *High Court must examine the entire evidence for itself independently of Sessions Court. Balak Ram* v. *State of U.P.*, (1975) 3 SCC 219: 1974 SCC (Cri) 837: AIR 1974 SC 2165: 1974 Cri LR (SC) 530: 1974 Cri LJ 1486.

Bench Strength **2**. Coram: *H.R. Khanna* and **Y.V. Chandrachud**, JJ. [Date of decision: 16-8-1974]

[8735] — S. 374 — Reference for confirmation of death sentence — Duty of High Court — Judicial approach must be cautious, circumspect and careful — *Arguments of appellants and infirmities pressed by them must be scrupulously examined — High Court examining the case according to these principles — Acts in accordance with the provisions of the section*

In a murder trial when an accused person stands charged with the commission of an offence punishable under S. 302, he stands the risk of being subjected to the highest penalty prescribed by the Indian Penal Code; and naturally judicial approach in dealing with such cases has to be cautious, circumspect and careful. In dealing with such appeals or reference proceedings where the question of confirming a death sentence is involved, the High Court has also to deal with the matter carefully and to examine all relevant and material circumstances before upholding the conviction and confirming the sentence of death. All arguments urged by the appellants and all material infirmities pressed before the High Court on their behalf must be scrupulously examined and considered before a final decision is reached. The fact that ten persons had been ordered to be hanged by the trial Judge necessarily imposed a more serious and onerous responsibility on the High Court in dealing with the present appeals. *Masalti* v. *State of U.P.*, AIR 1965 SC 202: (1964) 8 SCR 133: (1965) 1 Cri LJ 226.

Bench Strength **4**. Coram: **P.B. Gajendragadkar, C.J.** and *K.N. Wanchoo*, *K.C. Das Gupta* and *Raghubar Dayal*, JJ. [Date of decision: 4-5-1964]

[8736] — S. 374 — Reference under — Scope of reference and powers of the High Court — *Reference proceedings are a reappraisal and a re-assessment of the entire facts and law in order that the High Court should be satisfied on the materials about the guilt or innocence of the accused persons — It is High Court's duty to consider the* *proceedings in all their aspects and come to an independent conclusion on the materials apart from the view expressed by the Sessions Judge*

On a reference to the High Court under S. 374, CrPC, the entire case is before the High Court and in fact it is a continuation of the trial of the accused on the same evidence and additional evidence and that is why the High Court is given power to take fresh evidence if it so desires. In an appeal under Or. 41, CPC, an Appellate Court has to find whether the decision arrived at by the Court of first instance is correct or not on facts and law; but there is a difference when a reference is made under S. 374, CrPC, and when disposing of an appeal under S. 423, CrPC, and that is that the High Court has to satisfy itself as to whether a case beyond reasonable doubt has been made out against the accused persons for the infliction of the penalty of death. In fact the proceedings before the High Court are a reappraisal and the reassessment of the entire facts and law in order that the High Court should be satisfied on the materials about the guilt or innocence of the accused persons. Such being the case, it is the duty of the High Court to consider the proceedings in all their aspects and come to an independent conclusion on the materials, apart from the view expressed by the Sessions Judge. In so doing, the High Court will be assisted by the opinion expressed by the Sessions Judge, but under the provisions of the law above-mentioned it is for the High Court to come to an independent conclusion of its own. *Jumman* v. *State of Punjab*, AIR 1957 SC 469: 1957 Cri LJ 586.

Bench Strength **2**. Coram: *B. Jagannadhadas* and **P. Govinda Menon**, JJ. [Date of decision: 15-11-1956]

[8737] — S. 374 — View taken by High Court unreasonable and unwarranted by materials on record — *Supreme Court not prevented from interfering. State of U.P.* v. *Samman Dass*, (1972) 3 SCC 201: 1972 SCC (Cri) 275: AIR 1972 SC 677: 1972 Cri LJ 487: 1973 ALJ 489.

Bench Strength **2**. Coram: *J.M. Shelat* and **H.R. Khanna**, JJ. [Date of decision: 11-1-1972]

[8738] — Ss. 374, 375 and 376 — Confirmation of death sentence — Scope of enquiry by High Court — *Obligation to reassess the entire evidence — CrPC, 1973, Ss. 366 to 368. Subhash* v. *State of U.P.*, (1976) 3 SCC 629: 1976 SCC (Cri) 483: AIR 1976 SC 1924: 1976 Cri LJ 1521: 1977 MLJ (Cri) 129.

Bench Strength **3**. Coram: **Y.V. Chandrachud**, *R.S. Sarkaria* and *P.N. Shinghal*, JJ. [Date of decision: 6-5-1976]

[8739] — Ss. 374, 375 and 376 — Duty and powers of High Court

On a reference under S. 374, CrPC the entire case is before the High Court. In hearing such a reference the High Court has to satisfy itself as to whether a case beyond a reasonable doubt has been made out against the accused persons for the infliction of the penalty of death. In other words, in hearing the reference it is the duty of the High Court to reappraise and to re-assess the entire evidence and to come to an independent conclusion as to the guilt or innocence of each of the accused persons mentioned in the reference. *Surjit Singh* v. *State of Punjab*, *Cri. A. No. 77 of 1968*

Bench Strength **2**. Coram: *Shah* and *Ramaswami*, JJ. [Date of decision: 15-10-1968]

[8740] — Ss. 374, 375 and 376 — Reference to High Court to confirm death sentence — *Held, the High Court had examined the case for itself and found it proved beyond reasonable doubt — Dictum of Bhupendra Singh case was followed. Hari Har Singh* v. *State of U.P.*, (1975) 4 SCC 148: 1975 SCC (Cri) 405: AIR 1975 SC 1501: 1975 Cri LJ 1315.

Bench Strength **2**. Coram: **N.L. Untwalia** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 15-4-1975]

— S. 375 *See* Ss. 374, 375 and 376
See also Ss. 376, 375, 374 and 423
— S. 376 *See also* Ss. 374, 375 and 376

[8741] — S. 376 — Confirmation of death sentence — High Court's power in proceedings of — High Court must consider the evidence carefully and record its conclusions clearly

In dealing with confirmation cases, the High Court should consider the evidence carefully and record its conclusions clearly after dealing with all the points urged before it by the counsel for the defence. Judicial approach both at the trial and in appeal has to be careful and thorough and so it is of utmost importance that no room should be left for any legitimate complaint by the defence that important points were argued before the High Court and were not considered by it. *Gurcharan Singh* v. *State of Punjab*, AIR 1963 SC 340: (1963) 3 SCR 585: (1963) 1 Cri LJ 323, 27.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.C. Das Gupta* and *J.R. Mudholkar*, JJ. [Date of decision: 10-8-1962]

[8742] — S. 376 — Confirmation of death sentence by one Judicial Commissioner as ultimate appellate authority — *Fact of there being no*

Bench of two judges to deal with death sentences not an adequate ground for converting Supreme Court into an ordinary court of appeal

If in any particular State there is only one Judicial Commissioner as the ultimate appellate authority, and if the confirmation of sentence of death has to made by him, the procedure laid down must be followed. The fact that there is not a Bench of two Judges as in the High Courts to deal which death sentences is not an adequate ground for converting the Supreme Court into an ordinary Court of appeal and confirmation in such matters. *Kalawati* v. *State of Himachal Pradesh*, AIR 1953 SC 131: 1953 SCR 546: 1953 Cri LJ 668, 669.

Bench Strength **5**. Coram: *Patanjali Sastri, C.J.* and *B.K. Mukherjea*, **N. Chandrasekhara Aiyar**, *Vivian Bose* and *Ghulam Hasan*, JJ. [Date of decision: 19-1-1953]

[8743] — S. 376 — Difference of opinion among the Judges open question of sentence

When appellate Judges, who agree on the question of guilt, differ on that of sentence, it is usual not to impose the death penalty unless there are compelling reasons. *Pandurang* v. *State of Hyderabad*, AIR 1955 SC 216, 223: (1955) 1 SCR 1083: 1955 Cri LJ 572.

Bench Strength **3**. Coram: *B.K. Mukherjea*, *S.R. Das* and **Vivian Bose**, JJ. [Date of decision: 3-12-1954]

[8744] — S. 376 — Practice of High Courts of also hearing appeal of accused with confirmation proceedings approved

It has been the uniform practice of the High Courts in India to hear the reference for confirmation of sentence of death and the appeal preferred by the accused together and to deal with the merits of the case against the accused in the light of all the material questions of law as well as fact and to adjudicate upon the guilt of the accused and the appropriateness of the sentence of death. *Rama Shankar Singh* v. *State of W.B.*, AIR 1962 SC 1239, 1243: 1962 Supp (1) SCR 49: (1962) 2 Cri LJ 296.

Bench Strength **3**. Coram: *K.N. Wanchoo*, *K.C. Das Gupta* and **J.C. Shah**, JJ. [Date of decision: 10-10-1961]

[8745] — S. 376 — Order can be confirmed by Supreme Court in appeal under Art. 136

All persons are equal before the law is fundamental of every civilised Constitution. Equality before law is a negative concept: equal protection of laws is a positive one. The former declares that every one is equal before law, that no one can claim special privileges and that all classes are equally subjected to the ordinary law of the land; the latter postulates an equal protection of all alike in the same situation and under like circumstances. No discrimination can be made either in the privileges conferred or in the liabilities imposed. But these propositions conceived in the interests of the public, if logically stretched too far, may not achieve the high purpose behind them. In a society of unequal basic structure, it is well nigh impossible to make laws suitable in their application to all the persons alike. So, a reasonable classification is not only permitted but is necessary if society should progress. But such a classification cannot be arbitrary but must be based upon differences pertinent to the subject in respect of and the purpose for which it is made. *State of U.P.* v. *Deoman Upadhyaya*, AIR 1960 SC 1125, 1134: (1961) 1 SCR 14: 1960 Cri LJ 1504.

Bench Strength 5. Coram: *S.K. Das*[1], *J.L. Kapur*[1], **K. Subba Rao**[2], **M. Hidayatullah**[3] and **J.C. Shah**[1], JJ. [Date of decision: 6-5-1960]

[8746] — Ss. 376, 375, 374 and 423 — Duty of High Court while confirming sentence — Defence evidence to be seen in spite of concession on behalf of the appellant

On a reference for confirmation of sentence of death, the High Court is required to proceed in accordance with Ss. 375 and 376 of the Code of Criminal Procedure and the provisions of these sections make it clear that the duty of the High Court, in dealing with the reference, is not only to see whether the order passed by the Sessions Judge is correct, but to examine the case for itself and even direct a further enquiry or the taking of additional evidence if the Court considers it desirable in order to ascertain the guilt or the innocence of the convicted person. It is true that, under the proviso to S. 376, no order of confirmation is to be made until the period allowed for preferring the appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of, so that if an appeal is filed by a condemned prisoner, that appeal has to be disposed of before any order is made in the reference confirming the sentence of death. In disposing of such an appeal, however, it is necessary that the High Court should keep in view its duty under S. 375 of the Code of Criminal Procedure and, consequently, the Court must examine the appeal record for itself, arrive at a view whether a further enquiry or taking of additional evidence is desirable or not, and then come to its own conclusion on the entire material on record whether conviction of the condemned prisoner is justified and the sentence of death should be confirmed.

The High Court did not properly examine the defence evidence on the ground that the counsel for the appellant in that Court admitted that there was no substance in it. *Bhupendra Singh* v. *State of Punjab*, AIR 1968 SC 1438, 1440: (1968) 3 SCR 404: 71 Punj LR 98: 1969 Cri LJ 6.

Bench Strength 3. Coram: *S.M. Sikri, J.M. Shelat* and **V. Bhargava**, JJ. [Date of decision: 5-3-1968]

[8747] — Ss. 376, 418 and 423 — Relative scope — High Court's power wide — Verdict of jury justiciable. *Rama Shankar Singh* v. *State of W.B.*, AIR 1962 SC 1239, 1243: 1962 Supp (1) SCR 49: (1962) 2 Cri LJ 296.

Bench Strength 3. Coram: *K.N. Wanchoo, K.C. Das Gupta* and **J.C. Shah**, JJ. [Date of decision: 10-10-1961]

[8748] — Ss. 377 and 4(1)(i) — Confirmation by two Judges under S. 377 — Confirmation of death sentence by the only Judicial Commissioner then functioning in the Union Territory not improper — *Goa, Daman and Diu (Judicial Commissioner's Court) Regulation, 1963 will not prevail over the Code — In any case Regulation 8(1) permits JC to confirm death sentence — Referral jurisdiction under S. 377 is akin to appeal and revision — CrPC, 1973, Ss. 369 and 2(e). Joseph Peter* v. *State of Goa, Daman and Diu*, (1977) 3 SCC 280: 1977 SCC (Cri) 486: AIR 1977 SC 1812: 1977 Cri LJ 1449.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *Jaswant Singh*, JJ. [Date of decision: 4-5-1977]

[8749] — Ss. 378 and 386 — Acquittal from criminal conviction — *Effect of acquittal from date of appellate acquittal or date of conviction by lower court*

An appellate order of acquittal takes effect retrospectively and the conviction and sentence are deemed to be set aside with effect from the date they were recorded. It has to be held that the conviction has been wiped out and did not exist at all. *Manni Lal* v. *Parmai Lal*, (1970) 2 SCC 462: 1970 SCC (Cri) 487: AIR 1971 SC 330.

Bench Strength 2. Coram: *J.C. Shah* and **V. Bhargava**, JJ. [Date of decision: 13-8-1970]

But see K. Prabhakaran v. P. Jayarajan, (2002) 8 SCC 79

[8750] — Ss. 380 and 562 to 564 — Release of offender on probation of good conduct — Applicability of the 1958 Act or S. 360 CrPC, 1973 not considered by High Court — Effect — *Hence, matter remitted to High Court for consideration thereof — CrPC, 1973, S. 360 — Probation of Offenders Act, 1958, S. 4* (Para 9). *Daljit Singh* v. *State of Punjab*, (2006) 6 SCC 159: (2006) 3 SCC (Cri) 20.

Bench Strength 2. Coram: **Arijit Pasayat** and *Lokeshwar Singh Panta*, JJ. [Date of decision: 27-7-2006]

[8751] — S. 383 — Life imprisonment is executable in jail — *CrPC, 1973, S. 418*

Apart from S. 32 of the Prisoners Act, S. 383 of CrPC, 1898 and S. 418 of CrPC, 1973 also contain the necessary legal authority and power under which a criminal court can by issuing a warrant direct the execution or carrying out of a sentence of life imprisonment in local jails. Both the sections appear in a chapter dealing with 'Execution of Sentences' under the respective Codes and are identically worded — It is obvious that the 'confinement' of the convict in the jail pursuant to the court's warrant issued under the sections is for the purpose of executing or carrying out of the sentence. The proviso to sub-section (1) of S. 418 and sub-section (2) of S. 418 make this position abundantly clear that the expression 'confinement' has been used in the sense of execution or carrying out of the sentence. *Naib Singh* v. *State of Punjab*, (1983) 2 SCC 454: 1983 SCC (Cri) 536: AIR 1983 SC 855: 1983 Cri LJ 1345.

Bench Strength 2. Coram: **V.D. Tulzapurkar** and *R.B. Misra*, JJ. [Date of decision: 19-4-1983]

— S. 386 *See* Ss. 378 and 386

[8752] — S. 386(1)(b) — Issue of warrant not to affect other remedies open to the authorities — *Travancore Cochin Sales Tax Act (11 of 1125 M.E.) — Ss. 13 & 19. State of Kerala* v. *C.M. Francis & Co.*, AIR 1961 SC 617: (1961) 3 SCR 181: (1961) 12 STC 119.

Bench Strength 3. Coram: *J.L. Kapur*, **M. Hidayatullah** and *J.C. Shah*, JJ. [Date of decision: 12-12-1960]

[8753] — Ss. 386(1)(b) proviso and 431 — Issue of warrant for realising fine

An appeal from a sentence of fine is excepted from the all-pervasive rule of abatement of criminal appeals for the reason that the fine constitutes a liability on the estate of the deceased and the legal representatives on whom the estate devolves are entitled to ward off that liability. The fact that the offender has served the sentence in default of payment of fine is not a complete answer to the right of the Government to realize the fine because under the proviso to S. 386(1)(*b*) of the Code the court can, for special reasons to be recorded in writing, issue a warrant for realizing the fine even if the offender has undergone the whole of the imprisonment in default of payment of fine. *Harnam Singh* v. *State of H.P.*, (1975) 3 SCC 343: 1974 SCC (Cri) 951: AIR 1975 SC 236: 1975 Cri LJ 276: 1975 MLJ (Cri) 493.

Bench Strength 2. Coram: **Y.V. Chandrachud** and *P.N. Bhagwati*, JJ. [Date of decision: 21-11-1974]

[8754] — S. 388 — Order of remand — Recording of reasons — *When remand order based on remand report, the perusal of the reasons in the remand report satisfies the provisions of S. 344 when the evidence and circumstances are peculiar — Quaere: Whether the report has to be confidential*

When the order-sheet speaks of the Magistrate, having perused the police report for remand, the reasons and the circumstances set out in the report would be the reasons for passing the orders of remand. *Mowu* v. *Supdt., Special Jail*, (1971) 3 SCC 936: 1972 SCC (Cri) 184: 1971 CAR 66 (SC).

Bench Strength **5**. Coram: *M. Hidayatullah, C.J.* and **J.M. Shelat**, *G.K. Mitter, C.A. Vaidialingam* and *A.N. Ray*, JJ. [Date of decision: 14-12-1970]

[8755] — S. 396 — Witnesses not giving description of the dacoit or part played by him during commission of dacoity — Effect

Where the first information report clearly mentioned that the informant and the witnesses named by him had properly seen the miscreants and would be able to identify them if shown to them and there was evidence that the witnesses had taken up their positions around the house where the dacoity was committed and there was adequate light to enable the witnesses to mark the faces and the features of the miscreants and the miscreants remained at the scene of offence for more than half an hour and the number of miscreants was also not great, failure to give description of the accused or the part played by them was no lacuna in the prosecution case. *Chander Singh* v. *State of U.P.*, (1973) 3 SCC 55: 1973 SCC (Cri) 133: AIR 1973 SC 1200: 1973 Cri LJ 926.

Bench Strength **3**. Coram: **J.M. Shelat**, *I.D. Dua* and *H.R. Khanna*, JJ. [Date of decision: 23-8-1972]

[8756] — S. 401 — Effect of pardon and remission — Remission not to affect disqualification under election law — *Comparison of remission with the order of an appellate or revisional Court*

In England and India the effect of a pardon or what is sometimes called a free pardon is to clear the person form all infamy and from all consequences of the offence of which it is granted and from all statutory or other disqualification following upon conviction. It makes him, as it were, a new man. But the same effect does not follow on a mere remission which stands on a different footing altogether. In the first place, an order of remission does not wipe out the offence; it also does not wipe out the conviction. All that it does is to have an effect on the execution of the sentence; though ordinarily a convicted person would have to serve out the full sentence imposed by a court, he need not do so with respect to that part of the sentence which has been ordered to be remitted.

An order of remission thus does not in any way interfere with the order of the Court; it affects only the execution of the sentence passed by the Court and frees the convicted person from his liability to undergo the full term of imprisonment inflicted by the Court, though the order of conviction and sentence passed by the Court still stands as it was. The power to grant remission is executive power and cannot have the effect which the order of an appellate or revisional Court would have of reducing the sentence passed by the trial Court and substituting in its place the reduced sentence adjudged by the appellate or revisional Court. *Sarat Chandra Rabha* v. *Khagendranath Nath*, AIR 1961 SC 334, 336: (1961) 2 SCR 133: 23 ELR 125.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.* and *J.L. Kapur, P.B. Gajendragadkar, K. Subba Rao* and **K.N. Wanchoo**, JJ. [Date of decision: 27-10-1960]

[8757] — S. 401 — Mistake in remitting sentence of some convicts — No reason for extending it to others. *G.V. Ramanaiah* v. *Supdt. of Central Jail*, (1974) 3 SCC 531: 1974 SCC (Cri) 6: AIR 1974 SC 31: 1974 Cri LJ 150: (1974) MLJ (Cri) 263: (1974) 1 SCR 852: 1973 CrLR (SC) 754.

Bench Strength **2**. Coram: *H.R. Khanna* and **R.S. Sarkaria**, JJ. [Date of decision: 10-10-1973]

[8758] — S. 401 — Remission of sentence of life imprisonment — *Matter entirely within the discretion of the appropriate Government — No writ will lie against its order refusing remission. State of M.P.* v. *Ratan Singh*, (1976) 3 SCC 470: 1976 SCC (Cri) 428: AIR 1976 SC 1552: 1976 Cri LJ 1192: (1977) 1 MLJ 19 (SC).

Bench Strength **2**. Coram: *A.C. Gupta* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 5-5-1976]

[8759] — Ss. 401 and 402 — Life imprisonment is for indefinite duration — appropriate Government can remit the sentence on a consideration of relevant factors

Before coming into force of S. 53-A a sentence of transportation for life could be undergone by a prisoner by way of rigorous imprisonment for life in a designated prison in India. After the introduction of S. 53-A into the Code such a convict shall be dealt with in the same manner as one sentenced to rigorous imprisonment for the same term. Unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions of the Indian Penal Code or the Code of Criminal Procedure, a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison. The rules framed under the Prisons Act enable such a prisoner to earn remissions — ordinary, special and State and the said remissions will be given credit towards his term of imprisonment. For the purpose of working out of the remissions the sentence of transportation for life is ordinarily equated with a definite period, but it is only for that particular purpose and not for any other purpose. As the sentence of transportation for life or its prison equivalent, the life imprisonment, is one of indefinite duration, the remissions so earned do not in practice help such a convict as it is not possible to predicate the time of his death. That is why the rules provide for a procedure to enable the appropriate Government to remit the sentence under S. 401 of the Code of Criminal Procedure on a consideration of the relevant factors, including the period of remissions earned. The question of remission is exclusively within the province of the appropriate Government.

Where the appropriate Government makes certain remissions under S. 401 of CPC, but does not remit the entire sentence the prisoner does not acquire any right to release. *Gopal Vinayak Godse* v. *State of Maharashtra*, AIR 1961 SC 600: (1961) 3 SCR 440: (1961) 1 Cri LJ 736, 738.

Bench Strength 5. Coram: *P.B. Gajendragadkar*, *A.K. Sarkar*, **K. Subba Rao**, *K.N. Wanchoo* and *J.R. Mudholkar*, JJ. [Date of decision: 12-1-1961]

[8760] — Ss. 401 and 402(3) — Appropriate Government is the Government of the State where the prisoner has been convicted and sentenced. *State of M.P.* v. *Ratan Singh*, (1976) 3 SCC 470: 1976 SCC (Cri) 428: AIR 1976 SC 1552: 1976 Cri LJ 1192: (1977) 1 MLJ 19 (SC).

Bench Strength 2. Coram: *A.C. Gupta* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 5-5-1976]

[8761] — S. 401(3) — Conditional order of remission — There is no automatic cancellation of remission on breach of a condition

Under S. 401(3) on the breach of any condition of remission there is no automatic revival of sentence. It is open to the Government to cancel the remission but it may not. It is only when Government orders cancellation of the remission that the convict is rearrested to serve the unexpired portion of the sentence. During the interregnum, the accused, who is released, cannot be said to be under a sentence of imprisonment for life. In fact, that period is not even reckoned under S. 401, Criminal Procedure Code for the purpose of calculation of the sentence to be served, in the event of cancellation. *Sk. Abdul Azees* v. *State of Karnataka*, (1977) 2 SCC 485: 1977 SCC (Cri) 378: AIR 1977 SC 1485: 1978 MLJ (Cri) 1: (1977) 3 SCR 393: 1977 Cri LJ 1121.

Bench Strength 3. Coram: *Y.V. Chandrachud*, **P.K. Goswami** and *P.N. Shinghal*, JJ. [Date of decision: 28-3-1977]

— S. 402 *See also* Ss. 401 and 402

[8762] — S. 402 — Commutation of death sentence on ground of delay in its execution — *A matter for local Government's consideration — But no rule of law — Court's discretion in the matter — How to be exercised*

It is true that in proper cases an inordinate delay in the execution of the death sentence may be regarded as a ground for commuting it, but we desire to point out that this is no rule of law and is a matter primarily for consideration of the local Government. If the Court has to exercise a discretion in such matter, the other facts of each case would have to be taken into consideration.

Held :

On facts that the murder was a cruel and a deliberate one and there were no extenuating circumstances whatsoever which would justify the Supreme Court in ordering a commutation of the death sentence. *Nawab Singh* v. *State of U.P.*, AIR 1954 SC 278: 1954 Cri LJ 738.

Bench Strength 3. Coram: *M.C. Mahajan*, **B.K. Mukherjea** and *B. Jagannadhadas*, JJ. [Date of decision: 28-9-1953]

[8763] — Ss. 402 and 402-A — Commutation of death sentence — *These sections repeal the prerogative of the Maharaja in old Cochin Law*

By the Code of Criminal Procedure (Amendment) Act, 1951 (Central Act 1 of 1951), passed by the Union Legislature, the Code of Criminal Procedure, 1898, has been made applicable to the whole of India by amending S. 1 of the Code and by substitution therein for the words "whole of India except part B State", the words "whole of India except the States of Jammu and Kashmir and Manipur".

The Code of Criminal Procedure and along with it Ss. 401, 402 and 402-A thereof, relating to commutation of sentences having thus been made specifically applicable to all Part B states by Central Act 1 of 1951, the prerogative under the old Cochin law must in any case be deemed to have been repealed or abrogated by competent legislative authority after the coming into force of the Constitution. *Thaivalappil Kunjuvaru Vareed* v. *State of Travancore-Cochin*, AIR 1956 SC 142: (1955) 2 SCR 1022: 1956 Cri LJ 315.

Bench Strength 5. Coram: *S.R. Das*, *Vivian Bose*, *N.H. Bhagwati*, **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 1-12-1955]

— **S. 402(3)** *See* Ss. 401 and 402(3)

— **S. 402-A** *See* Ss. 402 and 402-A

— **S. 403** *See* Ss. 236, 237 and 403

See also Ss. 253, 254-A & 258 and 439 & 403

[8764] — S. 403 — Issue-estoppel — Principle of — Two separate trials of accused — One for murder and the other for offence under S. 27 of Arms Act — *Main case of murder decided first and that under Arms Act subsequently — In both the cases accused admitting that gun in question was recovered from his possession — In the case under Arms Act trial Court erroneously acquitting accused — Appeal filed against the murder case but not against the acquittal in the case under Arms Act — Held — Appellate Court while deciding the murder case not precluded from holding that the accused was in possession of the gun — Principle of issue-estoppel not applicable — CrPC, 1973, S. 300. Bhoor Singh* v. *State of Punjab*, (1974) 4 SCC 754: 1974 SCC (Cri) 664: AIR 1974 SC 1256: 1974 Cri LJ 929.

Bench Strength **2**. Coram: *V.R. Krishna Iyer* and **R.S. Sarkaria**, JJ. [Date of decision: 28-2-1974]

[8765] — S. 403 — Principle of 'autrefois acquit' and 'autrefois convict' — Principle of 'issue estoppel' if operates in India apart from S. 403 — *Conviction of respondents under Ss. 324, 323, set aside by High Court on the plea of 'issue of estoppel' as on some evidence and incidents the respondents had been discharged in S. 107, CrPC*

Section 403, CrPC, governs the entire principle of *autrefois acquit* and *autrefois convict*. But apart from this the Australian 'principle of issue estoppel' has been followed in India.

Autrefois acquit and *autrefois convict* are pleas which are concerned with the judicial determination of an alleged criminal liability and in the case of conviction with the substitution of a new liability. 'Issue of estoppel' is concerned with the judicial establishment of a proposition of law or fact between parties. It depends upon well-known doctrines which control the re-litigation of issue which are settled by prior litigation — *Per* Dixon, J., in *King and Wilkes*, 77 CLR 511 at 518-519, *approved*.

A proceeding under S. 107, CrPC, is not a trial. So the rejection of evidence given in the earlier proceeding to sustain an order for binding over the respondents to keep the peace does not preclude the trial of the respondents in respect of specific incident which together with the other incident was sought to be made the basis of the order of binding over the respondents. No principle of issue estoppel arises in this case. *State of A.P.* v. *Kokkiliagada Meerayya*, (1969) 1 SCC 161: AIR 1970 SC 771: 1970 Cri LJ 759.

Bench Strength **2**. Coram: **J.C. Shah** and *A.N. Grover*, JJ. [Date of decision: 28-11-1968]

[8766] — S. 403 — Principle of double jeopardy — Different to that of issue estoppel

The appellant, Piara Singh, along with Nand Lal Sehgal and Mohinder Singh sent by post a hand grenade in a parcel to Mr Ram Sahai to cause his death. On opening the parcel the bomb exploded causing death and injuries to several people.

The appellant and Nand Lal Sehgal were tried under S. 302, IPC and S. 3 of the Explosive Substances Act. Mohinder Singh became approver and the conviction was mostly based on his evidence. On appeal, the High Court acquitted Nand Lal Sehgal.

On appeal to the Supreme Court it was contended by the appellant that as Nand Lal Sehgal was acquitted, evidence against him must be totally rejected and that the remaining evidence against the appellant was insufficient. The principle of issue-estoppel was raised. Rejecting the argument, it was held, that the High Court had acquitted Nand Lal because of insufficient evidence and not due to false implication. That in any case the principle of issue-estoppel was not applicable and that it was different to that of *autrefois acquit* embodied in S. 403, CrPC. Approving its earlier decisions in *Pritam Singh* v. *State of Punjab*, AIR 1956 SC 415; *Manipur Adm.* v. *T.B. Singh*, (1964) 7 SCR 123 and *Sambasivam* v. *Public Prosecutor, Malaya*, 1950 AC 458, the Court explained that for issue-estoppel to arise, there must have been distinctly raised and inevitably decided the same issue in earlier proceedings between the same parties. *Piara Singh* v. *State of Punjab*, (1969) 1 SCC 379: AIR 1969 SC 961: 1969 Cri LJ 1435.

Bench Strength **3**. Coram: *J.C. Shah*, **V. Ramaswami** and *A.N. Grover*, JJ. [Date of decision: 6-1-1969]

[8767] — S. 403 — Accused discharged — Prosecution on a fresh complaint on the same facts is not barred. *S.A. Venkataraman* v. *State*, AIR 1958 SC 107: 1958 SCR 1040: (1958) 2 LLJ 1: 1958 Cri LJ 254, 256.

Bench Strength **3**. Coram: *B.P. Sinha*, **Syed Jafer Imam** and *J.L. Kapur*, JJ. [Date of decision: 3-12-1957]

[8768] — S. 403 — Accused having been charged with two distinct offences relating to same transaction — *Accused acquitted in one trial held without the aid of jury — In the trial held with the aid of jury a verdict of guilty being returned by jury* *and reference made by the Judge having been rejected by High Court — Conviction in the latter trial not illegal on the ground of acquittal in the former trial*

The accused were tried without the aid of jury for offences under Ss. 467, IPC. The two offences related to the same transaction, the case of the prosecution being that a Heba-nama was forged and later presented before the sub-registrar registration. The Judge acquitted the accused in the trial under S. 82(*c*) of Indian Registration Act. In the trial under Ss. 467 and 109, IPC the jury returned a verdict of guilty, the Judge made a reference under S. 307, CrPC and the High Court rejected the reference. It was contended that the High Court was not competent to convict the accused in the reference till the order of acquittal in the trial under S. 82(*c*), Registration Act was not set aside.

Held :

Forging a valuable security and presentation of that valuable security for registration are two distinct offences. In support of the case that the appellants were guilty of forging a valuable security the material evidence is that relating to the making dishonestly or fraudulently of a false document of the nature of a valuable security. That evidence consisted of the instructions given at the time of writing of the document, the character of the document, its execution, and the intention of the accused in fabricating the document. The offence of false personation for presenting any document consisted in the presentation of a document before the registering authority by a person claiming to be someone else. An item of evidence may corroborate charges for more offences than one: but acquittal of the accused for one such offence will not render that item of evidence inadmissible in assessing the criminality of the accused for another offence corroborated thereby. The question in such a case is not one of admissibility but of weight to be given to that evidence. The High Court was therefore not debarred from founding the order of conviction for the offences under S. 467, IPC and abetment thereof, of the appellants upon evidence which corroborated the story of the prosecution in support of those charges merely because that evidence was not accepted by the Sessions Court in considering the charge against them of false personation for procuring registration of the Heba-nama. *Sekendar Sheikh* v. *State of W.B.*, (1964) 1 SCR 852: (1964) 1 Cri LJ 733, 35.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.* and *P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah* and **J.C. Shah**, JJ. [Date of decision: 8-2-1963]

[8769] — S. 403 — Accused, in previous trial acquitted on the erroneous belief that the Court had no jurisdiction — No trial on merits — Subsequent trial not barred

The provisions of S. 403, CrPC are based upon the general principle of autrefois acquit recognised by the English Courts. The principle on which the right to plead autrefois acquit depends is that a man may not be put twice in jeopardy for the same offence. This principle has now been incorporated in Art. 20 of the Constitution. The defence of autrefois acquit, however, has no application where the accused person was not liable lawfully to be convicted at the first trial because the Court lacked jurisdiction. From the language used in S. 403(1) of the Code it is clear that what can be successfully pleaded as a bar to a subsequent trial for the same offence or for an offence based on the same facts is that the accused had been (*a*) tried by a Court, (*b*) of competent jurisdiction, and (*c*) acquitted of the offence alleged to have been committed by him or an offence with which he might have been charged under S. 236 or for which he might have been convicted under S. 237 of the Code.

Only a court which is competent to initiate proceedings or to carry them on can properly make an order of acquittal, at any rate, an order of acquittal which will have the effect of barring a subsequent trial upon the same facts and for the same offence.

Where a court comes to the conclusion that it had no jurisdiction, albeit erroneously, it is difficult to appreciate how that Court can absolve the person arraigned before it completely of the offence alleged against him. Where a person had done something which is made punishable by law he is liable to face a trial and this liability cannot come to an end merely because the Court before which he was placed for trial forms on opinion that it has no jurisdiction to try him or that it has no jurisdiction to take cognizance of the offence alleged against him. Where, therefore, a court says, though erroneously, that it was not competent to take cognizance of the offence it has no power to acquit that person of the offence. An order of acquittal made by it is in fact a nullity.

The mere fact that a charge had been framed in this case does not help the appellant. Similarly the provisions of S. 494 of the Code cannot be attracted to a case of this kind because that provision itself assumes the withdrawal by a public prosecutor of a charge competently made and before a court competent to entertain the application for withdrawal.

The fact that all the witnesses for the prosecution as well as for the defence had been examined before the magistrate and the further fact that the appellant was also examined under S. 342 cannot in law be deemed to be a trial at all. It would be only repetition to say that for proceedings to amount to a trial they must be held before a court which is in fact competent to hold them and which is not of opinion that it has no jurisdiction to hold them. A fortiori it would also follow that the ultimate order made by it by whatever name it is characterised cannot in law operate as an acquittal. *Mohd. Safi* v. *State of W.B.*, AIR 1966 SC 69: (1965) 3 SCR 467: 1966 Cri LJ 75, 76-78.

Bench Strength **3**. Coram: *A.K. Sarkar*, **J.R. Mudholkar** and *R.S. Bachawat*, JJ. [Date of decision: 25-3-1965]

[8770] — S. 403 — Acquittal for offences under S. 409 IPC and S. 5 Prevention of Corruption Act, 1947 — *Held, does not bar trial under S. 135 Customs Act, 1962 and S. 85, Gold (Control) Act, 1968 — Ingredients of offences in the previous and the subsequent trial are distinct — CrPC, 1973, S. 300 — Constitution of India, Art. 20(2) — Double jeopardy — Maxims — 'Nemo debet bis vexari pro eadem causa'. A.A. Mulla* v. *State of Maharashtra*, (1996) 11 SCC 606: AIR 1997 SC 1441.

Bench Strength **2**. Coram: **G.N. Ray** and *G.B. Pattanaik*, JJ. [Date of decision: 28-10-1996]

V.K. Agarwal, Asstt. Collector of Customs v. Vasantraj Bhagwanji Bhatia, (1988) 3 SCC 467: 1988 SCC (Cri) 679; P.V. Mohd. Barmay Sons v. Director of Enforcement, 1993 Supp (2) SCC 724: 1993 SCC (Cri) 777, applied

[8771] — S. 403 — Acquittal in one and conviction in the other case on same day — *Separate prosecution under S. 302/34, IPC and 19(f), Arms Act about the same event — Accused convicted under S. 302/34, Arms Acts — The same day acquitted by the same Judge under S. 19(f), IPC — Not clear which of the two judgments was pronounced prior in time — It is not open to contend that acquittal under S. 19(f), Arms Act was prior to accused's conviction under S. 302/34, IPC — Conviction is not bad on this account — Judge's act in giving two inconsistent findings in two companion cases on the same day disapproved. Gurcharan Singh* v. *State of Punjab*, AIR 1963 SC 340: (1963) 3 SCR 585: (1963) 1 Cri LJ 323.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.C. Das Gupta* and *J.R. Mudholkar*, JJ. [Date of decision: 10-8-1962]

[8772] — S. 403 — Appeal to Supreme Court after acquittal in one of the two cases arising from same facts — *Accused's conviction under S. 302, IPC for murder by pistol confirmed by the High Court — Accused acquitted in case under S. 19(f), Arms Act for the recovery of the same pistol with which murder was committed long after the conviction under S. 302 was confirmed by High Court — Acquitted was result of the resiling of two search witnesses from their earlier statement — On an appeal to Supreme Court by special leave in murder case — Held, later acquittal not to be taken into account in deciding the appeal*

The acquittal in the firearms case was recorded long after the conclusion of the trial in the Court of Session and the dismissal of the appeal by the High Court. That acquittal was recorded because the two search witnesses resiled from their earlier statements and the learned Magistrate did not think it necessary to wait for the evidence of the police officer who investigated the murder. From what has happened in this case, it is easy to see that these witnesses who had stood firm before were won over in the interval and deposed contrary to their earlier versions and documents signed by them. The acquittal itself on a parity of reasoning could not be granted by the Magistrate in view of the verdict of conviction by the Sessions Court in the earlier trial without recording evidence fully.

The Supreme Court when hearing an appeal on special leave which merely involved the examination of judgment of the High Court with a view to finding out whether it was legally correct or not would not take a later acquittal into account. *Mohinder Singh* v. *State of Punjab*, AIR 1965 SC 79: (1965) 1 Cri LJ 112.

Bench Strength **3**. Coram: *A.K. Sarkar*, **M. Hidayatullah** and *J.C. Shah*, JJ. [Date of decision: 31-7-1963]

[8773] — S. 403 — Application of res judicata in criminal proceedings — Binding effect

The judgment of the High Court in revision is binding in the subsequent proceedings in the case. *State of Rajasthan* v. *Tarachand Jain*, (1974) 3 SCC 72: 1973 SCC (Cri) 774: AIR 1973 SC 2131: (1974) 1 SCR 146: 1973 Cri LJ 1396.

Bench Strength **2**. Coram: **H.R. Khanna** and *I.D. Dua*, JJ. [Date of decision: 1-5-1973]

[8774] — S. 403 — Bar on conviction when the accused once convicted on the same facts — Proceedings under S. 488, Calcutta Municipalities Act, 1923, do not bar subsequent proceedings under S. 363

When the Legislature provides that on the same facts proceedings could be taken under two different sections and the penalties provided in those sections are not the same, it obviously intends to treat them as distinct, and, therefore, where no question under S. 403 of the Code of Criminal Procedure arises, proceedings taken under one section cannot be treated as falling within the other. The penalty prescribed in S. 488 for breach of R. 62 of

Sch. XVII is fine up to the limit of Rs 200, whereas the penalty provided for the same offence under S. 493(*a*) is fine which may extend to Rs 500.

It will not therefore be in consonance with the intention of the Legislature to hold that proceedings under S. 488 are in substance the same as proceedings under S. 493, so as to be subject to the disability enacted in the proviso to S. 363. If the intention of the Legislature was that proceedings taken under S. 488, read with R. 62 of Sch. XVII should bar proceedings under S. 363, it could have said so expressly as it did with reference to proceedings take under S. 493.

Therefore the proceedings under S. 488, Calcutta Municipalities Act, 1923 do not bar subsequent proceedings under S. 363 of the Act. *Corpn. of Calcutta* v. *Mulchand Agarwala*, AIR 1956 SC 110: (1955) 2 SCR 995: 1956 Cri LJ 285, 290.

Bench Strength **2**. Coram: **T.L. Venkatarama Aiyar** and *Syed Jafer Imam*, JJ. [Date of decision: 17-11-1955]

[8775] — S. 403 — Principle of res judicata and issue-estoppel in criminal trials — *Application of, to the defence of the accused — Defence plea in a criminal trial rejected by Magistrate in a cross case where one of the accused M was informant — Defence plea not barred under S. 403, CrPC. Article 20(2), Constitution of India or principles of res judicata and issue-estoppel applicable to criminal trials — Constitution of India, Art. 20(2)*

Three prosecutions were started by the State about the same incident. One prosecution was started against the appellants *M* and *B* alleging that *M* at the instance of *B* fired at and injured *A*. The other prosecution was under S. 19(*f*), Arms Act started against *M* for being found in possession of revolver. The third prosecution was started against *A* and his companions on the complaint of *M* detailing the defence version of the story. *M* was acquitted in the case under S. 19(*f*), Arms Act and he and *B* were convicted in the first case. *A* and others were acquitted in the case started on the complaint of *M*. In the case against *M* and *B* the trial Court and the High Court refused to examine the defence of the appellant solely on the ground that their defence story was rejected in the case against *A*.

Held :

In both the prosecutions, in the complaint made by *M* as well as in the complaint made by *A*, the prosecutor before the Court was the State. Therefore, the decision in the former case cannot operate as an issue-estoppel against the appellants in the present case, because they were not parties in the former case. In other words the plea taken by the appellants in this case was never before litigated between them and the State, the opposite party in the present case. All that can be said is that the case put forward by the State in the one case is inconsistent with that put forward by it in the other. In those circumstances it was wrong to hold that the appellants were estopped from putting forward their defence. That apart, it is doubtful — though for the purpose of this case it is unnecessary to express any final opinion on this point — whether the rule in question could be pressed against an accused, the reason being that while a prosecution cannot succeed unless it proves its case beyond reasonable doubt, the nature of the proof required of an accused in substantiating the plea taken by him is different — it is sufficient if he proves that plea taken by him is reasonable and probable. In that event he is entitled to the benefit of doubt.

The trial Court as well as the High Court erred in summarily rejecting the defence of the appellants on the sole ground that the version put forward by them having been rejected by the Court in G.R. case 1376/TR/20 of 61/63 in the Court of the Munsif-Magistrate 1st Class, Sasaram, the same cannot be again considered. *Mohar Rai* v. *State of Bihar*, AIR 1968 SC 1281: (1968) 3 SCR 525: 1968 ALJ 1094: 1969 MPWR 2: 1968 Cri LJ 1479.

Bench Strength **2**. Coram: *R.S. Bachawat* and **K.S. Hegde**, JJ. [Date of decision: 22-3-1968]

[8776] — S. 403 — Court of competent jurisdiction — *'G's acquittal by a Special Judge constituted by S. 4(1) of Act 21 of 1949 — S. 4(1) declared ultra vires by High Court whereby special Court ceasing to be a court of competent jurisdiction — 'G' prosecuted again and his revision against this prosecution being dismissed by the High Court and the order not challenged — Supreme Court declaring S. 4(1) intra vires and that the Court passing the order of acquittal is a court of competent jurisdiction — Matter coming before the Supreme Court — The prosecution is barred by S. 403 — The decision of the High Court not challenged was no impediment for the prosecution being barred by S. 403*

'*G*' and '*B*' were prosecuted before a Special Judge constituted under S. 4(1) of Act 21 of 1949. On 11-7-51 '*G*' was acquitted and '*B*' was convicted. In another case in the meanwhile the High Court declared S. 4(1) of Act 24 of 1949 ultra vires thereby declaring the Court of the Special Judge as a court not of competent jurisdiction. Therefore in '*B*'s' appeal the High Court set aside the conviction being by a court not of competent jurisdiction and left it to the Government to try him afresh. The Government filed fresh complaint before another

Special Judge constituted under the amended law against both '*G*' and '*B*'. '*G*' pleaded before the Special Judge bar of S. 403 who overruled it and later '*G*' went in revision before the High Court where his petition was dismissed on 19-3-1953. This order was not challenged by '*G*'. In the meantime the Supreme Court set aside High Court's order declaring S. 4(1) ultra vires by its decision reported in AIR 1953 SC 404 and declaring section intra vires and thereby declaring the Court of the Special Judge acquitting '*G*' as a court of competent jurisdiction. Finally, the case as a result of High Court's order on '*B*'s' petition came before a Magistrate who overruled '*G*'s' plea that his prosecution was barred by S. 403 because he had been acquitted by a court of competent jurisdiction. '*G*'s' revision was dismissed by the High Court on the ground that High Court's order, dated 19-3-1953 was a bar even though S. 4(1) of Act 21 of 1949 had been declared intra vires and the Court acquitting him was a court of competent jurisdiction. '*G*' filed an appeal before the Supreme Court.

Per majority

(i) For an order of acquittal to be binding it must be pronounced by a court of competent jurisdiction. In view of Supreme Court's decision in AIR 1953 SC 404 S. 4(1) of Act 21 of 1949 was not ultra vires and the judgment of the Calcutta High Court reported in AIR 1952 Cal 644 declaring it ultra vires was erroneous. The order of acquittal passed in favour of '*G*' on 11-7-1951 was, therefore, an order made by a court of competent jurisdiction, as such, it was binding unless set aside in appeal and it was never set aside in appeal.

The plea of 'G' effectively falls within S. 403, CrPC because the trial in which he was acquitted was a trial before a court competent to pass a valid order and the prosecution was bound to accept the correctness of the verdict of acquittal, and is precluded from challenging it. Another trial would place '*G*' in jeopardy a second time which would contravene S. 403 of the Criminal Procedure Code.

(ii) Except where the statute so requires it is not imperative upon a party to appeal against every error, defect or irregularity in any order by which he may conceive himself aggrieved under the penalty, if he does not do so, of forfeiting for ever the benefit of consideration by Supreme Court. Nothing would be more detrimental to the expeditious administration of justice than the establishment of a rule which would impose upon a party the necessity of appealing against every such order. When the matter properly comes to the Supreme Court in appeal it is open to it unless there is any statute which provides differently to review the order passed by the High Court, as much as, it would have been, if the original order passed by the trial Court had not been taken to the High Court in revision. Therefore, the order dated 19-3-1953 of the High Court does not have the effect of debarring the appellant from the benefit to obtain a review by the Supreme Court on that decision.

(iii) The prosecution of 'G' is barred by S. 403 of the CrPC. The High Court's decision, dated 19-3-1953 dismissing the revision of 'G' does not bar the application of S. 403.

Per Sarkar, J. (dissenting)

Any Court before which a plea of *autrefois acquit is* taken, must decide for itself — and of course in coming to its decision it must follow such precedents as are binding upon it — Whether the Court which had earlier acquitted the accused was a court of competent jurisdiction. Its power to decide that question is not derived from a decision of a higher court pronouncing upon the question of the competence of the Court which earlier acquitted the accused. Therefore, the Supreme Court case AIR 1953 SC 404 does not decide the case.

The judgment of the High Court, dated March 19, 1953 dismissing the revision of '*G*' prevented him from raising the question that the Court which had acquitted him was a court of competent jurisdiction. That question was directly raised by '*G*' in that revision and the plea was rejected and the High Court held that the Court which acquitted him was not a court of competent jurisdiction. The High Court had full jurisdiction to decide the petition and the question. Its jurisdiction to do so was never questioned. It is no doubt true that AIR 1953 SC 404 shows that the High Court's judgment, dated 19-3-1953 was wrong. That however does not make the decision lose its force as a final judgment. A final judgment does not lose its force as such because a superior court in a different case subsequently takes a view which shows that judgment to be wrong. A final judgment however wrong is still a final judgment. Its binding force does not depend upon its correctness. '*G*' could not therefore now be heard to contend that the Court which acquitted him was a court of competent jurisdiction. That result follows from the rule of res judicata which applies to all final judgments. *N.R. Ghose* v. *State of W.B.*, AIR 1960 SC 239: (1960) 2 SCR 58: 1960 Cri LJ 289.

Bench Strength **4**. Coram: *Syed Jafer Imam*[1], **J.L. Kapur**[1], **A.K. Sarkar**[2] and *K.N. Wanchoo*[1], JJ. [Date of decision: 27-10-1959]

[8777] — S. 403 — Issue-estoppel — Principle of — Whether both the proceedings should necessarily be criminal proceedings

The principle of issue-estoppel is simply this that where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of the accused, such a finding would constitute an estoppel or res judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different or distinct offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by law.

However, the plea of issue-estoppel is not the same as the plea of double jeopardy or *autrefois acquit.* Issue-estoppel arises only if the earlier as well as the subsequent proceedings were criminal prosecutions.

Thus, where while the earlier case was a criminal prosecution, the subsequent one is merely an action taken under the Foreigners (Internment) Order, 1962 for the purpose of deporting the petitioner out of India, the question of applicability of issue-estoppel does not arise because the subsequent case is not a criminal prosecution. *Masud Khan* v. *State of U.P.*, (1974) 3 SCC 469: 1973 SCC (Cri) 1084: AIR 1974 SC 28.

Bench Strength 3. Coram: *H.R. Khanna*, **A. Alagiriswami** and *R.S. Sarkaria*, JJ. [Date of decision: 26-9-1973]

See also (1969) 1 SCC 379

[8778] — S. 403 — Issue-estoppel and res judicata — Application of the principle to criminal trials — *Issue of fact tried by a competent court on a former occasion and finding reached in favour of accused — Finding constituting estoppel not to be disturbed in subsequent trial — Principle autrefois contained in S. 403(2), CrPC does not preclude the applicability of the rule of issue-estoppel*

Where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of the accused, such a finding would constitute an estoppel or res judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of S. 403(2), CrPC.

Section 403, CrPC does not preclude the applicability of this rule of issue-estoppel. *Lalta* v. *State of U.P.*, AIR 1970 SC 1381: (1969) 2 SCR 526: 1970 Cri LJ 1270.

Bench Strength 3. Coram: *J.C. Shah*, **V. Ramaswami** and *A.N. Grover*, JJ. [Date of decision: 25-10-1968]

[8779] — S. 403 — Issue-estoppel, rule of — Applicability

"The Crown is as much precluded by an estoppel by judgment in criminal proceedings as is a subject in civil proceedings.... The law which gives effect to issue-estoppels is not concerned with the correctness or incorrectness of the finding which amounts to an estoppel, still less with the process of reasoning by which the finding was reached in fact.... It is enough that an issue or issues have been distinctly raised or found. Once that is done, then, so long as the finding stands, if there be any subsequent litigation between the same parties, no allegations legally inconsistent with the finding may be made by one of them against the other". (*Marz* v. *Queen*, 96 CLR 62)

Section 403 of the Criminal Procedure Code does not preclude the applicability of this rule of issue-estoppel. The rule being one which is in accord with sound principle and supported by high authority and there being a decision of the Supreme Court which has accepted it as a proper one to be adopted, there is no reason for discarding it. *Manipur Admn.* v. *Thokchom Bira Singh*, AIR 1965 SC 87, 92, 93: (1964) 7 SCR 123: (1965) 1 Cri LJ 120.

Bench Strength 5. Coram: *P.B. Gajendragadkar, C.J.* and *K.N. Wanchoo*, *K.C. Das Gupta*, *J.C. Shah* and **N. Rajagopala Ayyangar**, JJ. [Date of decision: 11-3-1964]

[8780] — S. 403 — Prohibition of a subsequent trial for the same offence — *Offence of criminal misconduct punishable under S. 5(2) of the Prevention of Corruption Act, 1947 is not identical in essence, import and content with an offence under S. 409, IPC — Therefore acquittal for an offence under S. 5(2), Prevention of Corruption Act, 1947 does not bar a trial under S. 409, IPC*

The offence of criminal misconduct punishable under S. 5(2) of the Prevention of Corruption Act 2 of 1947 is not identical in essence, import and content with an offence under S. 409 of the Indian Penal Code. The offence of criminal misconduct is a new offence created by that enactment and it does not repeal by implication or abrogate S. 409 of the Indian Penal Code. Therefore there can be no objection to a trial and conviction under S. 409 of the Indian Penal Code even if the respondent has been acquitted of an offence under S. 5(2) of the Prevention of Corruption Act 2 of 1947. *State of M.P.* v. *Veereshwar Rao Agnihotri*, AIR 1957 SC 592: 1957 SCR 868: 1957 Cri LJ 892.

Bench Strength 5. Coram: *S.R. Das, C.J.* and *Syed Jafer Imam*, *S.K. Das*, **P. Govinda Menon** and *A.K. Sarkar*, JJ. [Date of decision: 5-4-1957]

[8781] — S. 403 — Res judicata — Principle — Application to criminal cases — *Accused acquitted on a particular charge — The verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication*

The accused was acquitted in trial under S. 19(*f*), Arms Act for having been found in possession of a revolver belonging to the deceased and looted at the time of murder. The evidence of recovery and the factum of possession were relied upon in the trial about the murder of the two deceased whose revolvers were looted.

Held :

The effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication.

The maxim 'res judicata pro veritate accipitur' is no less applicable to criminal than to civil proceedings.

Having regard, therefore, to the circumstance attendant upon the recovery of the revolver and the acquittal of the accused of the offence under S. 19(*f*), Arms Act, the High Court was rightly of the opinion that the evidence of recovery of revolver could not be taken into consideration against him.

The acquittal of the accused of the charge under S. 19(*f*), was tantamount to a finding that the prosecution has failed to establish the possession of the revolver by him. The possession of that revolver was a fact in issue which had to be established by the prosecution before he could be convicted of the offence with which he had been charged. That fact was found against the prosecution and having regard to the observations of Lord MacDermott in *Sambasivam* v. *Public Prosecutor, Federation of Malaya*, 1950 AC 458, could not be proved against the accused in any further proceedings between the Crown and him. *Pritam Singh* v. *State of Punjab*, AIR 1956 SC 415: 1956 Cri LJ 805, 810.

Bench Strength **3**. Coram: **N.H. Bhagwati**, *T.L. Venkatarama Aiyar* and *B.P. Sinha*, JJ. [Date of decision: 4-11-1955]

Affirmed in (1964) 7 SCR 123: AIR 1965 SC 87: (1965) 1 Cri LJ 120: and in (1972) 2 SCC 466: 1972 SCC (Cri) 751

[8782] — S. 403 — Res judicata — Whether applicable to criminal cases

The principle of res judicata is also applicable to criminal proceedings and it is not permissible in the subsequent stage of the same proceedings to convict a person for an offence in respect of which an order for his acquittal has already been recorded. The plea of autrefois acquit as a bar to prosecution embodies in S. 403 of the Code of Criminal Procedure is based upon the same wholesome principle. *Bhagat Ram* v. *State of Rajasthan*, (1972) 2 SCC 466: 1972 SCC (Cri) 751: AIR 1972 SC 1502: (1972) 3 SCR 303: 1972 Cri LJ 909: (1972) 9 ACC 67.

Bench Strength **2**. Coram: *J.M. Shelat* and **H.R. Khanna**, JJ. [Date of decision: 31-1-1972]

[8783] — S. 403 — Retrial after grant of requisite sanction — Not barred

The whole basis of S. 403(1) was not the first trial should have been before a court competent to hear and determine the case and to record a verdict of conviction or acquittal; if the Court was not so competent, as for example where the required sanction for the prosecution was not obtained, it was irrelevant that it was competent to try other cases of the same class or indeed the case against the particular accused in different circumstances, for example if a sanction had been obtained. *Baij Nath Prasad Tripathi* v. *State of Bhopal*, AIR 1957 SC 494: 1957 SCR 650: (1958) 2 LLJ 475: 1957 Cri LJ 597, 98.

Bench Strength **5**. Coram: *S.R. Das, C.J.* and *T.L. Venkatarama Aiyar*, *B.P. Sinha*, **S.K. Das** and *P.B. Gajendragadkar*, JJ. [Date of decision: 13-2-1957]

[8784] — S. 403 — Scope — Autrefois acquit — Applies when a person is tried again for the same offence — *Two offences being distinct and spaced slightly by time and place — Trials for each incident separate — Offence distinct requiring different charges — Prior acquittal in one case cannot bar conviction in the other case*

The charges on which acquittal took place had nothing whatever to do with the charges on which there is conviction in the present appeal. A plea of autrefois acquit which statutorily recognised in India under S. 403 of the Code of Criminal Procedure arises when a person is tried again for the same offence or on the same facts for any other offence for which a different charge from the one made against him might have been made under S. 236 of for which he might have been convicted under S. 237. Neither of these provisions is applicable to the present facts because the two offences were distinct and spaced slightly by time and place. The trials were separate as the two incidents were viewed as distinct transactions. Even if the two incidents could be viewed to be connected so as to form parts of one transaction it is obvious that the offences were distinct and required different charges. The assault on *T* in fulfilment of the common object of the unlawful assembly was over when the unlawful assembly proceeded to the house of *T* to loot it. The new common object to beat P was formed at a time when the common object in respect of *T* had been fully worked out and even if the two incidents could be taken to be connected by unity of time and place (which they were not), the offences were distinct and required separate charges. The learned Sessions Judge was right in breaking up the single charge framed by the Magistrate and ordering separate trials. In this view the prior acquittal cannot create a bar in respect of the conviction herein reached. *Kharkan* v. *State of U.P.*, AIR 1965 SC 83: (1964) 4 SCR 673: (1965) 1 Cri LJ 116, 118.

Bench Strength **3**. Coram: *S.K. Das*, **M. Hidayatullah** and *K.C. Das Gupta*, JJ. [Date of decision: 29-8-1963]

[8785] — S. 403 — Separate trials for several misappropriations

The appellant had been prosecuted for the various misappropriations alleged to have been committed by him. Each one of those misappropriations is a distinct offence by itself; therefore it was open to the Court to separately charge him and separately try him for those offences. *Jai Dev* v. *State of Punjab*, 1968 SCD 539, 542.

Bench Strength **3**. Coram: *S.M. Sikri, J.M. Shelat* and **K.S. Hegde**, JJ. [Date of decision: 15-11-1967]

[8786] — S. 403 — Spirit of the section no real basis

It was contended on behalf of the appellant that his case comes within the spirit of S. 403(1) though it may not come within the letter of the law.

That contention has no legal basis. Either a plea comes within the scope of a provision of law or it does not. If it does not come within the scope of some provision of law, then there is no question of its coming within the spirit of any provision of law. A contention based on the so-called spirit of the law has no place in a Court of law. *Jai Dev* v. *State of Punjab*, 1968 SCD 539, 543.

Bench Strength **3**. Coram: *S.M. Sikri, J.M. Shelat* and **K.S. Hegde**, JJ. [Date of decision: 15-11-1967]

— S. 403(1) *See also* Ss. 347 and 403(1)

[8787] — S. 403(1) — Bar under, against trial for the 'same offence' — Applicability — *Ingredients of the offences have to be seen to determine whether the offences are same or different — Ingredients of offences under S. 111 r/w S. 135 of Customs Act, 1962 and S. 85 of Gold (Control) Act, 1968 are different — Hence after acquittal under Customs Act subsequent trial under Gold (Control) Act not barred — CrPC, 1973, S. 300(1) — Constitution of India, Art. 20(2). V.K. Agarwal, Asstt. Collector of Customs* v. *Vasantraj Bhagwanji Bhatia*, (1988) 3 SCC 467: 1988 SCC (Cri) 679: AIR 1988 SC 1106: (1988) 16 ECC 164: (1988) 64 Comp Cas 664.

Bench Strength **2**. Coram: **M.P. Thakkar** and *K.N. Singh*, JJ. [Date of decision: 7-4-1988]

[8788] — S. 403(1) — Prohibition of a subsequent trial for the same offence — *One trial for several offences under Ss. 409, 468 and 477-A, IPC and S. 5(2) of Prevention of Corruption Act, 1947 — Accused having been acquitted for offences under Ss. 468 and 477-A, IPC, convicted for the offence under S. 409, IPC and no formal order for conviction or acquittal passed under S. 5(2) of Prevention of Corruption Act, 1947 for lack of jurisdiction — Contention being that since on the same facts the trial Judge found that the accused could not be found guilty under S. 5(2) of Prevention of Corruption Act, 1947, it was tantamount to any acquittal for that offence and therefore conviction under S. 4 of IPC was barred by S. 403(c), CrPC*

Held :

S. 403(1) has no application to the facts of the case, where there was only one trial for several offences, of some of which the accused person was acquitted while being convicted of one. *State of M.P.* v. *Veereshwar Rao Agnihotri*, AIR 1957 SC 592: 1957 SCR 868: 1957 Cri LJ 892.

Bench Strength **5**. Coram: *S.R. Das, C.J.* and *Syed Jafer Imam, S.K. Das*, **P. Govinda Menon** and *A.K. Sarkar*, JJ. [Date of decision: 5-4-1957]

[8789] — S. 403(1) and (2) — Retrial after conviction or acquittal in a previous trial — *Accused acquitted in a trial under S. 7, Essential Supplies (Temporary Powers) Act — Subsequent trial under Ss. 332 and 392, IPC — S. 403(2) applies and the trial is not barred. Kunjilal* v. *State of M.P.*, AIR 1955 SC 280: (1955) 1 SCR 872: 1955 Cri LJ 730.

Bench Strength **3**. Coram: *S.R. Das*, **Ghulam Hasan** and *N.H. Bhagwati*, JJ. [Date of decision: 8-10-1954]

[8790] — Ss. 403(1) and (4) — Res judicata

Section 403(4) provides that a person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constructed by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged. In view of this sub-section it is obvious that there can be a fresh charge and trial under S. 307, Penal Code, in spite of the acquittal of the appellant on the minor charges. There is hence no reason why an order for commitment under S. 307, Indian Penal Code cannot be made by the Additional Sessions Judge in spite of the acquittal of the appellant on the charges under Ss. 326 and 338, Indian Penal Code. *Ramekbal Tiwary* v. *Madan Mohan Tiwary*, AIR 1967 SC 1156: (1967) 2 SCR 368: 1967 Cri LJ 1076, 1081.

Bench Strength **5**. Coram: *K. Subba Rao, C.J.* and *J.C. Shah, S.M. Sikri*, **V. Ramaswami** and *C.A. Vaidialingam*, JJ. [Date of decision: 17-1-1967]

— S. 403(2) *See* Ss. 403(1) and (2)

— S. 403(4) *See* Ss. 403(1) and (4)

[8791] — S. 404 — Appeal — The right of at least one appeal in serious cases is a substantial right

Hence the High Court should not summarily reject the appeal. *Babu Rajirao Shinde* v. *State of Maharashtra*, (1971) 3 SCC 337: 1971 SCC (Cri) 616: 1972 Punj LR 108: 1972 Cri LJ 1376.

Bench Strength **2**. Coram: **K.S. Hegde** and *A.N. Grover*, JJ. [Date of decision: 28-4-1971]

[8792] — Ss. 404 and 411-A — Question raised before Supreme Court touching credibility of witnesses — *Question of fact — No interference by Supreme Court*

In appeals before the Supreme Court the usual rule to be followed by it is that it will not interfere on questions of fact. The question touching the credibility of the witnesses who were believed being a question of fact the Supreme court did not interfere on this point. *Moti Das* v. *State of Bihar*, AIR 1954 SC 657: 1954 Cri LJ 1708.

Bench Strength **3**. Coram: *B.K. Mukherjea*, **Vivian Bose** and *Ghulam Hasan*, JJ. [Date of decision: 8-5-1954]

— S. 410 *See also* Ss. 258, 419, 410 and 423

[8793] — S. 410 — High Court in appeal bound to consider all the circumstances against the accused before confirming the conviction by trial court — Failure to do so meriting reconsideration by the High Court — *CrPC, 1973, S. 374*. *Jagan Nath* v. *State*, (1976) 1 SCC 583: 1976 SCC (Cri) 101: AIR 1976 SC 1132: 1976 Cri LJ 847.

Bench Strength **2**. Coram: *K.K. Mathew* and **Y.V. Chandrachud**, JJ. [Date of decision: 21-10-1975]

[8794] — S. 410 — Maintainability of joint appeal by State against order of acquittal against several persons in joint Trial — *Bombay High Court Appellate Side Rules, 1960, Ch. XXVI — R. 6*

Section 419 CrPC does not prohibit a joint appeal from an order of acquittal. Nor are Ss. 258, 410 and 423, CrPC, a bar. *State of Gujarat* v. *Ramprakash P. Puri*, (1969) 3 SCC 156: 1970 SCC (Cri) 29.

Bench Strength **2**. Coram: *V. Ramaswami* and **I.D. Dua**, JJ. [Date of decision: 16-10-1969]

[8795] — S. 410 — Appeal to High Court under — Raising arguable points — Power of the High Court — Summary dismissal of appeal by High Court — Whether justified

The High Court had dismissed the appeal preferred by the appellant in limine.

The right to prefer an appeal from sentence of Court of Sessions is conferred by S. 410 of the Criminal Procedure Code. The right to appeal is one both on a matter of fact and a matter of law.

The Appellate Court undoubtedly has power of summary dismissal. If the appeal raises arguable and substantial points the High Court should give reasons for rejection of appeal. Rejection of an appeal by using only one word of dismissal causes difficulties and embarrassment in finding out the reasons which weighed with the High Court in dismissal of the appeal in limine. The High Court should not summarily reject criminal appeals if they raise arguable and substantial points. In the present case the High Court dismissed the appeal by a single word and it is not possible to know the reasons which persuaded the High Court to dismiss the appeal. *Siddanna Apparao Patil* v. *State of Maharashtra*, (1970) 1 SCC 547: 1970 SCC (Cri) 224: AIR 1970 SC 977: 1970 Cri LJ 891.

Bench Strength **2**. Coram: **A.N. Ray** and *I.D. Dua*, JJ. [Date of decision: 6-3-1970]

[8796] — S. 410 — High Court — Appeal raising arguable points — Summary rejection of — Necessity to give reasons for such dismissal. *Rajnikant* v. *State of Maharashtra*, (1970) 2 SCC 866: 1970 SCC (Cri) 575.

Bench Strength 3. Coram: *S.M. Sikri*, *K.S. Hegde* and **I.D. Dua**, JJ. [Date of decision: 30-9-1970]

[8797] — S. 410 — Special Court deemed as Court of Session — Ss. 410 & 417 apply — *States and Other Areas Reorganisation and Administration — Vindhya Pradesh Ordinance, 1949, S. 5(2)*

Once the Special Court is to be deemed a Court of Session the normal right of appeal provided by S. 410 or S. 417, as the case may be, must be taken to have been expressly provided by reference and not as arising by mere implication. *Rao Shiv Bahadur Singh* v. *State of V.P.*, AIR 1953 SC 394, 397: 1953 SCR 1188: 1953 Cri LJ 1480.

Bench Strength **5**. Coram: *Patanjali Sastri, C.J.* and *B.K. Mukherjea, Vivian Bose, Ghulam Hasan* and **B. Jagannadhadas**, JJ. [Date of decision: 22-5-1953]

[8798] — S. 410 — Summary dismissal of appeal — Matter involving arguable and substantial points both of fact and law — Rejection of appeal by High Court with only one word — Validity of

In dealing with appeals under S. 410 of CrPC from sentences of Court of Sessions, the High Court should give reasons for rejection of an appeal and if arguable and substantial points are raised, the High Court should not summarily reject the appeal. *Dnyanu Hariba Mali* v. *State of Maharashtra*, (1970) 3 SCC 7: 1970 SCC (Cri) 357: AIR 1970 SC 979: 1970 Punj LR 992: 1970 Cri LJ 893.

Bench Strength **2**. Coram: **A.N. Ray** and *I.D. Dua*, JJ. [Date of decision: 10-3-1970]

[8799] — Ss. 410 and 417 — Special court deemed as Court of Session — Ss. 410 and 417 CrPC, 1898 apply — *Vindhya Pradesh Criminal Law Amendment (Special Courts) Ordinance, 1949, S. 5(2). Rao Shiv Bahadur Singh* v. *State of V.P.*, AIR 1953 SC 394: 1953 SCR 1188: 1953 Cri LJ 1480.

Bench Strength **5**. Coram: *Patanjali Sastri, C.J.* and *B.K. Mukherjea, Vivian Bose, Ghulam Hasan* and **B. Jagannadhadas**, JJ. [Date of decision: 22-5-1953]

[8800] — S. 411 — Difference in the constitution and jurisdiction of Courts in the mofussil and city of Madras — *Held not violative — Constitution of India — Article 14*

In view of the geographical and historical considerations, the existence of differences in the constitution and jurisdiction of the Courts in the mofussil and the city of Madras does not violate Art. 14. *P. Shankar Lal* v. *Asstt. Collector of Customs, Madras*, 1968 SCD 385.

Bench Strength **3**. Coram: *M. Hidayatullah*, **S.M. Sikri** and *K.S. Hegde*, JJ. [Date of decision: 12-12-1967]

[8801] — S. 411 — Constitutionality — Held, not violative of Art. 14

In view of the geographical and historical considerations, the existence of differences in the constitution and jurisdiction of the Courts in the Mofussil and the City of Madras does not violate Art. 14. *P. Shankar Lal* v. *Asstt. Collector of Customs*, 1968 SCD 385.

Bench Strength **3**. Coram: *M. Hidayatullah*, **S.M. Sikri** and *K.S. Hegde*, JJ. [Date of decision: 12-12-1967]

— **S. 411-A** *See also* Ss. 404 and 411-A

[8802] — S. 411-A — Appeal from sentence of High Court — Practice

The absence of the name of the accused in the first information report and the absence of marks of injury on his person are only material and relevant for the purpose of appreciation of the evidence. The Courts below having come to a definite finding on the evidence before them that the accused was a member of the unlawful assembly and took some part in inflicting injuries on the deceased in prosecution of their common object, the Supreme Court cannot go behind the concurrent finding. *Thakur Prasad* v. *State of M.P.*, AIR 1954 SC 30: 1954 Cri LJ 261.

Bench Strength **3**. Coram: *M.C. Mahajan*, **S.R. Das** and *Ghulam Hasan*, JJ. [Date of decision: 27-1-1953]

[8803] — S. 411-A — Appeal from sentence of High Court — Supreme Court not to go behind concurrent finding of fact on appeal by special leave

The plea of alibi involves a question of fact and where both the Courts below concurrently found that fact against the accused, held, that the Supreme Court cannot, on an appeal by special leave, go behind that concurrent finding of fact. *Thakur Prasad* v. *State of M.P.*, AIR 1954 SC 30: 1954 Cri LJ 261.

Bench Strength **3**. Coram: *M.C. Mahajan*, **S.R. Das** and *Ghulam Hasan*, JJ. [Date of decision: 27-1-1953]

— **S. 417** *See* Ss. 410 and 417

See also Ss. 423(1)(a) and 417

See also Ss. 428, 423 and 417

[8804] — S. 417 — Conviction by High Court in appeal against acquittal — If findings of High Court liable to be set aside — *Offences under Ss. 325, 324 and 323, IPC, if made out — Evaluation of evidence*

(*i*) No doubt the FIR was a belated one but on that account alone the whole prosecution case cannot be thrown out.

(*ii*) It is true that there are some contradictions but on the whole the prosecution story seems clear and substantiated.

(*iii*) On the facts of the case, it cannot be held that there was a right of private defence of property or of person.

(*iv*) The High Court was not impressed and quite rightly, by the conclusion of the Sessions Judge that it was the party of the complainant who committed aggression and accordingly the finding of the Trial court must be deemed to have been displaced.

Hegde, J. (dissenting) held,

It is true that it is open to courts to accept portions of evidence of witnesses and reject the rest but the danger inherent in such situations should not be overlooked. Such evidence should not be made the basis of conviction unless the same is corroborated either by an independent testimony or by reliable circumstances. *Satwara Chhagan Karsan* v. *State of Gujarat*, (1969) 3 SCC 203: 1970 SCC (Cri) 59.

Bench Strength 3. Coram: **S.M. Sikri**[1], *G.K. Mitter* and **K.S. Hegde**[2], JJ. [Date of decision: 13-8-1969]

[8805] — S. 417 — Compared with S. 378 CrPC, 1973

A comparison of Section 378 with the old Section 417 shows that whilst under the old section no application for leave to appeal had to be made by the State Government or the Central Government, now by virtue of Section 378(3) the State Government or the Central Government have to obtain leave of the High Court before their appeal could be entertained. Sub-section (4) of Section 378 is identical to sub-section (3) of Section 417. Thus a complainant desirous of filing an appeal against acquittal must still obtain special leave. Thus, Section 378 makes a distinction between an appeal filed by the State Government or the Central Government, who only need to obtain "leave", and an appeal by a complainant who needs to obtain "special leave". *State (Delhi Admn.)* v. *Dharampal*, (2001) 10 SCC 372: AIR 2001 SC 2924.

Bench Strength 2. Coram: *K.T. Thomas* and **S.N. Variava**, JJ. [Date of decision: 19-10-2001]

Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793: 1973 SCC (Cri) 1033; Basavaraj R. Patil v. State of Karnataka, (2000) 8 SCC 740: 2001 SCC (Cri) 87, relied on

[8806] — S. 417 — In S. 378(1) sub-section (6) should be read in place of sub-section (5), CrPC, 1973 — It is an inadvertent mistake — *CrPC, 1973, S. 378*

Under Section 417 of the Criminal Procedure Code, 1898 no application for special leave to appeal had to be made by the State Government or the Central Government, if they filed an appeal against acquittal. The period of 60 days provided in Section 417(4) did not apply to an appeal by the State Government or the Central Government. The period of limitation for the State Government or the Central Government was only under Article 114(*a*) of the Limitation Act. The right of the State Government to file an appeal under Section 417(1) was subject to sub-section (5) which provided that if special leave to appeal had been refused to a complainant then the State Government could not maintain an appeal. A comparison of Section 378 with the old Section 417 shows that whilst under the old section no application for leave to appeal had to be made by the State Government or the Central Government, now by virtue of Section 378(3) the State Government or the Central Government have to obtain leave of the High Court before their appeal could be entertained. Sub-section (4) of Section 378 is identical to sub-section (3) of Section 417. Thus a complainant desirous of filing an appeal against acquittal must still obtain special leave. Section 378 makes a distinction between an appeal filed by the State Government or the Central Government, who only need to obtain "leave", and an appeal by a complainant who needs to obtain "special leave". The limitation provided in sub-section (5) is only in respect of applications under sub-section (4) i.e. application for special leave to appeal by a complainant. A complainant may be either a public servant or a private party. If the complainant is a public servant then the period of limitation for an application for special leave is 6 months. If the complainant is a private party then the period of limitation for an application for special leave is 60 days. The periods of 6 months and/or 60 days do not apply to appeals by the State Government [under sub-section (1)] or the Central Government [under sub-section (2)]. Appeals by the State Government or the Central Government continue to be governed by Article 114(*a*) of the Limitation Act. (Paras 22, 23 and 25)

However, the reference to sub-section (5) in sub-section (1) of Section 378 is clearly an inadvertent mistake. Sub-section (5) applies only to application for special leave by a complainant. It has no application to an appeal by the State Government or to an application for leave under sub-section (3). What the legislature clearly intended was to continue to provide that an appeal by the State Government would not be maintainable if special leave to appeal had been refused to a complainant. Thus sub-section (1) of Section 378 was to be subject to provisions of sub-section (6) and not sub-section (5) as inadvertently provided therein. Inadvertently the figure (5) in Section 417(1) was continued, without noticing that now under Section 378 the relevant provision was sub-section (6). The figure (5) in Section 378(1) is inadvertently retained. Thus in Section 378(1) the figure (6) will have to be read in place of the figure (5). (Para 26). *State (Delhi Admn.)* v. *Dharampal*, (2001) 10 SCC 372: AIR 2001 SC 2924.

Bench Strength 2. Coram: *K.T. Thomas* and **S.N. Variava**, JJ. [Date of decision: 19-10-2001]

[8807] — S. 417 — Reversal of acquittal by High Court — Principles to be followed restated — Reversal of acquittal upheld — *CrPC, 1973, S. 378*

The High Court in an appeal under S. 417 of the Code of Criminal Procedure has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it be found expressly stated in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any real and reasonable doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witness. *Barati* v. *State of U.P.*, (1974) 4 SCC 258: 1974 SCC (Cri) 420: AIR 1974 SC 839: (1974) 3 SCR 570: 1974 Cri LJ 709.

Bench Strength 2. Coram: **H.R. Khanna** and *V.R. Krishna Iyer*, JJ. [Date of decision: 12-3-1974]

[8808] — S. 417 — Appeal against acquittal — Appellate Court's powers — *Trial Court chasing bare possibilities of doubt and exalting them into sufficiently militating factors justifying acquittal of accused — Reconsideration of circumstantial evidence by High Court — High Court not failing to observe built-in restraints on exercise of power while upsetting the acquittal — Held, High Court's approach correct — CrPC, 1973, S. 386. Khem Karan* v. *State of U.P.*, (1974) 4 SCC 603: 1974 SCC (Cri) 639: AIR 1974 SC 1567: (1974) 3 SCR 863: 1974 Cri LJ 1033: (1974) 2 ACC 307.

Bench Strength 3. Coram: *M.H. Beg*, *Y.V. Chandrachud* and **V.R. Krishna Iyer**, JJ. [Date of decision: 8-4-1974]

[8809] — S. 417 — S. 12(3), Limitation Act, 1963 — *Applicability to an application under S. 417 CrPC — Limitation Act, 1908, S. 12(3)*

S. 417(4) itself prescribes a period of limitation for an application to be made under S. 417(3). It was not necessary for the Legislature to have amended the Limitation Act and to have inserted an article dealing with applications under S. 417(3). It was open to it to prescribe a period of limitation in the Code itself. *Lala Ram* v. *Hari Ram*, (1969) 3 SCC 173: 1970 SCC (Cri) 25: AIR 1970 SC 1093: 1970 Cri LJ 1014: 1960 Cri LJ 1014: (1970) 2 SCR 898.

Bench Strength 3. Coram: **S.M. Sikri**, *G.K. Mitter* and *P. Jaganmohan Reddy*, JJ. [Date of decision: 17-10-1969]

[8810] — Ss. 417 and 423 — "Substantial and compelling reasons" — Rule of "compelling reasons" — Extraneous to S. 417

Per Venkatarama Ayyar, J. (dissenting)

An appeal against acquittal under S. 417 stands as regards the powers of the appellate Court, on the same footing as appeals against conviction. The words compelling reasons were for the first time used in *Surajpal Singh* v. *State*, AIR 1952 SC 52 and are not found in S. 417. The words used in this judgment did not import a limitation on the powers of a court hearing an appeal under S. 417. It is probable that these words were intended to express that the Court hearing an appeal under S. 417 should observe the rules which all appellate Courts should, before coming to a conclusion different from that of the trial Court.

If the expression "compelling reason" does not impose a restriction on the powers of a court hearing an appeal under S. 417 and its true scope is to guide it in arriving at a decision, the question whether the appellate Court can interfere with the decision on the ground that it is erroneous presents no difficulty. The decision would then be on questions of fact depending upon the appreciation of evidence and the Supreme Court cannot interfere with it. *Aher Raja Khima* v. *State of Saurashtra*, AIR 1956 SC 217: (1955) 2 SCR 1285: 1956 Cri LJ 426: (1956) 1 MLJ (SC) 135.

Bench Strength 3. Coram: **Vivian Bose**[1], **T.L. Venkatarama Aiyar**[2] and *N. Chandrasekhara Aiyar*[1], JJ. [Date of decision: 22-12-1955]

[8811] — S. 417 — Appeal against acquittal — *Held, acquittal cannot be set aside by High Court unless Sessions Court in acquitting the accused was palpably wrong or took an erroneous view or committed grave injustice — CrPC, 1973, S. 378. Parichhat* v. *State of M.P.*, (1972) 4 SCC 694: AIR 1972 SC 535: 1972 Cri LJ 322.

Bench Strength 2. Coram: **A.N. Ray** and *D.G. Palekar*, JJ. [Date of decision: 14-10-1971]

[8812] — S. 417 — Appeal against acquittal — Appellate court — Power of — Principles to be followed in setting aside order of acquittal

The High Court has full power on appeal from acquittal to appraise the evidence for itself just as it is empowered to do on appeal against conviction. The statute, as has repeatedly been said, creates no distinction between the two kinds of appeals. All that the High Court is expected to do in appeal against the orders of acquittal, is, that it should bear in mind that there is an initial presumption in favour of the innocence of an accused person and that the trial court having acquitted him, this initial presumption should be considered to have been further strengthened to some extent, but certainly not weakened, as a result of the trial court's conclusion. The correctness or otherwise of the conclusions of the trial court, it is true, is the subject of the appeal and is, therefore, open to examination by the High Court. But while appraising the evidence, the High

Court should not ignore the importance of the opinion of the trial court which has to be dislodged before reversing the order under appeal. *Lekha Yadav* v. *State of Bihar*, (1973) 2 SCC 424: 1973 SCC (Cri) 820: AIR 1973 SC 2241: 1973 Cri LJ 1421.

Bench Strength 2. Coram: *K.K. Mathew* and **I.D. Dua**, JJ. [Date of decision: 3-5-1973]

[8813] — S. 417 — Appeal against acquittal — Appellate Court ought to give reasons before setting aside the acquittal. *Ram Kishan Singh* v. *Harmit Kaur*, (1972) 3 SCC 280: 1972 SCC (Cri) 493: AIR 1972 SC 468: 1972 Cri LJ 267.

Bench Strength 2. Coram: **A.N. Ray** and *D.G. Palekar*, JJ. [Date of decision: 9-12-1971]

[8814] — S. 417 — Appeal against acquittal — Appellate Court ought to give reasons before setting aside the acquittal. *Gopalsingh* v. *State of M.P.*, (1972) 3 SCC 268: 1972 SCC (Cri) 513: AIR 1972 SC 1557: 1972 Cri LJ 1045.

Bench Strength 4. Coram: *A.N. Grover*, *A.N. Ray*, **D.G. Palekar** and *M.H. Beg*, JJ. [Date of decision: 22-2-1972]

[8815] — S. 417 — Appeal against acquittal — Duty of High Court before interfering — Reasons to be stated

It is true that the High Court when reversing a finding of acquittal has to bear in mind that the accused have been acquitted by the trial court and unless the High Court finds such acquittal unreasonable it would normally not be justified in reversing that finding. The High Court must not only find that the view of the learned Sessions Judge about the evidence was unreasonable but must also give reasons why it does. *Bhakla and Ramadhin* v. *State of M.P.*, (1973) 3 SCC 672: 1973 SCC (Cri) 478: AIR 1972 SC 2576: 1973 Cri LJ 39.

Bench Strength 3. Coram: *J.M. Shelat*, **D.G. Palekar** and *S.N. Dwivedi*, JJ. [Date of decision: 30-8-1972]

[8816] — S. 417 — Appeal against acquittal — Power of the Appellate Court — Manner of approach

The power of the Appellate Court in an appeal against acquittal is not different from that it has in appeal against conviction. The difference lies more in the manner of approach and perspective rather than in the content of the power. *Gopi Nath Ganga Ram Surve* v. *State of Maharashtra*, (1970) 3 SCC 627.

Bench Strength 2. Coram: **V. Ramaswami** and *I.D. Dua*, JJ. [Date of decision: 15-10-1969]

[8817] — S. 417 — Appeal against acquittal — Power of the High Court — Extent of — *Interference with order of acquittal — How far permissible*

The powers of the High Court in considering the evidence on record under S. 417, CrPC, are as extensive as its powers in appeals against convictions but that the Court at the same time should bear in mind the presumption of innocence of accused persons which presumption is not weakened by their acquittal. It must also bear in mind the fact the Appellate Judge has found them not guilty. Unless the conclusions reached by him are palpably based on erroneous view of the law or that his decision is likely to result in grave injustice, the High Court should be reluctant to interfere with his conclusion. If two reasonable conclusions can be reached on the basis of the evidence on record then the view in support of the acquittal of the accused should be preferred. The fact that the High Court is inclined to take a different view of the evidence on record is not sufficient to interfere with the order of acquittal. *Khedu Mohton* v. *State of Bihar*, (1970) 2 SCC 450: 1970 SCC (Cri) 479: AIR 1971 SC 66: 1971 Cri LJ 20.

Bench Strength 2. Coram: **K.S. Hegde** and *I.D. Dua*, JJ. [Date of decision: 17-8-1970]

[8818] — S. 417 — Appeal against acquittal — Powers of the High Court — Presumption of innocence of the accused — *Interference with the order of Trial Court only on cogent grounds*

It is now well settled that the power of an Appellate Court to review evidence in appeals against acquittal is as extensive as its powers in appeals against convictions. It is also well settled that before an Appellate Court can set aside the order of acquittal, it must carefully consider the reasons given by the trial Court in support of its order and must give its own reasons to reject those reasons. It should bear in mind the presumption of innocence of the accused and the fact that the trial Judge had the advantage of seeing and hearing the witnesses. In brief, the Appellate Court should not disturb an order of acquittal except on very cogent grounds. On an examination of the entire material on record we have come to the conclusion that the High Court was not justified in setting aside the order of the Trial Court. *Mathai Methews* v. *State of Maharashtra*, (1970) 3 SCC 772.

Bench Strength 3. Coram: *S.M. Sikri*, *G.K. Mitter* and **K.S. Hegde**, JJ. [Date of decision: 23-7-1969]

[8819] — S. 417 — Appeal to Supreme Court against acquittal by High Court — Accused being convicted by trial Judge — High Court setting aside conviction — *Application by State under Art. 134(1)(c) of Constitution of India is competent*

If an accused person is convicted by the trial Court and on appeal to the High Court, his conviction is set aside, the State is entitled to apply to the High Court for a certificate under Art. 134(1)(*c*). Such an application cannot be rejected in limine on the ground that it is incompetent, it has to be entertained and considered and decided on the merits.

Articles 134(1)(*a*) and (*b*) confer a right of an appeal to this Court, whereas Art. 134(1)(*c*) confers a right on the aggrieved party to make an application for a certificate; and it is for the High Court to consider whether the Certificate of fitness should be issued or not. Article 134(1)(*c*) does not, therefore, give the State a right to move this Court by way of an appeal against the order of acquittal passed by the High Court in appeal. Nevertheless it has a right to move the High Court for a certificate in that behalf.

The words used in Art. 134(1)(*c*) are wide enough to take in appellate orders of acquittal passed by the High Courts while dealing with appeals brought before them by accused persons who are convicted by the trial courts. *State of U.P.* v. *R.B. Agarwal*, AIR 1966 SC 1135, 1137: (1966) 3 SCR 462: 1966 Cri LJ 815, 816, 81.

Bench Strength **5**. Coram: **P.B. Gajendragadkar, C.J.** and *K.N. Wanchoo*, *J.C. Shah*, *S.M. Sikri* and *V. Ramaswami*, JJ. [Date of decision: 4-2-1966]

Shantiranjan Manjumdar v. A. Brahmachari, Cr. A. No. 21 of 1960, dt. Sept. 14, 1964; State Govt., M.P. v. R.G. Limsey, 1954 Cri LJ 244: AIR 1954 SC 20, overruled

[8820] — S. 417 — Appeal to Supreme Court against acquittal by High Court — Not allowed under Art. 134 — *Can be tried under Art. 136 — Constitution of India — Arts. 134 and 136*

Article 134 does not provide for an appeal from a judgment, final order or sentence in a criminal proceeding of a High Court if the High Court has on appeal reversed an order of conviction of an accused person and has ordered his acquittal. In other words, there is no provision in the Constitution corresponding to S. 417, CrPC, and such an order is final, subject, however, to the overriding powers vested in this Court by Art. 136 of the Constitution. *State of M.P.* v. *Ramkrishna Ganpatrao Limsey*, AIR 1954 SC 20: 1954 Cri LJ 244.

Bench Strength **3**. Coram: **M.C. Mahajan**, *S.R. Das* and *N.H. Bhagwati*, JJ. [Date of decision: 19-11-1952]

[**Ed.**: Explained in AIR 1956 SC 158 thus: that AIR 1954 SC 20 was a decision of a Bench of three Judges and not that of a Constitution Bench. There, the appeal was by special leave granted by this Court. The observation that there was no provision in the Constitution corresponding to S. 417 of the Criminal Procedure Code was obviously made to emphasise that this Court should not, in an appeal by special leave, interfere with an order of acquittal passed by the High Court merely for correcting errors of facts or law. Without hearing further arguments on the scope of Art. 134(1)(c), we would prefer not to express any opinion on a Constitution Bench as to the validity of the certificates given by the High Court in this case

See State of Madras v. *A.V. Iyer*, AIR 1958 SC 61 and State of Punjab v. S. Lal, AIR 1960 SC 397; see contrary view in *State of U.P.* v. *R.B. Agarwal*, (1966) 3 SCR 462: AIR 1966 SC 1135: 1966 Cri LJ 815-16, 17.]

[8821] — S. 417 — Benefit of doubt continues

The presumption of innocence of an accused is not weakened by his acquittal by the trial Court and the Appellate Court should consider every one of the grounds taken into consideration in favour of the accused by the trial Court before setting aside his acquittal and further bear in mind the fact that the trial Judge had the benefit of seeing the witnesses. *Asaram Vithalsingh Pardeshi* v. *State of Maharashtra*, (1970) 3 SCC 456: 1971 SCC (Cri) 62: AIR 1971 SC 1315: 1971 Cri LJ 1093.

Bench Strength **2**. Coram: *S.M. Sikri* and **K.S. Hegde**, JJ. [Date of decision: 16-9-1970]

[8822] — S. 417 — Limitations on the power of High Court in considering an appeal against acquittal — *Proper appraisal of evidence by trial Court not to be disturbed*

Held, the High Court has failed to realise the limitations within which it had to function and the caution that it had to observe in considering an appeal against acquittal. Since the Sessions Judge had made a proper appraisal of the evidence, there was no justification for the High Court to interfere with the order of acquittal passed by the learned Sessions Judge. *Bhubneshwar Mandal* v. *State of Bihar*, (1973) 1 SCC 303: 1973 SCC (Cri) 323: AIR 1973 SC 399: 1973 Cri LJ 337.

Bench Strength **3**. Coram: **A. Alagiriswami**, *I.D. Dua* and *C.A. Vaidialingam*, JJ, [Date of decision: 6-12-1972]

[8823] — S. 417 — Person actively participating in offence with accused but witness leaving him out while involving the accused — *No appeal made against his acquittal by trial Court — High Court not called upon to appreciate evidence on relative culpability — Whether accused can get benefit of the acquittal of his co-accused*

Where one of the members of the accused party, though actively participated in the offence, was not involved in the case, he can only be a witness to speak about the occurrence and perhaps his version about the accused persons cannot be accepted.

Moreover, where there was no appeal against acquittal of such a person by the trial Court and the High Court was not called upon to make an appreciation of evidence on the relative culpability of the two accused the contention that the appellant should also get the benefit of the same evidence on which he was acquitted is untenable. *Nanhku Singh* v. *State of Bihar*, (1972) 3 SCC 590: AIR 1973 SC 491: 1972 Cri LJ 1204.

Bench Strength **2**. Coram: **P. Jaganmohan Reddy** and *K.K. Mathew*, JJ. [Date of decision: 21-4-1972]

[8824] — S. 417 — Prima facie reasonableness of trial Court judgment not to prevent reassessment by High Court

The legal position regarding the powers of the High Court to allow an appeal against an order of acquittal is well settled.

Only because the judgment of the trial Court prima facie seems reasonable, it cannot be said that there is no scope for reassessment of the evidence by the appellate Court. The Court of appeal has full power under the statute to go into the entire evidence and all the relevant circumstances of the case for coming to its own conclusion about the guilt or innocence of the accused bearing in mind the initial presumption of the innocence of an accused person and the fact that he was acquitted by the trial Court. *Pala Singh* v. *State of Punjab*, (1972) 2 SCC 640: 1973 SCC (Cri) 55: AIR 1972 SC 2679: 1973 Cri LJ 59.

Bench Strength **3**. Coram: *J.M. Shelat*, **I.D. Dua** and *H.R. Khanna*, JJ. [Date of decision: 23-8-1972]

[8825] — S. 417 — Reappraisal of evidence — High Court setting aside acquittal — *Sessions Judge erred in exaggerating discrepancies — Fresh assessment of evidence by High Court justified*

The approach of the learned trial Judge to the evidence was one of suspicion which led him to give to those discrepancies an exaggerated significance. The High Court was right in arriving at the conclusion which on its own assessment of the evidence the Trial Judge had unjustifiably discarded on the mere ground of discrepancies.

Considering the gruesome nature of the attack on the deceased, the weapon used, the nature of the injuries caused and lastly the reason for that attack, it can hardly be said that the extreme sentence imposed upon the appellant by the High Court was not in the circumstances justified. *Kanauji* v. *State of U.P.*, (1971) 3 SCC 58: 1977 SCC (Cri) 662.

Bench Strength **2**. Coram: **J.M. Shelat** and *G.K. Mitter*, JJ. [Date of decision: 18-2-1970]

[8826] — S. 417 — Reappraisal of evidence by High Court

It is true that the High Court is entitled on appeal against acquittal to reappraise the evidence in the same manner in which it does on appeals against conviction with the only difference that in the former case it has to bear in mind the verdict of acquittal by the Trial Court. It is also true that under Art. 136 this Court does not ordinarily reappraise evidence for itself for determining whether or not the High Court has come to a correct conclusion on facts. But where the High Court has completely missed the real point requiring determination and has also on erroneous grounds discredited the medical testimony and has further failed to consider the fact that on account of long-standing enmity between the party of the accused and that of the deceased there is a tendency to involve innocent persons and to exaggerate and lead perjured evidence in regard to the occurrence, the Supreme Court would be justified in going into the evidence for the purpose of satisfying itself that grave injustice has not resulted in the case. *Masji Tato Rawool* v. *State of Maharashtra*, (1971) 3 SCC 416: 1971 SCC (Cri) 664.

Bench Strength **3**. Coram: *S.M. Sikri, C.J.* and *P. Jaganmohan Reddy* and **I.D. Dua**, JJ. [Date of decision: 16-2-1971]

[8827] — S. 417 — Reappraisal of evidence by High Court

Though the High Court has power on a review of the evidence to reverse the order of acquittal, yet in doing so it should not only consider all matters on record including the reasons given by the Trial Court in respect of the order of acquittal, but should particularly consider those aspects which are in favour of the accused and ought not also to act on conjectures or surmises nor on inferences which do not arise on the evidence in the case.

In view of the infirmities in the evidence and contradictions in the account of the witnesses the reversal of the order of acquittal by the High Court was not warranted. *Kanu Ambu Vish* v. *State of Maharashtra*, (1971) 1 SCC 503: 1971 SCC (Cri) 211: AIR 1971 SC 2256: 1971 Cri LJ 1547.

Bench Strength **3**. Coram: *S.M. Sikri, C.J.* and **P. Jaganmohan Reddy** and *I.D. Dua*, JJ. [Date of decision: 1-2-1971]

[8828] — S. 417 — Reason for rejecting defence version to be given when prosecution case unconvincing

Where defence story is that the accused was urinating when he received injuries and that gun went off in struggle causing injuries to the accused, and the Judge rejects it then it is his duty to consider the evidence of prosecution as to how the gun was fired and in case not accepting that story it is his duty to give reasons for not doing this. *Sohrab* v. *State of M.P.*, (1972) 3 SCC 751: 1972 SCC (Cri) 819: AIR 1972 SC 2020: 1972 Cri LJ 1302.

Bench Strength **2**. Coram: **P. Jaganmohan Reddy** and *G.K. Mitter*, JJ. [Date of decision: 2-5-1972]

[8829] — S. 417 — Reversal of acquittal by High Court upheld — *No two views of the evidence possible — Trial court's approach perverse and legally erroneous. Pedda Narayana* v. *State of A.P.*, (1975) 4 SCC 153: 1975 SCC (Cri) 427: AIR 1975 SC 1252: 1975 Cri LJ 1062: (1975) 12 ACC 201: 1975 Cr LR (SC) 335.

Bench Strength **2**. Coram: *N.L. Untwalia* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 8-4-1975]

[8830] — S. 417 — Rule of substantial and compelling reasons — M.G. Agarwal case *[No longer good law. (1963) 2 SCR 405: AIR 1963 SC 200]*

Per majority

It is not enough for the High Court to take a different view of the evidence; there must also be substantial and compelling reasons for holding that the trial Court was wrong. If the trial Court takes a reasonable view of the facts of the case, interference under S. 417 is not justifiable unless there are really strong reasons for reversing that view. *Aher Raja Khima* v. *State of Saurashtra*, AIR 1956 SC 217, 220: (1955) 2 SCR 1285: 1956 Cri LJ 426: (1956) 1 MLJ (SC) 135.

Bench Strength **3**. Coram: **Vivian Bose**[1], **T.L. Venkatarama Aiyar**[2] and *N. Chandrasekhara Aiyar*[1], JJ. [Date of decision: 22-12-1955]

*Following cases also **overruled** Surjan v. State of Rajasthan, AIR 1956 SC 425: 1956 Cri LJ 815, 818; Chinna Baliga v. State of Hyderabad, 1954 Cri LJ 1731; Bhagwan Das v. State of Rajasthan, 1957 SCR 854: AIR 1957 SC 589: 1957 Cri LJ 889, 92; Puran v. State of Punjab, AIR 1953 SC 459: 1953 Cri LJ 1925, 27, 28; Balbir Singh v. State of Punjab, AIR 1957 SC 216: 1957 Cri LJ 481; Wilayat Khan v. State of U.P., AIR 1953 SC 122: 1953 Cri LJ 662, 664; Ajmer Singh v. State of Punjab, 1953 SCR 418: AIR 1953 SC 76: 1953 Cri LJ 521; Surajpal Singh v. State, 1952 SCR 193: AIR 1952 SC 52: 1952 Cri LJ 331, 332*

[**Ed.**: *See latest view esp. (1974) 3 SCC 307: 1973 SCC (Cri) 933; (1973) 2 SCC 793; 1973 SCC (Cri) 1033; (1970) 3 SCC 474: 1971 SCC(Cri) 80.*]

[8831] — S. 417 — Scope — Appellate powers of superior Courts — Criteria to be followed

The scope of criminal appeal is set at rest by the decision in *Sanwat Singh* v. *State of Rajasthan*, (1961) 3 SCR 120. According to it —

1. An appellate court has full powers to review the evidence upon which the order of acquittal is founded.

2. The principles laid down in *Sheo Swarup case* afforded a correct guide for the appellate court's approach to a case disposing of such an appeal.

3. The different phraseology used in the judgments of this Court such as —

(*a*) "substantial and compelling reasons";

(*b*) "good and sufficiently cogent reasons";

(*c*) "strong reasons",

are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion, but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal but should express the reasons in its judgment which led it to hold that the acquittal was not justified.

To this it may be added.

4. The appellate court should also bear in mind the fact that the trial Court had the benefit of seeing the witnesses in the witness-box and the presumption of innocence is not weakened by the order of acquittal. If two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the findings of the trial Court. *Ramaphupala Reddy* v. *State of A.P.*, (1970) 3 SCC 474: 1971 SCC (Cri) 80: AIR 1971 SC 460: 1971 Cri LJ 422.

Bench Strength **2**. Coram: *S.M. Sikri* and **K.S. Hegde**, JJ. [Date of decision: 28-9-1970]

[8832] — S. 417 — Trial Court's appraisal of testimony based on demeanour of witness not to be brushed aside easily

In dealing with an appeal against an acquittal the High Court can go into the question of law and fact and reach its own conclusion on evidence provided it pays due regard to the fact that matter had been before the Court of Sessions and the Sessions Judge had the chance and opportunity of seeing the witnesses depose to the facts. *Damodarprasad Chandrikaprasad* v. *State of Maharashtra*, (1972) 1 SCC 107: 1972 SCC (Cri) 110: AIR 1972 SC 622: (1972) 2 SCR 622: 1972 Cri LJ 451.

Bench Strength **2**. Coram: **A.N. Ray** and *D.G. Palekar*, JJ. [Date of decision: 29-11-1971]

[8833] — S. 417 — Two reasonable views possible — Trial Court view to be duly considered

No doubt on appeal against acquittal the High Court is entitled to reappraise the evidence for itself but when the evidence is capable of two reasonable views, then the view taken by the trial Court demands due consideration. *Deo Narain* v. *State of U.P.*, (1973) 1 SCC 347: 1973 SCC (Cri) 330: AIR 1973 SC 473: 1973 Cri LJ 677.

Bench Strength 3. Coram: *A. Alagiriswami*, **I.D. Dua** and *C.A. Vaidialingam*, JJ, [Date of decision: 11-12-1972]

See Khedu Mohton v. State of Bihar, (1970) 2 SCC 450: 1970 SCC (Cri) 479 for the proposition that of the two reasonable views the view favouring the acquittal of the accused should be preferred. High Court's inclination to take a different view, held, not sufficient to interfere with an order of acquittal

[8834] — Ss. 417, 418 and 423 — Principles governing appreciation of evidence in an appeal from a judgment of acquittal

In an appeal from a judgment of acquittal, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption certainly not weakened by the fact that he has been acquitted at his trial (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. *Dappili Verma Reddy* v. *State of A.P.*, (1973) 3 SCC 89: 1973 SCC (Cri) 151: AIR 1973 SC 153: 1973 Cri LJ 223.

Bench Strength 3. Coram: *P. Jaganmohan Reddy*, **K.K. Mathew** and *G.K. Mitter*, JJ. [Date of decision: 4-5-1972]

[8835] — Ss. 417, 423 and 418 — Appeal against order of acquittal and of conviction not materially different

The Code does not make any difference between the ambit of an appeal from a conviction and that of an appeal from an order of acquittal except that an appeal against a conviction is as of right and lies to courts of different jurisdiction depending on the nature of sentence, the kind of trial and the Court in which it was held, whereas an appeal against an order of acquittal can only be made to the High Court by the State Government or by a complainant (where the case started on a complaint) with the special leave of the High Court. The matters on which an appeal under the Code is admissible are stated in S. 118 and they are the same for the two kinds of appeals. Such appeals lie on a matter of fact as well as a matter of law (except in trials by Jury). The procedure for dealing with the two kinds of appeals is identical and the powers of Appellate Courts in disposing of the appeals, though indicated separately in S. 423 are in essence the same. *Rajeswar Prasad Misra* v. *State of W.B.*, AIR 1965 SC 1887, 1890: (1966) 1 SCR 178: (1965) 2 Cri LJ 817.

Bench Strength 3. Coram: *A.K. Sarkar*, **M. Hidayatullah** and *V. Ramaswami*, JJ. [Date of decision: 6-5-1965]

[8836] — Ss. 417, 423 and 418 — Appeal against order of acquittal and of conviction not materially different

The Code does not make any difference between the ambit of an appeal from a conviction and that of an appeal from an order of acquittal except that an appeal against a conviction is as of right and lies to courts of different jurisdiction depending on the nature of sentence, the kind of trial and the Court in which it was held, whereas an appeal against an order of acquittal can only be made to the High Court by the State Government or by a complainant (where the case started on a complaint) with the special leave of the High Court. The matters on which an appeal under the Code is admissible are stated in S. 118 and they are the same for the two kinds of appeals. Such appeals lie on a matter of fact as well as a matter of law (except in trials by Jury). The procedure for dealing with the two kinds of appeals is identical and the powers of Appellate Courts in disposing of the appeals, though indicated separately in S. 423 are in essence the same. *Laxman Kalu Nikalje* v. *State of Maharashtra*, AIR 1968 SC 1390: (1968) 3 SCR 685: 1968 Cri LJ 1647.

Bench Strength 3. Coram: **M. Hidayatullah, C.J.** and *C.A. Vaidialingam* and *A.N. Grover*, JJ. [Date of decision: 5-4-1968]

[8837] — Ss. 417 and 369 — Relative scope — Power of High Court to entertain appeal by State after summary dismissal of appeal of convict

The right to appeal against the order of acquittal is expressly conferred upon the State by S. 417 of the Code, and S. 369 does not purport to place any restriction upon the exercise of that right. Section 369 occurs in Ch. XXVI and prima facie applies to judgments of the Courts of first instance. *Nirbhay Singh* v. *State of M.P.*, (1969) 2 SCR 569, 571.

Bench Strength 3. Coram: **J.C. Shah**, *V. Ramaswami* and *A.N. Grover*, JJ. [Date of decision: 30-10-1968]

[8838] — Ss. 417 and 421 — Reversal of acquittal by the High Court not justified where the view taken by the trial court was reasonably possible and the High Court was inclined to take a different view of the facts. *Bahal Singh* v. *State of Haryana*, (1976) 3 SCC 564: 1976 SCC (Cri) 461: AIR 1976 SC 2032: 1976 Cri LJ 1568.

Bench Strength 2. Coram: *R.S. Sarkaria* and **N.L. Untwalia**, JJ. [Date of decision: 12-3-1976]

[8839] — Ss. 417 and 423 — Ambit and scope of High Court's powers in appeal against acquittal under — *Principles restated — CrPC, 1973, Ss. 378 and 386. Salim Zia* v. *State of U.P.*, (1979) 2 SCC 648: 1979 SCC (Cri) 568: AIR 1979 SC 391: 1979 Cri LJ 323.

Bench Strength 2. Coram: **Jaswant Singh** and *O. Chinnappa Reddy*, JJ. [Date of decision: 24-11-1978]

[8840] — Ss. 417 and 423 — Appeal against acquittal — Scope of appellate Court's jurisdiction explained and law laid down in *Sanwant Singh case* reiterated — *That if two reasonable views of the evidence are possible the appellate Court should not interfere, held, is but the old rule of giving accused the benefit of reasonable doubt — What is "reasonable doubt" further explained — On facts, reversal of acquittal by the High Court was justified — CrPC, 1973, Ss. 378 and 386. K. Gopal Reddy* v. *State of A.P.*, (1979) 1 SCC 355: 1979 SCC (Cri) 305: AIR 1979 SC 387: 1979 MLJ (Cri) 259: 1979 ALJ 137: 1980 Cri LJ 812.

Bench Strength 2. Coram: *Jaswant Singh* and **O. Chinnappa Reddy**, JJ. [Date of decision: 22-11-1978]

[8841] — Ss. 417 and 423 — Reversal of acquittal by High Court, held, not justified when it could not offset all the reasons given by the trial court for recording a verdict of acquittal — *High Court's reasoning based on conjectures and conclusion based on the testimony of interested witnesses ignoring that of government officials on duty who were disinterested and independent witnesses — That another reasonable view of the evidence was possible cannot justify the reversal of acquittal — Position in law on this aspect restated — Penal Code, 1860 — S. 302 — CrPC, 1973, Ss. 378 and 386.* (Para 27). *Bhagirath Singh* v. *State of Bihar*, (1976) 1 SCC 614: 1976 SCC (Cri) 112: AIR 1976 SC 924: 1976 Cri LJ 685.

Bench Strength 2. Coram: *P.N. Bhagwati* and **R.S. Sarkaria**, JJ. [Date of decision: 31-10-1975]

[8842] — Ss. 417 and 423 — Appeal against acquittal — Powers of appellate Court — Scope and ambit of — Restated — *Appellate Court should give reasons why acquittal of trial Court was not justified — CrPC, 1973, Ss. 386 and 378*

The appellate Court has full powers to review the evidence upon which the order of acquittal is founded. However, in exercising this power the appellate Court, while dealing with an order of acquittal, should not only consider every matter on record having a bearing on the question of facts and the reasons given by the Court below in support of its order of acquittal, but it must express its reasons in its judgment which led it to hold that the acquittal is not justified.

In cases where a large number of persons are involved and in the commotion some persons cause injuries to others and the evidence is of a partisan character, it is often safer for the judge of fact to be guided by the compass of probabilities along the rock-ribbed contours of the case converging on the heart of the matter. Once the Court goes astray from the basic features of the case it is apt to lose itself in the labyrinths of immaterial details, desultory discussion and vacillation arising from unfounded suspicions. *Bava Haji Hamsa* v. *State of Kerala*, (1974) 4 SCC 479: 1974 SCC (Cri) 515: AIR 1974 SC 902: 1974 Cri LJ 755.

Bench Strength 3. Coram: *M.H. Beg*, *Y.V. Chandrachud* and **R.S. Sarkaria**, JJ. [Date of decision: 21-2-1974]

(1974) 3 SCC 762: 1974 SCC (Cri) 238, followed

[8843] — Ss. 417 and 423 — Maintainability of joint appeal by State against order of acquittal against several persons in a joint trial — *R. 6 in Ch. XXVI of Bombay High Court Appellate Side Rules*

The finding of the Full Bench in *Lalu Jela case* as to R. 6 in Chapter XXVI of the Bombay High Court Appellate Side Rules being not inconsistent with Chapter XXXI of the Code of Criminal Procedure is approved by the Supreme Court. Procedure is a hand-maid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. So construed a joint appeal in compliance with this rule must be sustained.

Section 419, CrPC, does not prohibit a joint appeal from an order of acquittal. Nor are Ss. 258, 410 and 423, CrPC, a bar. *State of Gujarat* v. *Ramprakash P. Puri*, (1969) 3 SCC 156: 1970 SCC (Cri) 29.

Bench Strength 2. Coram: *V. Ramaswami* and **I.D. Dua**, JJ. [Date of decision: 16-10-1969]

[8844] — Ss. 417 and 423 — Appeal against acquittal — Appreciation of evidence — Power of High Court — *Sessions Judge adopting inconsistent and unsound standards in appreciating evidence — High Court is not only entitled but bound to give effect to its own independent conclusion on evidence*

In view of the highly unsatisfactory appreciation of the oral evidence by the Sessions Judge and the view of his adopting inconsistent and unsound standards without any real effect to assist the credibility of the evidence given by the various alleged eyewitnesses as against each of the accused there is every justification for the correctness of the various acquittals being closely scrutinised and examined by the Appellate Court. In such a situation the Court is not only entitled but bound to give effect to its own independent conclusion on the evidence, giving due weight to all the circumstance which have normally to be kept in view in a case of this kind. There was, therefore, ample justification for interference by the High Court with the acquittals which resulted from the judgment of the Sessions Judge. *Surjan* v. *State of Rajasthan*, AIR 1956 SC 425: 1956 Cri LJ 815, 818.

Bench Strength 2. Coram: *Vivian Bose* and **B. Jagannadhadas**, JJ. [Date of decision: 1-11-1955]

[8845] — Ss. 417 and 423 — Appeal against acquittal — High Court's power of review — Points to be considered by High Court before reaching its conclusion upon facts — *High Court should not disturb finding of acquittal recorded by trial court merely because a different view was possible. Bishan Singh* v. *State of Punjab*, (1974) 3 SCC 288, 294: AIR 1973 SC 2443: 1973 SCC (Cri) 914; *Mohandas Lalwani* v. *State of M.P.*, (1974) 3 SCC 361, 367: (1974) 1 SCR 636: 1973 SCC (Cri) 1011: 1973 Cri LJ 1812; *Samson Hyam Kemkar* v. *State of Maharashtra*, (1974) 3 SCC 494, 498: 1973 SCC (Cri) 1096: 1974 Cri LJ 809; *Dappili Verma Reddy* v. *State of A.P.*, (1973) 3 SCC 89, 94: 1973 SCC (Cri) 151: 1973 Cri LJ 223; *Shivaji Genu Motuite* v. *State of Maharashtra*, (1973) 3 SCC 219, 223: (1973) MLJ (Cri) 462: 1973 SCC (Cri) 214; *Roop Singh* v. *State of Punjab*, (1974) 3 SCC 307, 313: (1974) 1 SCR 828: 1973 SCC (Cri) 933; *Dargahi* v. *State of U.P.*, (1974) 3 SCC 302, 307: 1973 SCC (Cri) 928: 1973 Cri LJ 1828; *Sohrab* v. *State of M.P.*, (1972) 3 SCC 751, 756, 757: AIR 1972 SC 2020: 1972 SCC (Cri) 819; *Ram Kishan Singh* v. *Harmit Kaur*, (1972) 3 SCC 280, 281: 1972 SCC (Cri) 493: 1972 Cri LJ 267; *Chandrakant Ganpat Sovitar* v. *State of Maharashtra*, (1975) 3 SCC 16, 26: 1974 SCC (Cri) 712; *Khedu Mohton* v. *State of Bihar*, (1970) 2 SCC 450: (1970) SCC (Cri) 479; *Lekha Yadav* v. *State of Bihar*, (1973) 2 SCC 424, 427, 428: 1973 SCC (Cri) 820; *Pala Singh* v. *State of Punjab*, (1972) 2 SCC 640, 645, 646: 1973 SCC (Cri) 55; *Dharam Dass* v. *State of U.P.*, (1973) 2 SCC 216, 219; 1973 SCC (Cri) 765; *Mehtab Singh* v. *State of M.P.*, (1975) 3 SCC 407, 412: 1975 SCC (Cri) 33; *Balak Ram* v. *State of U.P.*, (1975) 3 SCC 219, 227, 228: 1974 SCC (Cri) 837; *Deo Narain* v. *State of U.P.*, (1973) 1 SCC 347, 351: 1973 SCC (Cri) 330; *Rajendra Rai* v. *State of Bihar*, (1975) 3 SCC 193, 197, 198: 1974 SCC (Cri) 811; *Bhubneshwar Mandal* v. *State of Bihar*, (1973) 1 SCC 303: 1973 SCC (Cri) 323: 1973 Cri LJ 337; *Bhakla and Ramadhin* v. *State of M.P.*, (1973) 3 SCC 672, 675: AIR 1972 SC 2576: 1973 SCC (Cri) 478: 1973 Cri LJ 39; *Ram Jag* v. *State of U.P.*, (1974) 4 SCC 201, 207: (1974) 3 SCR 9: 1974 SCC (Cri) 370: 1974 Cr LR (SC) 116; *Keshav Gangaram Navge* v. *State of Maharashtra*, (1971) 1 SCC 513: AIR 1971 SC 953; *Sethu Madhavan Nair* v. *State of Kerala*, (1975) 3 SCC 150: 1974 SCC (Cri) 774: AIR 1974 SC 1857: (1975) 1 SCR 673: 1974 Cri LJ 1279.

[8846] — Ss. 417 and 423 — Appeal against acquittal not different — Conclusion of compelling reasons not essential in reversing the acquittal

An appeal from acquittal need not be treated differently from an appeal from conviction and if the High Court finds that the acquittal is not justified by the evidence on record it can set aside the acquittal without coming to the conclusion that there were compelling reasons for doing so. *Radha Kishan* v. *State of U.P.*, AIR 1963 SC 822: 1963 Supp (1) SCR 408: 1963 Cri LJ 809: (1963) 2 LLJ 667.

Bench Strength 3. Coram: *Syed Jafer Imam*, *N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 27-9-1962]

[8847] — Ss. 417 and 423 — Appeal against acquittal of one of the several accused — High Court can record finding against the basis of acquittal of all — *Sessions Judge acquitting several accused of offences under S. 414, IPC holding that property not proved as "stolen property" — Appeal preferred against only one of the accused — High Court is competent to reverse the finding that property not stolen*

The mere fact that the learned Additional Sessions Judge acquitted the other accused on the ground that the property recovered was not proved to be stolen property did not preclude the State from appealing against the acquittal of the appellant against whom there is better evidence for establishing that he was in possession of the stolen property than the evidence was against the other co-accused. The State could challenge the correctness of the findings of the learned Additional Sessions Judge about the property being stolen property and, consequently the High Court can record its own finding on that question. The fact that the State did not appeal against the acquittal of others is not detrimental to this appeal. *Ajendranath* v. *State of M.P.*, AIR 1964 SC 170: (1964) 3 SCR 289: (1964) 1 Cri LJ 129: 1964 MLJ (Cri) 226.

Bench Strength 3. Coram: *K. Subba Rao*, **Raghubar Dayal** and *J.R. Mudholkar*, JJ. [Date of decision: 23-4-1963]

[8848] — Ss. 417 and 423 — Case based on oral evidence — Trial Court's estimate of such evidence not to be lightly set aside

Where the appeal before the High Court is one against acquittal, the High Court is, no doubt, entitled to go into the facts and arrive at its own estimate of the evidence, it is also settled law that, where the case turns on oral evidence of witnesses, the estimate of such evidence by the trial Court is not to be lightly set aside. General suspicions are not by themselves enough in such an appeal to dispute the credibility of witnesses, whom a trial Magistrate was inclined to accept. *S.A.A. Biyabani* v. *State of Madras*, AIR 1954 SC 645: 1954 Cri LJ 1665.

Bench Strength **3**. Coram: *B.K. Mukherjea*, *Ghulam Hasan* and **B. Jagannadhadas**, JJ. [Date of decision: 28-5-1954]

[8849] — Ss. 417 and 423 — Error of Law — *Sessions Judge committing error in proceeding on a basis wherein inferences and probabilities resting on assumptions were permitted to do duty for proved facts, which the statute required to be established before exemption under S. 84, Penal Code could be claimed — High Court must interfere with an acquittal — Impelling reasons for interference are present in such a case. State of M.P.* v. *Ahmadulla*, AIR 1961 SC 998: (1961) 3 SCR 583: (1961) 2 Cri LJ 43.

Bench Strength **2**. Coram: *A.K. Sarkar* and **N. Rajagopala Ayyangar**, JJ. [Date of decision: 25-1-1961]

[8850] — Ss. 417 and 423 — Extent of powers to review at large all the evidence

The Supreme Court has consistently taken the view that in an appeal against acquittal the High Court has full power to review at large all the evidence and to reach the conclusion that upon that evidence the order of acquittal should be reversed. *Jadunath Singh* v. *State of U.P.*, (1971) 3 SCC 577: 1971 SCC (Cri) 726: AIR 1972 SC 116: 1972 Cri LJ 29.

Bench Strength **3**. Coram: *S.M. Sikri, C.J.* and **G.K. Mitter** and *P. Jaganmohan Reddy*, JJ. [Date of decision: 12-8-1971]

[8851] — Ss. 417 and 423 — High Court can interfere if the trial Court fails to take note of a very important fact

In exercising its appellate powers in dealing with orders of acquittal the High Court should not interfere unless there is sufficient ground to do so. If the questions decided by the trial Court are pure questions of facts and their decision depends merely on appreciation of oral evidence the High Court would not be justified in interfering with the order of acquittal passed by the trial Court. But, where the trial Court's appreciation of evidence has been vitiated by its failure to take note of a very important fact the position becomes different.

Where the conclusion arrived at by the trial Court is not reasonably possible having regard to the specific case made by the appellant in his written statement and the evidence accepted is inconsistent with the case of the defence set up in the written statement, it is held that the infirmity in the judgment vitiates the conclusions of the trial Court and so the High Court was justified in considering the evidence for itself. *Dharamdas Hukamatrai Dorwani* v. *State of Bombay*, AIR 1960 SC 734: 1960 Cri LJ 1148: (1960) 2 Ker LR 32.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K. Subba Rao* and *J.C. Shah*, JJ. [Date of decision: 4-11-1959]

[8852] — Ss. 417 and 423 — High Court taking a different view — High Court not justified in brushing aside the view taken by the Court which is not patently absurd

The High Court was not justified, in an appeal from an order of acquittal in brushing aside the view taken by the trial Court which is by no means patently absurd or unreasonable merely because, as a result of an elaborate and laborious process of reasoning, the High Court came to think that it might be possible to take a different view of the evidence. This approach is utterly contrary to the salutary principles. *Bansidhar Mohanty* v. *State of Orissa*, AIR 1955 SC 585: 1955 Cri LJ 1300, 1302.

Bench Strength **4**. Coram: *M.C. Mahajan, C.J.* and **S.R. Das**, *N.H. Bhagwati* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 19-11-1954]

[8853] — Ss. 417 and 423 — High Court to set out the evidence succinctly and categorically when reversing judgment

When reversing acquittals their judgment should clearly set out and discuss the evidence of the eyewitnesses as against each of the accused succinctly and categorically, instead of merely cataloguing a summary of the evidence of each prosecution witness and an enumeration of all who spoke against each accused. *Surjan* v. *State of Rajasthan*, AIR 1956 SC 425, 430: 1956 Cri LJ 815.

Bench Strength **2**. Coram: *Vivian Bose* and **B. Jagannadhadas**, JJ. [Date of decision: 1-11-1955]

[8854] — Ss. 417 and 423 — Interference by High Court with order of acquittal

The appellate Court has full powers to review the evidence upon which the order of acquittal is founded and that the different phrases used in some of the judgments of this Court like "Substantial and compelling reasons", "good and sufficiently cogent reasons", and "strong reasons", were not intended to curtail the undoubted power of the appellate Court to review the entire evidence and to come to its own conclusion in an appeal against acquittal. It was, however, emphasised that in exercising this power the appellate Court, while dealing with an order of acquittal should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the Court below in support of its order of acquittal but it must express its reasons in its judgment which led it to hold that the acquittal is not justified. Also the appellate Court must bear in mind the fact that the trial Court had the benefit of seeing the witness in the witness-box and the presumption of innocence is not weakened by the order of acquittal. Therefore, "if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate Court should not disturb the findings of the trial Court". *Bhim Singh Rup Singh* v. *State of Maharashtra*, (1974) 3 SCC 762: 1974 SCC (Cri) 238: AIR 1974 SC 286.

Bench Strength 2. Coram: *M.H. Beg* and **Y.V. Chandrachud**, JJ. [Date of decision: 28-11-1973]

Followed in (1974) 4 SCC 479: 1974 SCC (Cri) 515.

[8855] — Ss. 417 and 423 — Nature and scope — Appeal against acquittal — Cardinal rules for High Court laid down

The following are the cardinal rules which have always to be kept in view on appeals against acquittal.

Firstly, there is presumption of innocence in favour of the accused which has to be kept in mind, especially when the accused has been acquitted by the Court below;

Secondly, if two views of the matter are possible, view favourable to the accused should be taken;

Thirdly, in case of acquittal by the trial Judge, the appellate Court should take into account the fact that the trial Judge had the advantage of looking at the demeanour of witnesses; and

Fourthly, the accused is entitled to the benefit of doubt. The doubt should, however, be reasonable and as observed in *H.P. Admn.* v. *Om Prakash*, (1972) 1 SCC 249: 1972 SCC (Cri) 88, the doubt should be such which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fights shy — though unwittingly it may be or is afraid of the logical consequences, if that benefit was not given. To put it differently, it is "not the doubt of a vacillating mind that has not the moral courage to decide but shelters itself in a vain and ideal scepticism". *State of U.P.* v. *Samman Dass*, (1972) 3 SCC 201: 1972 SCC (Cri) 275: AIR 1972 SC 677: 1972 Cri LJ 487: 1973 ALJ 489.

Bench Strength 2. Coram: *J.M. Shelat* and **H.R. Khanna**, JJ. [Date of decision: 11-1-1972]

[8856] — Ss. 417 and 423 — Nature and Scope — Latest view — Appeal against acquittal — Approach to be taken by appellate Court — *Matters to be considered as a matter of practice — Balance between the rule of benefit of doubt and public good — Caution in giving the benefit of doubt too freely — Rational application of the consideration that the trial Court had observed the witnesses and assessed their reliability — Trial Court in no better position as regards expert evidence. Shivaji Sahabrao Bobade* v. *State of Maharashtra*, (1973) 2 SCC 793: 1973 SCC (Cri) 1033: AIR 1973 SC 2622: 1973 Cri LJ 1783.

Bench Strength 3. Coram: *P. Jaganmohan Reddy, H.R. Khanna* and **V.R. Krishna Iyer**, JJ. [Date of decision: 27-8-1973]

[8857] — Ss. 417 and 423 — Nature and Scope — Latest view — Appeal against acquittal — Consideration before High Court before interfering

The jurisdiction of the High Court in dealing with appeals from judgments and orders of acquittal is wide enough to empower the High Court to assess and appraise the evidence for itself and come to its own conclusion on the question of guilt or innocence of the accused persons. The statute places no limitation on this power, there being no distinction between an appeal from an acquittal and an appeal from a conviction. If the court on examining with care the evidence and the reasons for acquittal feels satisfied that the guilt of the accused is established beyond reasonable doubt then it may be considered as much its duty to convict as it would be its duty to acquit, if it entertains reasonable doubt about the guilt of the accused.

The High Court has, of course, to bear in mind when sifting and appraising the evidence, the initial presumption in favour of innocence of the accused and the fact that he was acquitted by the trial Court. The presumption of innocence has to be considered to be further strengthened to some extent by virtue of the order of acquittal. And then according to the obligation generally imposed on courts of appeal, the High Court should dislodge the reasons on which the trial Court recorded the order of acquittal. *Dharam Das* v. *State of U.P.*, (1973) 2 SCC 216: 1973 SCC (Cri) 765: AIR 1973 SC 2195: 1973 Cri LJ 1181.

Bench Strength 2. Coram: *K.K. Mathew* and **I.D. Dua**, JJ. [Date of decision: 18-4-1973]

[8858] — Ss. 417 and 423 — Not necessary that judgment of trial Court should be perverse before being reversed

It is not correct to say that unless the Appellate Court in an appeal under S. 417 came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order. *Atley* v. *State of U.P.*, AIR 1955 SC 807: 1955 Cri LJ 1653, 1655.

Bench Strength **3**. Coram: *Vivian Bose*, *T.L. Venkatarama Aiyar* and **B.P. Sinha**, JJ. [Date of decision: 16-9-1955]

[8859] — Ss. 417 and 423 — Presumption of innocence to be dislodged — *Case under S. 411, IPC*

It is settled law that the presumption of the innocence of an accused person is reinforced by an order of acquittal and a heavy onus rests on the prosecution in an appeal from such an order to prove that the order is manifestly erroneous. Where the High Court approached the case as if it was considering an appeal preferred against his conviction by an accused person and took the view that the accused having given no explanation regarding his knowledge of the place from which the ornaments were taken out, it must be presumed that he must have kept the ornaments there and that the fact that the field did not belong to the accused and that the place was accessible to others would not show that the ornaments were not in his possession but were kept by someone else, in the absence of a statement from the accused explaining the circumstances under which he come to know about the ornaments.

Held :

That was not the correct way of approaching the decision of a case under S. 411, IPC. When the field from which the ornaments were recovered was an open one, and accessible to all and sundry, it is difficult to hold positively that the accused was in possession of these articles. The fact of recovery by the accused is compatible with the circumstance of somebody else having placed the articles there and of the accused somehow acquiring knowledge about their whereabouts and that being so, the fact of discovery cannot be regarded as conclusive proof that the accused was in possession of these articles. *Trimbak* v. *State of M.P.*, AIR 1954 SC 39: 1954 Cri LJ 335.

Bench Strength **2**. Coram: **M.C. Mahajan** and *N.H. Bhagwati*, JJ. [Date of decision: 12-3-1953]

[8860] — Ss. 417 and 423 — Reappreciation of oral evidence not ruled out

It is true that in dealing with oral evidence, a Court of Appeal would normally be reluctant to differ from the appreciation of oral evidence by the trial Court because obviously the trial Court has the advantage of watching the demeanour of the witnesses: but that is not to say that even in a proper case, the Appeal Court cannot interfere with such appreciation. *Jai Dev* v. *State of Punjab*, AIR 1963 SC 612, 619: (1963) 3 SCR 489: (1963) 1 Cri LJ 495.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.C. Das Gupta* and *J.R. Mudholkar*, JJ. [Date of decision: 30-7-1962]

[8861] — Ss. 417 and 423 — Reasonable doubt by trial Court and Jury — *Sufficiently cogent reasons necessary to overcome such reasonable doubt*

In an appeal against an order of acquittal on a charge of murder, under S. 417, CrPC, while the appeal cou¬t has full powers to review the whole case, the Court must start with the realisation that an experienced judicial officer (with four assessors) had concluded that there was clearly reasonable doubt in respect of the guilt of the accused on the evidence put before the Court. It, therefore, requires good and sufficiently cogent reasons to overcome such reasonable doubt before the appeal court comes to a different conclusion. *Tulsiram Kanu* v. *State*, AIR 1954 SC 1: 1954 Cri LJ 225.

Bench Strength **3**. Coram: **Harilal J. Kania, C.J.** and *Patanjali Sastri* and *S.R. Das*, JJ. [Date of decision: 29-1-1951]

Howeve see Sanwat Singh v. State of Rajasthan, (1961) 3 SCR 120: AIR 1961 SC 715

[8862] — Ss. 417 and 423 — Reversal of acquittal by High Court upheld — Proper considerations in this regard as enunciated by Supreme Court, held, were observed by the High Court. *Sita Ram* v. *State of M.P.*, (1975) 4 SCC 171: 1975 SCC (Cri) 464: AIR 1975 SC 77: 1975 Cri LJ 37.

Bench Strength **2**. Coram: **H.R. Khanna** and *P.K. Goswami*, JJ. [Date of decision: 13-3-1974]

[8863] — Ss. 417 and 423 — Reversal of acquittal by High Court upheld — Trial court's reasoning absurd and baseless — *High Court dealing with every relevant matter forming the basis of the order of acquittal — Approach of High Court cautious and justified. Ram Anjore* v. *State of U.P.*, (1975) 3 SCC 379: 1975 SCC (Cri) 5: AIR 1975 SC 185: 1975 Cri LJ 249: (1975) 12 ACC 66.

Bench Strength **2**. Coram: *P.N. Bhagwati* and **N.L. Untwalia**, JJ. [Date of decision: 3-12-1974]

[8864] — Ss. 417 and 423 — Scope — Court may interfere when satisfied that the view taken by the acquitting Judge is clearly unreasonable — "Compelling reasons" used in earlier Supreme Court decisions in this context explained

Before interfering in appeal with an order of acquittal a court must examine not only questions of law and fact in all their aspects but must also closely and carefully examine the reasons which impelled the lower courts to acquit the accused and should interfere only if satisfied, after such examination that the conclusion reached by the lower court that the guilt of the person has not been proved is unreasonable.

In emphasising in earlier decisions the necessity of "compelling reasons" to justify an interference with an order of acquittal the Supreme Court did not in any way try to curtail the power bestowed on Appellate Courts under S. 423, CrPC when hearing appeals against acquittal. The golden thread running through all these decisions is the rule that in deciding appeals against acquittal the Court of appeal must examine the evidence with particular care, must examine also the reasons on which the order of acquittal was based and should interfere with the order only when satisfied that the view taken by the acquitting Judge is clearly unreasonable. Once the Appellate Court comes to the conclusion that the view taken by the lower Court is clearly an unreasonable one that itself is a "compelling reason" for interference, for it is a court's duty to convict a guilty person when the guilt is established beyond all reasonable doubt, no less than it is its duty to acquit the accused when such guilt is not established. *Harbans Singh* v. *State of Punjab*, AIR 1962 SC 439: 1962 Supp (1) SCR 104: (1962) 1 Cri LJ 479.

Bench Strength **4**. Coram: *P.B. Gajendragadkar*, *A.K. Sarkar*, *K.N. Wanchoo* and **K.C. Das Gupta**, JJ. [Date of decision: 16-10-1961]

[8865] — Ss. 417 and 423(1)(a) — Appeal against acquittal — High Court's power extends to review evidence and arrive at its own conclusions — *Nevertheless High Court would be slow to disturb findings based on oral evidence*

The Code of Criminal Procedure placed no special limitation upon the powers of the High Court in dealing with an appeal against an order of acquittal. The High Court is entrusted with power to review evidence and to arrive at its own conclusion on the evidence. There are certainly restrictions inherent in the exercise of the power, but those restrictions arise from the nature of the jurisdiction which the High Court exercises. In a criminal trial the burden always lies on the prosecution to establish the case against the accused and the accused is presumed to be innocent of the offence charged till the contrary is established. The burden lies upon the prosecution, and the presumption of innocence applies with equal, if not greater, force in an appeal to the High Court against an order of acquittal. In applying the presumption of innocence the High Court is undoubtedly slow to disturb findings based on appreciation of oral evidence for the Court which has the opportunity of seeing the witnesses is always in a better position to evaluate their evidence than the Court which merely peruses the record. *Bhagwanbhai Dulabhai Jadhav* v. *State of Maharashtra*, (1963) 3 SCR 386: (1963) 2 Cri LJ 694: 1963 Mah LJ 134.

Bench Strength **3**. Coram: *B.P. Sinha, C.J.* and *K.N. Wanchoo* and **J.C. Shah**, JJ. [Date of decision: 24-7-1962]

[8866] — Ss. 417 and 423(1)(a) — Appeal against acquittal — High Court's power in no way different from those in an appeal from conviction — Evidence can be considered and probabilities weighed — *Due attention must, however, be paid to the grounds on which acquittal is based — Presumption of innocence to remain*

The powers of the High Court in an appeal from an acquittal are in no way different from those in an appeal from a conviction. The High Court can consider the evidence and weigh the probabilities. It can accept evidence rejected by the Sessions Judge and reject evidence accepted by him unless the Sessions Judge relied upon his observations of the demeanour of a particular witness. In departing from the conclusions of the Sessions Judge the High Court must pay due attention to the grounds on which the acquittal is based and repeal those grounds satisfactorily, bearing in mind always that an accused starts with a presumption of innocence in his favour and this presumption of innocence in his favour cannot certainly be less strong after the acquittal. If these matters are properly kept in view and the acquittal is reversed, there can be no objection because our Criminal Jurisdiction empowers the High Court to reverse an acquittal. *Sher Singh* v. *State of U.P.*, AIR 1967 SC 1412: (1967) 2 SCR 727: 1967 Cri LJ 1213-14.

Bench Strength 3. Coram: **M. Hidayatullah**, *J.M. Shelat* and *G.K. Mitter*, JJ. [Date of decision: 23-2-1967]

[8867] — Ss. 417 and 423(1)(a) — Earlier rulings limiting power of High Court explained and overruled

In some of the earlier decisions of this Court, however, in emphasising the importance of adopting cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so "the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons": vide *Surajpal Singh* v. *State,* 1952 SCR 193, 201. Similarly in *Ajmer Singh* v. *State of Punjab,* 1953 SCR 418, it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are "very substantial and compelling reasons to do so". In some other decisions, it has been stated that an order of acquittal can be reversed only for "good and sufficiently cogent reasons" or for "strong reasons". In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in cl. (*a*) of S. 423(1) of the code. All that the said observations are intended to emphasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of *Sheo Swarup,* 61 1A 398: AIR 1934 PC 227 the presumption of innocence in favour of the accused "is not certainly weakened by the fact that he has been acquitted at his trial". Therefore the test suggested by the expression "substantial and compelling reasons" should not be construed as a formula which has to be rigidly applied in every case. *M.G. Agarwal* v. *State of Maharashtra*, AIR 1963 SC 200, 206: (1963) 2 SCR 405: (1963) 1 Cri LJ 235.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.* and **P.B. Gajendragadkar**, *K.N. Wanchoo*, *N. Rajagopala Ayyangar* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 24-4-1962]

Affirmed in Durgacharan Naik v. State of Orissa, (1966) 3 SCR 636: AIR 1966 SC 1775: 1966 Cri LJ 1491, 93, 94

[8868] — Ss. 417 and 423(1)(a) — Scope — Extent of High Court's power

The view that the High Court has no power under S. 417, CrPC, to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate Court has in some way or other misdirected itself so as to produce a miscarriage of justice cannot be supported.

The High Court in appeal under S. 417 of the Code of Criminal Procedure has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it be found expressly stated in the Code, but in exercising the power conferred by the Code and before reaching its conclusions upon fact the High Court should give proper weight and consideration to such maters as: (1) the view of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court is disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses. *Sheo Swarup* v. *Emperor,* 61 IA 398: AIR 1934 PC 227: 36 Cri LJ 786.

To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice. *Mohandas Lalwani* v. *State of M.P.*, (1974) 3 SCC 361: 1973 SCC (Cri) 1011; *Bishan Singh* v. *State of Punjab*, (1974) 3 SCC 288: 1973 SCC (Cri) 914; *Dargahi* v. *State of U.P.*, (1974) 3 SCC 302: 1973 SCC (Cri) 928; *Shivaji Genu Mohite* v. *State of Maharashtra*, (1973) 3 SCC 219, 223: 1973 SCC (Cri) 214; *Dappili Verma Reddy* v. *State of A.P.*, (1973) 3 SCC 89, 93, 94; 1973 SCC (Cri) 151; *Lekha Yadav* v. *State of Bihar,* (1973) 2 SCC 424, 427: 1973 SCC (Cri) 820; *Ram Kishan Singh* v. *Harmit Kaur,* (1972) 3 SCC 280, 281: AIR 1972 SC 468: 1972 SCC (Cri) 493: 1972 Cri LJ 267; *Bhagwanbhai Dulabhai Jadhav* v. *State of Maharashtra*, (1963) 3 SCR 386, 390: (1963) 2 Cri LJ 694; *Noor Khan* v. *State of Rajasthan*, AIR 1964 SC 286: (1964) 1 Cri LJ 167; *Ramjanam Singh* v. *State of Bihar,* AIR 1956 SC 643: 1956 Cri LJ 1254; *Aher Raja Khima* v. *State of Saurashtra*, (1955) 2 SCR 1285: AIR 1956 SC 217: 1956 Cri LJ 426; *Atley* v. *State of U.P.*, AIR 1955 SC 807: 1955 Cri LJ 1653; *Bansidhar Mohanty* v. *State of Orissa*, AIR 1955 SC 585: 1955 Cri LJ 1300; *Madan Mohan Singh* v. *State of U.P.*, AIR 1954 SC 637: 1954 Cri LJ 1656; *Shiv Bahadur Singh* v. *State of V.P.*, 1954 SCR 1098: AIR 1954 SC 322: 1954 Cri LJ 910; *Prandas* v. *State*, AIR 1954 SC 36: 1954 Cri LJ 331; *Zwinglee Ariel* v. *State of M.P.*, AIR 1954 SC 15: 1954 Cri LJ 280; *Chelloor Mankhal Narayan* v. *State of Travancore-Cochin*, AIR 1953 SC 478: 1954 Cri LJ 102; *Wilayat Khan* v. *State of U.P.*, AIR 1953 SC 122: 1963 Cri LJ 662. *Roop Singh* v. *State of Punjab*, (1974) 3 SCC 307: 1973 SCC (Cri) 933: AIR 1973 SC 2617: 1973 Cri LJ 1778.

Bench Strength **2**. Coram: **H.R. Khanna** and *A. Alagiriswami*, JJ. [Date of decision: 28-8-1973]

[8869] — S. 417(1) — Applicability — "Acquittal" — Meaning of — *Held, even when the trial Court does not entirely acquit the accused of the major offence and convicts him of a minor offence, it is still an "acquittal" — CrPC, 1973, S. 378(1)*

Having regard to the language employed in S. 417(1) of the 1898 Code and S. 2*(a)* of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, when an accused is acquitted of a major charge but convicted under a minor charge, it is still an acquittal under the major charge which may be challenged by the State before the High Court in an appeal under S. 417(1) of the 1898 Code. *Kishore Singh* v. *State of M.P.*, (1977) 4 SCC 524: 1977 SCC (Cri) 656: AIR 1977 SC 2267: 1977 Cri LJ 1937.

Bench Strength **2**. Coram: **P.K. Goswami** and *N.L. Untwalia*, JJ. [Date of decision: 10-10-1977]

[8870] — **S. 417(2) — Appeal filed by State Government in a case instituted on a complaint by the Delhi Special Police Establishment if proper** — *Delhi Special Police Establishment Act, 1946 — Purpose of amendment to S. 417 by Act 26 of 1955*

The Central Government is concerned with the investigation of the cases by the Establishment and its ultimate result. So in view of the provisions of the Delhi Act it was necessary to introduce sub-section (3) in S. 417 so that this Central agency which is solely and intimately connected with the investigation of the specified offences may also approach the Central Government for direction to appeal in appropriate cases. This, however, does not bar the jurisdiction of the State Government also to direct presentation of appeals when it is moved by the Establishment. The Establishment can move either the Central Government or the State Government. It will be purely a matter of procedure whether it moves the State Government directly or through the Central Government or in a given case moves the Central Government alone. It will again be a matter of procedure when the Central Government decides to appeal it requests the State Government to do the needful through the Public Prosecutor appointed under the Code. The word 'also' in sub-section (2) of S. 417 is very significant. This word seems not to bar the jurisdiction of the State Government to direct the Public Prosecutor to present an appeal even in cases investigated by the Establishment. Sub-section (1) of S. 417 is in general terms and would take in its purview all types of cases since the expression used in that sub-section is "in any case". There is no limitation on the power of the State Government to direct institution of appeal with regard to any particular type of cases. Sub-section (1) of S. 417 being in general terms is as such of wider amplitude. Sub-section (2) advisedly used the word 'also' when power is given to the Central Government in addition to direct the Public Prosecutor to appeal.

In the present case the move was made by the Superintendent, Delhi Special Police Establishment, by requesting the Secretary, Law Department of the Government of Madhya Pradesh and the appeal was thereafter filed in the name of the State of Madhya Pradesh. No objection, therefore, can be taken about the competency of the appeal being filed by the State of Madhya Pradesh. *Khemraj* v. *State of M.P.*, (1976) 1 SCC 385: 1976 SCC (Cri) 3: AIR 1976 SC 173: (1976) 2 SCR 753: 1976 Cri LJ 192.

Bench Strength **2**. Coram: *M.H. Beg* and **P.K. Goswami**, JJ. [Date of decision: 19-11-1975]

— S. 417(3) *See* Ss. 210, 417(3) and 423(1)
See also Ss. 439(4), 417(3) and 423(1)(a)

[8871] — **S. 417(3) — Appeal against acquittal signed and filed by an advocate holding power of attorney and not by the officer who filed the complaint originally** — *Appeal, held, properly filed*

Under S. 419 (CrPC) an appeal is made in the form of a petition in writing presented by the appellant or his pleader. We think that the expression 'other applications in any criminal proceedings' in the order of Commissioner, dated June 11, 1963, is broad enough to cover an application for special leave to appeal under S. 417(3) and an appeal in the form of a petition under S. 419.

Shri Manohar Lal (Asstt. Commissioner) was competent to engage counsel and the High Court was in error in upholding the preliminary objections. *Municipal Corpn. of Delhi* v. *Shiv Prasad*, (1969) 3 SCC 783.

Bench Strength **3**. Coram: *S.M. Sikri*, **R.S. Bachawat** and *K.S. Hegde*, JJ. [Date of decision: 15-4-1969]

[8872] — **S. 417(3) — Charge-sheet by police against two accused — Complaint against third accused in Court by — Cases consolidated and heard together** — *Acquittal of all the accused by Sessions Court — Petition by complainant in the High Court for special leave to appeal under S. 417(3) — Maintainability — Dismissal of revision against acquittal by High Court — Effect — "Cases", "Instituted", "Complaint" — Meaning of*

There can be no manner of doubt that one of the cases was instituted on the report of a police officer and the other on the complaint of the complainant. There can be no question of merger because the identity of the two cases is maintained right up to the end of Sessions trial. The case of the complainant, here appellant, proceeded on its own number and although evidence was led in both the cases together, the acquittal was recorded in each of the two cases. The police did not present a charge-sheet against Respondent 3 and his trial can be said to be in the other case and not in the case filed by the police. In this view of the matter it is quite plain that the complainant was entitled to move the High Court for special leave in his own case. The order saying that he had no standing cannot, therefore, be sustained.

The word 'case' is not defined by the Code but its meaning is well understood in legal circles. In criminal jurisdiction it means ordinarily a proceeding for the prosecution of a person alleged to have committed an offence. In other contexts the word may represent other kinds of proceedings but in the context of the sub-section it must mean a proceeding which at the end results either in discharge, conviction, or acquittal of an accused person.

What is meant by 'instituted' may next be explained. There are three different ways in which cognizance is taken by Magistrate of offences. This is stated in S. 190 of the Code.

The word 'complaint' has a wide meaning since it includes even an oral allegation it may, therefore, be assumed that no form is prescribed which the complaint must take. It may only be said that there must be an allegation which prima facie discloses the commission of an offence with the necessary facts for the Magistrate to take action. Section 190(1)(*a*) makes it necessary that the alleged facts must disclose the commission of an offence. *Bhimappa Basappa Bhu Sannavar* v. *Laxman Shivarayappa Samagouda*, (1970) 1 SCC 665: 1970 SCC (Cri) 263: AIR 1970 SC 1153: 1970 Cri LJ 1132.

Bench Strength **3**. Coram: **M. Hidayatullah, C.J.** and *A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 11-3-1970]

[8873] — S. 417(3) — Complainant's appeal against the order of acquittal — Competency in *G.R. case* even though clubbed with complaint case — *Held, incompetent*

That the appeal to the High Court was incompetent. There were two separate cases of which cognisance was taken separately. As the accused in both the cases were said to have committed the offences in the course of the same transaction, the cases were clubbed together for the purpose of trial and such a course was clearly permissible under S. 239, CrPC. That did not however alter the nature of the cases so as to affect their appealability under S. 417. The two cases retained their individuality except for the convenience of the trial. If the cases had ended in conviction they would have had to be separately recorded. The first ten accused would have had to appeal from their conviction and sentence in the *G.R. case* and similarly the remaining accused from the complaint case. If the State did not think it proper to direct the Public Prosecutor to present an appeal to the High Court from the order of acquittal in the *G.R. case* it might have been open to the complainant to invoke the powers of the High Court under S. 439, CrPC, if proper grounds for revision were present. *Khetrabasi Samual* v. *State of Orissa*, (1969) 2 SCC 571: AIR 1970 SC 272: 36 Cut LT 85: 1970 Cri LJ 369.

Bench Strength **3**. Coram: *S.M. Sikri*, **G.K. Mitter** and *P. Jaganmohan Reddy*, JJ. [Date of decision: 14-8-1969]

[8874] — S. 417(3) — Complaint instituted by Food Inspector — Appeal by Municipal Board — Maintainability — Point raised after disposal of appeal held not permissible — *Prevention of Food Adulteration Act, 1954*

Held, that the complaint purports to have been filed by the Municipal Board. Neither in the trial court nor in the High Court at the stage of hearing of the appeal, any objection was taken by the accused as to the maintainability either of the complaint or of the appeal. It is only after the disposal of the appeal, the accused for the first time took up the contention that the Municipal Board was not the real complainant. It is true that the complaint was signed by the Food Inspector. It was competent for the Municipal Board to authorise him to file the complaint. If the accused had challenged the authority of the Food Inspector to file the complaint, the trial Court would have gone into that question. The accused cannot be permitted to take up that contention for the first time after the disposal of the appeal. *Dhian Singh* v. *Municipal Board*, (1969) 2 SCC 371: AIR 1970 SC 318: 1970 Cri LJ 492.

Bench Strength **3**. Coram: *S.M. Sikri*, *G.K. Mitter* and **K.S. Hegde**, JJ. [Date of decision: 31-7-1969]

[8875] — S. 417(3) — Appeal against acquittal

It is clear that an appeal under S. 417 can only abate on the death of the accused and not otherwise. Once an appeal against an acquittal is entertained by the High Court it becomes the duty of the High Court to decide the same irrespective of the fact that the appellant either does not choose to prosecute or is unable to prosecute it for one reason or the other. *Khedu Mohton* v. *State of Bihar*, (1970) 2 SCC 450: 1970 SCC (Cri) 479: AIR 1971 SC 66: 1971 Cri LJ 20.

Bench Strength **2**. Coram: **K.S. Hegde** and *I.D. Dua*, JJ. [Date of decision: 17-8-1970]

[8876] — Ss. 417(3), 200, 202, 156(3) and 173 — "Institution of a case" — Taking cognizance of a case — Principles explained — *Magistrate on* *receipt of a complaint examining the complaint under S. 200 CrPC — Then ordering the police to institute a case and report — Police submitting a charge-sheet — Held, cognizance taken on complaint — Application for special leave to appeal against acquittal under S. 417(3) is maintainable*

The Code does not contain any definition of the words "institution of a case". It is clear however and indeed not disputed that a case can be said to be instituted in a court only when the Court takes cognizance of the offence alleged therein. An examination of the provisions of Ss. 193 and 194 makes it clear that when a Magistrate takes cognizance of an offence upon receiving a complaint of facts which constituted such offence a case is instituted in the Magistrate's Court and such a case is one instituted on a complaint. Again, when a Magistrate takes cognizance of any offence upon a report in writing of such facts made by any police officer it is a case instituted in the Magistrate's Court on a police report.

The Magistrate after receipt of a complaint proceeded to examine the complainant under S. 200 CrPC. After completing the examination the Magistrate ordered the police to institute a case and submit a report.

Held :

The examination by the Magistrate under S. 200 of the Code of Criminal Procedure puts it beyond doubt that the Magistrate did take cognizance of the offence mentioned in the complaint. If the Magistrate had ordered the police for investigation instead of for instituting the case the order would clearly be under S. 202 of the Code of Criminal Procedure. The fact that the case was sent for instituting the case makes no difference. The Magistrate was not bound to take cognizance of the offence on receipt of the complaint. He could have, without taking cognizance, directed an investigation of the case by the police under S. 156(3) of the Code of Criminal Procedure. Once however he took cognizance he could order investigation by the police only under S. 202 of the Code of Criminal Procedure and not under S. 156(3) of the Code of Criminal Procedure. As it is clear here from the very fact that he took action under S. 200 of the Code of Criminal Procedure, that he had taken cognizance of the offences mentioned in the complaint, it was open to him to order investigation only under S. 202 of the Code of Criminal Procedure and not under S. 156(3) of the Code. It would be proper in these circumstances to hold that though the Magistrate used the words "for instituting a case" in this order of November 22, 1956 he was actually taking action under S. 202 of the Code of Criminal Procedure, that being the only section under which he was in law entitled to act. The fact that the Sub-Inspector of Police treated the copy of the petition of complaint as a first information report and submitted "charge-sheet" against the accused persons cannot make any difference. The report made by the police officer though purporting to be a report under S. 173 of the Code of Criminal Procedure should be treated in law to be a report only under S. 202 of the Code of Criminal Procedure.

Cognizance having already been taken by the Magistrate before he made the order there was no scope of cognizance being taken afresh of the same offence after the police officer's report was received. The case was therefore instituted on complaint and not on police report. The contention that the appeal did not lie under S. 417(3) of the Code Criminal Procedure must therefore be rejected. *Jamuna Singh* v. *Bhadai Shah*, AIR 1964 SC 1541: (1964) 5 SCR 37: (1964) 2 Cri LJ 468, 71.

Bench Strength **3**. Coram: *B.P. Sinha, C.J.* and *M. Hidayatullah* and **K.C. Das Gupta**, JJ. [Date of decision: 4-10-1963]

[8877] — Ss. 417(3) and (4) — Scope — Appeal against acquittal in respect of offence under Companies Act after sixty days without obtaining special leave — *Limitation Act, 1963, Art. 114*

Section 417(4) of the Code of Criminal Procedure states that no application under sub-section (3) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of the order of acquittal.

Section 624-B of the Companies Act does not confer any right of appeal from any order passed by a Criminal Court in respect of any offence under the provisions of the Companies Act. The right to appeal to the High Court in the present cases of acquittal is governed by S. 147 of the Code of Criminal Procedure.

No application for the grant of special leave to appeal from an order of acquittal was made within sixty days from that order of acquittal. The orders of acquittal were passed on April 4, 1968. The petitions of appeal were presented on July 1, 1968. The appeals were rightly not entertained by the High Court because first there was no application for grant of special leave under S. 417(3) of the Code of Criminal Procedure, secondly, the appeals were incompetent without grant of special leave, and thirdly, these were barred by limitation. An appeal under S. 417(3) against acquittal is competent only when there is special leave granted by the High

Court. On obtaining special leave the appeal has thereafter to be filed within thirty days of the grant of leave to escape the mischief of the period of limitation under Art. 114 of the Limitation Act, 1963. *Asstt. Registrar of Companies* v. *Standard Paint Works (P) Ltd.*, (1971) 2 SCC 85: 1971 SCC (Cri) 388: AIR 1971 SC 1115: (1971) 41 Comp Cas 474: 1971 Cri LJ 827: 1973 MLJ (Cri) 744.

Bench Strength **2**. Coram: *C.A. Vaidialingam* and **A.N. Ray**, JJ. [Date of decision: 1-3-1971]

[8878] — Ss. 417(3) and (4) — Application for special leave to appeal from order of acquittal by private person after expiry of limitation prescribed under S. 417(4), CrPC, 1898 — S. 5, Limitation Act, held, inapplicable — *Bar of time prescribed by S. 417(4) is 'special law' within the meaning of S. 29(2) — Limitation Act, 1908, Ss. 29(2) and 5 — Limitation Act, 1963, Ss. 29(2) and 5*

So far as appeal by the State Government is concerned, the law of limitation is the general law laid down in the Limitation Act (Art. 157) to which S. 5 would apply by its own force. But in so far as appeal by a private prosecutor is concerned, the legislature was astute to specifically lay down that the foundation for such an appeal should be laid within 60 days from the date of the order of acquittal. In that sense, this rule of 60 days' bar is a special law, that is to say, a rule of limitation which is specially provided for in the Code itself, which does not ordinarily provide for a period of limitation for appeals or applications. It is the general law of limitation, as laid down in the Limitation Act, which governs appeals ordinarily preferable under the Code, *vide* Arts. 150, 154, 155 and 157. To such appeals the provision of S. 5 would apply.

The Code is a general law regulating the procedure for the trial of criminal cases, generally; but if it lays down any bar of time in respect of special cases in special circumstances like those contemplated by S. 417(3) and (4), read together, it will be special law contained within the general law.

Once it is held that the special rule of limitation laid down in sub-section (4) of S. 417 of the Code is a 'special law' of limitation, governing appeals by private prosecutors, there is no difficulty in coming to the conclusion that S. 5 of the Limitation Act is wholly out of the way, in view of S. 29(2)(*b*) of the Limitation Act.

The Limitation Act, Art. 157, has prescribed the rule of limitation in respect of appeals against acquittal at the instance of the State. Hence, it may be said that there is no limitation prescribed by the Limitation Act for an appeal against an order of acquittal at the instance of a private prosecutor. Thus, there is a difference between the Limitation Act and the rule laid down in S. 417(4) of the Code in respect of limitation affecting such an application. Section 29(2) is supplemental in its character in so far as it provides for the application of S. 3 to such cases as would not come within its purview but for this provision. And for the purpose of determining any period of limitation prescribed by any special law, it has made the provisions of the Limitation Act, referred to in clause (*a*) of sub-section (2) of S. 29 applicable to such cases to the extent to which they are not expressly excluded by such special or local law, and clause (*b*) of that sub-section expressly lays it down that the remaining provisions of the Limitation Act shall not apply to cases governed by any special or local law. In our opinion, therefore, the provisions of the Code supplemented by the provisions of S. 29(2) of the Limitation Act, make it clear that S. 5 of the Limitation Act would not apply to an application for special leave to appeal under S. 417(3) of the Code. *Kaushalya Rani* v. *Gopal Singh*, AIR 1964 SC 260, 262, 263: (1964) 4 SCR 982: (1964) 1 Cri LJ 152.

Bench Strength **3**. Coram: **B.P. Sinha, C.J.** and *J.C. Shah* and *N. Rajagopala Ayyangar*, JJ. [Date of decision: 20-9-1963]

[**Ed.**: There is an important departure made by 1963 Act in so far as provision contained in S. 29(2) is concerned — Under new Act only if the special or local law expressly excludes applicability of S. 5 would it stand displaced.]

[8879] — Ss. 417(3) and 431 — Appeal to High Court after obtaining special leave under S. 417(3) — Death of appellant during pendency of appeal — Appeal whether abates

It is clear that an appeal under S. 417 can only abate on the death of the accused and not otherwise. Once an appeal against an acquittal is entertained by the High Court it becomes the duty of the High Court to decide the same irrespective of the fact that the appellant either does not choose to prosecute or is unable to prosecute it for one reason or the other. *Khedu Mohton* v. *State of Bihar*, (1970) 2 SCC 450: 1970 SCC (Cri) 479: AIR 1971 SC 66: 1971 Cri LJ 20.

Bench Strength **2**. Coram: **K.S. Hegde** and *I.D. Dua*, JJ. [Date of decision: 17-8-1970]

— S. 417(4) *See also* Ss. 417(3) and (4)

[8880] — S. 417(4) — "Entertain" — Meaning of

"Entertain" means "file or received by the High Court" and it has no reference to the actual hearing of the application for leave to appeal, otherwise the result would be that in many cases applications for leave to appeal would be barred because the applications have not been put up for hearing before the High Court within 60 days of the order of acquittal. *Lala Ram* v. *Hari Ram*, (1969) 3 SCC 173: 1970 SCC (Cri) 25: AIR 1970 SC 1093: 1970 Cri LJ 1014: 1960 Cri LJ 1014: (1970) 2 SCR 898.

Bench Strength 3. Coram: **S.M. Sikri**, *G.K. Mitter* and *P. Jaganmohan Reddy*, JJ. [Date of decision: 17-10-1969]

— S. 418 *See* Ss. 307(3), 418 and 423
See also Ss. 376, 418 and 423
See also Ss. 417, 418 and 423
See also Ss. 417, 423 and 418
See also Ss. 421 and 418

[8881] — Ss. 418 and 307(3) — Relative power of High Court under

The Legislature designedly conferred a larger power on the High Court under S. 307(3) of the Code than that conferred under S. 418 thereof, as in the former case the Sessions Judge differs from the jury while in the latter he agrees with the jury. *K.M. Nanavati* v. *State of Maharashtra*, AIR 1962 SC 605, 614: 1962 Supp (1) SCR 567: (1962) 1 Cri LJ 521.

Bench Strength 3. Coram: *S.K. Das*, **K. Subba Rao** and *Raghubar Dayal*, JJ. [Date of decision: 24-11-1961]

— S. 419 *See also* Ss. 258, 419, 410 and 423

[8882] — S. 419 — Joint appeal against order of acquittal

Section 419, CrPC, does not prohibit a joint appeal from an order of acquittal. Nor are Ss. 258, 410 and 423, CrPC, a bar. *State of Gujarat* v. *Ramprakash P. Puri*, (1969) 3 SCC 156: 1970 SCC (Cri) 29.

Bench Strength 2. Coram: *V. Ramaswami* and **I.D. Dua**, JJ. [Date of decision: 16-10-1969]

[8883] — S. 419 — Contents of petition of appeal *— Is meant to be succinct statement of the grounds upon which the appeal is proposed to be supported — Should contain detailed grounds — Bald statement — Effect*

A memorandum of appeal is meant to be a succinct statement of the grounds upon which the appellant proposes to support the appeal. It is a notice to the Court that such and such specific grounds are proposed to be urged on behalf of the appellant, as also a notice to the respondent that he should be ready to meet these specific grounds.

A memorandum of appeal with a bald ground that "the order of acquittal is against the weight of evidence on record and contrary to law" is of no help to any of the parties or to the Court. Such a bald statement of the grounds leaves the door wide open for all kinds of submissions, thus tending to waste the time of the Court and taking the respondents by surprise. Such a practice deems to be discontinued and a more efficient way of drawing up grounds of appeal has to be developed. *Kapil Deo Shukla* v. *State of U.P.*, AIR 1958 SC 121: 1958 SCR 640: 1958 Cri LJ 262, 265.

Bench Strength 3. Coram: **B.P. Sinha**, *P. Govinda Menon* and *J.L. Kapur*, JJ. [Date of decision: 14-10-1957]

[8884] — S. 419 — "Copy" — Expression used in the section — Means certified copy and not plain copy

So far as S. 419 is concerned having regard to the context and the purpose of that section, the copy to be filed along with the petition of appeal must be a certified copy.

The word "copy" in S. 419 means a "certified copy". *State of U.P.* v. *C. Tobit*, AIR 1958 SC 414: 1958 SCR 1275: 1958 Cri LJ 809, 813.

Bench Strength 4. Coram: **S.R. Das, C.J.** and *T.L. Venkatarama Aiyar*, *A.K. Sarkar* and *Vivian Bose*, JJ. [Date of decision: 14-2-1958]

[8885] — S. 420 — Appeal against conviction — Accused in jail — Application for certified copy made after expiry of limitation period *— Held, fit case for condonation of delay — Limitation Act, 1963, S. 5. Krishna Daji Kalab* v. *State of Maharashtra*, 1968 ACC 366.

Bench Strength 2. Coram: **J.C. Shah** and *A.N. Grover*, JJ. [Date of decision: 15-11-1968]

[8886] — Ss. 420, 421 and 430 — Appeal dismissed without hearing the appellant under S. 420 *— Another appeal from the same judgment through the counsel is not maintainable*

If the order dismissing the appellant's appeal under S. 420 was lawful, a second appeal from the same judgment of conviction presented through a pleader was not maintainable because the previous order dismissing the appeal was final under S. 430, CrPC. *Pratap Singh* v. *State of V.P.*, AIR 1961 SC 586: (1961) 2 SCR 509: (1961) 1 Cri LJ 733.

Bench Strength 5. Coram: **Syed Jafer Imam**, *J.L. Kapur*, *K.C. Das Gupta*, *Raghubar Dayal* and *N. Rajagopala Ayyangar*, JJ. [Date of decision: 18-11-1960]

— S. 421 *See* Ss. 417 and 421
See also Ss. 420, 421 and 430

[8887] — S. 421 — Appeal — Conviction of accused by trial Court relying on evidence of relation of deceased — Appeal to High Court — Summary dismissal by High Court — Propriety *— Necessity of recording a speaking order*

The trial court relied in support of its order on two eyewitnesses — one of whom is stated to be the uncle of the deceased. That Court also noticed that in the dying declaration by the deceased made to his uncle the name of the accused as his assailant was not mentioned. In a case like this, it was incumbent on the High Court to issue notice to the State and hear the appeal with the record before it and after evaluating the evidence record a speaking order so that this Court could also have before it the reasoning of the High Court for upholding the appellant's conviction. The dismissal of appeal by the High Court with the one word "dismissed" has left the Supreme Court guessing about the line of reasoning which the High Court would have adopted after appropriate scrutiny of the material on the record. *Challappa Ramaswami* v. *State of Maharashtra*, (1970) 2 SCC 426: 1970 SCC (Cri) 472: AIR 1971 SC 64: 1971 Cri LJ 19.

Bench Strength **2**. Coram: *K.S. Hegde* and **I.D. Dua**, JJ. [Date of decision: 13-8-1970]

[8888] — S. 421 — Appeal an arguable one involving substantial and important question of law — Summary dismissal of appeal not justified

The appeal before the High Court was an arguable one and raised substantial and important questions. The High Court was not justified in dismissing the appeal summarily. *A. Vishwanathan* v. *State of Maharashtra*, (1969) 3 SCC 889.

Bench Strength **2**. Coram: **V. Ramaswami** and *I.D. Dua*, JJ. [Date of decision: 8-10-1969]

[8889] — S. 421 — Constitutionality — Art. 14 of the Constitution — *Court competent to dismiss a jail appeal where petition for appeal sent by a convicted person through jail authorities without hearing him — Court bound to hear a convict person if the petition for appeal presented in person or through a Counsel — There is no discrimination and the classification is rational — Section does not offend Art. 14 of the Constitution*

Section 421 of the Code of Criminal Procedure which enabled a court to dismiss an appeal filed by a convicted person, while he was in jail, without hearing did not offend Art. 14 of the Constitution on the ground that it discriminated between him and a convicted person who presented his appeal either in person or through a pleader. There is a rational basis for making the classification which has a reasonable connection with the object of the legislation providing for appeals under Ch. XXXI of the CrPC. *Pratap Singh* v. *State of V.P.*, AIR 1961 SC 586: (1961) 2 SCR 509: (1961) 1 Cri LJ 733.

Bench Strength **5**. Coram: **Syed Jafer Imam**, *J.L. Kapur*, *K.C. Das Gupta*, *Raghubar Dayal* and *N. Rajagopala Ayyangar*, JJ. [Date of decision: 18-11-1960]

[8890] — S. 421 — Summary dismissal of appeal by High Court under — Appeal to Supreme Court by special leave — *Interference by Supreme Court — Remand of appeal to High Court — Proper remedy — Constitution of India — Art. 136*

It was undoubtedly open to this Court to go into the evidence led in this case and consider the appellant's conviction on the merits, notwithstanding that the present appeal is by special leave. But it would be more appropriate and would serve the ends of justice better, if the High Court hears and decides the appeal in the light of the aforesaid decisions. The order of summary dismissal is set aside and the case remitted back to the High Court for hearing and deciding the appeals in accordance with law. *Challappa Ramaswami* v. *State of Maharashtra*, (1970) 2 SCC 426: 1970 SCC (Cri) 472: AIR 1971 SC 64: 1971 Cri LJ 19.

Bench Strength **2**. Coram: *K.S. Hegde* and **I.D. Dua**, JJ. [Date of decision: 13-8-1970]

[8891] — S. 421 — Criminal appeal — Evidence worth reconsideration — Summary dismissal of appeal — Validity of orders of the appellate court — *Held, not valid*

The record of the case demanded reconsideration of evidence. The High Court was not justified in summarily dismissing the appeal. *Vishwanath Shankar Beldar* v. *State of Maharashtra*, (1969) 3 SCC 883: 1970 SCC (Cri) 138.

Bench Strength **2**. Coram: *V. Bhargava* and **K.S. Hegde**, JJ. [Date of decision: 18-9-1969]

[8892] — S. 421 — Reasons for summary dismissal should be recorded at least in brief — *CrPC, 1973, S. 384*

It is very necessary for High Courts to at least record their reasons briefly even when they dismiss criminal appeals summarily on facts found. It is often difficult in criminal cases to say whether any material error was committed by trial Court in arriving at its findings of fact without at least some examination and consideration of the main feature of the evidence which only a reasoned order could disclose. *Rajendra Kumar Chaturvedi* v. *State of Maharashtra*, (1974) 4 SCC 586: 1974 SCC (Cri) 622: AIR 1974 SC 852: (1974) 3 SCR 847: 1974 Cri LJ 737.

Bench Strength **2**. Coram: **M.H. Beg** and *R.S. Sarkaria*, JJ. [Date of decision: 4-4-1974]

[8893] — S. 421 — Summary dismissal by High Court when arguable point raised — *CrPC, 1973, S. 384*

Though the High Courts possess the power to dismiss criminal appeals summarily, appeals involving serious or substantial questions which are prima facie arguable should not be dismissed summarily without recording brief reasons in support of the order of dismissal. (Para 2). *Dattu Genu Gaikwad* v. *State of Maharashtra*, (1974) 3 SCC 678: 1974 SCC (Cri) 208: AIR 1974 SC 387: 1974 Cri LJ 446: 1975 MLJ (Cri) 619.

Bench Strength **2**. Coram: *M.H. Beg* and **Y.V. Chandrachud**, JJ. [Date of decision: 23-11-1973]

[8894] — S. 421 — Summary disposal of appeal — Propriety — *CrPC, 1973, S. 384*

An appeal which raises arguable questions, either factual or legal, should not be summarily dismissed without recording a reasoned order. *Sampat Tatyada Shinde* v. *State of Maharashtra*, (1974) 4 SCC 213: 1974 SCC (Cri) 382: AIR 1974 SC 791.

Bench Strength **2**. Coram: *V.R. Krishna Iyer* and **R.S. Sarkaria**, JJ. [Date of decision: 14-2-1974]

[8895] — S. 421 — Impugned order worth consideration — Summary dismissal of the appeal by the High Court — Propriety of

On the face of it, the judgment of the Special Judge, contains matters which in our opinion required serious consideration by the High Court. The order of summary dismissal by the High Court was clearly unjustified. *Bhanwar Singh* v. *State of Rajasthan*, (1969) 3 SCC 763.

Bench Strength **2**. Coram: **V. Bhargava** and *K.S. Hegde*, JJ. [Date of decision: 17-9-1969]

[8896] — S. 421 — Scope of conviction of five accused by trial Court — Joint appeal by all accused — High Court admitting appeal on behalf of one accused and summarily rejecting appeal on behalf of other accused — Propriety — *Necessity of giving reasons for dismissal*

The power, under S. 421, CrPC, has to be exercised after perusing the petition of appeal and the copy of the order appealed against and after affording to the appellant or his pleader a reasonable opportunity of being heard in support of the appeal. The summary decision is accordingly a judicial decision which vitally affects the convicted appellant and in a fit case it is also open to challenge on appeal in this Court. An order summarily dismissing an appeal by the word "rejected", as is the case before us, though not violative of any statutory provision removes nearly every opportunity for detention of errors in the order. Such an order does not speak and is inscrutable giving no indication of the reasoning underlying it. It may at times embarrass this Court when the order appealed against prima facie gives rise to arguable points which this Court is required to consider without having the benefit of the views of the High Court on these points. When an appeal in the High Court raises a serious and substantial point which is prima facie arguable it is improper for that Court to dismiss it summarily without giving some indication of its view on the points raised. The interest of justice and fairplay require the High Court in such cases to give an indication of its views on the points argued so that this Court, in the event of an appeal from that order being presented here, has the benefit of the High Court's opinion on those points. *Govinda Kadtuji Kadam* v. *State of Maharashtra*, (1970) 1 SCC 469: 1970 SCC (Cri) 204: AIR 1970 SC 1033: 1970 Cri LJ 995.

Bench Strength **2**. Coram: *A.N. Ray* and **I.D. Dua**, JJ. [Date of decision: 9-2-1970]

[8897] — S. 421 — Admission of an appeal — Arguable and substantial question raised — Appeal must be admitted — *View taken by trial Court substantially correct — Appeal to be summarily dismissed — Not necessary to record reasons for summary dismissal*

When a criminal appeal is brought before the High Court, the High Court has to be satisfied that it raises an arguable or substantial question; if it is so satisfied, the appeal should be admitted; if, on the other hand, the High Court is satisfied that there is no substance in the appeal and that the view taken by the trial Court is substantially correct, it can summarily dismiss the appeal. It is necessary to emphasise that the summary dismissal of the appeal does not mean that before summarily dismissing the appeal, the High Court has not applied its mind to all the points raised by the appellant. Summary dismissal only means that having considered the merits of the appeal, the High Court does not think it advisable to admit the appeal because in its opinion, the decision appealed against is right.

If the High Court in dealing with criminal appeals takes the view that there is no substance in the appeal, it is not necessary that it should record reasons for its conclusion in summarily dismissing it. *Chittaranjan Das* v. *State of W.B.*, AIR 1963 SC 1696: (1964) 3 SCR 237: (1963) 2 Cri LJ 534, 537.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 22-4-1963]

[8898] — S. 421 — Appeal by State after appeal by accused summarily dismissed — Held admissible

When an appeal preferred by a person convicted of an offence is dismissed summarily by the High Court under S. 421 of the Code of Criminal Procedure, the judgment of the trial Court gets merged in the judgment of the High Court and it cannot thereafter be modified even at the instance of any other party affected thereby, and in respect of matters which were not and could not be dealt with by the High Court when summarily dismissing the appeal. When the High Court dismisses an appeal of the person accused summarily and without notice to the State, the High Court declines thereby to entertain the grounds set up for setting aside the conviction of the accused. That judgment undoubtedly binds the accused and he cannot prefer another appeal to the High Court against the same matter in respect of which he had earlier preferred an appeal. When an appeal of a convicted person is summarily dismissed by the High Court the State has no opportunity of being heard. The judgment summarily dismissing the appeal of the accused is a judgment given against the accused and not against the State or the complainant. If after the appeal of the accused is summarily dismissed, the State or the complainant seeks to prefer an appeal against the order of acquittal, the High Court is not prohibited by any express provision or implication arising from the scheme of the Code from entertaining the appeal. Where, however, the High Court issues notice to the State in an appeal by the accused against the order of conviction, and the appeal is heard and decided on the merits, all questions determined by the High Court either expressly or by necessary implication must be deemed to be finally determined, and there is no scope for reviewing those orders in any other proceeding.

Similarly if the State files an appeal and it is summarily dismissed, the accused is not prevented from filing an appeal against his conviction. Summary dismissal of the appeal filed by the accused does not bar any proceeding which the State may be competent to initiate against he order passed in favour of accused, but another appeal by the accused after summary dismissal of his earlier appeal is barred. *Nirbhay Singh* v. *State of M.P.*, (1969) 2 SCR 569, 572, 57.

Bench Strength 3. Coram: **J.C. Shah**, *V. Ramaswami* and *A.N. Grover*, JJ. [Date of decision: 30-10-1968]

[8899] — S. 421 — Appeal raising arguable issues — Summary dismissal by High Court — ***Legality***

Held, the appellant had raised arguable issues which ought not to have been disposed of in a summary manner when the case depended largely on the identification made at an identification parade and the testimony of handwriting experts. The order of dismissal of the High Court is set aside and remanded for fresh disposal in accordance with law. *Jeewan Prakash* v. *State of Maharashtra*, (1972) 3 SCC 266: 1972 SCC (Cri) 491: AIR 1973 SC 278: 1973 Cri LJ 307.

Bench Strength 2. Coram: **A.N. Grover** and *M.H. Beg*, JJ. [Date of decision: 9-3-1972]

[8900] — S. 421 — Appeal raising arguable points — Summary rejection by High Court — *Propriety — Importance of giving reasons for dismissal of appeal in limine*

Held, although it is open to the High Court to dismiss an appeal in limine if that Court is satisfied that it would not be necessary to issue notice to the State to meet the point raised by the appellant but the High Court would not be justified in dismissing summarily and without a speaking order an appeal which raises arguable questions, either factual or legal. It is both proper and desirable that the High Court should indicate its reasons for dismissing an appeal in limine because such a course would help the Supreme Court in better appreciating the grievance of the appellant seeking special leave to appeal from the decision of the High Court. Apart from that it serves to eliminate avoidable delay which must necessarily result in the final disposal of criminal cases. *Kapurchand Kesrimal Jain* v. *State of Maharashtra*, (1973) 3 SCC 299: 1973 SCC (Cri) 253: AIR 1973 SC 243: 1973 Cri LJ 284.

Bench Strength 3. Coram: *J.M. Shelat*, *A. Alagiriswami* and **I.D. Dua**, JJ. [Date of decision: 6-11-1972]

[8901] — S. 421 — Appellant raising plea of grave and sudden provocation, self-defence, etc. *— Summary dismissal by High Court set aside. Gulab Sonba* v. *State of Maharashtra*, (1971) 3 SCC 931(1): 1972 SCC (Cri) 179(1).

Bench Strength 3. Coram: *J.C. Shah*, *K.S. Hegde* and *A.N. Grover*, JJ. [Date of decision: 12-10-1970]

[8902] — S. 421 — Difference in the effect of verdict, if any, between full hearing and summary dismissal

Per S.R. Das, J.

When an appeal or revision is disposed of after a full hearing on notice to the respondent and allowed wholly or in part it becomes 'ex facie' obvious that the judgment appealed against or sought to be revised has been altered by the judgment or decision of the High Court on appeal or revision and a note is made in the record of this alteration.

But when an appeal or revision is dismissed after full hearing and the sentence is maintained there is outwardly no change in the record when the certificate is sent by the High Court but nevertheless there is an adjudication by the High Court. In the first case it is judgment of acquittal or reduction of sentence and in the second case it is a judgment of conviction.

Likewise, when an appeal or revision is summarily dismissed, such dismissal maintains the judgment or order of the lower Court and a note is made of such dismissal in the record and in the eye of the law it is the judgment of the High Court that prevails. To the uninstructed mind the change may be more easily noticeable in the first case than in the other two cases but on principle there is no difference. *U.J.S. Chopra* v. *State of Bombay*, AIR 1955 SC 633, 643: (1955) 2 SCR 94: 1955 Cri LJ 1410.

Bench Strength 3. Coram: **S.R. Das**[1], **N.H. Bhagwati**[2] and *Syed Jafer Imam*, JJ. [Date of decision: 25-3-1955]

[8903] — S. 421 — High Court's power of summary dismissal — *Held, can only be exercised after a perusal of the petition and the copy of the judgment — High Court must give some reasons why no arguable case is made out on a perusal of those documents — Case remanded to High Court — Practice of summary dismissal by one word disapproved — CrPC, 1973, S. 384. Dhondiba Gundu Pomaje* v. *State of Maharashtra*, (1976) 1 SCC 162: 1975 SCC (Cri) 793: AIR 1976 SC 1151: 1976 Cri LJ 856.

Bench Strength 2. Coram: **P. Jaganmohan Reddy** and *P.K. Goswami*, JJ. [Date of decision: 17-9-1974]

[8904] — S. 421 — High Court's power to dismiss an appeal in limine — Limitations on the power, if any — *Eyewitnesses deposing that they saw accused 'J' and 'K' giving knife blows in the abdomen and in the back of the deceased respectively — Trial Court finding that eyewitnesses only saw the infliction of blow by 'J' in abdomen — Possibility also existing that injury on the back of deceased could also have been caused with the same weapon with which 'J' gave the blow in the abdomen — Trial Court accepting prosecution allegation and sentencing both the accused under S. 302, IPC — High Court dismissing appeal in limine — High Court was not justified under the circumstances in dismissing the appeal in limine*

Held, it is true that under S. 421, CrPC the High Court can dismiss an appeal in limine if on a perusal of the petition of appeal and the judgment appealed from it were to form the view that there was no sufficient reason for its interference. At the same time, it is now settled law that the High Court would not be justified in dismissing summarily and without a speaking order an appeal which raises arguable questions either on points of law or on points of fact. *Krishna Vithu Suroshe* v. *State of Maharashtra*, (1974) 3 SCC 404: 1973 SCC (Cri) 969: AIR 1974 SC 274: (1974) 1 SCR 567: 1974 Cri LJ 330.

Bench Strength 2. Coram: **H.R. Khanna** and *A. Alagiriswami*, JJ. [Date of decision: 30-8-1973]

[8905] — S. 421 — Non-speaking order of summary dismissal by High Court — Not liable to be set aside for that reason alone

The appellate Court has got power to dismiss summarily a criminal appeal. If, however, the appeal raises an arguable and substantial point, the High Court should give reasons for rejecting the appeal. In appropriate cases this Court may examine the evidence for itself and dispose of the appeal on merits even though the High Court has dismissed the appeal by a single word order "dismissed" and has given no reasons in support of the order. So the impugned order cannot be set aside for the solitary reason that it is not a speaking order. (Para 5) . *Rajpal Bhiraram* v. *State of Maharashtra*, (1974) 3 SCC 633: 1974 SCC (Cri) 123: AIR 1974 SC 1150: 1974 Cri LJ 806.

Bench Strength 2. Coram: **S.N. Dwivedi** and *Y.V. Chandrachud*, JJ. [Date of decision: 13-11-1973]

[8906] — S. 421 — Power of appellate court — Matter involving arguable and substantial points — Summary rejection of appeal — Propriety

A summary rejection by an Appellate Court under S. 421 may not be violative of the section, nevertheless when an arguable or substantial question arises for consideration, it is improper for an Appellate Court to dismiss the appeal summarily without giving some indication of its view on the point. *Shyam Deo Pandey* v. *State of Bihar*, (1971) 1 SCC 855: 1971 SCC (Cri) 353: AIR 1971 SC 1606: 1971 Cri LJ 1177.

Bench Strength 2. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 23-3-1971]

[8907] — S. 421 — Powers of High Court to dismiss appeal in limine

Held, under S. 421 of the Code of Criminal Procedure the High Court can dismiss an appeal in limine if on a perusal of the petition of appeal and the judgment appealed from it were to be of the view that there was no sufficient reason for its interference. But where an appeal raises questions of fact and law, the High Court would not be justified in dismissing the petition of appeal summarily. *Sk. Mohd. Ali* v. *State of Maharashtra*, (1972) 2 SCC 784: 1973 SCC (Cri) 111: AIR 1973 SC 43: 1973 Cri LJ 166.

Bench Strength 3. Coram: **J.M. Shelat**, *I.D. Dua* and *H.R. Khanna*, JJ. [Date of decision: 25-8-1972]

[8908] — S. 421 — Practice of summary dismissal of appeal prevails in all the High Courts in India and is permissible under CrPC

The observations of the Divisional Bench of the High Court while disposing of application under Art. 134(1)(*c*) of the Constitution that the summary dismissal has not given satisfaction to the appellant and seemed unjust almost amounts to a condemnation of the practice of summary dismissal of appeal, especially against orders passed in a case tried by a jury when the appellant has to make a clear ground of law. Such a practice prevails in almost all the High Courts in India and has the sanction of the statute law as contained in the Code of Criminal Procedure. *Sidheswar Ganguly* v. *State of W.B.*, AIR 1958 SC 143: 1958 SCR 749: 1958 Cri LJ 273, 76, 78.

Bench Strength **2**. Coram: **B.P. Sinha** and *J.L. Kapur*, JJ. [Date of decision: 24-10-1957]

[8909] — S. 421 — Scope of — Power of summary dismissal when to be exercised — *Where there are arguable points the High Court must give reasons — Practice of High Court in dismissing criminal appeals without giving reasons disapproved — CrPC, 1973, S. 384*

The power of a summary rejection of a criminal first appeal, even though it is exercisable under the provisions of S. 421, Criminal Procedure Code, should be only exercised when the court is satisfied, from a perusal of the judgment as well as the record, that there is absolutely no reasonable possibility of its success for the reasons mentioned in the order. (Para 3)

At least, in such cases, where there are arguable points, the High Court should give its grounds and reasons in support of its decision to reject summarily on some absolutely clinching ground. *Munir Sayed Ibna Hussain* v. *State of Maharashtra*, (1976) 3 SCC 548: 1976 SCC (Cri) 459: AIR 1976 SC 1992: 1976 Cri LJ 1546.

Bench Strength **2**. Coram: **M.H. Beg** and *P.K. Goswami*, JJ. [Date of decision: 12-11-1975]

[8910] — S. 421 — Summary dismissal of appeal — *In a judgment of conviction under Ss. 195 and 34, IPC started on a complaint under S. 379-A CrPC, Sessions Court relying on the evidence of one of the accused as a witness in another Sessions trial which gave rise to the conviction — Also relying on the statement of a co-accused in the case under S. 342 CrPC — Contention that this evidence could not be under law taken into account well founded — Plea that the appellant not given an opportunity of being heard under S. 479-A CrPC an arguable, substantial and important point — Held, High Court not justified in summarily dismissing the appeal — Appeal remanded*

The appeal, filed by the appellant, before the High Court of Bombay, was an arguable one, and it also raised substantial and important questions, for consideration at the hands of the High Court. We are therefore satisfied that the High Court was not justified in dismissing the appeal, filed by the appellant, summarily. *Narayan Swami* v. *State of Maharashtra*, AIR 1968 SC 609: (1968) 2 SCR 88: 1968 Cri LJ 657, 59: (1968) 68 ITR 221, 225.

Bench Strength **2**. Coram: *V. Bhargava* and **C.A. Vaidialingam**, JJ. [Date of decision: 26-10-1967]

[8911] — S. 421 — Summary dismissal of appeal — Power of appellate court — Principles governing — *Summary dismissal justified when no arguable points raised — When case is arguable summary rejection order must give view of appellate court*

In a case which, prima facie, raises no arguable issue, a summary dismissal of the appeal may be justified, but in arguable case, a summary rejection order must give some indication of the views of the High Court, on the points raised. Summary rejection of appeals, which raise issues of substance and importance, was not justified. *Narayan Swami* v. *State of Maharashtra*, AIR 1968 SC 609: (1968) 2 SCR 88: 1968 Cri LJ 657, 59: (1968) 68 ITR 221, 225.

Bench Strength **2**. Coram: *V. Bhargava* and **C.A. Vaidialingam**, JJ. [Date of decision: 26-10-1967]

[8912] — S. 421 — Summary dismissal of appeal by High Court — Not justified when the appeal raises some arguable points requiring consideration — *High Court must give indication for its summary dismissal*

Where the appeal raised some arguable points which required consideration it was not right for the High Court to have dismissed it summarily. In cases which prima facie raise no arguable issue that course is, of course, justified, but the Supreme Court would appreciate it if in arguable cases the summary rejection order gives some indication of the views of the High Court on the points raised. Without the opinion of the High Court on such points in special leave petitions under Art. 136 of the Constitution the Supreme Court sometimes feels embarrassed if it has to deal with those matters without the benefit of that opinion. *Mushtak Hussein* v. *State of Bombay*, AIR 1953 SC 282: 1953 SCR 809: 1953 Cri LJ 1127, 1130.

Bench Strength **3**. Coram: **M.C. Mahajan**, *Vivian Bose* and *B. Jagannadhadas*, JJ. [Date of decision: 30-3-1953]

[8913] — S. 421 — Summary dismissal of appeal by High Court without recording any reasons — *Subsequently appeal by co-accused who were ear-*

lier absconding admitted — Held, since the evidence in both the cases was the same, the present appeal should also be admitted — CrPC, 1973, S. 384. Vithal Kandiba Kamble v. *State of Maharashtra*, (1977) 1 SCC 493: 1977 SCC (Cri) 127: AIR 1977 SC 1615: 1977 Cri LJ 1119.

Bench Strength **3**. Coram: **P.N. Bhagwati**, *A.C. Gupta* and *P.N. Shinghal*, JJ. [Date of decision: 8-12-1976]

[8914] — S. 421 — Summary dismissal of appeal justified when no question requiring closer and more detailed consideration presented. *Darasing Dhyansing* v. *State of Gujarat*, (1972) 4 SCC 648: AIR 1972 SC 505: 1972 Cri LJ 311.

Bench Strength **2**. Coram: *A.N. Ray* and **D.G. Palekar**, JJ. [Date of decision: 25-11-1971]

[8915] — S. 421 — Summary dismissal of criminal appeal — Arguable points — Evidence worth reconsideration — *Validity of order of summary dismissal of appellate Court*

Held, the right of appeal conferred by S. 410, read with S. 418, CrPC entitles the appellants to question the conclusions of the trial Courts both on matters of fact and of law. They have a right to ask for a review of the entire evidence and to challenge the appraisal of the evidence by the trial Court and its conclusions based on such appraisal. Section 421, CrPC no doubt empowers the appellate Court to dismiss the appeal summarily but before doing so it is bound to peruse with care and attention the petition of appeal and the copy of the judgment or order appealed against. The order of summary dismissal can be passed only if the Court considers that there is no sufficient ground for interference. Before exercising such right the High Court ought to record reasons for summary dismissal, however concise, so that the Supreme Court may, when approached by the aggrieved party to exercise its power under Art. 136 of the Constitution, have the benefit of the views of the High Court. *Mustaq Ahmed Mohd. Hussain* v. *State of Gujarat*, (1973) 1 SCC 702: 1973 SCC (Cri) 590: AIR 1973 SC 1222: 1973 Cri LJ 993.

Bench Strength **3**. Coram: *A. Alagiriswami*, **I.D. Dua** and *C.A. Vaidialingam*, JJ. [Date of decision: 13-3-1973]

[8916] — S. 421 — Summary dismissal of criminal appeal — Arguable points — Evidence worth reconsideration — *Validity of order of summary dismissal of appellate Court*

Appellate Court ought not to dispose of a case in a summary manner when the appellant raises arguable issues. In arguable cases not only would the reasons recorded by the High Court be helpful to the Supreme Court in better understanding and appreciating the High Court's line of approach, but it would also serve to assure the accused that the arguable points in his appeal were properly argued and duly considered by the High Court. This assurance cannot be considered to be without importance and value. *Shudhakar Bhanaji Chavan* v. *State of Maharashtra*, (1973) 2 SCC 200: 1973 SCC (Cri) 793: AIR 1973 SC 2187: 1973 Cri LJ 1174.

Bench Strength **2**. Coram: **K.K. Mathew** and *I.D. Dua*, JJ. [Date of decision: 26-4-1973]

[8917] — S. 421 — Summary dismissal of criminal appeal — Arguable points — Evidence worth reconsideration — *Validity of order of summary dismissal of appellate Court*

Appellate Court ought not to dispose of a case in a summary manner when the appellant raises arguable issues. In arguable cases not only would the reasons recorded by the High Court be helpful to the Supreme Court in better understanding and appreciating the High Court's line of approach, but it would also serve to assure the accused that the arguable points in his appeal were properly argued and duly considered by the High Court. This assurance cannot be considered to be without importance and value. *Mahendra Singh* v. *State of W.B.*, (1974) 3 SCC 409: 1973 SCC (Cri) 974: AIR 1973 SC 2288: (1974) 1 SCR 62: 1973 Cri LJ 1450.

Bench Strength **2**. Coram: *K.K. Mathew* and **I.D. Dua**, JJ. [Date of decision: 24-4-1973]

[8918] — S. 421 — Two appeals arising out of the same trial — One summarily dismissed while the other admitted by another Bench — *Held improper*

The three accused found guilty in a Sessions trial on a number of charges all centering around S. 409 IPC were convicted and sentenced to different terms of imprisonment and fine. The appeal of one of these accused was dismissed summarily with one word "dismissed". The remaining two accused appealed separately. Their appeals were admitted and a reasoned judgment followed.

Held :

The position, to say the least, was in the circumstance of the case anomalous. The appeals arise out of the same trial and are from one judgment and relate to the same charge to the jury. The Supreme Court is constrained to express its disapproval of the summary rejections of appeals which raise issues of substance and importance. *Shreekantiah Ramayya Munipalli* v. *State of Bombay*, AIR 1955 SC 287: (1955) 1 SCR 1177: 1955 Cri LJ 857, 860.

Bench Strength **3**. Coram: *B.K. Mukherjea* and *S.R. Das*, **Vivian Bose**, JJ. [Date of decision: 22-12-1954]

[8919] — S. 421 — Where arguable issues of fact or law arise, it is desirable that the High Court give reason for summary dismissal of appeal — *Case remanded for disposal on merits — CrPC, 1973, S. 384. Gulab* v. *State of Maharashtra*, (1977) 1 SCC 495: 1977 SCC (Cri) 129: AIR 1977 SC 1913: 1977 Cri LJ 1556.

Bench Strength 3. Coram: **P.N. Bhagwati**, *A.C. Gupta* and *P.N. Shinghal*, JJ. [Date of decision: 8-12-1976]

[8920] — Ss. 421, 422 and 423 — Admission of appeal — Appellate Court has no power to admit an appeal on question of sentence only

It seems to us, however, having regard to the provisions of the Code, that while an Appellate Court has power to dismiss an appeal summarily, if it considers that there is no sufficient ground for interfering, it has no power to direct that the appeal shall be heard only on the point of sentence. Such an order is not an order of summary dismissal under S. 421 and neither is it an order in terms of S. 422 of the Code. When an appeal is filed it is an appeal against conviction and sentence and it is not permissible for an Appellate Court to direct that it shall be heard only on the question of sentence.

The order of the High Court admitting the appeal only on the point of sentence is invalid. *Rabari Ghela Jadav* v. *State of Bombay*, AIR 1960 SC 748: (1960) 3 SCR 130: 1960 Cri LJ 1156, 1157.

Bench Strength 3. Coram: *B.P. Sinha, C.J.* and **Syed Jafer Imam** and *J.C. Shah*, JJ. [Date of decision: 26-2-1960]

[8921] — Ss. 421, 435 and 439 — Summary dismissal of appeal or revision involves an adjudication by the High Court

When the Court summarily dismissed an appeal without hearing the accused or his pleader as in the case of a jail appeal or after hearing the accused or his pleader but before issuing any notice to the respondent as in an appeal presented by the accused or his pleader, the Court does decide an appeal.

It is incorrect to say that Ss. 421, 435 or 439 give the Court a discretion not to decide an appeal or revision brought before it. A summary dismissal of appeal or revision does involve an adjudication by the High Court just as a dismissal after a full hearing does. *U.J.S. Chopra* v. *State of Bombay*, AIR 1955 SC 633: (1955) 2 SCR 94: 1955 Cri LJ 1410.

Bench Strength 3. Coram: **S.R. Das**[1], **N.H. Bhagwati**[2] and *Syed Jafer Imam*, JJ. [Date of decision: 25-3-1955]

[8922] — Ss. 421 and 418 — Grounds of appeal should be clearly specified — Practice of taking only few general grounds should be discouraged

Normally it has to be presumed that all the arguments actually pressed at the hearing in the High Court were noticed and appropriately dealt with and if the judgment of the High Court does not contain discussion on a point, then that point should be assumed prima facie not to have been argued at the Bar, unless the contrary is satisfactorily shown.

It is, therefore expected that the various grounds in support of the appeal should be clearly specified in the petition of appeal and general grounds, howsoever convenient to those drafting them, do not serve the intended statutory purpose. The matter indeed is not res integra.

The practice of challenging the conclusion of the criminal court in a memorandum of appeal by taking only one or two general omnipotent grounds, should be given up as early as possible for the "speedy and consequently cheap administration of justice". *Amanullah* v. *State of U.P.*, (1973) 2 SCC 81: 1973 SCC (Cri) 747: AIR 1973 SC 1370: 1973 Cri LJ 1140.

Bench Strength 2. Coram: *K.K. Mathew* and **I.D. Dua**, JJ. [Date of decision: 12-4-1973]

[8923] — Ss. 421 and 423 — Appeal before High Court raising points not only arguable but also substantial requiring critical scrutiny and serious appraisal and evaluation of the prosecution evidence and circumstances of the case — *Dismissal of appeal in limine with the one word "dismissed" — Propriety*

Held, where in an appeal before the High Court, the appeal was dismissed in limine with one word "dismissed" without making a speaking order indicating the reasons for the dismissal and the facts show that the appeal in the High Court did raise points which were not only arguable but were also substantial requiring critical scrutiny and serious appraisal and evaluation of the prosecution evidence and the circumstances of the case, it is highly desirable that the High Courts give an indication of their views on the points raised in arguable cases in accordance with the legal position enunciated by the Supreme Court. In such cases the Supreme Court would have no option but to remand the case back to the High Court for rehearing and deciding the appeal after considering the points raised and recording its reasons in accordance with law. *Rajendrapaul Ramasaran Dass Sharma* v. *State of Maharashtra*, (1973) 4 SCC 31: 1973 SCC (Cri) 672: AIR 1973 SC 1180: 1973 Cri LJ 1171.

Bench Strength 3. Coram: *A. Alagiriswami*, **I.D. Dua** and *C.A. Vaidialingam*, JJ. [Date of decision: 23-2-1973]

— S. 422 *See also* Ss. 421, 422 and 423

[8924] — S. 422 — Notice of appeal — *High Court intimated that the accused has entered appearance — Court requested that no summon need be issued — Accused knew the time and place of hearing of appeal — There is compliance of S. 422*

Section 422 does not speak of the notice of the appeal being served on the appellant. It states that the notice is to be given to the accused. In a case where the High Court is intimated that the accused has entered appearance and has notice of the appeal filed against him and the Court is requested not to issue any summons to him, it can hardly be said that the notice of the appeal had not been given to the accused. The accused was fully apprised of the time and place at which the appeal would be heard. It is therefore held in the circumstances that there was notice to the accused and S. 422 was complied with. *Mohd. Dastagir* v. *State of Madras*, AIR 1960 SC 756: (1960) 3 SCR 116: 1960 Cri LJ 1159, 64.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.* and **Syed Jafer Imam**, *A.K. Sarkar, K.N. Wanchoo* and *J.C. Shah*, JJ. [Date of decision: 26-2-1960]

[8925] — Ss. 422 and 423 — Reduction of sentence possible in final disposal of appeal admitted under S. 422

The Appellate Court, after hearing the appeal, certainly has the power in finally disposing of the appeal to reduce the sentence but that does not entitle it to direct that an appeal is admitted only on the question of sentence. *Rabari Ghela Jadav* v. *State of Bombay*, AIR 1960 SC 748, 750: (1960) 3 SCR 130: 1960 Cri LJ 1156.

Bench Strength **3**. Coram: *B.P. Sinha, C.J.* and **Syed Jafer Imam** and *J.C. Shah*, JJ. [Date of decision: 26-2-1960]

— S. 423 *See* Ss. 236, 237 and 423
See also Ss. 258, 419, 410 and 423
See also Ss. 297, 423 and 537
See also Ss. 307(3), 418 and 423
See also Ss. 376, 375, 374 and 423
See also Ss. 376, 418 and 423
See also Ss. 417, 418 and 423
See also Ss. 417 and 423
See also Ss. 417, 423 and 418
See also Ss. 421, 422 and 423
See also Ss. 421 and 423
See also Ss. 422 and 423
See also Ss. 428, 423 and 417
See also Ss. 439, 435 and 423

[8926] — S. 423 — Criminal appeal — Concurrent finding of guilty by courts below — *High Court merely brushing aside entire defence version in one sentence — Supreme Court to weigh the evidence for itself — Constitution of India — Art. 136*

That ordinarily the Supreme Court does not consider a case after the High Court and the court below have concurrently found the accused guilty on facts. But when the defence version merited close consideration and had been brushed aside by the High Court, the Supreme Court would reconsider the entire case.

On facts the Court found that there was considerable room for doubt in the prosecution case. The statement of the complainant, which alone was the foundation of the charge against the appellant, could not be accepted without corroboration. The order of conviction and sentence be set aside. *Lachman Dass* v. *State of Punjab*, (1970) 2 SCC 563: 1970 SCC (Cri) 505: AIR 1970 SC 450: 1970 Cri LJ 526.

Bench Strength **2**. Coram: **M. Hidayatullah, C.J.** and *A.N. Grover*, J. [Date of decision: 10-10-1969]

[8927] — S. 423 — On an appreciation of the facts and circumstances of the case, held, reversal of acquittal by High Court justified — *CrPC, 1973, Ss. 378 & 386*. *Barot Ram Vishram* v. *State of Gujarat*, (1977) 1 SCC 194: 1977 SCC (Cri) 92: AIR 1976 SC 2597: 1976 Cri LJ 2001.

Bench Strength **3**. Coram: **P.N. Bhagwati**, *A.C. Gupta* and *P.N. Shinghal*, JJ. [Date of decision: 4-11-1976]

[8928] — S. 423 — Powers of appellate court to pass consequential or incidental order

The power of the appellate court under S. 423, CrPC, was wide and empowered it even to make any amendment or any consequential or incidental order that may be just or proper. *Kantilal Chandulal Mehta* v. *State of Maharashtra*, (1969) 3 SCC 166: 1970 SCC (Cri) 19: AIR 1970 SC 359: 1970 Cri LJ 510: (1970) 2 SCR 742.

Bench Strength **2**. Coram: *S.M. Sikri* and **P. Jaganmohan Reddy**, JJ. [Date of decision: 10-10-1969]

[8929] — S. 423 — Acquittal of co-accused by the High Court on the same evidence

Benefit of acquittal must go to the other accused also. Court cannot accept same evidence against one when not accepting it against the other — *Dalip Singh* v. *State of Punjab*, 1954 SCR 145: 1953 Cri LJ 1465 — Distinguished and limited to its facts. *Mohinder Singh* v. *State of Punjab*, AIR 1955 SC 762: 1955 Cri LJ 1542.

Bench Strength **3**. Coram: *Vivian Bose, T.L. Venkatarama Aiyar* and **B.P. Sinha**, JJ. [Date of decision: 13-9-1955]

[8930] — S. 423 — Appeal by accused convicted in a case where some accused were acquitted — *High Court is not competent to set aside the order of acquittal — It can, incidentally, consider the evidence against accused who were acquitted and can arrive at a finding contrary to the finding of the trial Court*

The Appellate Court cannot set aside the order of acquittal passed against the accused in case an appeal against acquittal was not duly preferred. There is, however, no legal bar for the High Court to deal indirectly or incidentally with the case of the accused who has been acquitted if it becomes necessary for it to so do while considering the appeal of the accused who had been convicted. After examining the evidence the High Court may well have come to the conclusion, that the evidence against the accused who was acquitted by the trial Court is also good and need not have been discarded. If in appreciating the points made by the appellant before it the High Court had to consider whole of the evidence in respect of the accused persons, it was free to come to one conclusion or the other in respect of the said evidence, so far as it related to the accused who had been acquitted by the trial court. *Sunder Singh* v. *State of Punjab*, AIR 1962 SC 1211: 1962 Supp (2) SCR 654: (1962) 2 Cri LJ 290, 93.

Bench Strength 3. Coram: **P.B. Gajendragadkar**, *K.C. Das Gupta* and *Raghubar Dayal*, JJ. [Date of decision: 19-1-1962]

[8931] — S. 423 — Hearing — Presence — Cause list not showing either the name of the appellants or their Advocate — *Effect*

The very idea behind publishing a cause list is to give notice to Advocates and the parties that the case in which they were concerned was going to be heard on or after a particular date. If the name of the Advocate who appears in the case is not shown, there would be good reason to think that he had no notice of the case being posted for hearing. It would be an exercise of sound discretion if an opportunity is given to the party who is not heard. *Swarth Mahto* v. *Dharmdeo Narain Singh*, (1972) 2 SCC 273: 1972 SCC (Cri) 676: AIR 1972 SC 1300: 1972 Cri LJ 879.

Bench Strength 3. Coram: *S.M. Sikri, C.J.* and **D.G. Palekar** and *M.H. Beg*, JJ. [Date of decision: 31-1-1972]

[8932] — S. 423 — Interference by High Court — Extent of power to interfere — *Order of acquittal by Trial Court after considering entire evidence — Interference by High Court on ground of failure on the part of Trial Court to consider evidence — Order of Trial Court restored by Supreme Court. Gopal Sarkar* v. *Pashupati Ghosh*, (1971) 3 SCC 231: 1971 SCC (Cri) 431.

Bench Strength 2. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 9-2-1971]

[8933] — S. 423 — New Plea — Not allowed — *Pleas involving finding of fact not taken in trial Court — High Court justified in not allowing the appellant to raise that plea in appeal. Afzal Ullah* v. *State of U.P.*, AIR 1964 SC 264: (1964) 4 SCR 991: (1964) 1 Cri LJ 156, 60: ILR (1964) 1 All 385.

Bench Strength 5. Coram: **P.B. Gajendragadkar**, *K. Subba Rao*, *K.N. Wanchoo*, *J.C. Shah* and *Raghubar Dayal*, JJ. [Date of decision: 20-9-1963]

[8934] — S. 423 — Non-appearance by parties — Powers of Appellate Court — *Not necessary for the Appellate Court to dispose of the appeal, only after hearing the appellant or his pleader and the Public Prosecutor — Can dispose of the appeal without hearing them if they do not appear*

Section 423, CrPC does not enjoin the Appellate Court to dispose of the appeal after hearing the appellant or his pleader and the Public Prosecutor. The words "if he appears" after the expression "and hearing the pleader and the public prosecutor" indicate that if none of these appears at the hearing, the Appellate Court can proceed with the disposal of the appeal on merits. *Sankatha Singh* v. *State of U.P.*, AIR 1962 SC 1208: 1962 Supp (2) SCR 817: (1962) 2 Cri LJ 288.

Bench Strength 3. Coram: *S.K. Das*, *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 25-1-1962]

[8935] — S. 423 — Obligatory for High Court to give a considered opinion

The judgment of the High Court in this case does not contain an appraisal of the whole evidence in the case nor does it show that the learned Judge has applied his mind to all the facts and circumstances of the case in all aspects. It is not enough for the High Court to summarise mechanically all the arguments advanced by the appellant and those advanced on behalf of the prosecution and to state in one short paragraph that it accepts the prosecution case with regard to the guilt of the appellant. It is necessary that the judgment of the Appellate Court must contain a critical appraisal of the whole evidence in the case and must give clear reasons for the conclusions arrived at. This is specially important in a case where the facts are complicated and intricate and the evidence is contradictory. The judgment must show that Appellate Court has applied its mind to all the facts and circumstances of the case from all aspects. It is not enough to set out the arguments of both the sides without setting out the reasons why any particular argument has been accepted or rejected.

For these reasons we hold that the judgment of the High Court is not in accordance with law. *K.C. Aggarwal* v. *Delhi Admn., Cri. A. No. 100 of 1966*

Bench Strength 3. Coram: *Shah, Sikri* and *Ramaswami*, JJ. [Date of decision: 27-5-1969]

[8936] — S. 423 — Power of High Court in appeal against acquittal

The High Court's power in appeal against acquittal is not different from its power in ordinary appeals against conviction. The High Court has to consider all the matters which weighed with the Trial Court and reasons given by it for disbelieving the witnesses, whose demeanour it had opportunity of observing. *Keshav Gangaram Navge* v. *State of Maharashtra*, (1971) 1 SCC 513: 1971 SCC (Cri) 221: AIR 1971 SC 953: 1971 Cri LJ 798.

Bench Strength 2. Coram: *S.M. Sikri, C.J.* and **P. Jaganmohan Reddy**, J. [Date of decision: 3-2-1971]

[8937] — S. 423 — Summary rejection of appeal for default of appearance of the appellant or counsel — *Manner of disposal of appeal — Expression "After perusing such record" is condition precedent for proper disposal of appeal*

There is no emphasis on the perusal of the record in S. 421 whereas under S. 423 one of the essential requirements is that the Appellate Court should peruse the record. The limitation provided under S. 423 is that the Appellate Court before disposing of the appeal must peruse the record. The expression "after perusing such record" in the section is a condition precedent to a proper disposal of an appeal either by dismissing the same or in other manner contemplated in the said section. There must be a clear indication in the judgment or order of the Appellate Court that it has applied its judicial mind to the particular appeal with which it was dealing. Such an indication will be available when the Appellate Court has considered the material on record, which means not only the judgment and petition of appeal but also the other relevant materials. *Shyam Deo Pandey* v. *State of Bihar*, (1971) 1 SCC 855: 1971 SCC (Cri) 353: AIR 1971 SC 1606: 1971 Cri LJ 1177.

Bench Strength 2. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 23-3-1971]

[8938] — S. 423 — Trial Judge making an illegal reference under S. 307 — *High Court passing an order of conviction against same accused — In appeal Supreme Court finding that the reference was illegal and the order of High Court was consequently bad — Reference made 3 years before the order of Supreme Court and incident occurred 4 years before the order of Supreme Court — In the meantime trial Judge retired from service — Not a fit case for remitting the case back to the Court making the reference — Proper order is to reject the reference under S. 307, Penal Code. Sashi Mohan Debnath* v. *State of W.B.*, AIR 1958 SC 194: 1958 SCR 962: 1958 Cri LJ 303, 306, 30.

Bench Strength 5. Coram: *N.H. Bhagwati, B.P. Sinha*, **Syed Jafer Imam**, *J.L. Kapur* and *P.B. Gajendragadkar*, JJ. [Date of decision: 19-11-1957]

[8939] — Ss. 423 and 439 — Reference to S. 423 in S. 439 — Scope and effect

It is fallacious to read all the words of S. 423 into S. 439, which the latter section does not contemplate. Section 439 only authorises the High Court in revision to exercise any of the powers conferred under S. 423. It does not further make reference to the cases in which such powers have to be exercised. The latter question does not arise because S. 439 itself makes the sweeping provision that "in the case of any proceeding", the High Court may exercise the powers enumerated in S. 423. We have, therefore, to look into S. 423 to find out not the cases in which the High Court can interfere but only the nature of the power that it can exercise in a case, in its revisional jurisdiction, that is to say, we have to incorporate only the several powers contained in S. 423, into S. 439, except the power to convert a finding of acquittal into one of conviction. *Ramgopal Ganpatrai Ruia* v. *State of Bombay*, AIR 1958 SC 97, 104: 1958 SCR 618: 1958 Cri LJ 244.

Bench Strength 3. Coram: **B.P. Sinha**, *P. Govinda Menon* and *J.L. Kapur*, JJ. [Date of decision: 8-10-1957]

— S. 423(1) *See* Ss. 210, 417(3) and 423(1)

— S. 423(1)(a) *See* Ss. 417 and 423(1)(a)

See also Ss. 423(1)(b) and (a)

See also Ss. 439(4), 417(3) and 423(1)(a)

[8940] — S. 423(1)(a) — Remand — Not to be given to prosecution to improve its case — Retrial — Prosecution of a practising lawyer by a client under S. 409 IPC — *An important document alleged to be in accused's handwriting alleged to be forged by the accused — Complainant not producing expert evidence — Trial court holding the document not proved and acquitting the accused — High Court ordering retrial in the appeal against acquittal and directing the Magistrate to afford an opportunity to the complainant to produce expert evidence — Order against well established rules of criminal jurisprudence is erroneous — Penal Code, 1860 — S. 409*

The accused, a practising lawyer, was prosecuted by the complaint, his client, under S. 409, IPC for misappropriating a sum of Rs 5000. The prosecution case was based on a letter alleged to have been written by the accused. The accused challenged the document as a forgery in material parts, but the complainant did not take any steps to get an expert on handwriting examined. The trial Court acquitted the accused. In appeal by the complainant against the order of acquittal the High Court ordered a retrial and directed the Magistrate to give an opportunity to the complainant to adduce the evidence of a handwriting expert, in order to establish the genuineness of the questioned document. The accused appealed to the Supreme Court.

Held :

An accused person should not be placed on trial for the same offence more than once, except in very exceptional circumstances. Though the complainant had the fullest opportunity of adducing all the evidence that would be necessary to prove the charge against the accused person, but he did not adduce expert evidence and also did not pray for examination of an expert. The prosecution took its chance of having a decision in its favour on the evidence adduced by it before the trial Court. That Court was not satisfied that evidence was adequately reliable to bring the charge home to the accused and acquitted him. On appeal the High Court could take a different view of the evidence, reverse the judgment and convert the order of acquittal into an order of conviction. It was however not justified to have put the accused to the botheration and expense of a second trial simply because the prosecution did not adduce all the evidence which should and could have been brought before the Court of first instance. Simply because the accused happened to be a lawyer would not be a ground for subjecting him to harassment a second time. Therefore, the order of retrial passed by the High Court was entirely erroneous. *Abinash Chandra Bose* v. *Bimal Krishna Sen*, AIR 1963 SC 316: (1963) 3 SCR 564: (1963) 1 Cri LJ 261.

Bench Strength **3**. Coram: **B.P. Sinha, C.J.** and *K.N. Wanchoo* and *J.C. Shah*, JJ. [Date of decision: 3-8-1962]

Explained in AIR 1965 SC 1887: (1965) 2 Cri LJ 817

[8941] — S. 423(1)(a) — Sentence — Appeal against acquittal — Power of the Appellate Court to impose punishment — Extent of — *Absence of show-cause notice against enhancement to the accused — Principles of natural justice — Violation of*

An appeal is a creature of a statute and the powers and the jurisdiction of the Appellate Court must be circumscribed by the words of the statute. At the same time a court of appeal is a "court of error" and its normal function is to correct the decision appealed from and its jurisdiction should be coextensive with that of the trial Court. It cannot and ought not to do something which the trial Court was not competent to do. There does not seem to be any fetter to its power to do what the trial Court could do.

In this case, the Trial Magistrate was competent to pass a sentence of imprisonment up to two years and the High Court's jurisdiction hearing an appeal would therefore be limited to a sentence up to that period and no more. When the order of the Magistrate was set aside by the Sessions Judge the matter became one at large and the High Court hearing an appeal was empowered under S. 423(1)(*a*) CrPC, to pass a sentence according to law. It could therefore pass any sentence which the Magistrate trying the case was empowered to pass and the High Court in this case did not exceed that limit. In disposing of an appeal, from an order of acquittal, the High Court is competent to pass a sentence which the trial Court was empowered to pass.

If the appeal is from an order of acquittal with no prior order or sentence, the punishment must be commensurate with the gravity of the offence. But if the order of acquittal is preceded by an order of conviction, the court hearing the appeal from acquittal should not impose a sentence greater than what the court of first instance could have imposed inasmuch as if the trial Court had given him the maximum sentence which it was competent to give and no appeal was preferred by the accused, the State could not have approached the High Court under any provision of the Code for enhancement of the sentence. The interposition of the order of an intermediate court of appeal and acquittal of the accused by it should not put the accused in a predicament worse than that before the trial Court.

Where the accused is given notice of appeal and actually takes part in the hearing before the High Court it would be superfluous to give him notice to show cause why a sentence within the competence of the Trial Magistrate should not be passed. The accused knows or ought to know that the High Court was bound to form its own conclusions on the material before it and award a sentence which the merits of the case demanded within the limit of the trial Court's jurisdiction. The absence of a show-cause notice does not violate any known principle of natural justice. *Shankar Kerba Jadhav* v. *State of Maharashtra*, (1969) 2 SCC 793: AIR 1971 SC 840: 1971 Cri LJ 693.

Bench Strength **3**. Coram: *S.M. Sikri*, **G.K. Mitter** and *P. Jaganmohan Reddy*, JJ. [Date of decision: 8-9-1969]

[8942] — S. 423(1)(a) — Appellate Court ordering retrial of one of the appellant — Connected appeal by another appellant against his conviction in the same case — *His retrial must also be ordered by the Appellate Court. Darshan Singh Balwant Singh* v. *State of Punjab*, AIR 1953 SC 83: 1953 SCR 319: 19 Cut LT 419: ILR 1953 Punj 639: 1953 Cri LJ 525.

Bench Strength **5**. Coram: *Patanjali Sastri, C.J.* and **B.K. Mukherjea**, *N. Chandrasekhara Aiyar*, *Vivian Bose* and *Ghulam Hasan*, JJ. [Date of decision: 5-12-1952]

[8943] — S. 423(1)(a) — Power to be exercised by High Court only

The powers conferred on the Appellate Court by S. 423(1)(*a*) can be exercised only by the High Court and not by any other Appellate Court.

All appeals against acquittal whether passed by the trial Court or the Appellate Court lie only to the High Court, and so the powers prescribed by S. 423(1)(*a*) can be exercised only by the High Court. *State of A.P.* v. *Thadi Narayana*, AIR 1962 SC 240, 242: (1962) 2 SCR 904: (1962) 1 Cri LJ 207: (1963) 1 MLJ (SC) 77.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 24-7-1961]

[8944] — S. 423(1)(a) — Retrial — Appellants remaining in jail for a little less than 3 years — *Retrial for an offence under S. 392, IPC will not be a proper order. Ram Shankar Singh* v. *State of U.P.*, AIR 1956 SC 441: 1956 Cri LJ 822.

Bench Strength **3**. Coram: **S.R. Das**[2], *N.H. Bhagwati* and **B.P. Sinha**[1], JJ. [Date of decision: 19-4-1955]

[8945] — S. 423(1)(a) — Retrial — Courts should not shut their eyes to the circumstance of a particular case before ordering a retrial. *Suraj Pal* v. *State of U.P.*, AIR 1955 SC 419: (1955) 1 SCR 1332: 1955 Cri LJ 1004.

Bench Strength **3**. Coram: *Vivian Bose*, **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 1-3-1955]

[8946] — S. 423(1)(a) — Retrial — Generally proper where trial held not proper and fair — Exception in cases of unfairness and injustice. *Mohinder Singh* v. *State*, AIR 1953 SC 415: 1950 SCR 821: 1953 Cri LJ 1761.

Bench Strength **3**. Coram: **Fazl Ali**, *B.K. Mukherjea* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 17-10-1950]

[8947] — S. 423(1)(a) — Retrial — No hard and fast rule — Wide discretion in this regard

A retrial may be ordered for a variety of reasons which it is hardly necessary or desirable to state in a set formula and the observations of the Supreme Court are illustrative but not exhaustive. The Code gives a wide discretion and deliberately does not specify the circumstances for the exercise of the discretion because the facts of cases that come before the Courts are extremely dissimilar. It would not be right to read the observations of the Supreme Court (intended to illustrate the meaning of the Code) as indicating in advance the rigid limits of a discretion which the Code obviously intended should be developed in answer to problems as they arise. *Rajeswar Prasad Misra* v. *State of W.B.*, AIR 1965 SC 1887: (1966) 1 SCR 178: (1965) 2 Cri LJ 817.

Bench Strength **3**. Coram: *A.K. Sarkar*, **M. Hidayatullah** and *V. Ramaswami*, JJ. [Date of decision: 6-5-1965]

Affirmed in (1966) 1 SCR 255: AIR 1966 SC 356: 1966 Cri LJ 307

[8948] — S. 423(1)(a) — Retrial — Not to be ordered where case covered by Ss. 236 & 237, CrPC. *G.D. Sharma* v. *State of U.P.*, AIR 1960 SC 400: 1960 Cri LJ 541.

Bench Strength **4**. Coram: **Syed Jafer Imam**, *J.L. Kapur*, *A.K. Sarkar* and *K.N. Wanchoo*, JJ. [Date of decision: 1-9-1959]

[8949] — S. 423(1)(a) — Retrial — Supreme Court setting aside conviction of two accused — *The appeal of the 3rd accused not before the Supreme Court — Direction of a retrial not proper as the trial cannot proceed against all the accused who are said to have acted in concert each playing an appointed part in a common plan. Shreekantiah Ramayya Munipalli* v. *State of Bombay*, AIR 1955 SC 287: (1955) 1 SCR 1177: 1955 Cri LJ 857, 860.

Bench Strength **3**. Coram: *B.K. Mukherjea* and *S.R. Das*, **Vivian Bose**, JJ. [Date of decision: 22-12-1954]

[8950] — S. 423(1)(a) — Retrial — Supreme Court setting aside conviction on the ground of misdirection or non-direction — *Direction of retrial is the normal course. Shreekantiah Ramayya Munipalli* v. *State of Bombay*, AIR 1955 SC 287: (1955) 1 SCR 1177: 1955 Cri LJ 857, 860.

Bench Strength **3**. Coram: *B.K. Mukherjea* and *S.R. Das*, **Vivian Bose**, JJ. [Date of decision: 22-12-1954]

[8951] — S. 423(1)(a) — Scope and meaning — "Find guilty" meaning of — *High Court under S. 423(1)(a) is competent to find the accused guilty of the offence disclosed by the evidence and convict him for that offence — Power under Ss. 236 and 238, CrPC can be exercised*

In S. 423(1)(*a*) of the Criminal Procedure Code the High Court has been given the power to find the accused guilty and pass sentence on him according to law, besides other powers enumerated in cl. (*a*). The words "find him guilty", used in cl. (*a*) means "guilty of the offence disclosed by the evidence" and not merely "guilty of the offence with which he stood charged in the Court below and of which he was acquitted". Therefore, the High Court while disposing of an appeal against acquittal is competent under S. 423(1)(*a*), Criminal Procedure Code to alter the finding or the charge or the nature of the offence as contemplated in Ss. 236, 237 and 238, CrPC and find the accused guilty of any offence other than that with which he has been charged. *Ramaswamy Nadar* v. *State of Madras*, AIR 1958 SC 56: 1958 SCR 739: 1958 Cri LJ 228, 231.

Bench Strength 3. Coram: **B.P. Sinha**, *P. Govinda Menon* and *J.L. Kapur*, JJ. [Date of decision: 11-10-1957]

[8952] — S. 423(1)(a) — Sentence — High Court can pass a sentence up to maximum sentence that the trial Court could legally pass. *Jagat Bahadur* v. *State of M.P.*, AIR 1966 SC 945: (1966) 2 SCR 822: 1966 Cri LJ 709.

Bench Strength 3. Coram: *A.K. Sarkar*, **J.R. Mudholkar** and *R.S. Bachawat*, JJ. [Date of decision: 30-11-1965]

[8953] — S. 423(1)(a) — Sentence — Is in the discretion of trial Court — Appellate Court not to interfere if discretion judicially exercised. *Mathri* v. *State of Punjab*, AIR 1964 SC 986: (1964) 5 SCR 916: (1964) 2 Cri LJ 57, 59.

Bench Strength 2. Coram: *P.B. Gajendragadkar* and **K.C. Das Gupta**, JJ. [Date of decision: 11-12-1963]

[8954] — Ss. 423(1)(a) and 417 — Conviction by High Court in appeal against acquittal

The observations in various decisions prescribing a cautious approach on the part of High Courts in dealing with appeals against acquittals do not cut down, limit or qualify its statutory power under S. 423(1)(*a*), CrPC which is coextensive with that under cl. (*b*). The High Court is free to reach its own conclusions upon the evidence. It is not necessary that the High Court must hold that the trial Court's finding was perverse before reversing it. The passages quoted in *Bhubaneshwar Mondal case*, (1973) 1 SCC 303: 1973 SCC (Cri) 323, clearly illustrate the basic line of approach the High Court is expected to adopt while dealing with the State appeals from the judgments of acquittal. *M.G. Agarwal case*, (1963) 2 SCR 405: AIR 1963 SC 200: (1963) 1 Cri LJ 235, laid down the correct principle. *Bajwa* v. *State of U.P.*, (1973) 1 SCC 714: 1973 SCC (Cri) 596: AIR 1973 SC 1204: 1973 Cri LJ 769: (1973) 3 SCR 571.

Bench Strength 3. Coram: *A. Alagiriswami*, **I.D. Dua** and *C.A. Vaidialingam*, JJ. [Date of decision: 6-3-1973]

[8955] — Ss. 423(1)(a) and 428 — Retrial — Power of Appellate Court to order — Scope of — *Retrial to be ordered in exceptional cases like lack of jurisdiction or serious illegalities or irregularities when trial is vitiated — Where evidence is insufficient or deficient S. 438 should be applied and additional evidence admitted and retrial not ordered*

Per majority

An order for retrial of a criminal case is made in exceptional cases, and not unless the Appellate Court is satisfied that the Court trying the proceeding had no jurisdiction to try it or that the trial was vitiated by serious illegalities or irregularities or on account of misconception of the nature of the proceedings and on that account in substance there had been no real trial or that the Prosecutor or an accused was, for reasons over which he had no control, prevented from leading or tendering evidence material to the charge, and in the interest of justice the Appellate Court deems it appropriate, having regard to the circumstances of the case, that the accused should be put on his trial again.

An order of retrial wipes out from the record the earlier proceeding, and exposes the person accused to another trial which affords the prosecutor an opportunity to rectify the infirmities disclosed in the earlier trial, and will not ordinarily be countenanced when it is made merely to enable the prosecutor to lead evidence which he could but has not cared to lead either on account of insufficient appreciation of the nature of the case or for other reasons.

Where the trial suffered from irregularities and evidence led was deficient in important respects an order of retrial was not justified. If the Appellate Court thought in the interest of justice and for a just and proper decision of the case it was necessary that additional evidence should be brought on the record it should instead of directing a retrial and reopening the entire proceedings, resort to the procedure prescribed by S. 428(1) CrPC. *Ukha Kolhe* v. *State of Maharashtra*, AIR 1963 SC 1531: (1964) 1 SCR 926: (1963) 2 Cri LJ 418: 1964 Mah LJ 246: 65 Bom LR 793.

Bench Strength 5. Coram: *B.P. Sinha, C.J.*[1] and *P.B. Gajendragadkar*[1], *K.N. Wanchoo*[1], **K.C. Das Gupta**[2] and **J.C. Shah**[1], JJ. [Date of decision: 11-2-1963]

Explained in AIR 1965 SC 1887: (1965) 2 Cri LJ 817

[8956] — Ss. 423(1)(a) and 537 — Retrial — Supreme Court — *Plea necessitating a retrial not taken at the earliest stage and in appeal before the High Court — Supreme Court not to entertain such a plea*

An argument, which would, if accepted, necessitate a retrial, is one that ought to be put forward at the earliest stage and at any rate at the time of regular appeal in the High Court. This cannot be entertained for the first time in an appeal on special leave. *Moseb Kaka Chowdhry* v. *State of W.B.*, AIR 1956 SC 536: 1956 SCR 372: 1956 Cri LJ 940, 43, 44.

Bench Strength 2. Coram: **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 18-4-1956]

[8957] — Ss. 423(1)(a) and (b) — Nature and scope of High Court's powers in an appeal against acquittal — Powers are equally wide while dealing with appeal against acquittal or conviction — *In practice High Court while dealing with an appeal against acquittal has to keep in mind the principle of accused's presumption of innocence — High Court is, nevertheless entitled to reach its own conclusion — Not necessary that High Court must find trial Court findings perverse. M.G. Agarwal* v. *State of Maharashtra*, AIR 1963 SC 200: (1963) 2 SCR 405: (1963) 1 Cri LJ 235, 41.

Bench Strength 5. Coram: *B.P. Sinha, C.J.* and **P.B. Gajendragadkar**, *K.N. Wanchoo*, *N. Rajagopala Ayyangar* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 24-4-1962]

— S. 423(1)(b) *See also* Ss. 423(1)(a) and (b)

[8958] — S. 423(1)(b) — "Alter the finding"

The words "alter the finding" in Section 423(1)(*b*) of the Code has only one meaning, and that is alter the finding of conviction and not the finding of acquittal. The expression "alter the finding" does not apply to the order of acquittal. *State of A.P.* v. *Thadi Narayana*, AIR 1962 SC 240: (1962) 2 SCR 904: (1962) 1 Cri LJ 207, 213: (1963) 1 MLJ (SC) 77.

Bench Strength 3. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 24-7-1961]

Applied in Lakhan Mahto v. State of Bihar, AIR 1966 SC 1742: 1966 Cri LJ 1349, 1352

[8959] — S. 423(1)(b) — "Acquit or discharge the accused" — *Retrial not ordered by Supreme Court as the accused had been in suspense over his death sentence for more than a year. Mohinder Singh* v. *State*, AIR 1953 SC 415: 1950 SCR 821: 1953 Cri LJ 1761.

Bench Strength 3. Coram: **Fazl Ali**, *B.K. Mukherjea* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 17-10-1950]

[8960] — S. 423(1)(b) — "Alter the finding" — *Appellate Court can alter the conviction to a different offence which the lower Court could also do — Conviction under Ss. 302/149 IPC altered to that under Ss. 302/34, IPC. Lachhman Singh* v. *State*, AIR 1952 SC 167: 1952 SCR 839: 1952 Cri LJ 863.

Bench Strength 2. Coram: **Fazl Ali** and *Vivian Bose*, JJ. [Date of decision: 21-3-1952]

[8961] — S. 423(1)(b) — "Alter the finding" — High Court can substitute S. 149, IPC for S. 34, IPC. *Tilkeshwar Singh* v. *State of Bihar*, AIR 1956 SC 238: (1955) 2 SCR 1043: 1956 Cri LJ 441.

Bench Strength 3. Coram: *Vivian Bose*, **T.L. Venkatarama Aiyar** and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 8-12-1955]

See also 1954 SCR 904: AIR 1954 SC 204: 1954 Cri LJ 580 and (1955) 2 SCR 1140: AIR 1956 SC 116: 1956 Cri LJ 291

[8962] — S. 423(1)(b) — "Alter the finding" — Not applicable to acquittal part of the case — *Accused charged of several offences, acquitted of some while convicted of others — Appeal against conviction — The whole case cannot be considered by the Appellate Court — Order of acquittal is not under the purview of the Appellate Court — Expression "alter the finding" does not apply to the order of acquittal. State of A.P.* v. *Thadi Narayana*, AIR 1962 SC 240: (1962) 2 SCR 904: (1962) 1 Cri LJ 207, 213: (1963) 1 MLJ (SC) 77.

Bench Strength 3. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 24-7-1961]

[8963] — S. 423(1)(b) — Power to commit for trial — Appellate Court can commit a case — Power not circumscribed to cases exclusively triable by Sessions Court

Section 423(1)(*b*) CrPC expressly gives the power to the Appellate Court to commit a case for trial to the Court of Session. The power is not circumscribed to cases exclusively triable by a Court of Session. *State of U.P.* v. *Shankar*, AIR 1962 SC 1154: 1962 Supp (3) SCR 213: (1962) 2 Cri LJ 261.

Bench Strength 3. Coram: **J.L. Kapur**, *K.C. Das Gupta* and *Raghubar Dayal*, JJ. [Date of decision: 15-2-1962]

[8964] — S. 423(1)(b) — Retrial — *Accused acquitted under Ss. 302 & 392, IPC and convicted under S. 411, Penal Code — In appeal High Court remanding the whole case and ordering retrial under Ss. 302, 392 and 411, Penal Code — Order of retrial for offences under Ss. 302 and 392, Penal Code is illegal*

The accused tried for offences under Ss. 302, 392 and 411, IPC. Sessions Judge acquitted him under Ss. 302 and 392, IPC and convicted under S. 411, IPC. In appeal the High Court remanded the case and ordered a retrial under all the offences. During the retrial the accused moved an application that he could not be tried under Ss. 302 and 392, IPC which was rejected. A revision against this order was filed which was decided in accused's favour by a Full Bench. The State of Andhra Pradesh filed an appeal before the Supreme Court.

Held :

The High Court acted without jurisdiction in altering the finding and order of acquittal passed in favour of the accused in respect of the offences under Ss. 302 and 392, IPC when he was dealing with the appeal preferred by the accused against her conviction under S. 411. *State of A.P.* v. *Thadi Narayana*, AIR 1962 SC 240: (1962) 2 SCR 904: (1962) 1 Cri LJ 207, 213: (1963) 1 MLJ (SC) 77.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 24-7-1961]

[8965] — S. 423(1)(b) — Scope — Provision is confined to an appeal against the order of conviction and sentence — *Powers conferred by the clause cannot be exercised for reversing an order of acquittal*

Section 423(1)(*b*)(1) is confined to cases of appeals preferred against orders of conviction and sentence. The powers conferred by the clause cannot be exercised for the purpose of reversing an order of acquittal passed in favour of a party in respect of an offence charged in dealing with an appeal preferred by him against the order of conviction in respect of another offence charged and found proved.

In exercising the powers conferred on it by S. 423(1)(*b*) the High Court cannot convert acquittal into conviction; that can be done only by adopting the procedure prescribed in S. 439, CrPC. *State of A.P.* v. *Thadi Narayana*, AIR 1962 SC 240: (1962) 2 SCR 904: (1962) 1 Cri LJ 207, 213: (1963) 1 MLJ (SC) 77.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 24-7-1961]

[8966] — Ss. 423(1)(b) and (a) — "Alter the finding" — Not to include order of acquittal — *High Court's power to convict of an offence for which appellant acquitted by trial Judge — Appellant and others convicted under Ss. 302/149 and 326/149, IPC — Acquitted under S. 302, IPC for causing death of the deceased — State Government preferring no appeal against acquittal — High Court on appeal by altering the conviction under Ss. 302/149, IPC to 326, IPC for causing fatal injury to the deceased — High Court not competent to convict under S. 302 or 320, IPC when the appellant was acquitted under S. 302, IPC by the trial Judge. Lakhan Mahto* v. *State of Bihar*, AIR 1966 SC 1742: (1966) 3 SCR 643: 1966 Cri LJ 1349, 1352.

Bench Strength **2**. Coram: *K. Subba Rao* and **V. Ramaswami**, JJ. [Date of decision: 24-2-1966]

[8967] — Ss. 423(1)(b) and (a) — Appellant and others convicted under Ss. 302/149 and 326/149 — Acquitted under S. 302 for causing death of the deceased — *State Government preferring no appeal against acquittal — High Court on appeal by accused altering the conviction under S. 302/149 to 326 for causing fatal injury to the deceased — Held, High Court not competent to convict under S. 302 or 326 when the appellant was acquitted under S. 302 by the trial Judge — Penal Code, 1860 — Ss. 302/149 & 326/149. Lakhan Mahto* v. *State of Bihar*, AIR 1966 SC 1742: (1966) 3 SCR 643: 1966 Cri LJ 1349.

Bench Strength **2**. Coram: *K. Subba Rao* and **V. Ramaswami**, JJ. [Date of decision: 24-2-1966]

[8968] — Ss. 423(1)(b) and (d) — Altering the conviction — Scope — *Disposal of appeal — Magistrate convicting an accused under Ss. 4(a) and 5 of the Bombay Prevention of Gambling Act, 1887 and sentencing him under S. 4(a) alone — In revision High Court setting aside conviction under S. 4(a) and maintaining conviction under S. 5 and awarding sentence under this section — High Court's order is justified under S. 423(d) and not under S. 423(1)(b) — It is also justified from the law enacting that on conviction a sentence shall be imposed*

When there is a conviction for more offences than one, there are distinct findings in respect of each of them, and when S. 423(1)(*b*) speaks of a finding being reserved or altered by the Court of appeal, it has reference to the finding in respect of each of the offences. When, therefore, the High Court set aside the conviction under S. 4(*a*) and affirmed that under S. 5, there are two distinct findings, one of reversal and another of affirmance, and there is no question of alteration.

The power to pass a sentence under those circumstances is derived from the law which enacts that on conviction a sentence shall be imposed on the accused, and that is a power which can and ought to be exercised by all the Courts which, having jurisdiction to decide whether the accused is guilty or not, find that he is. We are of opinion that this power is preserved to the Appellate Court expressly by S. 423(1)(*d*), which enacts that it can make any amendment or any consequential or incidental order that may be just or proper. *Jayaram Vithoba* v. *State of Bombay*, AIR 1956 SC 146: (1955) 2 SCR 1049: 1956 Cri LJ 318, 20, 21: 1956 ALJ 153: (1956) 1 MLJ (SC) 92.

Bench Strength 3. Coram: *Vivian Bose*, **T.L. Venkatarama Aiyar** and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 13-12-1955]

— S. 423(1)(d) *See also* Ss. 423(1)(b) and (d)

[8969] — S. 423(1)(d) — Power of passing consequential orders — *High Court can order eviction under S. 18 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 while convicting under S. 3 of that Act. Kamalabai Jethamal* v. *State of Maharashtra*, AIR 1962 SC 1189: 1962 Supp (2) SCR 632: (1962) 2 Cri LJ 273: 64 Bom LR 517.

Bench Strength 2. Coram: **J.L. Kapur** and *Raghubar Dayal*, JJ. [Date of decision: 18-1-1962]

[8970] — S. 423(1)(d) — Sentence — Court's duty to impose sentence on accused — Need for fixation of separate period of sentence even if sentences are made concurrent — *Appellate court awarding sentence on failure of trial court to do so — Held, covered by S. 423(1)(d)*

When a person is tried for an offence and convicted, it is the duty of the Court to impose on him such sentence, as is prescribed therefor. This power is preserved to the appellate court expressly by S. 423(1)(*d*) of the Code of Criminal Procedure which enacts that it can "make any amendment or any consequential or incident order that may be just or proper". When a conviction is affirmed in appeal but no sentence had been awarded by the trial Magistrate, the award of a sentence is consequential on and incidental to the affirmance of the conviction, and it is a just and proper order to be passed under the law.

According to law, a separate sentence ought to be passed for each offence even if sentences are made concurrent because a court may set aside a conviction so that the need for a separate sentence must necessarily arise in such an event.

Sentence for offence under S. 201, IPC, cannot be concurrent for the whole period of sentence for life imprisonment for offence under S. 302, IPC. If sentence under S. 302 is set aside by the High Court on appeal, the period of sentence under S. 201 has to be fixed as a necessary consequence. Contention of the accused that as no particular sentence was imposed on him, he must be deemed not to have been sentenced at all, is incorrect. *Sawal Das* v. *State of Bihar*, (1975) 3 SCC 156: 1974 SCC (Cri) 780: AIR 1974 SC 2276: (1975) 1 SCR 607: 1974 Cri LJ 1306.

Bench Strength 2. Coram: **M.H. Beg** and *P.N. Bhagwati*, JJ. [Date of decision: 7-8-1974]

— S. 423(1-A) *See also* Ss. 439 and 423(1-A)

[8971] — S. 423(1-A) — Enhancement of sentence

The High Court was justified in enhancing the sentence of 3 years R.I. under Ss. 325/149, IPC to 7 years R.I. when a brutal attack was made by several persons in a fit of superstition relating to suspected sorcery. The circumstances in which the attack was made calls for a deterrent sentence. *Dasrath Gond* v. *State of Orissa*, AIR 1955 SC 583: 1955 Cri LJ 1297.

Bench Strength 3. Coram: *Vivian Bose*, **B. Jagannadhadas** and *B.P. Sinha*, JJ. [Date of decision: 15-3-1955]

[8972] — S. 423(1-A) — Enhancement of sentence by the High Court — No hard and fast rules on the subject can be laid — *Whether the judicial discretion about sentence was properly exercised by the trial Judge depends upon the circumstances of each case*

It is impossible to lay down a hard and fast rule, for each case must depend upon its own facts. Whether in a given case there was proper exercise of judicial discretion by the trial Judge depends upon the circumstances of that case. *Kapur Chand Pokhraj* v. *State of Bombay*, AIR 1958 SC 993: 1958 Cri LJ 1558, 1564: (1958) 9 STC 455: 1959 SCR 250.

Bench Strength 3. Coram: *B.P. Sinha*, *Syed Jafer Imam* and **K. Subba Rao**, JJ. [Date of decision: 24-3-1958]

[8973] — S. 423(1-A) — Enhancement of sentence in a case under S. 396, IPC by High Court — Each of two appellants committing one cold blooded murder each by shooting with the object of facilitating commission of dacoity — Deceased did not put up any resistance — *Held, High Court justified in enhancing the sentence of life imprisonment awarded by the trial Judge to death sentence by hanging. Iman Ali* v. *State of Assam*, AIR 1968 SC 1464: (1968) 3 SCR 610: 1969 Cri LJ 23, 25.

Bench Strength 3. Coram: *V. Ramaswami*, *J.M. Shelat* and **V. Bhargava**, JJ. [Date of decision: 28-3-1968]

[8974] — Ss. 423(1-A) and 439 — "Alter the nature of sentence" — High Court's power to enhance sentence — Must be exercised along well known judicial lines

Though no limitation has been placed on the High Court's power to enhance sentence it is nevertheless a judicial act and like all judicial acts involving an exercise of discretion must be exercised along well known judicial lines.

A question of sentence is a matter of discretion and when discretion has been properly exercised along accepted judicial lines an Appellate Court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgment.

In a matter of enhancement there should not be interference when the sentence passed imposes substantial punishment. Interference is only called for when it is manifestly inadequate. *Bed Raj* v. *State of U.P.*, AIR 1955 SC 778: (1955) 2 SCR 583: 1955 Cri LJ 1642, 1644.

Bench Strength 3. Coram: **Vivian Bose**, *B. Jagannadhadas* and *B.P. Sinha*, JJ. [Date of decision: 28-9-1955]

— S. 423(2) *See also* Ss. 369(6) and 423(2)

[8975] — S. 423(2) — Appeal against verdict of Jury — Appellate Court has extensive powers of overruling or modifying the verdict of jury — *Appellate Court not to exercise the powers lightly*

The statute law in India in certain circumstances permits an appeal against a jury's verdict and authorises the Appellate Court to substitute its own verdict on its own consideration of the evidence. It has conferred on the Appellate Court extensive powers of overruling or modifying the verdict of a jury in the interests of due administration of justice confident that the Appellate Judges who have not themselves seen and heard the witnesses, will not exercise lightly the responsible power entrusted to them. *Mushtak Hussein* v. *State of Bombay*, AIR 1953 SC 282: 1953 SCR 809: 1953 Cri LJ 1127.

Bench Strength 3. Coram: **M.C. Mahajan**, *Vivian Bose* and *B. Jagannadhadas*, JJ. [Date of decision: 30-3-1953]

[8976] — S. 423(2) — Jury trial — Alteration or reversal of verdict of jury — *No misdirection or non-direction amounting to misdirection in the charge to jury — Jury's verdict cannot be interfered with*

Unless there was a misdirection or non-direction amounting to a misdirection in the charge to the jury which, in fact, had occasioned a failure of justice the jury's verdict must prevail and it cannot be interfered with. *Jnanendra Nath Ghose* v. *State of W.B.*, AIR 1959 SC 1199: (1960) 1 SCR 126: 1959 Cri LJ 1492, 94, 95.

Bench Strength 2. Coram: **Syed Jafer Imam** and *J.L. Kapur*, JJ. [Date of decision: 8-5-1959]

[8977] — S. 423(2) — Jury trial — High Court's power in appeal — *Verdict held erroneous — High Court has power to appraise the evidence and reverse the order of conviction or acquittal*

In appeal against orders of acquittal as well as conviction the High Court is conferred under S. 423(2), CrPC with powers to direct retrial or to consider the case on the merits. This power can be effectively exercised only if the High Court is competent apart from the verdict to appraise the evidence on which the order of the trial Court is founded. The High Court is not bound when it arrives at the opinion that the verdict of the jury is vitiated to interfere with the verdict. The High Court is, therefore, competent in appeals against orders of conviction and sentence or against orders of acquittal even in cases tried with jury to order a retrial or to maintain the conviction and sentence on a reconsideration of the evidence.

Section 423 applies to all appeals before the High Court whether from a trial by jury or otherwise and when the High Court finds that the verdict of the jury is vitiated on account of some defect of law or misdirection it has full power to deal with the appeal in the manner specified in S. 423 and for that purpose it may appraise the evidence to decide what course it will follow. *Rama Shankar Singh* v. *State of W.B.*, AIR 1962 SC 1239: 1962 Supp (1) SCR 49: (1962) 2 Cri LJ 296, 299.

Bench Strength 3. Coram: *K.N. Wanchoo*, *K.C. Das Gupta* and **J.C. Shah**, JJ. [Date of decision: 10-10-1961]

[8978] — S. 423(2) — Jury trial — Interference limited

Since the appeals before the High Court and before the Supreme Court are against the convictions and sentences based on the acceptance of the verdict of the jury against each of the accused, scope for interference on appeal either by the High Court or by the Supreme Court is very limited. *Sardul Singh* v. *State of Bombay*, AIR 1957 SC 747, 759: 1958 SCR 161: 60 Bom LR 691: 1957 Cri LJ 1325.

Bench Strength 3. Coram: **B. Jagannadhadas**, *B.P. Sinha* and *P.B. Gajendragadkar*, JJ. [Date of decision: 23-5-1957]

[8979] — S. 423(2) — Jury trial — Powers of High Court to interfere in appeal

It is for the Court of Appeal to take the whole case into consideration and determine for itself whether the verdict pronounced by the jury was justified or whether there had been in fact a failure of justice, where a jury has been misdirected and has based its verdict on assumptions and conjectures, the Supreme Court may order a retrial or remit the case to the High Court with a direction that it should consider the merits of the case in the light of the decision of the Supreme Court and say whether there has been a failure of justice as a result of the misdirections, or it may examine the merits of the case and decide for itself whether there has been a failure of justice in the case and that in deciding whether there has been in fact a failure of justice in consequence of a misdirection the Court would be entitled to take the whole case into consideration.

Unless it was established in a case that there had been a serious misdirection by the Judge in charging the jury which had occasioned a failure of justice and had misled the jury in giving its verdict, the verdict of the jury could not be set aside.

The Court of Appeal is thus entitled to substitute its own verdict for the verdict of the jury if on examining the record for itself it comes to the conclusion that the verdict of the jury was erroneous or that there has been a failure of justice in the sense that a guilty man has been acquitted or an innocent man has been convicted. *Ramkishan Mithanlal Sharma* v. *State of Bombay*, AIR 1955 SC 104, 120, 12: (1955) 1 SCR 903: 1955 Cri LJ 196.

Bench Strength **3**. Coram: **N.H. Bhagwati**[1], **B. Jagannadhadas**[2] and *T.L. Venkatarama Aiyar*[1], JJ. [Date of decision: 22-10-1954]

See also 1953 SCR 809: AIR 1953 SC 282: 1953 Cri LJ 1127

— S. 424 *See* Ss. 369 and 424

See also Ss. 369, 424, 430 and 561-A

[8980] — Ss. 424 and 369 — Appellate Court dismissing an appeal — High Court not competent to restore the appeal or rehear it — *Inherent powers of the Court cannot be invoked in view of specific prohibition by the Sections*

The Sessions Judge dismissed a criminal appeal in the absence of the appellant or his Counsel. Later, he set aside his order and restored the appeal on an application of the appellant. On his transfer, his successor, did not hear the appeal on the ground that since the Appellate Court had no power to review or restore an appeal, the order of his predecessor was ultra vires. The High Court upheld this order. *Held*, that the Sessions Judge could not set aside his order dismissing the appeal when neither the appellant nor his Counsel appeared and could not order the rehearing of the appeal, because S. 369, read with S. 424 of CrPC makes it clear that the Appellate Court is not to alter or review the judgment once signed, except for the purpose of correcting a clerical error.

Assuming that the Sessions Judge could exercise inherent powers, he could not pass the order of rehearing of the appeal in the exercise of such powers when S. 369, read with S. 424, specifically prohibits the altering or reviewing of its orders by a court. Inherent powers cannot be exercised to do what the Code specifically prohibits the Court from doing. *Sankatha Singh* v. *State of U.P.*, AIR 1962 SC 1208: 1962 Supp (2) SCR 817: (1962) 2 Cri LJ 288.

Bench Strength **3**. Coram: *S.K. Das, K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 25-1-1962]

— S. 426 *See* Ss. 561-A and 426

[8981] — S. 427 — Grant of special leave against order of acquittal on capital charge — *Held, the Supreme Court can exercise the same powers which the High Court has under S. 427, CrPC, 1898 and issue a non-bailable warrant for the arrest and committal to prison of the accused-respondent — CrPC, 1973, S. 390 — Such exercise of power does not offend Art. 21*

As soon as the High Court on perusing a petition of appeal against an order of acquittal, considers that there is sufficient ground for interfering and issuing process to the respondent, his status as an accused person and the proceedings against him, revive. The question of judging his guilt or innocence in respect of the charge against him, once more becomes sub judice.

Similar is the position when the Supreme Court, in its discretion, grants special leave to appeal under Art. 136 of the Constitution, against an order of acquittal passed by the High Court.

Whether in the circumstances of the case, the attendance of accused-respondent can be best secured by issuing a bailable warrant or non-bailable warrant, is a matter which rests entirely in the discretion of the Court. Although the discretion is exercised judicially, it is not possible to computerise and reduce into immutable formulae the diverse considerations on the basis of which this discretion is exercised. Broadly speaking, the Court would take into account the various factors, such as the nature and seriousness of the offence, the character of the evidence, circumstances peculiar to the accused, possibility of his absconding, larger interest of the public and State. In addition, the Court may also take into consideration the period during which the proceedings against the accused were pending in the courts below and the period which is likely to elapse before the appeal comes up for final hearing in the Supreme Court. *State of U.P.* v. *Poosu*, (1976) 3 SCC 1: 1976 SCC (Cri) 368: AIR 1976 SC 1750: (1976) 3 SCR 1005: 1976 Cri LJ 1373.

Bench Strength **5**. Coram: *A.N. Ray, C.J.* and *M.H. Beg*, **R.S. Sarkaria**, *P.N. Shinghal* and *Jaswant Singh*, JJ. [Date of decision: 2-4-1976]

— **S. 428** *See* Ss. 423(1)(a) and 428
See also Ss. 540 and 428

[8982] — S. 428 — First appellant firing at the victim while the second appellant firing at a police constable but missing the shot — *Conviction under, upheld — But in the peculiar circumstances of the case and especially having regard to the nature of injury received by the victim, sentence reduced from 10 years' RI to 5 years' RI in case of the first appellant and from 7 years' RI to 4 years' RI in case of the second appellant — Appellants would be entitled to the benefit of S. 428, Criminal Procedure Code — Penal Code, 1860, Ss. 307/34. Prabhu Rashu Machhi* v. *State of Gujarat*, 1980 Supp SCC 11: 1980 SCC (Cri) 439: AIR 1980 SC 1758.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 23-1-1980]

[8983] — S. 428 — Additional evidence in High Court

Criminal Courts and the High Courts have ample power and jurisdiction even in a case of conviction to direct additional evidence in the interest of justice and fair-play rather than take a different view of the oral evidence. Much more so can the High Court in a case of discharge direct even before setting aside the order of discharge to take further evidence or additional evidence if it considers that it is necessary in the interest of justice to do so. *Ratilal Bhanji Mithani* v. *State of Maharashtra*, (1971) 1 SCC 523: 1971 SCC (Cri) 231: AIR 1971 SC 1630: 1971 Cri LJ 1188.

Bench Strength **2**. Coram: *S.M. Sikri, C.J.* and **P. Jaganmohan Reddy**, J. [Date of decision: 4-2-1971]

[8984] — S. 428 — Permitting additional evidence instead of retrial

If the Sessions Judge thought that in the interests of justice and for a just and proper decision of the case it was necessary that additional evidence should be brought on the record he should have, instead of directing a retrial and reopening the entire proceeding, resorted to the procedure prescribed by S. 428(1) of the Code of Criminal Procedure. There is no doubt that if the ends of justice require, the Appellate Court should exercise its power under the said section. *Ukha Kolhe* v. *State of Maharashtra*, AIR 1963 SC 1531, 1537: (1964) 1 SCR 926: (1963) 2 Cri LJ 418: 1964 Mah LJ 246: 65 Bom LR 793.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.*[1] and *P.B. Gajendragadkar*[1], *K.N. Wanchoo*[1], **K.C. Das Gupta**[2] and **J.C. Shah**[1], JJ. [Date of decision: 11-2-1963]

[8985] — **Ss. 428, 423 and 417 — Additional evidence in appeal — Power of Appellate Court to admit** — *Appellate Court has the power to admit additional evidence in appeal against acquittal also*

The Criminal Procedure Code does not make any difference between the ambit of an appeal from a conviction and that of an appeal from an order of acquittal except that an appeal against a conviction is as of right and lies to Courts of different jurisdiction depending on the nature of sentence, the kind of trial and the Court in which it was held, whereas an appeal against an order of acquittal can only be made to the High Court by the State Government or by a complainant (where the case started on a complaint) with the special leave of the High Court. The matters on which an appeal under the Code is admissible are stated in S. 418 and they are the same of the two kinds of appeals. Such appeals lie on a matter of fact as well as a matter of law (except in trials by Jury). The procedure for dealing with the two kinds of appeals is identical and the powers of Appellate Courts in disposing of the appeals, though indicated separately in S. 423 are in essence the same. The Code contemplates that a retrial may be ordered after setting aside the conviction or acquittal (as the case may be) if the trial already held is found to be unsatisfactory or leads to a failure of justice. In the same way, the Code gives a proper to the Appellate Court to take additional evidence, which, for reasons to be recorded, it considers necessary. The Code thus gives power to the Appellate Court to order one or the other as the circumstances may require leaving a wide discretion to it to deal appropriately with different cases. Since a wide discretion is conferred on Appellate Courts, the limits of that Court's jurisdiction must obviously be dictated by the exigency of the situation, and fair play and good sense appear to be the only safe guides. There is, no doubt, some analogy between the power to order a retrial and the power to take additional evidence. The former is an extreme step appropriately taken if additional evidence will not suffice. Both actions subsume failure of justice as a condition precedent.

The appellant had received three sums from the agents and the allegation was that he had misappropriated the amount. During his trial he asked for certain documents but for some reason they were not brought. There was oral evidence tending to show that the money was not credited with the cashier of the Company. The Magistrate did not accept oral evidence and basing himself on this failure, ordered an acquittal. In appeal against acquittal the High Court took additional evidence, allowed the appeal and recorded a conviction.

Held :

The High Court acted within the powers conferred by the Code of Criminal Procedure. *Rajeswar Prasad Misra* v. *State of W.B.*, AIR 1965 SC 1887: (1966) 1 SCR 178: (1965) 2 Cri LJ 817, 819.

Bench Strength **3**. Coram: *A.K. Sarkar*, **M. Hidayatullah** and *V. Ramaswami*, JJ. [Date of decision: 6-5-1965]

[8986] — S. 429 — Judges of appeal equally divided — Reference to third Judge — *Third Judge is free to decide the appeal in the manner he thinks fit — He is not obliged, either as a rule of prudence or on the score of judicial etiquette, to accept the view of one of the Judges holding in favour of acquittal of the accused — CrPC, 1973, S. 392*

The plain reading of Section 392 clearly indicates that it is for the third Judge to decide on what points he shall hear arguments, if any, and it necessarily postulates that the third Judge is free to decide the appeal by resolving the difference in the manner, he thinks proper.

Where a case is referred to a third Judge under Section 392 CrPC, such Judge is not only entitled to decide on what points he shall hear the arguments, if any, but his decision will be final and the judgment in the appeal will follow his decision.

In the scheme of Section 392 CrPC, the view that the third Judge, as a rule of prudence or on the question of judicial etiquette, will lean in favour of the view of one of the Judges in favour of acquittal of the accused, cannot be sustained. There is no manner of doubt that the third Judge has a statutory duty under Section 392 CrPC to consider the opinions of the two Judges whose opinions are to be laid before the third Judge for giving his own opinion on consideration of the facts and circumstances of the case. *Tanviben Pankajkumar Divetia* v. *State of Gujarat*, (1997) 7 SCC 156: 1997 SCC (Cri) 1004: AIR 1997 SC 2193: 1997 Cri LJ 2535: (1997) 1 Guj LH 851: (1997) 2 Guj LR 1346.

Bench Strength **2**. Coram: **G.N. Ray** and *G.T. Nanavati*, JJ. [Date of decision: 6-5-1997]

Babu v. State of U.P., AIR 1965 SC 1467: (1965) 2 SCR 771; Hethubha v. State of Gujarat, (1970) 1 SCC 720: 1970 SCC (Cri) 280; Union of India v. B.N. Ananti Padmanabiah, (1971) 3 SCC 278: 1971 SCC (Cri) 535; State of A.P. v. P.T. Appaiah, (1980) 4 SCC 316 ; 1980 SCC (Cri) 960, followed

Empress v. Debi Singh, 1886 All WN 275; Narsiah, In re, AIR 1959 AP 313: 1959 Cri LJ 689: 1959 An LT 139, overruled

Balku v. Emperor, AIR 1948 All 237: 1948 All LJ 102: 49 Cri LJ 264; Nemai Mondal v. State of W.B., AIR 1966 Cal 194: 1966 Cri LJ 522; Dharam Singh v. State of U.P., (1964) 1 Cri LJ 78: 1962 All LJ 748 (SC), approved

[8987] — S. 429 — Judges of appeal equally divided — Reference to third judge — Course open to — *Held, the third judge is not obliged, either as a rule of prudence or on the score of judicial etiquette, to accept the view of one of the Judges holding in favour of acquittal*

The criminal appeal filed by the appellants in the present case was heard by a Division Bench of High Court consisting of judges *S* and *K*. There was a difference of opinion between the two learned Judges. One of the judges i.e. *S* was of the opinion that the appeal should be allowed and the conviction of the appellants and the sentences imposed thereunder were liable to be set aside. In view of the said difference of opinion, the appeal was placed for hearing before a third judge *U*, who came to the conclusion that the appeal deserved to be dismissed. Before the Supreme Court, it was contended by the appellants that the third judge should have leaned in favour of the view taken by *S* as a rule of prudence and should not have differed from the findings recorded by Judge *S* unless the same were perverse or there were strong and weighty reasons for doing so.

Held :

Section 392 CrPC lays down that when an appeal under Chapter XXIX is heard by a High Court before a Bench of Judges and they are divided in opinion, the appeal with their opinions, shall be laid before another Judge of that Court, and that Judge, after such hearing as he thinks fit, shall deliver his opinion and the judgment and order shall follow that opinion. The settled position being that the third judge is under no obligation to accept the view of one of the Judges holding in favour of acquittal of the accused either as a rule of prudence or on the score of judicial etiquette, it is not possible to accept the contention raised by the appellant. (Paras 8 and 10). *Radha Mohan Singh* v. *State of U.P.*, (2006) 2 SCC 450: (2006) 1 SCC (Cri) 661: AIR 2006 SC 951: (2006) 1 KLJ 535: (2006) 2 All LJ 242: 2006 Cri LJ 1121.

Bench Strength **3**. Coram: *K.G. Balakrishnan*, *Arun Kumar* and **G.P. Mathur**, JJ. [Date of decision: 20-1-2006]

Tanviben Pankajkumar Divetia v. State of Gujarat, (1997) 7 SCC 156: 1997 SCC (Cri) 1004; Dharam Singh v. State of U.P., (1964) 1 Cri LJ 78: 1962 Supp (3) SCR 769, followed

Babu v. State of U.P., (1965) 2 SCR 771: AIR 1965 SC 1467: (1965) 2 Cri LJ 539; Hethubha v. State of Gujarat, (1970) 1 SCC 720: 1970 SCC (Cri) 280; State of A.P. v. P.T. Appaiah, (1980) 4 SCC 316: 1980 SCC (Cri) 960, relied on

[8988] — S. 429 — Scope of, compared with S. 392, CrPC, 1973

In the present Code a proviso has been added to Section 392. But for this proviso effect of Section 429 of the old Code and Section 392 of the present

Code would appear to be the same. *Sajjan Singh* v. *State of M.P.*, (1999) 1 SCC 315: 1999 SCC (Cri) 44: AIR 1998 SC 2756.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **D.P. Wadhwa**, JJ. [Date of decision: 2-9-1998]

[8989] — S. 429 — Third Judge to whom the case is referred to — Jurisdiction, powers and duty of — *Held, he is required to examine independently the entire case including the points on which the two Judges of the Division Bench had concurred — His position is not that of a Judge sitting in a three-Judge Bench where majority opinion prevails — His opinion is rather the material one and it is against the judgment that follows therefrom that an appeal lies under Art. 136 or 134 of the Constitution or under S. 379, CrPC, 1973 — On facts, therefore, the third Judge was bound to examine appeal of the three accused whose conviction had been upheld by both the Judges — However, despite the third Judge having not followed the correct procedure, in the peculiar circumstances of the case, matter decided by Supreme Court itself on merits and not remanded — Constitution of India — Arts. 136, 142 and 134 — CrPC, 1973, Ss. 392 and 379.* *Sajjan Singh* v. *State of M.P.*, (1999) 1 SCC 315: 1999 SCC (Cri) 44: AIR 1998 SC 2756.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **D.P. Wadhwa**, JJ. [Date of decision: 2-9-1998]

Babu v. State of U.P., AIR 1965 SC 1467: (1965) 2 SCR 771; State of U.P. v. Dan Singh, (1997) 3 SCC 747: 1997 SCC (Cri) 469; Tanviben Pankajkumar Divetia v. State of Gujarat, (1997) 7 SCC 156: 1997 SCC (Cri) 1004, followed

[8990] — S. 429 — Difference of opinion — Case laid before third Judge — Third Judge if can deal with the whole case

Two things are noticeable in S. 429, CrPC. First, that the case shall be laid before another Judge, and, secondly the judgment and order will follow the opinion of third learned Judge. So the third Judge can or will deal with the whole case. *Hethubha* v. *State of Gujarat*, (1970) 1 SCC 720: 1970 SCC (Cri) 280: AIR 1970 SC 1266: 1970 Cri LJ 1138.

Bench Strength **2**. Coram: **A.N. Ray** and *I.D. Dua*, JJ. [Date of decision: 13-3-1970]

[8991] — S. 429 — Single Judge to whom a reference is made, held, cannot reopen the entire matter — *Unanimous decision of the Division Bench binding on him — Precedents — High Court vis-à-vis Itself and other H.C. Precedents. Bhagat Ram* v. *State of Rajasthan*, (1972) 2 SCC 466: 1972 SCC (Cri) 751: AIR 1972 SC 1502: (1972) 3 SCR 303: 1972 Cri LJ 909: (1972) 9 ACC 67.

Bench Strength **2**. Coram: *J.M. Shelat* and **H.R. Khanna**, JJ. [Date of decision: 31-1-1972]

See also (1974) 3 SCC 72

[8992] — S. 429 — Judges of appeal equally divided — Opinion of the Judge acquitting the accused — *Not to be treated as judgment of acquittal — Third judge not bound to discuss opinion of acquitting Judge and indicate reasons for disagreement*

Per Kapur, J. (majority)

All that S. 429 says is that the opinion of the two judges who disagree shall be laid before another judge who, after giving such hearing, if any, as he thinks fit, shall deliver his opinion and the judgment or order should be in accordance with such opinion. Now it is obvious that when the opinions of the two judges are placed before a third judge he would consider those two opinions and give his own opinion and the judgment has to follow the opinion of the third judge. Consequently on that opinion is based the judgment of the Court. For all practical purposes the third judge must consider the opinions of his two colleagues and then give his own opinion but to equate the requirements with appeals against acquittals is not justified by provisions of S. 429 or by principle or precedent.

The contention that under S. 429, Criminal Procedure Code, where there is difference of opinion between the Judges constituting a Division Bench and the matter is referred to a third judge the opinion of the Judge acquitting the accused has to be treated in the same manner as the judgment of acquittal by the trial Court and, even though it may not be necessary to find compelling reasons for disagreeing with the opinion of the acquitting judge it is necessary that the judgment should show that all the findings and the reasons given in the opinion of the acquitting judge are mentioned in the opinion of the third judge and the judgment should indicate the reasons for disagreeing with the opinion of the acquitting judge is without substance. *Dharam Singh* v. *State of U.P.*, 1962 Supp (3) SCR 769: (1964) 1 Cri LJ 78, 81.

Bench Strength **3**. Coram: **J.L. Kapur**[1], *K.C. Das Gupta* and **Raghubar Dayal**[2], JJ. [Date of decision: 9-3-1962]

[8993] — S. 429 — Power of third judge in case of difference of opinion

The language of S. 429 of the Code of Criminal Procedure is explicit that the case with the opinion of the judges comprising the Court of Appeal shall be laid before another judge of the same Court. The other noticeable feature in S. 429 of the Code of Criminal Procedure is that the judgment or order shall follow the opinion of the third learned judge. *Union of India* v. *B.N. Ananti Padmanabiah*, (1971) 3 SCC 278: 1971 SCC (Cri) 535: AIR 1971 SC 1836: 1971 Cri LJ 1287.

Bench Strength **3**. Coram: *S.M. Sikri, C.J.* and *C.A. Vaidialingam* and **A.N. Ray**, JJ. [Date of decision: 22-4-1971]

[8994] — S. 429 — Procedure when Judges of Court of Appeal equally divided — *Case laid before the third Judge — He is completely free in resolving the difference as he thinks fit*

Section 429 contemplates that it is for the third judge to decide on what points he shall hear arguments, if any, and that postulates that he is completely free in resolving the difference as he thinks fit.

Where there was a difference of opinion between the two Judges of the High Court hearing an appeal against a conviction in a murder case and the case was laid before a third judge under S. 429, CrPC, it was sufficient for the third judge to have said on the question of the First Information Report, about which there was a difference of opinion between the two Judges of appeal, that he did not consider it necessary to decide the point but if it was necessary he was in agreement with one of the judges specified by him. That was a proper decision by the third judge. *Babu* v. *State of U.P.*, AIR 1965 SC 1467: (1965) 2 SCR 771: (1965) 2 Cri LJ 539, 541.

Bench Strength **5**. Coram: *K.N. Wanchoo*, **M. Hidayatullah**, *J.C. Shah*, *J.R. Mudholkar* and *S.M. Sikri*, JJ. [Date of decision: 19-1-1965]

[8995] — S. 429 — Reference to third Judge of one aspect of matter — *Whether third judge competent to reopen the entire matter — Whether on other matters the findings of the Division Bench is binding on him*

It is not permissible for the third Judge to reopen the matter and pass a conviction order for offences under Ss. 347, 389 and 120-B, IPC. The matter referred to the third Judge was only for offences under S. 161, IPC and S. 5(1)(*a*) of Prevention of Corruption Act, and the third Judge could go only into that aspect of the matter and come to a conclusion.

Where an express order has been made by the Division Bench upholding the acquittal for offences under Ss. 120-B, 218, 347 and 389, IPC and the State appeal to that extent has been dismissed, the decision of the Division Bench was binding on the third Judge and it was not within his competence to reopen the matter and pass a conviction order.

The order of acquittal passed by the Division Bench, unless set aside in appeal to the Supreme Court was binding and conclusive in all subsequent proceedings between the parties. *Bhagat Ram* v. *State of Rajasthan*, (1972) 2 SCC 466: 1972 SCC (Cri) 751: AIR 1972 SC 1502: (1972) 3 SCR 303: 1972 Cri LJ 909: (1972) 9 ACC 67.

Bench Strength **2**. Coram: *J.M. Shelat* and **H.R. Khanna**, JJ. [Date of decision: 31-1-1972]

[8996] — S. 429 — Third Judge, before whom the case is laid for opinion under, held, is competent to deal with the whole case and is not bound to confine his judgment only to the matter concerning difference of opinion between the other two Judges — *On facts, view taken by the third Judge not being unreasonable and perverse, held, is not open to challenge — CrPC, 1973, S. 392. State of A.P.* v. *P.T. Appaiah*, (1980) 4 SCC 316: 1980 SCC (Cri) 960: AIR 1981 SC 365: 1980 Cri LJ 1410.

Bench Strength **2**. Coram: *R.S. Sarkaria* and **A.C. Gupta**, JJ. [Date of decision: 28-8-1980]

— S. 430 *See* Ss. 369, 424, 430 and 561-A

See also Ss. 420, 421 and 430

See also Ss. 439(6), 369 and 430

[8997] — S. 430 — Finality of appellate judgments even if decided wrongly

The Appellate Court in a case which properly comes before it on appeal, is fully competent to decide whether the trial was with or without jurisdiction, and it has jurisdiction to decide the matter rightly as well as wrongly. If it affirms the conviction and thereby decides wrongly that the trial Court had the jurisdiction to try and convict, it cannot be said to have acted without jurisdiction and its order cannot be treated as a nullity. *Janardhan Reddy* v. *State of Hyderabad*, AIR 1951 SC 217, 225: 1951 SCR 344: (1951) 52 Cri LJ 736.

Bench Strength **5**. Coram: **Fazl Ali**, *M.C. Mahajan*, *B.K. Mukherjea*, *S.R. Das* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 16-3-1951]

[8998] — S. 430 — Rejection of jail appeal — Second appeal through pleader cannot be entertained. *Pratap Singh* v. *State of V.P.*, AIR 1961 SC 586: (1961) 2 SCR 509: (1961) 1 Cri LJ 733.

Bench Strength **5**. Coram: **Syed Jafer Imam**, *J.L. Kapur*, *K.C. Das Gupta*, *Raghubar Dayal* and *N. Rajagopala Ayyangar*, JJ. [Date of decision: 18-11-1960]

[8999] — Ss. 430 and 439(6) — Finality of the orders in appeal — S. 439(6) is not controlled by S. 430

Per Das, J.

The scope of Ch. 32 of the Criminal Procedure Code having been enlarged by the addition of sub-section (6) of S. 439, the scope of Exception to S. 430 must also stand enlarged so as to include within its exception whatever, after the amendment of S. 439, may come within Ch. 32 and therefore cases now coming within the Chapter must stand free from the rule of finality embodied in S. 430.

In therefore follows that S. 439(6) is not in terms controlled by S. 369 or S. 430. *U.J.S. Chopra* v. *State of Bombay*, AIR 1955 SC 633: (1955) 2 SCR 94: 1955 Cri LJ 1410, 1414.

Bench Strength **3**. Coram: **S.R. Das**[1], **N.H. Bhagwati**[2] and *Syed Jafer Imam*, JJ. [Date of decision: 25-3-1955]

— S. 431 *See* Ss. 386(1)(b) proviso and 431
See also Ss. 417(3) and 431

[9000] — S. 431 — Death — Abatement — Special leave appeal against sentence of life imprisonment — Appellant dying during pendency of the appeal — Appeal abates — *In appeal against sentence of fine principles of S. 431 to apply and the appeal to be permitted to continue — Constitution of India — Art. 136*

Per Sarkar, J.

Appeals from sentences of fine may be permitted to be continued by the legal representative of the deceased appellant, because there is no provision making such appeals abate and also because if they can be continued when arising under CrPC there is no reason why they should not be continued when arising under the Constitution.

The principle on which the hearing of a proceeding may be continued after the death of an accused would appear to be the effect of the sentence on his property in the hands of his legal representatives. If the sentence affects that property, the legal representatives can be said to be interested in the proceeding and allowed to continue it. A sentence of fine no doubt affects the property.

Per Hidayatullah, J.

An appeal is not a heritable asset and does not devolve as a matter of course upon an executor or heir. Even under the civil law an express provision is required for substitution of another person in the place of the person deceased before the appeal can be continued and this is again subject to whether the cause of action survives or not. The same principle is again to the forefront in S. 431 when it allows an appeal in respect of fine to be continued but not appeals involving imprisonment. The intention there too appears to be to afford only to those persons a right whose interests are directly jeopardized by the judgment. In so far as personal punishment (other than a fine) is concerned that stands dissolved by the death of the offender and an appeal to get that punishment set aside becomes infructuous and abates.

Per Madholkar, J.

The Legislature has, by limiting in S. 431 of the Code the survival of appeals to appeals against sentences of fine has chosen to recognise only one kind of interest and no other. *Bondada Gajapathi Rao* v. *State of A.P.*, AIR 1964 SC 1645, 1647: (1964) 7 SCR 251, 254: (1964) 2 Cri LJ 598, 600.

Bench Strength **3**. Coram: **A.K. Sarkar**[1], **M. Hidayatullah**[2] and **J.R. Mudholkar**[3], JJ. [Date of decision: 16-3-1964]

Applied in State of A.P. v. S. Narasimha Kumar, (2006) 5 SCC 683

[9001] — S. 431 — Applicability — *Abatement of State appeal under Art. 136 pending in Supreme Court on death of accused — Appeal filed by State against order of High Court which set aside conviction and sentence of accused — Held, said appeal abated on death of accused —* Bondada Gajapathy Rao, *AIR 1964 SC 1645 and* Harnam Singh, *(1975) 3 SCC 343 followed — CrPC, 1973, S. 394* (Para 8). *State of A.P.* v. *S. Narasimha Kumar*, (2006) 5 SCC 683: (2006) 3 SCC (Cri) 54: AIR 2006 SC 2924: (2006) 3 KLT 505.

Bench Strength **2**. Coram: **Arijit Pasayat** and *S.H. Kapadia*, JJ. [Date of decision: 13-7-2006]

Bondada Gajapathy Rao v. State of A.P., (1964) 7 SCR 251: AIR 1964 SC 1645: (1964) 2 Cri LJ 598; Harnam Singh v. State of H.P., (1975) 3 SCC 343: 1974 SCC (Cri) 951, applied

Applied in Shankar Prasad Ghosh v. State of Bihar, (2008) 11 SCC 373

[9002] — S. 431 — Permission to continue appeal subsequent to death of accused-appellant — *Sought by widow of appellant after "delay of 149 days" — Condoning the delay, Supreme Court granting the said permission — CrPC, 1973, S. 394(2) proviso* (Para 11) . *Girja Prasad* v. *State of M.P.*, (2007) 7 SCC 625: (2007) 3 SCC (Cri) 475: (2007) 4 KLT 99: (2007) 58 AIC 230 (SC).

Bench Strength **2**. Coram: **C.K. Thakker** and *Tarun Chatterjee*, JJ. [Date of decision: 27-8-2007]

[9003] — S. 431 — Abatement of criminal appeal on death of accused — *Whether S. 431 applicable to an appeal by special leave under Art. 136 against a composite sentence of imprisonment and fine — CrPC, 1973, S. 394*

Though strictly speaking S. 431, CrPC, 1898 does not apply to appeals by special leave, yet, in the interests of uniformity there is no valid reason for applying to appeals under Art. 136 a set of rules different from those which govern appeals under the Code in the matter of abatement.

Now every appeal against conviction abates on the death of accused except an appeal from a sentence of fine. An appeal from a sentence of fine is excepted from the all-pervasive rule of abatement of criminal appeals for the reason that the fine constitutes a liability on the estate of the deceased and the legal representatives on whom the estate devolves are entitled to ward off that liability. The sentence of fine remains outstanding though the right to recover the fine is circumscribed by a sort of a period of limitation prescribed by S. 70, IPC.

Though an appeal from a composite order of sentence is ordinarily directed against both the substantive imprisonment and the fine, it does not cease to be an appeal from a sentence of fine. The plain meaning of S. 431 is that every criminal appeal abates on the death of the accused "except an appeal from a sentence of fine". The section for its application requires that the appeal must be directed to the sentence of fine and not that it must be directed to that sentence only. If by the judgment under appeal a sentence of fine is imposed either singularly or in conjunction with a sentence of imprisonment the appeal against conviction would be an appeal from a sentence of fine within the meaning of S. 431. All that is necessary is that a sentence of fine should have been imposed on the accused and the appeal filed by him should involve the consideration of the validity of that sentence.

In this regard it is incorrect to state that even after finding that the conviction is illegal, the Court must only set aside the sentence of fine permitting the illegal conviction and the substantive sentence founded upon it to remain. *Harnam Singh* v. *State of H.P.*, (1975) 3 SCC 343: 1974 SCC (Cri) 951: AIR 1975 SC 236: 1975 Cri LJ 276: 1975 MLJ (Cri) 493.

Bench Strength 2. Coram: **Y.V. Chandrachud** and *P.N. Bhagwati*, JJ. [Date of decision: 21-11-1974]

***Applied in** State of A.P. v. S. Narasimha Kumar, (2006) 5 SCC 683; Shankar Prasad Ghosh v. State of Bihar, (2008) 11 SCC 373*

[9004] — Ss. 431 and 439 — Revision — Effect of the death of the revisionist — Abatement — Revision does not abate — *High Court continues to have power to examine the whole question including the order of conviction*

In the absence of statutory provisions, in terms applying to an application in revision, as there are those in S. 431 in respect of criminal appeals, the High Court has the power to pass such orders as to it may seem fit and proper, in exercise of its revisional jurisdiction vested in it by S. 439 of the Code. Indeed, it is a discretionary power which has to be exercised in aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon the facts and circumstances of that case. The revisional powers of the High Court vested in it by S. 439 of the Code, read with S. 435, do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognised rules of Criminal Jurisprudence, and that subordinate criminal Courts do not exceed their jurisdiction, or abuse their powers vested in them by the Code. On the other hand a right of appeal is a statutory right which has got to be recognised by the Courts, and the right to appeal, where one exists, cannot be denied in exercise of the discretionary power even of the High Court. The Legislature has, therefore, specifically provided, by S. 431 of the Code, the rules governing the right of substitution in case of death of an appellant, but there is no corresponding provision in Ch. XXXII, dealing with the question of abatement and the right of substitution in a criminal revision. The High Court is not bound to entertain an application in revision, or having entertained one, to order substitution in every case. It is not bound the other way, namely, to treat a pending application in revision as having abated by reason of the fact that there was a composite sentence of imprisonment and fine, as some of the Single Judge decisions referred to would seem to indicate. The High Court has been left with complete discretion to deal with a pending matter on the death of the petitioner in accordance with the requirements of justice. The petitioner in the High Court may have been an accused person who has been convicted and sentenced, or he may have been a complainant who may have been directed under S. 250 of the Code to pay compensation to an accused person upon his discharge or acquittal. Whether it was an accused person or it was a complainant who has moved the High Court in its revisional jurisdiction, if the High Court has issued a rule that rule has to be heard and determined in accordance with law, whether or not the petitioner in the High Court is alive or dead, or whether he is represented in Court by a legal practitioner. In hearing and determining cases under S. 439 of the Code, the High Court discharges its statutory function of supervising the administration of justice on the criminal side. Hence, the considerations applying to abatement of an appeal, may not apply to the case of revisional applications. *Pranab Kumar Mitra* v. *State of W.B.*, AIR 1959 SC 144: 1959 Supp (1) SCR 63: 1959 Cri LJ 256, 57, 59.

Bench Strength 5. Coram: *S.R. Das*, *C.J.* and *N.H. Bhagwati*, **B.P. Sinha**, *K. Subba Rao* and *K.N. Wanchoo*, JJ. [Date of decision: 3-10-1958]

***See also** AIR 1964 SC 1645: (1964) 2 Cri LJ 598*

[9005] — S. 432 — Question as to the validity of an Act — Must be taken under S. 432 and not Arts. 226 and 227 of the Constitution

The Legislature has provided a special procedure for bringing a matter before the High Court when a party to a criminal prosecution pleads that the case involves a question as to the validity of an Act, Ordinance or Regulation and determination of that question is necessary for the disposal of the case.

The appellants did not apply to the trial Magistrate and approached the High Court. The High Court declined to entertain the petition under Arts. 226 and 227 of the Constitution, because in their view the matter could be brought before them according to the procedure prescribed by S. 432. We do not think that the order of the High Court was in any manner erroneous. *Sitaram Chhawehharia* v. *State of Bihar*, 1969 SCD 260, 262.

Bench Strength **3**. Coram: **J.C. Shah**, *V. Ramaswami* and *A.N. Grover*, JJ. [Date of decision: 10-10-1968]

[9006] — S. 432 — Revision — *High Court acted improperly in finding that the respondents had no dishonest intention from the beginning and the case was of a civil nature — It was the function of the magistrate who has to determine if there is a prima facie charge and so case remanded to him. Rattan Lal* v. *State of Rajasthan*, (1981) 4 SCC 430: 1981 SCC (Cri) 850.

Bench Strength **3**. Coram: *O. Chinnappa Reddy, A.P. Sen* and *Baharul Islam*, JJ. [Date of decision: 26-8-1981]

[9007] — Ss. 432 and 540 — Revisional power of High Court — *It is a discretionary power which has to be exercised to correct miscarriage of justice — Justification for exercise of the power would depend upon facts and circumstances of each particular case — Where trial court acquitted the appellant of offence under S. 307 IPC in absence of any evidence and order of acquittal was not suffering from any perversity or unreasonableness, held on facts and in the circumstances of the case, there was no justification for the High Court to interfere with the trial court's order in exercise of its revisional jurisdiction under S. 401 and order a retrial for the purpose of examining the victims under S. 311 who had not been examined either under S. 161 CrPC or in the trial — CrPC, 1973, Ss. 401 and 311.* (Paras 11 and 12). *T.N. Dhakkal* v. *James Basnett*, (2001) 10 SCC 419.

Bench Strength **3**. Coram: *Dr. A.S. Anand, C.J.* and *N. Santosh Hegde* and *Shivaraj V. Patil*, JJ. [Date of decision: 21-9-2000]

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305: 1993 SCC (Cri) 36, relied on

— S. 435 *See* Ss. 146(1-B) and (1-D), 435 and 439

See also Ss. 198 and 435

See also Ss. 421, 435 and 439

See also Ss. 439, 435 and 423

See also Ss. 476 and 435/439

[9008] — S. 435 — Supreme Court can, when the matter is before it in appeal, exercise the powers of the High Court to correct wrong decisions of the inferior Courts. *Abdul Rehman Mahomed Yusuf* v. *Mahomed Haji Ahmad Agbotwala*, AIR 1960 SC 82: (1960) 1 SCR 749: 1960 Cri LJ 158.

Bench Strength **2**. Coram: **Syed Jafer Imam** and *K.N. Wanchoo*, JJ. [Date of decision: 15-9-1959]

[9009] — Ss. 435, 337 and 338 — Revision of tender of pardon

Tender of pardon is a proceeding of a criminal court. The revising authority can call for the records to satisfy itself as to the regularity of any proceedings of an inferior criminal court. *State of U.P.* v. *Kailash Nath Agarwal*, (1973) 1 SCC 751: 1973 SCC (Cri) 698: AIR 1973 SC 2210: 1973 Cri LJ 1196.

Bench Strength **3**. Coram: *A. Alagiriswami, I.D. Dua* and **C.A. Vaidialingam**, JJ. [Date of decision: 16-3-1973]

[9010] — Ss. 435, 436 and 439 — Applicability to order of discharge under S. 494

Held, that the resultant order, on the granting of the consent, being an order of 'discharge' or 'acquittal' would attract the applicability of correction by the High Court under Ss. 435, 436 and 439 or 417, CrPC. *State of Bihar* v. *Ram Naresh Pandey*, AIR 1957 SC 389, 392: 1957 SCR 279: 1957 Cri LJ 567.

Bench Strength **3**. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 31-1-1957]

[9011] — Ss. 435, 439 and 526 — Summoning record while appeal pending — *Accused's appeal against conviction pending in Sessions Judge's Court — During pendency the High Court, not knowing that appeal was pending summoning the record suo moto under S. 435 — Later transferring the appeal to its file — Confirming conviction and enhancing sentence — Held, there is no illegality*

The appellant filed an appeal against his conviction. The High Court, not knowing that the appeal was pending summoned the record and issued notice to the appellant to show cause why the sentence be not enhanced. Later the High Court on learning that an appeal against the conviction was pending transferred the appeal to itself and decided the whole case. It is contended that the High Court could not issue a notice of enhancement when an appeal against the conviction was pending in Sessions Court.

Held :

If the High Court was not aware of the filing of an appeal, it was open to it to call for the record of the proceeding before the Magistrate in order to satisfy itself whether the sentence passed was a proper one or not. When, however, it was brought to the notice of the High Court that an appeal was pending before the Sessions Judge, it could order that the appeal be withdrawn to the High Court so that the appeal and the rule could be heard together. The High Court did not commit any illegality in adopting the course which it did.

Provided the appeal was validly transferred for hearing to the High Court, it was open to the High Court to enhance the sentence in exercise of its revisional power under S. 439, Criminal Procedure Code, when it dismissed the appeal on merits after hearing the appellant. There can be no doubt in the present case that the appellant has had an opportunity of being heard both as to the correctness of his conviction and the propriety of the sentence. *Romesh Chandra Arora* v. *State*, AIR 1960 SC 154: (1960) 1 SCR 924: 1960 Cri LJ 177, 81.

Bench Strength 3. Coram: **S.K. Das**, *A.K. Sarkar* and *M. Hidayatullah*, JJ. [Date of decision: 6-10-1959]

[9012] — Ss. 435 and 438 — Both parties must be heard in proceedings before High Court — *On failure to give party or his counsel notice, order of High Court set aside and matter remanded — CrPC, 1973, Ss. 397, 399 and 401. Makkapati Nagaswara Sastri* v. *S.S. Satyanarayan*, (1981) 1 SCC 62: 1981 SCC (Cri) 111: AIR 1981 SC 1156: 1981 Cri LJ 617.

Bench Strength 2. Coram: **R.S. Sarkaria** and *O. Chinnappa Reddy*, JJ. [Date of decision: 18-9-1980]

[9013] — Ss. 435 and 439 — Powers of the High Court in revision while dealing with the cases of acquittal

The ambit of the powers of the High Court under Ss. 435 and 439, CrPC, in dealing with the cases of acquittal has been explained by this Court in more than one decision. *Ibrahim Haji Moidee* v. *Food Inspector*, (1969) 3 SCC 901: 1970 SCC (Cri) 167: 1969 KLT 62.

Bench Strength 3. Coram: *S.M. Sikri*, *G.K. Mitter* and **K.S. Hegde**, JJ. [Date of decision: 5-8-1969]

[9014] — Ss. 435 and 439 — S. 259(1), Cantonment Act, 1924 — Magistrate acting under, not amenable to revision

The Magistrate acting under S. 259 of the Act, acts as a persona designata and, therefore, his order under that section is not revisable under Ss. 435/439 of the Code of Criminal Procedure and the Sessions Judge and the High Court had no jurisdiction under those provisions to interfere with such an order. *Cantonment Board* v. *Pyare Lal*, AIR 1966 SC 108: (1965) 3 SCR 341: 1966 Cri LJ 93.

Bench Strength 3. Coram: **K.N. Wanchoo**[1], **J.R. Mudholkar**[2] and *S.M. Sikri*[1], JJ. [Date of decision: 12-3-1965]

[9015] — Ss. 435 & 439 and 209 — High Court's power to interfere with the order of the Presidency Magistrate discharging an accused under S. 209

The contention that only that order is revisable under S. 439 of Criminal Procedure Code which is appealable under the Code is not correct because S. 439 is worded in very wide terms. Section 435 authorises the High Court besides other Courts mentioned therein to "call for and examine the record of proceeding before any inferior criminal Court". A Presidency Magistrate is also such an inferior criminal Court. If the High Court is empowered to call for the record of any proceeding before a Presidency Magistrate, it follows that it may examine the correctness, legality or propriety of any order passed by him and if it finds that the order is not correct or is illegal or improper, it may, acting under S. 439 exercise any of the powers conferred on a Court of Appeal under S. 423. Section 439 provides that on examining the record of any proceedings the High Court may in its discretion exercise any of the powers conferred on a Court of Appeal under S. 423.

The contention that unless there is an appeal against an order of acquittal, the High Court's power to order that the accused be committed to trial cannot be exercised under S. 439, because cl. (*a*) of S. 423(1) which contains the power to order committal begins with the words "in an appeal from an order of acquittal", is not correct. The fallacy of this line of argument lies in reading all the words of S. 423 into S. 439, which the latter section does not contemplate. Section 439 only authorises the High Court in revision to exercise any of the powers conferred under S. 423. It does not further make reference to the cases in which such powers have to be exercised. The latter question does not arise because S. 439 itself makes sweeping provision that "in the case of any proceeding" the High Court may exercise the powers enumerated in S. 423. Therefore the several powers contained in S. 423 have to be incorporated into S. 439 except the power to convert a finding of acquittal into one of conviction.

The High Court has jurisdiction to revise the order of discharge passed by a Presidency Magistrate. *Ramgopal Ganpatrai Ruia* v. *State of Bombay*, AIR 1958 SC 97: 1958 SCR 618: 1958 Cri LJ 244, 251-53.

Bench Strength **3**. Coram: **B.P. Sinha**, *P. Govinda Menon* and *J.L. Kapur*, JJ. [Date of decision: 8-10-1957]

[9016] — Ss. 435 and 439 — Magistrate acting under S. 20 of Suppression of Immoral Traffic in Women & Girls Act, 1956 subject to revision. *State of U.P.* v. *Kaushailiya*, AIR 1964 SC 416: (1964) 4 SCR 1002: (1964) 1 Cri LJ 304.

Bench Strength **5**. Coram: *P.B. Gajendragadkar*, **K. Subba Rao**, *K.N. Wanchoo*, *J.C. Shah* and *Raghubar Dayal*, JJ. [Date of decision: 1-10-1963]

[9017] — Ss. 435 and 439 — Nature and extent of revisional jurisdiction — When may be exercised — *CrPC, 1973, Ss. 397 and 401*

The High Court in exercising its revisional powers should not lightly interfere with the order of the Sessions Judge. The revisional jurisdiction can be exercised only in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The jurisdiction is not ordinarily invoked or used merely because the lower court has taken a wrong view of the law or misappreciated the evidence on record. *Thakur Das* v. *State of M.P.*, (1978) 1 SCC 27: 1978 SCC (Cri) 21: AIR 1978 SC 1: 1978 Cri LJ 1: 1978 MLJ (Cri) 255: (1977) 3 ALR 720: (1978) 1 ALT 81.

Bench Strength **3**. Coram: *P.K. Goswami*, *N.L. Untwalia* and **D.A. Desai**, JJ. [Date of decision: 14-10-1977]

[9018] — Ss. 435 and 439 — Revisional power of High Court — *Sessions Judge appointed as appellate authority under S. 6-C of Essential Commodities Act, 1955 — Sessions Court held subordinate to High Court not persona designata*

The Sessions Judge gets his designation as such since he presides over the Sessions Court and thereby enjoys the powers and discharges the functions conferred by the Code of Criminal Procedure. Therefore, even if the judicial authority appointed under S. 6-C is the Sessions Judge, it would mean the Judge presiding over the Sessions Court and discharging the functions of that Court. The Sessions Court is constituted under the Code of Criminal Procedure and is indisputably an inferior court in relation to the High Court. Therefore, against the order made in exercise of the powers conferred by S. 6-C a revision application would lie to the High Court and the High Court would be entitled to entertain such revision application. If by the Sessions Judge is meant the Judge presiding over the Sessions Court and he is the appointed appellate authority, the conclusion is inescapable that he was not persona designata. That expression is understood to mean a person appointed or described as an individual as opposed to a person ascertained as a member of a class or as filling a particular character. *Thakur Das* v. *State of M.P.*, (1978) 1 SCC 27: 1978 SCC (Cri) 21: AIR 1978 SC 1: 1978 Cri LJ 1: 1978 MLJ (Cri) 255: (1977) 3 ALR 720: (1978) 1 ALT 81.

Bench Strength **3**. Coram: *P.K. Goswami*, *N.L. Untwalia* and **D.A. Desai**, JJ. [Date of decision: 14-10-1977]

[9019] — Ss. 435 & 439 and 144 — Order under S. 144 CrPC — Can be reviewed

Though no appeal has been provided in the Code against the Magistrate's order under S. 144, the High Court has power under S. 435 read with S. 439 of the Code to entertain an application for the revision of such an order. *Babulal Parate* v. *State of Maharashtra*, AIR 1961 SC 884, 890: (1961) 3 SCR 423: (1961) 2 Cri LJ 16, 22.

Bench Strength **5**. Coram: *B.P. Sinha, C.J.* and *S.K. Das*, *A.K. Sarkar*, *N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 12-1-1961]

[9020] — Ss. 435 and 561-A — Revisional power and inherent power — *Inherent power may be invoked for quashing interlocutory order even though revision is prohibited — "Interlocutory order" — Meaning of — CrPC, 1973, Ss. 397(2) & 482. Madhu Limaye* v. *State of Maharashtra*, (1977) 4 SCC 551: 1978 SCC (Cri) 10: AIR 1978 SC 47: 1978 Cri LJ 165.

Bench Strength **3**. Coram: *P.K. Goswami*, **N.L. Untwalia** and *D.A. Desai*, JJ. [Date of decision: 31-10-1977]

Amar Nath v. State of Haryana, (1977) 4 SCC 137: 1977 SCC (Cri) 585, explained

— S. 436 *See* Ss. 435, 436 and 439

— S. 437 *See* Ss. 207, 207-A and 437

See also Ss. 213(2), 437 and 439

[9021] — S. 437 — High Court setting aside order of discharge and directing commitment for trial under S. 409 IPC (Criminal breach of trust) — *Held, order of the High Court did not revive the committal proceedings and therefore did not attract the 1973 Code by virtue of proviso to S. 484 — The High Court did not order any fresh enquiry in terms of S. 437, Criminal Procedure Code, 1898 but straightaway committed him to Sessions — CrPC, 1973, S. 484, proviso. M.R. Dhawan* v. *Delhi Admn.*, (1978) 2 SCC 184: 1978 SCC (Cri) 186: AIR 1978 SC 1011: 1978 Cri LJ 769.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 13-3-1978]

[9022] — S. 437 — Commitment can be made against an implied order of discharge

It is true that in the present case there is no express order of the Magistrate discharging the appellant of the charge under S. 307, IPC, but in his order, the Magistrate has given reasons for holding that no case is made out under S. 307, IPC, in order to justify an order of commitment. It is manifest that the order of the Magistrate is tantamount to an implied order of discharge and the Additional Sessions Judge had, therefore, jurisdiction under S. 437, CrPC, to set aside the order of the Magistrate and to order that the accused should be committed to trial in the Court of Session on the major charge under S. 437, IPC. There is nothing in the language of S. 437, CrPC, from which it could be said that the power of the Sessions Court under that section can be exercised only when the Magistrate has made an express order of discharge.

The language used in S. 437, CrPC is wide and there is nothing in that section from which it could be gathered that the power can be exercised only when the Magistrate has made an express order of discharge. *Ramekbal Tiwary* v. *Madan Mohan Tiwary*, AIR 1967 SC 1156, 1159: (1967) 2 SCR 368: 1967 Cri LJ 1076.

Bench Strength **5**. Coram: *K. Subba Rao, C.J.* and *J.C. Shah, S.M. Sikri*, **V. Ramaswami** and *C.A. Vaidialingam*, JJ. [Date of decision: 17-1-1967]

[9023] — S. 437 — Object of — Retrial for graver offence

Section 437 has been enacted to cover cases where a magistrate thinking the facts relate to a minor offence tries the case without sending it to the Court of Session, and to prevent inferior Courts from exercising a jurisdiction which they do not possess. Where under S. 209(1) a Magistrate finds there are not sufficient grounds for committing the accused for trial and directs such person to be tried before himself or some other Magistrate, the revisional powers under S. 437, Criminal Procedure Code, can be exercised by the Sessions Court. *Ramekbal Tiwary* v. *Madan Mohan Tiwary*, AIR 1967 SC 1156, 1159: (1967) 2 SCR 368: 1967 Cri LJ 1076.

Bench Strength **5**. Coram: *K. Subba Rao, C.J.* and *J.C. Shah, S.M. Sikri*, **V. Ramaswami** and *C.A. Vaidialingam*, JJ. [Date of decision: 17-1-1967]

[9024] — S. 437 — Power to commit — Prosecution making successive applications to the Magistrate to commit a case to Sessions — All applications having been rejected — *Finally informant filing a revision application — Case having proceeded on police report — Held, informant had no locus standi — Session Judge not justified in ordering committal of the case to Court of Sessions. Thakur Ram* v. *State of Bihar*, AIR 1966 SC 911: (1966) 2 SCR 740: 1966 Cri LJ 700, 703.

Bench Strength **3**. Coram: **J.R. Mudholkar**, *R.S. Bachawat* and *P. Satyanarayana Raju*, JJ. [Date of decision: 26-11-1965]

[9025] — S. 437 — Power to commit — Discretionary — Has to be exercised judicially

The provisions of S. 437, however, do not make it obligatory upon a Sessions Judge or a District Magistrate to order commitment in every case where an offence is exclusively triable by a Court of Session. The law gives a discretion to the revising authority and that discretion has to be exercised judicially. *Thakur Ram* v. *State of Bihar*, AIR 1966 SC 911: (1966) 2 SCR 740: 1966 Cri LJ 700, 703.

Bench Strength **3**. Coram: **J.R. Mudholkar**, *R.S. Bachawat* and *P. Satyanarayana Raju*, JJ. [Date of decision: 26-11-1965]

[9026] — Ss. 437, 347, 206 and 207-A — Power under S. 437 — Can be exercised during the pendency of trial before the Magistrate as well — *Not necessary for the exercise of power that order of discharge be passed by the Magistrate*

There is nothing in the language of S. 437 from which it could be said that this power is not exercisable during the pendency of a trial before a Magistrate or that this power can be exercised only where the Magistrate has made an express order of discharge.

Express orders of discharge are not required to be passed by the Court in cases where, upon the same facts, it is possible to say that though no offence exclusively or appropriately triable by a Court of Sessions Judge is made out, an offence triable by a Magistrate is nevertheless made out. Even if an express order of discharge is made by a Magistrate in respect of an offence exclusively triable by a Court of Session but a trial on the same facts for a minor offence is proceeded with, the Magistrate has undoubtedly power to order his commitment in respect of the very offence regarding which he has passed an order of discharge provided, of course, the material before him justifies such a course. There is nothing in S. 347 which precludes him from doing this. It will, therefore, be not right to say that the power conferred by S. 437 is exercisable only in respect of express orders of discharge.

The facts may disclose really a very grave offence such as say, one under S. 302, IPC but the Magistrate thinks that the offence falls under S. 304-A, which he can try and after trying the accused either convicts or acquits him. In either case the result would be that the appropriate Court will be prevented from trying the accused for the grave offence which those very facts disclose. It is to obviate such a consequence and to prevent inferior Courts from clutching at jurisdiction that the provisions of S. 437, CrPC have been enacted. To say that they can be availed of only where an express order of discharge is made by a Magistrate despite the wide language used in S. 437 would have the result of rendering those provisions inapplicable to the very class of cases for which they were intended. *Thakur Ram* v. *State of Bihar*, AIR 1966 SC 911: (1966) 2 SCR 740: 1966 Cri LJ 700, 703.

Bench Strength **3**. Coram: **J.R. Mudholkar**, *R.S. Bachawat* and *P. Satyanarayana Raju*, JJ. [Date of decision: 26-11-1965]

— S. 438 *See* Ss. 254, 438 and 439
See also Ss. 435 and 438
— S. 439 *See* Ss. 94 and 439
See also Ss. 145(1) and 439
See also Ss. 146(1-B) and (1-D), 435 and 439
See also Ss. 154, 156, 439 and 561-A
See also Ss. 156, 439 and 561-A
See also Ss. 213(2), 437 and 439
See also Ss. 227 and 439
See also Ss. 253, 254-A & 258 and 439 & 403
See also Ss. 254, 438 and 439
See also Ss. 421, 435 and 439
See also Ss. 423 and 439
See also Ss. 423(1-A) and 439
See also Ss. 431 and 439
See also Ss. 435, 436 and 439
See also Ss. 435 and 439
See also Ss. 435 & 439 and 144
See also Ss. 435 & 439 and 209
See also Ss. 435, 439 and 526
See also Ss. 476 and 435/439

[9027] — S. 439 — Scope

Where the High Court thinks it fit and proper to entertain an application in revision or calls for the record suo motu, it has the power to examine the whole question of the correctness, propriety or legality of the sentence of fine, which necessarily involves examining the order of conviction itself from that point of view. *Pranab Kumar Mitra* v. *State of W.B.*, AIR 1959 SC 144: 1959 Supp (1) SCR 63: 1959 Cri LJ 256.

Bench Strength **5**. Coram: *S.R. Das, C.J.* and *N.H. Bhagwati*, **B.P. Sinha**, *K. Subba Rao* and *K.N. Wanchoo*, JJ. [Date of decision: 3-10-1958]

[9028] — S. 439 — Scope — Power of High Court to order retrial in order against revision

The High Court when approached by a private party for exercising its power of revision from an order of acquittal, should appropriately refrain from interfering except when there is a glaring legal defect of a serious nature which has resulted in grave failure of justice. The power being discretionary, it has to be exercised judiciously and not arbitrarily. It is only in glaring cases of injustice resulting from some violation of fundamental principles of law by the trial Court in the course of trial, that the High Court is empowered to set aside the order of acquittal and direct the retrial of the acquitted accused person. *Akalu Ahir* v. *Ramdeo Ram*, (1973) 2 SCC 583: 1973 SCC (Cri) 903: AIR 1973 SC 2145: 1973 Cri LJ 1404.

Bench Strength **2**. Coram: *K.K. Mathew* and **I.D. Dua**, JJ. [Date of decision: 1-5-1973]

[9029] — S. 439 — Scope of revisional jurisdiction under — *Unless view of the trial court is illegal or perverse, High Court cannot interfere with that view merely because it prefers a different view — On facts held, High Court exceeded its revisional jurisdiction in re-examining the evidence and reversing order of acquittal passed by trial court — Penal Code, 1860 — Ss. 302 and 34 — CrPC, 1973, S. 401*

The trial court, finding that there were serious discrepancies and glaring inconsistencies between the versions of the eyewitnesses and that the medical evidence also did not support their version of the incident, considered it unsafe to rely upon the testimony of those eyewitnesses and accordingly held that the prosecution had failed to prove its case beyond reasonable doubt. From the record of the case it appears that the view of the trial court was a possible view and it cannot be characterised as illegal or perverse. It may be that the High Court was not inclined to agree with the said view on the basis of his independent scrutiny and appreciation of the evidence adduced in the case but that would not furnish any justification for interference in revision with the order of acquittal passed by the trial court. Even in an appeal the appellate court would not have been justified in interfering with an acquittal merely because it was inclined to differ from the findings of fact reached by the trial court on the appreciation of the evidence. The revisional power of the High Court is much more restricted in its scope. Thus the High Court transgressed the limits of its revisional jurisdiction to setting aside the order of acquittal passed by the trial court. *Bansi Lal* v. *Laxman Singh*, (1986) 3 SCC 444: 1986 SCC (Cri) 342: AIR 1986 SC 1721: 1986 Cri LJ 1603.

Bench Strength 2. Coram: **V. Balakrishna Eradi** and *M.M. Dutt*, JJ. [Date of decision: 15-7-1986]

[9030] — S. 439 — Charges against a person appearing on the scene subsequently and unlikely to be a party to the conspiracy — *Held, charges rightly quashed under S. 439, CrPC, 1898 — Penal Code, 1860, Ss. 420, 468 and 471 r/w S. 120-B. State of W.B.* v. *Raj Kumar Agarwalla*, (1976) 2 SCC 204: 1976 SCC (Cri) 259: AIR 1977 SC 301: 1977 Cri LJ 206.

Bench Strength 2. Coram: **H.R. Khanna** and *M.H. Beg*, JJ. [Date of decision: 10-10-1975]

[9031] — S. 439 — Discharge of accused by Magistrate — Revision to High Court — Maintainability

That the order of the Magistrate was an order of discharge and not of acquittal. It is true that it is a summons case and no formal charge is necessary to be framed under S. 242, CrPC, but even so here when the accused appeared before anything was done the accused filed preliminary objections and no particulars of the offence of which the accused was charged were even stated to him. (Revision maintainable.) *Municipal Council, Raipur* v. *State of M.P.*, (1969) 2 SCC 582: AIR 1970 SC 1923: 1970 Cri LJ 1656: (1970) 2 LLJ 40.

Bench Strength 3. Coram: **S.M. Sikri**, *G.K. Mitter* and *P. Jaganmohan Reddy*, JJ. [Date of decision: 18-8-1969]

[9032] — S. 439 — High Court's power — Reversal on facts — Propriety

The powers of the High Court under S. 439, CrPC, although wide are subject to certain limitations. Section 439(4) expressly provides that the section shall not be deemed to authorise the High Court to convert a finding of acquittal into one of conviction. The High Court judgment does not show that the trial Court shut out any evidence which the prosecution wanted to produce or admitted any inadmissible evidence or overlooked any material evidence. The High Court proceeded to reappraise the evidence of the witnesses and upset the finding of the Magistrate thereon on the ground that he "had not taken the trouble of sifting the grain from the chaff". Clearly such a course is not permissible under S. 439, CrPC. The facts and circumstances of this case do not warrant the ordering of a retrial by the High Court if it felt disposed to exercise powers under S. 423, CrPC, expressly included in S. 439. *Khetrabasi Samual* v. *State of Orissa*, (1969) 2 SCC 571: AIR 1970 SC 272: 36 Cut LT 85: 1970 Cri LJ 369.

Bench Strength 3. Coram: *S.M. Sikri*, **G.K. Mitter** and *P. Jaganmohan Reddy*, JJ. [Date of decision: 14-8-1969]

[9033] — S. 439 — Recovery of expenses incurred by municipality in carrying out repairs to building under S. 222(4) of Ajmer-Merwara Municipalities Regulation — *Magistrate who entertains such application does not function under CrPC and hence is not an inferior criminal court to High Court within the meaning of S. 439, CrPC, 1898 — Ajmer-Merwara Municipalities Regulations, 1925 (6 of 1925), Ss. 234 and 222(4)*

The nature of the enquiry contemplated by S. 234 is very limited and it prima facie partakes of the character of a ministerial enquiry rather than judicial enquiry. In any event it is difficult to hold that the Magistrate who entertains the application is an inferior criminal court. The claim made before him is for the recovery of a tax and the order prayed for is for the recovery of the tax by distress and sale of the moveable property of the defaulter. If at all, this would at best be a proceeding of a civil nature and not criminal. That is why, we think, whatever may be the character of the proceeding, whether it is purely ministerial or judicial or quasi-judicial, the Magistrate who entertains the application and holds the enquiry does so because he is designated in that behalf and so he must be treated as a persona designata and not as a Magistrate functioning and exercising his authority under the Code of Criminal Procedure. He cannot therefore be regarded as an inferior criminal court. *Dargah Committee, Ajmer* v. *State of Rajasthan*, AIR 1962 SC 574: (1962) 2 SCR 265: (1962) 1 Cri LJ 507.

Bench Strength 4. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo*, *K.C. Das Gupta* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 24-4-1961]

[9034] — S. 439 — After issuing notice case must be decided or reasons given therefor

In this case, after hearing the petitioner the learned Judge of the High Court has merely said that "he did not wish to exercise the jurisdiction". It was urged that what was intended to be meant thereby was that no case was made out for exercise of the jurisdiction conferred upon the High Court under S. 439 of the Code of Criminal Procedure. But the High Court had issued rule in this case and the matter was placed for hearing after the parties were served. The Judge should have given some reasons if he intended to say that so case was made out for the exercise of the jurisdiction of the High Court in support of that conclusion, but no reasons have been given. But this is not a satisfactory way of disposing of a case after rule has been issued to the respondents and the parties are ready for hearing. *Mohanlal H. Dayalani* v. *State of Gujarat*, 1969 SCD 98, 100: 1969 ALJ 8.

Bench Strength 3. Coram: **J.C. Shah**, *V. Ramaswami* and *A.N. Grover*, JJ. [Date of decision: 31-10-1968]

[9035] — S. 439 — Appeals to High Court against the order of acquittal — Power of High Court to interfere with the orders of acquittal — When justified

The revisional jurisdiction conferred on the High Court under S. 439, CrPC, is not to be lightly exercised, when it is invoked by a private complainant against an order of acquittal, against which the Govt. has a right of appeal under S. 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower Court has taken a wrong view of the law or misappreciated the evidence on record. *D. Stephens* v. *Nosibolla*, AIR 1951 SC 196: 1951 SCR 284: (1951) 52 Cri LJ 510.

Bench Strength **4**. Coram: *Fazl Ali, M.C. Mahajan, B.K. Mukherjea* and **N. Chandrasekhara Aiyar**, JJ. [Date of decision: 2-3-1951]

Followed in Johar v. Mangal Prasad, (2008) 3 SCC 423

[9036] — S. 439 — Belated objection to defect not occasioning failure of justice — Not entertained by High Court — *Upheld. State of W.B.* v. *Motilal Kanoria*, AIR 1966 SC 1586: (1966) 3 SCR 933: 1966 Cri LJ 1210.

Bench Strength **5**. Coram: *P.B. Gajendragadkar, C.J.* and *K.N. Wanchoo*, **M. Hidayatullah**, *J.C. Shah* and *S.M. Sikri*, JJ. [Date of decision: 15-3-1966]

[9037] — S. 439 — Committal order — Revision against — Grounds of interference by High Court — *High Court normally not to enter upon reappraisal of evidence — Interference justified where substantial question of law arises — Failure to comply with law etc., complete want of evidence, and ignoring of substantive law which constitutes the offence are some of the good grounds for interference. Alamohan Das* v. *State of W.B.*, AIR 1970 SC 863: (1969) 2 SCR 520: (1970) All Cri Cas 114: (1970) 40 Comp Cas 643: 1970 Cri LJ 860.

Bench Strength **2**. Coram: **J.C. Shah** and *V. Ramaswami*, JJ. [Date of decision: 26-10-1968]

[9038] — S. 439 — Driving car in rash and negligent manner causing accident resulting in death of two — *High Court on reappraisal of evidence acquitting the accused — It exceeded its revisional power*

The main criterion for deciding whether the driving which led to the accident was rash and negligent is not only the speed but the width of the road, the density of the traffic, and the attempt as in the case, to overtake the other vehicles resulting in going to the wrong side of the road and being responsible for the accident. Even if the accident took place in the twinkling of an eye it is not difficult for an eyewitness to notice a car overtaking other vehicles and going to the wrong side of the road and hitting a vehicle travelling on that side of the road.

There is only one conclusion possible on the facts of this case and that is that the accused came over to the wrong side of the road and was responsible for the accident and that is clearly a rash and negligent act in the condition of the road and the condition of the traffic.

The High Court not only exceeded the scope of its revisional powers but also completely misdirected itself in regard to the appreciation of evidence. *Shakila Khader* v. *Nausheer Cama*, (1975) 4 SCC 122: 1975 SCC (Cri) 379: AIR 1975 SC 1324: 1975 Cri LJ 1105.

Bench Strength **2**. Coram: **A. Alagiriswami** and *N.L. Untwalia*, JJ. [Date of decision: 10-3-1975]

[9039] — S. 439 — Enhancement of sentence — Enhancement to death — Whether possible in revision by the complainant

Where the complainant moved the High Court in revision, the High Court was competent and well within its power to enhance the sentence of transportation for life to a sentence of death. *Bissu Mahgoo* v. *State of U.P.*, AIR 1954 SC 714: 1954 Cri LJ 1796.

Bench Strength **3**. Coram: **N.H. Bhagwati**, *B. Jagannadhadas* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 12-2-1954]

[9040] — S. 439 — Enhancement of sentence — *High Court, on facts and circumstances, held, justified in substituting death sentence for life imprisonment even though the State had not filed any application for enhancement of sentence*

It is undoubtedly true that it was primarily for the Sessions Court to decide whether the extreme penalty of death was called for in the circumstances of the case. But, unfortunately, the Sessions Judge did not take into consideration various relevant aspects of the matter while awarding the lesser sentence to the appellant. The conduct of the appellant shows that he was determined at all events to murder the deceased and if possible, some of the other members of the family, including his father. (Para 4).

Hence the High Court was not in error in enhancing the sentence from imprisonment for life to death. The circumstance that the State Government did not apply for enhancement of the sentence has no relevance. *Suna* v. *State of Orissa*, (1976) 4 SCC 307: 1976 SCC (Cri) 601.

Bench Strength **3**. Coram: **Y.V. Chandrachud**, *P.N. Bhagwati* and *R.S. Sarkaria*, JJ. [Date of decision: 5-8-1975]

[9041] — S. 439 — Enhancement of sentence — Practice when an appeal is pending before an inferior Court — *High Court to exercise its revisional powers when the appeal is disposed of — In exceptional cases a departure from the practice is permissible*

The Supreme Court does not commend or encourage a departure from the usual practice which is that when an appeal is pending before an inferior Court, the High Court exercises, if necessary, its powers of revision after the appeal has been disposed of.

In exceptional cases when the ends of justice require that the appeal itself be heard by the High Court it is open to the High Court to exercise its powers of revision under S. 439, CrPC of enhancing the sentence after having heard and dismissed the appeal. *Romesh Chandra Arora* v. *State*, AIR 1960 SC 154: (1960) 1 SCR 924: 1960 Cri LJ 177, 81.

Bench Strength 3. Coram: **S.K. Das**, *A.K. Sarkar* and *M. Hidayatullah*, JJ. [Date of decision: 6-10-1959]

[9042] — S. 439 — Enhancement of sentence in revision — Revision proceedings brought by whom immaterial

Whether the State filed a revision or the complainant moved the High Court in revision, it was competent to the High Court to go into the question of sentence and it was well within the power of the High Court to enhance the sentence. *Bissu Mahgoo* v. *State of U.P.*, AIR 1954 SC 714, 715: 1954 Cri LJ 1796.

Bench Strength 3. Coram: **N.H. Bhagwati**, *B. Jagannadhadas* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 12-2-1954]

[9043] — S. 439 — Finding of fact — Non-interference with, by High Court in revision — *Whether justified*

Accused was tried for an offence under S. 406, IPC. The point for determination in the trial was one of fact which depended largely on appreciation of oral evidence. The trial Court had dealt with the matter fully and was satisfied on the evidence that the case of the prosecution had been established.

Held:

That the High Court quite rightly declined to interfere in revision with that finding. *Held*, further that in such a case the contention that the High Court had not given any reasons for dismissing the revision application and had not recorded any findings, had no force. Where in such a case, in an appeal by special leave against the order of the High Court, the argument of the accused turned on essentially a matter of appreciation of oral evidence the order of the High Court, held, could not be said to be erroneous. *Narayan Tewary* v. *State of W.B.*, AIR 1954 SC 726: 1954 Cri LJ 1808.

Bench Strength 3. Coram: *N.H. Bhagwati*, *B. Jagannadhadas* and **T.L. Venkatarama Aiyar**, JJ. [Date of decision: 13-1-1954]

[9044] — S. 439 — Finding of fact — Revision of — *Magistrate fixing maintenance allowance under S. 488, CrPC — Sessions Judge accepted the finding and concurred with the quantum of compensation fixed — The finding is a concurrent finding of fact — Cannot be questioned in revision proceedings in High Court. Jagir Kaur* v. *Jaswant Singh*, AIR 1963 SC 1521: (1964) 2 SCR 73: (1963) 2 Cri LJ 413.

Bench Strength 3. Coram: **K. Subba Rao**, *Raghubar Dayal* and *J.R. Mudholkar*, JJ. [Date of decision: 13-2-1963]

[9045] — S. 439 — High Court's power to enhance sentence — Sentence imposed by the trial Court should not be lightly interfered with by the High Court

The question of sentence is a matter of discretion which has to be exercised in a judicial way, that is to say, the sentence imposed by the trial Court should not be lightly interfered with and should not be enhanced unless the Appellate Court comes to the conclusion, on a consideration of the entire circumstances disclosed in the evidence, that the sentence imposed is inadequate. *Sarjug Rai* v. *State of Bihar*, AIR 1958 SC 127: 1958 SCR 768: 1958 Cri LJ 268, 269.

Bench Strength 2. Coram: **B.P. Sinha** and *J.L. Kapur*, JJ. [Date of decision: 28-10-1957]

[9046] — S. 439 — High Court's power to set order of acquittal at private party's instance — Can be exercised in exceptional cases — Principle detailed

The power of the High Court to set aside an order of acquittal at the instance of a private party can be exercised only in exceptional cases as for example where the trial Court has wrongly shut out the evidence which the prosecution wished to produce, or where the Appellate Court has wrongly held evidence which was admitted by the trial Court to be inadmissible, or where material evidence has been overlooked either by the trial Court or by the Appellate Court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. It is only in these circumstances that an order of acquittal challenged before the High Court under S. 439, CrPC, can be set aside.

Where the order passed by the High Court under S. 439 is based merely and solely on the conclusion which it reached on reappreciating evidence itself and the conclusion of the Appellate Court which led to the acquittal of the appellant does not suffer from any legal infirmity the High Court's jurisdiction under S. 439, CrPC to set aside order of acquittal cannot be legitimately invoked. *Fakir Chand* v. *Komal Prasad*, (1964) 2 Cri LJ 74, 75.

Bench Strength 2. Coram: **P.B. Gajendragadkar** and *K.C. Das Gupta*, JJ. [Date of decision: 29-11-1963]

See also (1973) 2 SCC 583: 1973 SCC (Cri) 903

[9047] — S. 439 — High Court's powers of revision — Complainant's application for revision against acquittal — *High Court should use its revisional powers very sparingly*

It is not enough to justify interference in revision when there is an application by a private party to set aside an order of acquittal only because a different view of the evidence could have been taken. No right of appeal is conferred in such cases though there is provision for appeal against acquittals. Courts must therefore use their revisional powers very sparingly. *Dhirendra Nath Mitra* v. *Mukanda Lal Sen*, AIR 1955 SC 584: 1955 Cri LJ 1299, 1300.

Bench Strength 3. Coram: **Vivian Bose**, *B. Jagannadhadas* and *B.P. Sinha*, JJ. [Date of decision: 1-3-1955]

[9048] — S. 439 — High Court's revisional power in a revision against acquittal — *High Court not competent to re-weigh evidence from their point of view and reach inference contrary to Sessions Judge's on almost all points — Acquittal can be set aside only when judgment is illegal and there is gross miscarriage of justice*

In a revision the High Court can set aside acquittal and order retrial when there exists a manifest illegality in the judgment of the Court of Session ordering the acquittal or there is a gross miscarriage of justice. The High Court is not entitled to interfere even if a wrong view of law is taken by the Court of Session or if even there is misappreciation of evidence. The High Court is entitled in revision to set aside an acquittal if there is an error on a point of law or no appraisal of the evidence at all.

It is not the duty of the High Court in dealing in revision with an acquittal, when Government has not chosen to file an appeal against it, to re-weigh the evidence from its own point of view and reach inference contrary to those of the Sessions Judge on almost every point. *Mahendra Pratap Singh* v. *Sarju Singh*, AIR 1968 SC 707: (1968) 2 SCR 287: 1968 Cri LJ 865, 866-67.

Bench Strength 2. Coram: **M. Hidayatullah** and *C.A. Vaidialingam*, JJ. [Date of decision: 20-11-1967]

Followed in Johar v. Mangal Prasad, (2008) 3 SCC 423

[9049] — S. 439 — Interference with sentence — Enhancement of

A question of a sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, an Appellate Court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgment.

In a matter of enhancement there should not be interference when the sentence passed imposes substantial punishment. Interference is only called for when it is manifestly inadequate. *Bed Raj* v. *State of U.P.*, AIR 1955 SC 778, 781: (1955) 2 SCR 583: 1955 Cri LJ 1642.

Bench Strength 3. Coram: **Vivian Bose**, *B. Jagannadhadas* and *B.P. Sinha*, JJ. [Date of decision: 28-9-1955]

[9050] — S. 439 — Jurisdiction under — When to be exercised

The jurisdiction of the High Court is to be exercised normally under S. 439, Criminal Procedure Code, only in exceptional cases, when there is a glaring defect in the procedure or there is a manifest error or point of law and consequently there has been a flagrant miscarriage of justice. *Amar Chand Agarwalla* v. *Shanti Bose*, (1973) 4 SCC 10: 1973 SCC (Cri) 651: AIR 1973 SC 799: 1973 Cri LJ 577.

Bench Strength 3. Coram: *A. Alagiriswami*, *I.D. Dua* and **C.A. Vaidialingam**, JJ. [Date of decision: 22-12-1972]

[9051] — S. 439 — Plea against forfeiture — *Plea that the court had no jurisdiction to forfeit the bond not taken either in the Court of the Magistrate who forfeited the bond or in revision — The plea cannot be taken in revision before the High Court*

On behalf of the appellant it was contended in revision before the High Court that the order forfeiting the bond is illegal because the bond was executed in the Court of one Magistrate while the order of forfeiture of the surety bond was passed by another Magistrate. This plea was not taken either before the Magistrate who passed the order of forfeiture of the surety bond or in appeal before the Sessions Judge. The High Court rightly refused the appellant to urge this ground as to want of jurisdiction of the Court which passed the said order of forfeiture. Such a plea of jurisdiction is interplaced with question of fact. It may be that the case was transferred from the Court of one Magistrate to the Court of another. It may be that a particular court is abolished and the jurisdiction of the abolished court is transferred to the other court. It may be that the allocation of business is charged or redistributed among Magistrates' Court from time to time. If this particular ground had been urged at the proper time these facts could have been elucidated. *Ramesh Chandra* v. *State of U.P.*, (1971) 3 SCC 689: 1972 SCC (Cri) 30: AIR 1972 SC 16: 1972 Cri LJ 5: 1972 ALJ 971.

Bench Strength 2. Coram: **A.N. Ray** and *D.G. Palekar*, JJ. [Date of decision: 14-10-1971]

[9052] — S. 439 — Power of appellate Court to alter sentence

It is true that the question of a sentence is a matter of discretion of the trial Court and when that discretion has been properly exercised along accepted judicial lines, the appellate Court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgment. Interference will be justified when the sentence is manifestly inadequate or unduly lenient in the particular circumstances of a case. The interference will also be justified when the failure to impose a proper sentence may result in miscarriage of justice. *Kodavandi Moidean* v. *State of Kerala*, (1973) 3 SCC 469: 1973 SCC (Cri) 369: AIR 1973 SC 467: 1973 Cri LJ 671.

Bench Strength 3. Coram: *A. Alagiriswami*, *I.D. Dua* and **C.A. Vaidialingam**, JJ. [Date of decision: 19-12-1972]

[9053] — S. 439 — Power of High Court to act suo motu in setting aside an order of acquittal

Revisional jurisdiction can be exercised by the High Court by being moved either by the convicted person himself or by any other person or suo motu on the basis of its own knowledge derived from any source whatsoever without being moved by any person at all. All that is necessary to bring the High Court's powers of revision into operation is such information as makes the High Court think that an order made by a subordinate court is fit for the exercise of its powers of revision. *Ramesh Chandra J. Thakkar* v. *Assandas Parmanand Jhaveri*, (1973) 3 SCC 884: 1973 SCC (Cri) 566: AIR 1973 SC 84: 1973 Cri LJ 201: 1973 Bom LR 364.

Bench Strength 2. Coram: **H.R. Khanna** and *Y.V. Chandrachud*, JJ. [Date of decision: 13-10-1972]

[9054] — S. 439 — Power of High Court to take action suo motu against the orders passed by subordinate courts

In proper cases the High Court can take action suo motu against the orders passed by the subordinate Courts without being moved by any party. *Cricket Assn. of Bengal* v. *State of W.B.*, (1971) 3 SCC 239: 1971 SCC (Cri) 446: AIR 1971 SC 1925: 1971 Cri LJ 1432.

Bench Strength 2. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 24-3-1971]

[9055] — S. 439 — Power of the High Court to enhance sentence — Principles to be followed by the High Court — *Interference to be made only when the sentence passed by the trial Judge is unduly lenient or relevant facts are not considered by it*

The question of sentence is normally in the discretion of the trial Judge. It is for the trial Judge to take into account all relevant circumstances and decide what sentence would meet the ends of justice in a given case. The High Court undoubtedly has jurisdiction to enhance such sentence under S. 439, CrPC, but this jurisdiction can be properly exercised only if the High Court is satisfied that the sentence imposed by the trial Judge is unduly lenient, or, that, in passing the order of sentence, the trial Judge had manifestly failed to consider the relevant facts. *Alamgir* v. *State of Bihar*, AIR 1959 SC 436: 1959 Supp (1) SCR 464: 1959 Cri LJ 527, 31, 32.

Bench Strength 2. Coram: **P.B. Gajendragadkar** and *A.K. Sarkar*, JJ. [Date of decision: 14-11-1958]

[9056] — S. 439 — Revision — High Court in revision should not disturb concurrent finding on similarity between the two labels — *Trade and Merchandise Marks Act, 1958*. *S.P.S. Jayam & Co.* v. *Nehrusadan*, (1977) 3 SCC 512: AIR 1977 SC 1621: 1977 Cri LJ 1101.

Bench Strength 3. Coram: *P.K. Goswami*, *P.N. Shinghal* and **Y.V. Chandrachud**, JJ. [Date of decision: 1-4-1977]

[9057] — S. 439 — Revision by a complainant against acquittal — Scope of High Court's power of interference — *High Court can set aside order of acquittal in exceptional cases — Appellate Court wrongly ruling out admissible evidence — High Court would be justified in interfering with the order of acquittal*

It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties though the State may not have thought fit to appeal; but this jurisdiction should be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of S. 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial Court has no jurisdiction to try the case but has still acquitted the accused, or where the trial Court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal Court has wrongly held evidence which was admitted by the trial Court to be inadmissible, or where material evidence has been overlooked either by the trial Court or by the appeal Court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of S. 439.

Where the Appellate Court ruled out relevant evidence as inadmissible the High Court would be justified in interfering with the order of acquittal so that the evidence may be reappraised after taking into account the evidence which was wrongly ruled out as inadmissible. The High Court is competent to confirm itself to the admissibility of that part of evidence, and is not competent to appraise the other evidence as well. *K. Chinnaswamy Reddy* v. *State of A.P.*, AIR 1962 SC 1788: (1963) 3 SCR 412: (1963) 1 Cri LJ 8, 11.

Bench Strength 3. Coram: *B.P. Sinha, C.J.* and **K.N. Wanchoo** and *J.C. Shah*, JJ. [Date of decision: 25-7-1962]

Followed in Johar v. Mangal Prasad, (2008) 3 SCC 423

[9058] — S. 439 — Revision by a complainant against acquittal — Scope of High Court's power of interference — *Nature of order by High Court when interfering — Trial Court acquitting the accused — High Court can on setting aside the order of acquittal send the case back for retrial — Trial Court convicting the accused and Appellate Court acquitting him — In such a case High Court can order rehearing of appeal or retrial but without disclosing its mind on the whole evidence*

In a case where High Court decides to interfere with an order of acquittal on a revision by a complainant two contingencies arise. In the first place there may be an acquittal by the trial Court. In such a case if the High Court is justified to interfere with the order of acquittal in revision, the only course open to it is to set aside the acquittal and send the case back to the trial Court for retrial. But there may be another type of case, namely, where the trial Court has convicted the accused while the appeal Court has acquitted him. In such a case if the conclusion of the High Court is that the order of the appeal court must be set aside, the question is whether the appeal Court should be ordered to re-hear the appeal after admitting the statement it had ruled out or whether there should necessarily be a retrial. So far as this is concerned, it is open to the High Court to take either of the two courses. It may order a retrial or it may order the appeal Court to re-hear the appeal. It will depend upon the facts of each case whether the High Court would order the appeal Court to re-hear the appeal or would order a retrial by the trial Court. Where the entire evidence is there and it was the appeal Court which ruled out the evidence that had been admitted by the trial Court, the proper course is to send back the appeal for re-hearing to the appeal Court, without disclosing its own mind on the whole evidence. *K. Chinnaswamy Reddy* v. *State of A.P.*, AIR 1962 SC 1788: (1963) 3 SCR 412: (1963) 1 Cri LJ 8, 11.

Bench Strength 3. Coram: *B.P. Sinha, C.J.* and **K.N. Wanchoo** and *J.C. Shah*, JJ. [Date of decision: 25-7-1962]

[9059] — S. 439 — Revision by High Court — Enhancement of sentence — *Propriety — Interference by Supreme Court*

When the High Court interferes at the instance of a private complainant the Supreme Court would be fully justified in considering for itself the propriety of the sentence as enhanced by the High Court. The High Court was in error in enhancing the sentence of the three appellants from life imprisonment to that of death.

Merely because the Appellate Court feels that left to itself it would have preferred to impose the sentence of death is by itself and without more not a sufficient ground to justify enhancement. It is only when the sentence appears on the facts and circumstances of the case to be so manifestly inadequate as to have resulted in failure of justice that enhancement of the sentence may be justified by the appellate court. *Ram Narain* v. *State of U.P.*, (1970) 3 SCC 493: 1971 SCC (Cri) 99: AIR 1971 SC 757: 1971 Cri LJ 649.

Bench Strength 3. Coram: *S.M. Sikri, V. Bhargava* and **I.D. Dua**, JJ. [Date of decision: 11-12-1970]

[9060] — S. 439 — Revisional jurisdiction of High Court at the instance of private complainant against acquittal — When to be exercised

The revisional jurisdiction conferred on the High Court under S. 439, CrPC, is not to be lightly exercised, when it is invoked by a private complainant against an order of acquittal, against which the Government has a right of appeal under S. 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower Court has taken a wrong view of the law or misappreciated the evidence on record. *Harihar Chakravarty* v. *State of W.B.*, AIR 1954 SC 266: 1954 Cri LJ 724.

Bench Strength **3**. Coram: *B.K. Mukherjea*, *Vivian Bose* and **N.H. Bhagwati**, JJ. [Date of decision: 22-10-1953]

[9061] — S. 439 — Revisional Power of High Court — Extent and scope

It is true that the Additional Sessions Judge has no authority to set aside the acquittal of the accused appellant under the provisions of S. 437, CPC. But the order of the Additional Sessions Judge has been affirmed by the High Court in its order under appeal and under S. 439, CrPC, the High Court has jurisdiction to interfere with an order of acquittal in revision and to direct that the accused may be retried on the graver offence. *Ramekbal Tiwary* v. *Madan Mohan Tiwary*, AIR 1967 SC 1156: (1967) 2 SCR 368: 1967 Cri LJ 1076, 1080.

Bench Strength **5**. Coram: *K. Subba Rao, C.J.* and *J.C. Shah*, *S.M. Sikri*, **V. Ramaswami** and *C.A. Vaidialingam*, JJ. [Date of decision: 17-1-1967]

[9062] — S. 439 — Revisional powers after death of accused — *High Court can exercise in respect of an order of conviction even after the death of the accused*

So far as revisional jurisdiction of High Court is concerned there is no provision similar to S. 431, CrPC providing for the abatement of an appeal on the death of an accused. Nor is there any provision whether a revisional application can be or cannot be made in respect of an order of conviction when the convicted person is dead. The distinction that while the appellate jurisdiction can be exercised only after an appeal is filed by the convicted person or against an order of acquittal under S. 411 or S. 417, no such limitation on the Court's revisional jurisdiction is noticeable. Revisional jurisdiction can be exercised by the High Court by being moved either by the convicted person himself or by any other person or suo motu, on the basis of its own knowledge derived from any source whatsoever without being moved by any person at all.

Therefore, in a proper case the High Court can exercise its power of revision of an order made against an accused person even after his death. *State of Kerala* v. *Narayani Amma Kamala Devi*, AIR 1962 SC 1530: 1962 Supp (3) SCR 943: (1962) 2 Cri LJ 506.

Bench Strength **3**. Coram: *J.L. Kapur*, **K.C. Das Gupta** and *Raghubar Dayal*, JJ. [Date of decision: 19-3-1962]

[9063] — S. 439 — Sentence — Enhancement of — *Interference by appellate Court — When justified*

A question of a sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, an appellate Court should not interfere, to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgment.

In a matter of enhancement, there should not be interference when the sentence passed imposes substantial punishment. Interference is only called for when it is manifestly inadequate. *Shiv Govind* v. *State of M.P.*, (1972) 3 SCC 399: 1972 SCC (Cri) 549: AIR 1972 SC 1823: 1972 Cri LJ 1181: (1972) 3 SCR 835.

Bench Strength **2**. Coram: *A.N. Grover* and **M.H. Beg**, JJ. [Date of decision: 14-3-1972]

[9064] — S. 439 — Setting aside an order made without jurisdiction

High Court is entitled to set aside an order of a court subordinate to it which has assumed a jurisdiction that it does not possess. *Kuldip Singh* v. *State of Punjab*, AIR 1956 SC 391, 399: 1956 SCR 125: 58 Punj LR 595: 1956 Cri LJ 781.

Bench Strength **5**. Coram: **Vivian Bose**, *B. Jagannadhadas*, *B.P. Sinha*, *Syed Jafer Imam* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 15-2-1956]

[9065] — S. 439 — Whether on facts, the High Court acting in exercise of its revisional powers was justified in interfering with the order of acquittal and in ordering a retrial — *Murder case — Case not instituted upon a complaint — Revision application by private party — High Court upsetting the acquittal on ground of wrongful appreciation of evidence — CrPC, 1973, S. 401*

Revisional power under S. 439(1) has to be exercised subject to S. 439(4). It is settled law that the revisional jurisdiction, when invoked by a private complainant against an order of acquittal, ought not to be exercised lightly and that it can be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice. *Pakalapati Narayana Gajapathi Raju* v. *Bonapalli Peda Appadu*, (1975) 4 SCC 477: 1975 SCC (Cri) 543: AIR 1975 SC 1854: 1975 Cri LJ 1646.

Bench Strength 3. Coram: **Y.V. Chandrachud**, *P.N. Bhagwati* and *R.S. Sarkaria*, JJ. [Date of decision: 25-7-1975]

[9066] — Ss. 439, 435 and 423 — Scope of revisional power of High Court restated — *CrPC, 1973, Ss. 401 and 397. State of Orissa* v. *Nakula Sahu*, (1979) 1 SCC 328: 1979 SCC (Cri) 283: AIR 1979 SC 663: 1979 Cri LJ 594: 1979 MLJ (Cri) 456: (1979) 47 CLT 624.

Bench Strength 2. Coram: **Jaswant Singh** and *P.S. Kailasam*, JJ. [Date of decision: 30-11-1978]

[9067] — Ss. 439, 561-A, 526 & 267 — Interlocutory orders or pending proceedings — High Court's inherent powers — Quashing of charges before conclusion of trial — When justified — *High Court ordering discharge of some accused and retrial of others and withdrawing the case before itself for trial without Jury — Prejudice to accused — Validity of High Court's order*

In a trial 28 persons were accused of conspiracy to commit criminal breach of trust under S. 409, IPC and falsification of accounts of a bank under S. 477-A, IPC. The trial went on for two years in course of which over 6, 000 exhibits were filed and 203 witnesses examined. As many as 67 charges were framed against them by the Magistrate. The accused, then, applied to the High Court to quash them. The High Court found that it was impracticable to try all the charges, which were vague and unintelligible, at a single trial and quashed the charges but directed retrial of some of the accused on the charge of conspiracy between October 1946 and April 1947 to falsify bank accounts and to bring into existence a false balance-sheet. It also decided to withdraw the case under S. 526(1)(*e*), CrPC, to itself and added a direction under S. 526(2) that the case be tried by warrant procedure but without Jury. It also made a strong recommendation to the Government for the appointment of a Director of Prosecutions on a fixed salary not much below that of a High Court Judge for handling this and other complicated cases. Appeal against High Court's order was filed before the Supreme Court by special leave whereon the Supreme Court

Held :

(1) That in the peculiar circumstances of the case the High Court was justified in quashing in the exercise of its inherent powers even before the conclusion of the trial. But there was no justification in its judgment for ordering a 'de novo' trial in the situation that had arisen for all these persons had stood a protracted trial for two and a half years.

(2) That the High Court in making a strong recommendation to Government to appoint a Director of Prosecutions for the case on a salary of Rs 4000 and also transferring the case to its own records, it ignored altogether the prejudice that such a procedure was sure to cause to the accused persons. The procedure adopted by the High Court had a tendency to divert the due and orderly administration of law into a new course and was likely to serve as an unwholesome precedent.

(3) That the grounds given by the High Court for absolving these accused during the pendency of a prosecution in the exercise of the powers under S. 561-A, CrPC, were absolutely untenable.

(4) That there being no necessity to transfer the case to the High Court and to deny the accused persons the right of trial by Jury under S. 267, CrPC, the High Court overstepped the limits of its jurisdiction inasmuch as it exercised it in an arbitrary manner without keeping in mind the prejudice it would cause to the accused.

(5) That in the circumstances further trial of the accused would not in any way advance the course of justice. Therefore the order of the High Court directing a 'de novo' trial of the accused before itself was set aside and the order quashing the charges was upheld. *K.V. Krishnamurthy Iyer* v. *State of Madras*, AIR 1954 SC 406: 1954 Cri LJ 1024.

Bench Strength 3. Coram: **M.C. Mahajan**, *N. Chandrasekhara Aiyar* and *N.H. Bhagwati*, JJ. [Date of decision: 6-10-1952]

[9068] — Ss. 439 and 423(1-A) — State not filing an appeal for enhancement — Revision by private party

Per majority

Under S. 439 of the Code of Criminal Procedure the High Court has got ample powers to issue notice to show cause why his sentence should not be enhanced on the basis of a revision petition filed by a private party and the power of the High Court under this section is one which the High Court can impose suo motu and all that a person filing a revision petition under that section does is to draw the Court's attention to an illegal, improper or incorrect finding, sentence or order of a subordinate court. The fact that the Government did not do so does not affect the powers of the High Court under that section.

Per Dua, J.

The High Court is ordinarily disinclined to interfere with the orders of the subordinate criminal courts in which the State is the prosecutor at the instance of private parties except where for some exceptional reason it considers proper to do so in the larger interests of justice. *Pratap* v. *State of U.P.*, (1973) 3 SCC 690: 1973 SCC (Cri) 496: AIR 1973 SC 786: 1973 Cri LJ 565.

Bench Strength 3. Coram: **A. Alagiriswami**[1], *C.A. Vaidialingam*[1] and **I.D. Dua**[2], JJ. [Date of decision: 22-12-1972]

[9069] — Ss. 439 and 441 — Orders of the Presidency Magistrate — Power of the High Court to revise — High Court has the power to revise any order of a Presidency Magistrate in a proper case

Section 441 specifically provides for the record "of any proceeding of any Presidency Magistrate" being called for by the High Court under S. 435. In such a case, such a Magistrate is empowered to submit, along with the record, a statement setting forth the grounds of his decision or order, and the High Court shall then "consider such statement before overruling or setting aside the said decision or order". Section 441 is so widely worded as to include the decision or order of a Presidency Magistrate in any proceeding, which the High Court may set aside in a proper case. *Ramgopal Ganpatrai Ruia* v. *State of Bombay*, AIR 1958 SC 97: 1958 SCR 618: 1958 Cri LJ 244, 251.

Bench Strength 3. Coram: **B.P. Sinha**, *P. Govinda Menon* and *J.L. Kapur*, JJ. [Date of decision: 8-10-1957]

[9070] — Ss. 439 and 561-A — Simultaneous civil and criminal proceedings — Which should be stayed — Consideration in giving precedence as between

No hard and fast rule can be laid down but the possibility of conflicting decisions in the civil and criminal Courts is not a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for certain limited purposes, such as, sentence or damages. The only relevant consideration here is the likelihood of embarrassment. Another factor is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust. Therefore as between the civil and the criminal proceedings the criminal matters should be given precedence.

This, however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under S. 476.

That the simultaneous prosecution of the present criminal proceedings and the civil suits will embarrass the accused and therefore the civil suits should be stayed till the criminal proceedings have finished. *M.S. Sheriff* v. *State of Madras*, AIR 1954 SC 397: 1954 SCR 1144: 1954 Cri LJ 1019.

Bench Strength 5. Coram: *M.C. Mahajan, C.J.* and *B.K. Mukherjea, S.R. Das*, **Vivian Bose** and *Ghulam Hasan*, JJ. [Date of decision: 18-3-1954]

Affirmed in K.G. Premshanker v. Inspector of Police, (2002) 8 SCC 87

[9071] — S. 439(1) — High Court's power to enhance the sentence — *Assistant Sessions Judge having power to impose a maximum sentence of 7 years R. I. imposing a sentence of 5 years R. I — High Court has power to enhance the sentence to 10 years R. I — There is no limitation that the High Court cannot impose a sentence exceeding the maximum that can be imposed by the trial Court. Sarjug Rai* v. *State of Bihar*, AIR 1958 SC 127: 1958 SCR 768: 1958 Cri LJ 268, 269.

Bench Strength 2. Coram: **B.P. Sinha** and *J.L. Kapur*, JJ. [Date of decision: 28-10-1957]

[9072] — Ss. 439(1) and (4) — Finding of acquittal cannot be altered in revision — *Revisional power of High Court — High Court cannot change the findings of facts arrived at by the trial Court — Effect of*

Though sub-section (1) of S. 439 authorises the High Court to exercise, in its discretion, any of the powers conferred on a Court of Appeal by S. 423, sub-section (4) specifically excludes the power to "convert a finding of acquittal into one of conviction". This does not mean that in dealing with a revision petition by a private party against an order of acquittal, the High Court could in the absence of any error on a point of law, re-appraise the evidence and reverse the findings of facts on which the acquittal was based, provided only it stopped short of finding the accused guilty and passing sentence on him. By merely characterising the judgment of the trial Court as "perverse" and "lacking in perspective", the High Court cannot reverse pure findings of fact based on the trial Court's appreciation of the evidence in the case. *Logendranath Jha* v. *Polai Lal Biswas*, AIR 1951 SC 316: 1951 SCR 676: (1951) 52 Cri LJ 1248.

Bench Strength **4**. Coram: *Harilal J. Kania, C.J.* and **Patanjali Sastri**, *S.R. Das* and *Vivian Bose*, JJ. [Date of decision: 24-5-1951]

Followed in Johar v. Mangal Prasad, (2008) 3 SCC 423

[9073] — S. 439(2) — Notice for enhancement of sentence — *Notice for enhancement of sentence cannot be issued after the appeal or the application for criminal revision is disposed of by the High Court and judgment pronounced (per Bhagwati, J). U.J.S. Chopra* v. *State of Bombay*, AIR 1955 SC 633: (1955) 2 SCR 94: 1955 Cri LJ 1410.

Bench Strength **3**. Coram: **S.R. Das**[1], **N.H. Bhagwati**[2] and *Syed Jafer Imam*, JJ. [Date of decision: 25-3-1955]

[9074] — S. 439(2) — Revision — Alteration of sentence without giving to accused opportunity to show cause — Validity of

Where the High Court in revision substituted the sentence of whipping into one of imprisonment without giving the accused an opportunity to show cause against such substitution, *held*, that the High Court should not have done so without giving the said opportunity. *Jangal Prasad* v. *State*, AIR 1953 SC 467: 1954 Cri LJ 67.

Bench Strength **2**. Coram: **Fazl Ali** and *Vivian Bose*, JJ. [Date of decision: 20-12-1951]

[9075] — Ss. 439(2) and (6) — Enhancement of sentence — Notice — Absence of — No particular formality — *Magistrate convicting an accused under Ss. 4(a) and 5 of the Bombay Prevention of Gambling Act, 1887, but awarding the sentence under S. 4(a) only — In revision High Court setting aside conviction under S. 4(a) and maintaining conviction under S. 5 and awarding sentence — The order is not bad for want of notice under S. 439(2). Jayaram Vithoba* v. *State of Bombay*, AIR 1956 SC 146: (1955) 2 SCR 1049: 1956 Cri LJ 318, 20, 21: 1956 ALJ 153: (1956) 1 MLJ (SC) 92.

Bench Strength **3**. Coram: *Vivian Bose*, **T.L. Venkatarama Aiyar** and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 13-12-1955]

[9076] — Ss. 439(2) and (6) — Notice for enhancement of sentence — Petition for appeal or application of criminal revision admitted, notice issued and conviction maintained — *Notice under S. 439(2) cannot be issued*

Per Bhagwati, J.

In cases where the petition of appeal or the application for criminal revision is admitted by the High Court and a notice is issued to the opposite party and the High Court maintains the conviction with or without reducing the sentence passed upon the accused the judgment of the High Court in the exercise of its appellate or revisional jurisdiction would replace the judgment of the lower Court and there would be no occasion at all for the exercise by the High Court of its revisional power under S. 439(1) which can only be exercised qua the judgment of the lower Court.

There would therefore be no question of giving the accused an opportunity of being heard either personally or through a pleader in his defence under S. 439(2) and the provision of S. 439(6) would certainly not come into operation at all. *U.J.S. Chopra* v. *State of Bombay*, AIR 1955 SC 633: (1955) 2 SCR 94: 1955 Cri LJ 1410.

Bench Strength **3**. Coram: **S.R. Das**[1], **N.H. Bhagwati**[2] and *Syed Jafer Imam*, JJ. [Date of decision: 25-3-1955]

[9077] — Ss. 439(2) and 6 — Notice of enhancement of sentence — *Trial Court awarding sentence of fine only — Sessions Court making reference to High Court for passing appropriate sentence — High Court issuing show-cause notice against enhancement of sentence and imposing sentence of imprisonment — Held, view that notice was only to show cause why the sentence should not be regularised by enhancement of fine and not to a term of imprisonment not borne out by the record — CrPC, 1973, S. 401. State of Orissa* v. *Ram Chander Agarwala*, (1979) 2 SCC 305: 1979 SCC (Cri) 462: AIR 1979 SC 87: 1979 Cri LJ 33.

Bench Strength **2**. Coram: *Jaswant Singh* and **P.S. Kailasam**, JJ. [Date of decision: 5-10-1978]

— S. 439(4) *See also* Ss. 439(1) and (4)

[9078] — S. 439(4) — Consideration of evidence

High Court should not consider the evidence in detail if it really goes to order a retrial. Such a detailed consideration of evidence and an expression of opinion about the guilt of the accused loads the dice against the accused when the case goes back for retrial. *Chaganti Kotaiah* v. *Gogineni Venkateshwara Rao*, (1973) 2 SCC 249: 1973 SCC (Cri) 801: AIR 1973 SC 1274: 1973 Cri LJ 978.

Bench Strength **3**. Coram: *A. Alagiriswami*, *I.D. Dua* and **C.A. Vaidialingam**, JJ. [Date of decision: 3-4-1973]

[9079] — S. 439(4) — High Court's power of revision

Sub-section (4) of S. 439, CrPC, forbids a High Court from converting a finding of acquittal into one of conviction by an indirect method of ordering retrial when the High Court itself cannot directly convert a finding of acquittal into a finding of conviction. *Chaganti Kotaiah* v. *Gogineni Venkateshwara Rao*, (1973) 2 SCC 249: 1973 SCC (Cri) 801: AIR 1973 SC 1274: 1973 Cri LJ 978.

Bench Strength 3. Coram: *A. Alagiriswami, I.D. Dua* and **C.A. Vaidialingam**, JJ. [Date of decision: 3-4-1973]

See also (1973) 2 SCC 583: 1973 SCC (Cri) 903

[9080] — S. 439(4) — High Court's power of revision — *Whether High Court should accept a dying declaration rejected by trial Court*

Whether the dying declaration of the deceased can be taken into account is a matter which the trial Court is entitled to decide one way or the other. If its view is wrong, the High Court can go into that aspect and differ from the opinion of the Sessions Court if the State had filed an appeal against acquittal. *Chaganti Kotaiah* v. *Gogineni Venkateshwara Rao*, (1973) 2 SCC 249: 1973 SCC (Cri) 801: AIR 1973 SC 1274: 1973 Cri LJ 978.

Bench Strength 3. Coram: *A. Alagiriswami, I.D. Dua* and **C.A. Vaidialingam**, JJ. [Date of decision: 3-4-1973]

[9081] — Ss. 439(4), 417(3) and 423(1)(a) — Reversal of acquittal and order for retrial by High Court acting under its revisional jurisdiction — *Held, that the High Court misdirected itself in exercising its revisional power. Satyendra Nath Dutta* v. *Ram Narain*, (1975) 3 SCC 398: 1975 SCC (Cri) 24: AIR 1975 SC 580: 1975 Cri LJ 577.

Bench Strength 2. Coram: **Y.V. Chandrachud** and *P.N. Bhagwati*, JJ. [Date of decision: 18-11-1974]

— **S. 439(5)** *See* Ss. 439(6) and (5)
— **S. 439(6)** *See* Ss. 369 and 439(6)
See also Ss. 430 and 439(6)
See also Ss. 439(2) and (6)

[9082] — S. 439(6) — Application of S. 439(6) is not barred by the theory of the inherent capacity of one judge of the High Court to reconsider the decision of another judge of the High Court

The theory of inherent capacity of one Judge of the High Court to reconsider the decision of another Judge must give way to the statutory capacity conferred by S. 439(6). If on a true construction a statute states, expressly or by necessary intendment, that one Judge or one Bench shall have jurisdiction and power to decide something, the theory of inherent incapacity of such Judge or Bench cannot be invoked to prevent the exercise of such jurisdiction and power merely on the ground that the decision which may be arrived at in exercise of this new jurisdiction or power may run counter to the previous decision arrived at by another Judge or Bench in exercise of another jurisdiction. *U.J.S. Chopra* v. *State of Bombay*, AIR 1955 SC 633: (1955) 2 SCR 94: 1955 Cri LJ 1410.

Bench Strength 3. Coram: **S.R. Das**[1], **N.H. Bhagwati**[2] and *Syed Jafer Imam*, JJ. [Date of decision: 25-3-1955]

[9083] — S. 439(6) — Right of a convicted person to show cause against his conviction on a notice for enhancement of sentence — *Scope and application — The right is unfettered*

Per Das, J.

Sub-section (6) of S. 439, CPC, confers a very valuable right on the subject which is designed to be a safeguard against the State or other interested person making frivolous revision application for enhancement of sentence. The State or person interested must, if they ask for an enhancement of sentences, be prepared to face the risk of the accused being altogether acquitted. It is the price or "quid pro quo" which the State or other interested person must be prepared to pay for the right or privilege of making an application for enhancement of sentence. The language used in sub-section (6) does not, in terms, place any fetter on the right conferred by it on the accused. *U.J.S. Chopra* v. *State of Bombay*, AIR 1955 SC 633: (1955) 2 SCR 94: 1955 Cri LJ 1410.

Bench Strength 3. Coram: **S.R. Das**[1], **N.H. Bhagwati**[2] and *Syed Jafer Imam*, JJ. [Date of decision: 25-3-1955]

[9084] — S. 439(6) — Right of a convicted person to show cause against his conviction on a notice of enhancement of sentence — *Appeal against conviction having been summarily dismissed — Accused subsequently called upon to show cause why sentence be not enhanced — S. 439(6) applies and the accused has a right to show cause against his conviction as well*

Per Das, J.

The summary dismissal of the appeal filed by the accused in the High Court was a judgment of conviction by the High Court and was final so far as the appellant was concerned and he could not initiate any further revision application either against his conviction or per reduction of sentence after that dismissal but that it was not final so far as the State was concerned and the State was entitled to apply in revision for enhancement of sentence. As soon as the State applied for enhancement and a notice was issued on the appellant he became entitled under S. 439(6) to again challenge his conviction. This sub-section gives a new and valuable weapon of defence to an accused person who is placed in fresh jeopardy by reason of an enhancement application having been filed against him and a notice to show cause having been issued to him.

There is nothing in Ss. 369 and 430, CrPC, to cut down that right. The previous dismissal of his appeal had no bearing on the new situation created by the enhancement application which the Legislature in enacting S. 439(6) may well and properly have thought to be sufficiently serious to deserve and require a thorough re-examination by the High Court of the conviction itself in this new context.

Per Bhagwati, J.

In the case of a summary dismissal or a dismissal in limine of petitions of appeal or applications for criminal revision even if the convicted person or his pleader has been heard by the High Court with a view to determine if there is a prima facie case for its interference, the convicted person to whom an opportunity has been given under S. 439(2) of showing cause why his sentence should not be enhanced would in showing cause be entitled to show cause against his conviction. *U.J.S. Chopra* v. *State of Bombay*, AIR 1955 SC 633: (1955) 2 SCR 94: 1955 Cri LJ 1410.

Bench Strength **3**. Coram: **S.R. Das**[1], **N.H. Bhagwati**[2] and *Syed Jafer Imam*, JJ. [Date of decision: 25-3-1955]

[9085] — Ss. 439(6), 369 and 430 — Scope and applicability of S. 439(6) — *Right under S. 439(6) accrues to the accused irrespective of what has happened in the past unless and until there is a judgment of the High Court against his conviction after hearing both the parties — Right not curtailed by Ss. 369 and 430*

Per Bhagwati, J.

The right which is conferred on the accused of showing cause against his conviction under S. 439(6) of the CrPC is a right which accrues to him on a notice for enhancement of sentence being served upon him and he is entitled to exercise the same irrespective of what has happened in the past unless and until there is a judgment of the High Court already pronounced against his conviction after a full hearing in the presence of both the parties on notice being issued by the High Court in that behalf.

This right of the accused is not curtailed by anything contained in the earlier provisions of S. 439 nor by anything contained in either S. 369 or S. 430 of the CrPC. *U.J.S. Chopra* v. *State of Bombay*, AIR 1955 SC 633: (1955) 2 SCR 94: 1955 Cri LJ 1410.

Bench Strength **3**. Coram: **S.R. Das**[1], **N.H. Bhagwati**[2] and *Syed Jafer Imam*, JJ. [Date of decision: 25-3-1955]

[9086] — Ss. 439(6) and (5) — "Non obstante" clause (6) does not refer only to clause (5)

Sub-section (5) of S. 439 only says that where an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed. When the accused person under sub-section (6) shows cause against his conviction he himself initiates no proceedings but only exercises right to show cause against his conviction which is given to him because somebody else has taken proceedings against him, for enhancement and a notice has been issued against him under sub-section (2). In such a situation the accused person is on the defensive and the act of showing cause against proceedings initiated against him cannot properly be said to be proceedings 'at his instance' which the High Court under sub-section (5) is enjoined not to entertain. Sub-section (6), strictly speaking, needs no exemption from sub-section (5). *U.J.S. Chopra* v. *State of Bombay*, AIR 1955 SC 633: (1955) 2 SCR 94: 1955 Cri LJ 1410.

Bench Strength **3**. Coram: **S.R. Das**[1], **N.H. Bhagwati**[2] and *Syed Jafer Imam*, JJ. [Date of decision: 25-3-1955]

— S. 441 *See* Ss. 213(1) and 441

See also Ss. 439 and 441

[9087] — S. 441 — Scope

Section 441 is so widely-worded as to include the decision or order of a Presidency Magistrate in any proceedings, which the High Court may set aside in a proper case. *Ramgopal Ganpatrai Ruia* v. *State of Bombay*, AIR 1958 SC 97, 104: 1958 SCR 618: 1958 Cri LJ 244.

Bench Strength **3**. Coram: **B.P. Sinha**, *P. Govinda Menon* and *J.L. Kapur*, JJ. [Date of decision: 8-10-1957]

[9088] — S. 452(1) — Illegal importation of foreign currency into India — Conviction under S. 135 of Customs Act, 1962 — *Currency seized by the customs authorities, however, neither produced before the Magistrate nor put in the custody or control of the Court — Held, in such circumstances, no order or direction by the Magistrate under S. 452(1), Criminal Procedure Code was called for and hence direction for confiscation set aside — Matter left to customs authorities to proceed according to law — Plea for restoration of seized currency to the appellant not acceded to — FERA, 1973, S. 13(1). Remo Paul Altoe* v. *Union of India*, (1977) 4 SCC 437: 1977 SCC (Cri) 629: AIR 1977 SC 2255: 1977 Cri LJ 1933: (1978) 48 Comp Cas 522.

Bench Strength **2**. Coram: **A.C. Gupta** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 13-10-1977]

[9089] — S. 464 — Incapacity in making defence — Mental infirmity — Duty of Magistrate

The unsoundness of mind dealt with in S. 464 of the Code of Criminal Procedure is the one which an accused person alleged to be suffering from at the time of the inquiry before the Magistrate and not one at the time of the incident during which he is said to have committed the offence in question. The words "reason to believe" indicate that when an accused person is presented before a Magistrate for inquiry, who, it is alleged, is suffering from unsoundness of mind, the Magistrate has, on such materials, as are brought before him to inquire before he proceeds with the inquiry whether there are reasons to believe that the accused before him is suffering from any such infirmity. The next step is that if he has such reasons to believe, he is to institute an inquiry into the fact of unsoundness of mind and cause him to be examined by the civil surgeon or such other medical officer as the State Government directs. Therefore, when a question is raised as to the unsoundness of mind of an accused person, the Magistrate is bound to inquire before he proceeds with the inquiry before him whether the accused is or not incapacitated by the unsoundness of mind from making his defence.

The Magistrate failed to make such an inquiry which it was incumbent upon him to make at the very threshold, and that having not been done, the committal proceedings, as also his order committing the appellant to the Sessions Court for trial were both vitiated. *Jai Shanker* v. *State of H.P.*, (1973) 3 SCC 83: 1973 SCC (Cri) 145: AIR 1972 SC 2267: 1972 Cri LJ 1526: (1973) 2 SCR 1: (1973) 10 ACC 109.

Bench Strength 3. Coram: **J.M. Shelat, Acting C.J.** and *I.D. Dua* and *H.R. Khanna*, JJ. [Date of decision: 30-8-1972]

[9090] — S. 465 — Accused appellant of unsound mind but not on the date of commencement of trial — Duty of Court — *Application of provisions of S. 465, CrPC — How far*

To adopt the procedure indicated in S. 465, CrPC, it is necessary that the person committed for trial must appear to the court to be of unsound mind and incapable of making his defence. There must be something in the demeanour of the accused who is brought up for the trial which would raise a doubt in the mind of the court that he is of unsound mind consequently incapable of making his defence and a doubt may arise in the mind of the court because of the manner in which an accused behaves or answers questions.

In the present case, the record shows that on the date when trial commenced, the accused was able to understand the charge read out to him and he pleaded not guilty and claimed to be tried. It is not the duty of the court or of the jury to proceed to try the fact of unsoundness of mind of an accused whenever one is brought for trial unless it appears that the accused is of unsound mind. Accordingly, there was no obligation on the part of the court to investigate whether the accused was of unsound mind or not and as such the trial proceedings cannot be considered to be illegal or void. *Vivian Rodrick* v. *State of W.B.*, (1969) 3 SCC 176: 1970 SCC (Cri) 33.

Bench Strength 3. Coram: *J.M. Shelat*, *V. Bhargava* and **C.A. Vaidialingam**, JJ. [Date of decision: 30-4-1969]

[9091] — S. 465 — Section, if, applicable to appeals

It is not necessary to express any opinion on the applicability or otherwise of S. 465, CrPC, to appeals but it would have been proper in view of the medical reports if the Division Bench which heard the appeal had postponed the hearing of appeal till such time as the appellant was declared fit to contest his appeal. The learned Judge's proposition that there is no bar to the hearing and disposing of an appeal, even if the accused appellant is of unsound mind or even insane, cannot be accepted. The High Court under S. 374, CrPC, has to hear on law as well as on facts. The appellant should be enabled to instruct his counsel on fact.

Held :

The hearing of the appeal in which sentence of death is challenged, when admittedly the accused appellant was of unsound mind, must be considered to have caused serious prejudice to the accused resulting in failure of justice and in the circumstances of the case it was not proper for the Division Bench to have heard and disposed of the appeal. *Vivian Rodrick* v. *State of W.B.*, (1969) 3 SCC 176: 1970 SCC (Cri) 33.

Bench Strength 3. Coram: *J.M. Shelat*, *V. Bhargava* and **C.A. Vaidialingam**, JJ. [Date of decision: 30-4-1969]

[9092] — Ss. 465, 364 and 365 — Statement under S. 364 showing the appellant to be of sane mind — *Sessions Judge satisfied about soundness of mind — Whether not holding regular enquiry under S. 465, CrPC, does not vitiate the trial*

Section 465, CrPC, requires that there should be an enquiry within the second limb of the section if it appears to the Sessions Judge that the accused was insane, but if it does not appear to him so it is not necessary that he should conduct a regular enquiry under the second limb of the section. It is true that the word "appears" in S. 465 imports a lesser degree of probability than "proof", but this does not mean that whenever a counsel raises a point before a Sessions Judge he has to straightaway hold an elaborate enquiry into the matter. If on examining the accused it does not appear to him that the accused is insane it is not necessary that he should go further and send for and examine medical witnesses and other relevant evidence. Of course if he has any serious doubt in the matter the Sessions Judge should hold a proper enquiry. *I.V. Shivaswamy* v. *State of Mysore*, (1971) 3 SCC 220: 1971 SCC (Cri) 434: AIR 1971 SC 1638: 1971 Cri LJ 1193.

Bench Strength 3. Coram: **S.M. Sikri**, *V. Bhargava* and *I.D. Dua*, JJ. [Date of decision: 18-1-1971]

— S. 476 *See also* Ss. 195, 476 and 476-B
See also Ss. 195(1)(b), (c) and 476
See also Ss. 195(1)(c) and 476
See also Ss. 195(1)(c), 476, 476-A and 476-B
See also Ss. 195(3), 476, 476-A and 476-B
See also Ss. 476-B, 195 and 476
See also Ss. 479, 479-A and 476
See also Ss. 479-A and 476
See also Ss. 479-A and 476 to 479
See also Ss. 479-A, 476 and 479

[9093] — S. 476 — Scope

Section 476, CrPC, quite clearly postulates formation of judicial opinion that it is expedient to hold an inquiry into an offence referred to in cl. (*b*) or cl. (*c*) of S. 195(1) which appears to the court to have been committed either in or in relation to a proceeding in that court. Offences mentioned in cl. (*b*) would be covered by that clause even if they are alleged to have been committed in relation to a proceeding in a court, whereas those mentioned in cl. (*c*) should be alleged to have been committed by a party to a proceeding in a court in respect of a document produced or given in evidence in that proceeding. Section 476 empowers the Court even suo motu to take up the question of expediency of making a complaint. As a general rule, the courts consider it expedient in the interest of justice to start prosecutions as contemplated by S. 476 only if there is a reasonable foundation for the charge and there is a reasonable likelihood of conviction. The requirement of a finding as to the expediency is understandable in case of an offence alleged to have been committed either in or in relation to a proceeding in that court in case of offences specified in cl. (*b*) because of the close nexus between the offence and the proceeding. In case of offences specified in cl. (*c*) they are required to be committed by a party to a proceeding in that court with respect to a document produced or given in evidence in that court. *Patel Laljibhai Somabhai* v. *State of Gujarat*, (1971) 2 SCC 376: 1971 SCC (Cri) 548: AIR 1971 SC 1935: 1971 Cri LJ 1437.

Bench Strength 3. Coram: *S.M. Sikri, C.J.* and *P. Jaganmohan Reddy* and **I.D. Dua**, JJ. [Date of decision: 7-5-1971]

[9094] — S. 476 — Scope — Complaint by Presiding Officer

It has no doubt been held that S. 476 must be taken to be exhaustive of all the powers of a court as such to lay a complaint, and that a complaint filed by it otherwise than under that section should not be entertained. But there is abundant authority that S. 476 does not preclude the officer presiding over a court from himself preferring a complaint, and that the jurisdiction of the Magistrate before whom the complaint is laid to try it like any other complaint, is not taken away by that section. *Virindar Kumar Satyawadi* v. *State of Punjab*, AIR 1956 SC 153, 158: (1955) 2 SCR 1013: 58 Punj LR 583: 1956 Cri LJ 326.

Bench Strength 3. Coram: *B.K. Mukherjea, C.J.* and **T.L. Venkatarama Aiyar** and *Syed Jafer Imam*, JJ. [Date of decision: 24-11-1955]

[9095] — S. 476 — Scope — Court not to express opinion regarding guilt of accused

While passing an order under S. 476, CrPC, the Court should not express any opinion as to the guilt or innocence of the accused. *M.S. Sheriff* v. *State of Madras*, AIR 1954 SC 397: 1954 SCR 1144: 1954 Cri LJ 1019.

Bench Strength 5. Coram: *M.C. Mahajan, C.J.* and *B.K. Mukherjea, S.R. Das*, **Vivian Bose** and *Ghulam Hasan*, JJ. [Date of decision: 18-3-1954]

[9096] — S. 476 — Certifying question of fact — Complaint under S. 476, CrPC — High Court before certifying must be satisfied that some substantial question of law or principle is involved — *High Court deciding whether Magistrate's conclusion that a complaint under S. 476, CrPC, 1898 was justified was correct or not — Is a question of fact and High Court not justified in certifying — Constitution of India — Art. 134(1)(c). Mohanlal Maganlal Thakkar* v. *State of Gujarat*, AIR 1968 SC 733, 738-39: (1968) 2 SCR 685, 693-94: 1968 Cri LJ 876.

Bench Strength 5. Coram: *K.N. Wanchoo, C.J.*[1] and **R.S. Bachawat**[2], **J.M. Shelat**[1], *G.K. Mitter*[2] and *C.A. Vaidialingam*[1], JJ. [Date of decision: 15-12-1967]

[9097] — S. 476 — After about 10 years of the alleged incident State succeeding in restoring its application which had been dismissed for default — *Held, continuance of proceedings of such lapse of time not justified — State free to file suits to recover any amounts wrongly paid on the basis of the false statement — Penal Code, 1860, S. 193 read with S. 340, CrPC, 1973*

It is not the function of the court hearing an application under S. 476 to cater to the acrimonious and vengeful attitudes taken up by the parties and to advance their interests elsewhere. *K.N. Mishra* v. *Jiwaji University*, 1980 Supp SCC 415: 1981 SCC (Cri) 356: AIR 1981 SC 174(5).

Bench Strength **2**. Coram: *R.S. Sarkaria* and **O. Chinnappa Reddy**, JJ. [Date of decision: 22-9-1980]

[9098] — Ss. 476, 476-A and 476-B — Nature of proceedings under

Per Fazal Ali and Sen, JJ.

These three provisions provide a separate and self-contained procedure which starts with an inquiry and terminates with an order of filing a complaint or refusing to do so. Chapter XXV is, therefore, restricted only to offences mentioned in S. 195(1)(*b*) and (*c*) of the Code. Thus, in view of the independent nature of the procedure contained in these sections, it is manifest that any order under S. 476 either filing a complaint or refusing to file a complaint becomes a final order in any event as such an order completely terminates the proceedings and brings the matter to an end so far as the first court is concerned. The same power is given to a superior court under S. 476-A which also ends with the filing or refusal to file a complaint. Section 476-B provides for appeal as indicated above. It is true that separate proceedings are taken when a complaint is filed but these proceedings are fresh proceedings starting with the complaint and ending with the conviction or acquittal of the accused. In other words, once the court decides to file a complaint forming an opinion whether or not it is expedient in the interest of justice to do so, the procedure spends itself out. *V.C. Shukla* v. *State through CBI*, 1980 Supp SCC 92: 1980 SCC (Cri) 695: AIR 1980 SC 962: 1980 Cri LJ 690: 1980 MLJ (Cri) 664.

Bench Strength **4**. Coram: **S. Murtaza Fazal Ali**[1], **P.N. Shinghal**[2], **D.A. Desai**[3] and *A.P. Sen*[1], JJ. [Date of decision: 7-12-1979]

[9099] — Ss. 476, 476-B and 195(3) — Single Judge of the High Court dismissing an application under S. 476 — *Appeal lies to the Appellate Bench of the High Court and not to the Supreme Court*

A right of appeal against the order of the Single Judge of a High Court is given by provisions of S. 476-B. The form of appeal is also determined by the provisions of S. 476-B, read with S. 195(3) as a court to which the former Court is subordinate within the meaning of S. 195(3), which provides that for the purposes of the section a court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, etc. etc. An appeal against the order of a Single Judge ordinarily under Cl. 10 of the Letters Patent Bench of the Allahabad High Court lie to High Court and therefore this appeal lies to the High Court.

It cannot be said that an appeal ordinarily lies to the Supreme Court from the judgment of a Single Judge of a High Court because such an appeal lies with a certificate granted under Art. 132 of the Constitution. *Narain Das* v. *State of U.P.*, AIR 1961 SC 181: (1961) 1 SCR 676: (1961) 1 Cri LJ 317, 318.

Bench Strength **3**. Coram: *Syed Jafer Imam*, *A.K. Sarkar* and **Raghubar Dayal**, JJ. [Date of decision: 14-9-1960]

[9100] — Ss. 476, 479(1) and (6) — Scope and applicability

Section 479-A applies when the Court, before or at the time the judgment is delivered, forms an opinion about the falsity of evidence. There being no material on the record for the Court for coming to the conclusion that a witness gave false evidence — S. 479-A(1) will not apply — Bar under sub-section (6) cannot be invoked — Proceedings under S. 476 are maintainable.

The scheme of S. 479-A is to enact a special procedure for the more expeditious and effective manner of dealing with certain cases of perjury and fabrication of false evidence by witnesses in the course of judicial proceedings. There is, however, a necessary condition for the application of S. 479-A, CrPC. The condition is that the Court before it delivers its judgment or at any rate at the time of delivering the judgment must form an opinion that a particular witness or witnesses is or are giving false evidence; if the Court could not form any opinion about the falsity of the evidence of the witness appearing before it, then certainly the Court cannot at the time of delivering its judgment, record any finding about the same.

Where at the time when the judgment is delivered the Magistrate had no material before him to form an opinion that the petitioner had given false evidence S. 479-A will not be applicable. In that case the bar contemplated by cl. (6) of that section cannot be invoked. *Kuppa Goundan* v. *M.S.P. Rajesh*, AIR 1966 SC 1863: 1966 Supp SCR 373: 1966 Cri LJ 1503, 1504-0.

Bench Strength 3. Coram: *M. Hidayatullah*, **V. Ramaswami** and *J.M. Shelat*, JJ. [Date of decision: 5-5-1966]

[9101] — Ss. 476 and 435/439 — Complaint by High Court in revision proceedings — *Proper course is to quash proceedings, if improper, and remit the case to trial Court — Original petition for prosecution for offences under Ss. 193 & 211, IPC, under S. 476, CrPC*

Two courts below having in their judicial discretion declined to direct the prosecution of the appellant on revision the High Court was not at all justified in itself directing the filing of the complaint. At best, if it considered the orders of the two courts below tainted with a serious legal infirmity or manifest error resulting in grave miscarriage of justice, it could have, after quashing those orders, sent the case back to the trial Court for reconsideration of the matter in accordance with law. *Santokh Singh* v. *Izhar Hussain*, (1973) 2 SCC 406: 1973 SCC (Cri) 828: AIR 1973 SC 2190: (1974) 1 SCR 78: 1973 Cri LJ 1176.

Bench Strength 2. Coram: *K.K. Mathew* and **I.D. Dua**, JJ. [Date of decision: 25-4-1973]

[9102] — Ss. 476 and 476-B — Scope of — Departure in the new Code in the matter of appeal — *CrPC, 1973, S. 340(1)*

Section 340, Criminal Procedure Code, 1973, corresponds to old S. 476, Criminal Procedure Code, 1898. Significant change has been made in respect of right of appeal under old S. 476-B. Now an order of the High Court made under sub-section (1) or sub-section (2) of S. 340 is specifically excluded for the purpose of appeal to the superior Court under S. 341(1), Criminal Procedure Code, (new). This is, therefore, a new restriction in the way of the appellant when he approaches the Supreme Court under Art. 136 of the Constitution. *K. Karunakaran* v. *T.V. Eachara Warrier*, (1978) 1 SCC 18: 1978 SCC (Cri) 32: AIR 1978 SC 290: 1978 Cri LJ 339: 1978 MLJ (Cri) 237.

Bench Strength 2. Coram: **P.K. Goswami** and *V.D. Tulzapurkar*, JJ. [Date of decision: 16-11-1977]

[9103] — Ss. 476 and 476-B — Enquiry and complaint — Whether "expedient in the interests of justice" — *No interference by Appellate Court*

While considering the matter on merits the only relevant consideration is whether "it is expedient in the interests of justice" that an enquiry should be made and a complaint filed. That involves a careful balancing of many factors. Where the High Court has scrutinised the evidence minutely and has disclosed ample material on which a judicial mind could reasonably reach the conclusion that there is matter here which requires investigation in a criminal Court and that it is expedient in the interests of justice to have it enquired into, there can be no reason for interfering with the High Court's discretion on that score. *M.S. Sheriff* v. *State of Madras*, AIR 1954 SC 397: 1954 SCR 1144: 1954 Cri LJ 1019.

Bench Strength 5. Coram: *M.C. Mahajan, C.J.* and *B.K. Mukherjea, S.R. Das*, **Vivian Bose** and *Ghulam Hasan*, JJ. [Date of decision: 18-3-1954]

[9104] — Ss. 476 and 479-A — Nature of proceedings before Income Tax Officer — Whether before a Court — *Cognizance of offence of submitting forged documents and making false statements if can be taken — IT Act, 1922, S. 26-A — IT Act, 1961, S. 184 — Penal Code, 1860, Ss. 193 and 196*

M/s Balwant Singh Santok Singh were registered as a firm under S. 26-A of Income Tax Act, 1922, for the assessment year 1960-61. The Income Tax Officer refused to renew registration for 1961-62, because no application for renewal of registration was received. The assessee produced a certificate of posting dated 21-6-1961, in proof of having posted the application for renewal of registration. The Income Tax Officer discovered that the form of certificate of posting purporting to have been issued on 21-6-1961 was actually printed in 1962. A complaint was, therefore, lodged with the Magistrate for prosecuting the partners for fabricating and giving false evidence under Ss. 193 and 196-A, IPC. It was argued that the Income Tax Officer is a "court" and it was incumbent on him to follow the procedure laid down in Ss. 476 and 479-A CrPC.

Held :

Whereas S. 195 uses the expression "Court", Ss. 476 and 479-A use the expression "any civil, revenue or criminal court". It is, therefore, manifest that the procedure provided in these two sections applies to a court, which is either a civil or a revenue or a criminal court and not to a court which does not fall in any one of these categories of courts. The proceedings under S. 26-A before Income Tax Officer must be treated as proceedings in a court for the purpose of S. 195(1)(*b*) of the Code of Criminal Procedure. The Income Tax Officer, however, cannot be treated as a revenue court. Though, therefore, proceedings before the Income Tax Officer are judicial proceedings in a court and S. 195(1)(*b*) applies, neither S. 476 nor S. 479-A of the Code would be applicable. It was, therefore, not incumbent upon the Income Tax Officer to follow the procedure laid down in either of those two sections before he can validly file a complaint for offences under Ss. 193 and 196 of Penal Code, where forged documents are produced and false statement, are made on oath in proceedings under S. 26-A. *Balwant Singh* v. *L.C. Bharupal*, (1968) 70 ITR 89, 93, 94.

Bench Strength 3. Coram: *S.M. Sikri*, **J.M. Shelat** and *K.S. Hegde*, JJ. [Date of decision: 27-11-1967]

[9105] — Ss. 476 and 479-A — Scope and applicability — S. 479-A applies to prosecution under S. 193, IPC and cognate sections of Ch. XI — *Ss. 476 to 479 continue to apply to other offences*

The special procedure of S. 479-A is prescribed only for the prosecution of a witness for the act of giving false evidence in any stage of judicial proceedings or for fabrication of false evidence for the purpose of being used in any stage of a judicial proceeding. There is nothing in the section which precludes the application of any other procedure prescribed by the Code in respect of other offences. In applying the principle that a special provision prevails over a general provision, the scope of the special provision must be strictly construed in order to find out how much of the field covered by the general provision is also covered by the special provision. Examining the special procedure prescribed by S. 479-A in that light, in it is important to notice that the act of intentionally giving false evidence in any stage of a judicial proceeding and the act of fabricating false evidence for the purpose of being used in any stage of a judicial proceeding mentioned in S. 479 of the CrPC are the acts which are made punishable under S. 193 of the IPC and cognate sections in Chapter XI. It will be unreasonable to read into S. 479-A the meaning that where a person who appears to have committed an offence under S. 193 of the IPC by giving false evidence or fabricating false evidence, appears to have committed some other offence also, say, forgery, for the very purpose of fabricating false evidence, complaint for such other offence also can be made under S. 479-A of the CrPC. Section 479-A has no application to prosecution for offences other than an offence under S. 193 and cognate sections in Chapter XI and that as regards other offences Ss. 476, 477 and 479 continue to apply even after the enactment of S. 479-A. *Raghubir Prosad Dudhewalla* v. *Chamanlal Mehra*, (1964) 3 SCR 980: (1964) 1 Cri LJ 489.

Bench Strength 3. Coram: *P.B. Gajendragadkar*, *K.N. Wanchoo* and **K.C. Das Gupta**, JJ. [Date of decision: 10-5-1963]

[9106] — Ss. 476 and 559 — Complaint under S. 476, CrPC, for offences under S. 195, IPC — Can be filed by successor in office of a Magistrates deciding the case giving rise to the complaint

A successor in office of a Magistrate can file a complaint under S. 476, CrPC, in respect of an offence under S. 195, IPC, committed before his predecessor, in view of the provisions of S. 559, CrPC. *Ajaib Singh* v. *Joginder Singh*, AIR 1968 SC 1422: (1969) 1 SCR 145: 1969 Cri LJ 4, 5, 6.

Bench Strength 2. Coram: **S.M. Sikri** and *V. Ramaswami*, JJ. [Date of decision: 30-4-1968]

Subramanian Chettiar,. In re, AIR 1957 Mad 442: 1957 Cri LJ 765; Ram Ajodhya Singh v. Emperor, AIR 1927 Pat 327; Behram v. Emperor, AIR 1926 Lah 305: 27 Cri LJ 776, approved.

AIR 1963 SC 816: (1963) 1 Cri LJ 803, relied on

[9107] — S. 476(1) — Transfer application against the appellant when acting as a Magistrate — *Also an application of the accused for filing a complaint against him taken together by a superior Court — Transfer application allowed, and suitable criminal and administrative proceedings recommended to the District Magistrate — The proceedings do not amount to an enquiry under S. 476(1)*

A perusal of the order passed by the Additional District Magistrate, however, shows that all the findings recorded against the appellant were only reasons for transferring the case from the appellant's file. He himself has not taken any action as contemplated under S. 476 of the Code. He was merely dealing with the transfer application and incidentally also with the applications for initiating criminal proceedings. From the nature of the enquiry conducted by the Additional District Magistrate on the complaint filed by the counsel for the accused it follows that S. 476 of the Code has no application and the proceedings did not amount to an enquiry under S. 476(1). *Govind Mehta* v. *State of Bihar*, (1971) 3 SCC 329: 1971 SCC (Cri) 608: AIR 1971 SC 1708: 1971 Cri LJ 1266.

Bench Strength 2. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 7-5-1971]

[9108] — S. 476(2) — Examination of complaint *— Magistrate need not examine complaint or follow procedure under Ss. 200 & 202.* *Ranjit Singh* v. *State of Pepsu*, AIR 1959 SC 843: 1959 Supp (2) SCR 727: 1959 Cri LJ 1124.

Bench Strength 2. Coram: *Syed Jafer Imam* and **J.L. Kapur**, JJ. [Date of decision: 21-4-1959]

— **S. 476-A** *See* Ss. 195(1)(c), 476, 476-A and 476-B

See also Ss. 195(3), 476, 476-A and 476-B

See also Ss. 476, 476-A and 476-B

— **S. 476-B** *See* Ss. 195, 476 and 476-B

See also Ss. 195(1)(c), 476, 476-A and 476-B

See also Ss. 195(3), 476, 476-A and 476-B

See also Ss. 195(3) and 476-B

See also Ss. 476, 476-A and 476-B

See also Ss. 476 and 476-B

See also Ss. 476, 476-B and 195(3)

[9109] — Ss. 476-B and 195(3) — High Court by a notification authorising Senior Subordinate Judge to hear appeals against orders and decrees passed by Subordinate Judge — *Senior Subordinate Judge does not become appellate tribunal within the meaning of S. 195(3), CrPC, 1898 — District Court must be regarded as appellate authority for purposes of S. 476-B CrPC, 1898 — Punjab Courts Act, 1918 (6 of 1918), S. 39. Kuldip Singh* v. *State of Punjab*, AIR 1956 SC 391: 1956 SCR 125: 58 Punj LR 595: 1956 Cri LJ 781.

Bench Strength 5. Coram: **Vivian Bose**, *B. Jagannadhadas, B.P. Sinha, Syed Jafer Imam* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 15-2-1956]

[9110] — Ss. 476-B, 195 and 476 — Appeal under S. 476-B — Lies if the offence under S. 193, IPC, is committed in or in relation to a proceeding in "Court" — *Does not lie if the offence under S. 193, IPC, is committed before a Returning Officer in proceedings under S. 36, Representation of the People Act*

Section 476-B provides for an appeal from an order passed under S. 476 to the appropriate court. The result then is that if the complaint relates to offences mentioned in S. 195(1)(*b*) and 195(1)(*c*), an appeal would be competent, but not if it relates to offences mentioned in S. 195(1)(*a*). Now, the order of the Magistrate dated 17-9-1952 directs that the appellant should be prosecuted for offences under Ss. 181, 182 and 193. There is no dispute that the order in so far as it relates to offences under Ss. 181 and 182 is not appealable, as they fall directly under S. 195(1)(*a*).

Section 193 makes it an offence to give false evidence whether it be in a judicial proceeding or not, and it likewise makes it an offence to fabricate false evidence for use in a judicial proceeding or elsewhere. If the offence is not committed in a judicial proceeding then it will fall outside S. 195(1)(*b*), which applies only when it is committed in or in relation to a proceeding in Court, and there is in consequence no bar to a complaint being made in respect thereof unaffected by the restrictions contained in S. 195(1)(*b*).

But if the offence under S. 193 is committed in or in relation to a proceeding in court, then it will fall under S. 195(1)(*b*), and the order directing prosecution under S. 476 will be appealable under S. 476-B.

The Returning Officer deciding on the validity of a nomination paper is not a court for the purpose of S. 195(1)(*b*) of the CrPC, and the result is that even as regards the charge under S. 193, the order of the Magistrate was not appealable, as the offence was not committed in or in relation to any proceeding in a court. *Virindar Kumar Satyawadi* v. *State of Punjab*, AIR 1956 SC 153: (1955) 2 SCR 1013: 58 Punj LR 583: 1956 Cri LJ 326, 330.

Bench Strength **3**. Coram: *B.K. Mukherjea, C.J.* and **T.L. Venkatarama Aiyar** and *Syed Jafer Imam*, JJ. [Date of decision: 24-11-1955]

— **Ss. 477 to 479** *See* Ss. 479-A and 476 to 479

[9111] — Ss. 479, 479-A and 476 — Scope — Witnesses filing false affidavits — *Offence of filing of false affidavit by a witness is under Ss. 191 and 192, IPC and not under S. 199, IPC — Prosecution possible according to the procedure detailed in S. 479-A — Proceedings under S. 476 barred under cl.(6) of the section — Penal Code, 1860, Ss. 191, 192 & 199*

Section 199 deals with a declaration and does not state that the declaration must be on oath. The only condition necessary is that the declaration must be capable of being used as evidence and which any court of justice or any public servant or other person, is bound or authorised by law to receive as evidence. Section 191 deals with evidence on oath and S. 192 with fabricating false evidence. When B and K made declarations in their affidavits which were tendered in the High Court to be taken into consideration, they intended the statements to appear in evidence in a judicial proceeding, and so appearing, to cause the Court to entertain an erroneous opinion regarding the compromise. In this way their offence came within the words of Ss. 191, 192 rather than S. 199 of the IPC. They were thus prima facie guilty of an offence of giving false evidence or of fabricating false evidence for the purpose of being used in a judicial proceeding. Section 479-A lays down a special procedure which applies to persons who appear as witnesses before civil, revenue or criminal Courts and do one of two things: (*i*) intentionally give false evidence in any stage of the judicial proceeding, or (*ii*) intentionally fabricate false evidence for the purpose of being used in any stage of the judicial proceeding. The first refers to an offence under S. 191/293 and the second to that under S. 192/193 of the IPC. In respect of such offences when committed by a witness, action under S. 479-A alone can be taken. The appellants were witnesses in the inquiry in the High Court and they had fabricated false evidence. If any prosecution was to be started against them the High Court ought to have followed the procedure under S. 479-A of the CrPC. Not having done so, the action under S. 476 of the CrPC was not open because of sub-section (6) of S. 479-A. *Baban Singh* v. *Jagdish Singh*, AIR 1967 SC 68: (1966) 3 SCR 552: 1967 Cri LJ 6.

Bench Strength **3**. Coram: *K. Subba Rao*, **M. Hidayatullah** and *R.S. Bachawat*, JJ. [Date of decision: 8-2-1966]

Followed in AIR 1968 SC 1422: 1969 Cri LJ 4

— S. 479-A *See* Ss. 476 and 479-A

See also Ss. 479, 479-A and 476

[9112] — S. 479-A — Applicability — Recording of opinion of false evidence by trial Court necessary. *Santokh Singh* v. *Izhar Hussain*, (1973) 2 SCC 406: 1973 SCC (Cri) 828: AIR 1973 SC 2190: (1974) 1 SCR 78: 1973 Cri LJ 1176.

Bench Strength **2**. Coram: *K.K. Mathew* and **I.D. Dua**, JJ. [Date of decision: 25-4-1973]

[9113] — S. 479-A — Requirement of giving opportunity to a witness before filing complaint against him not mandatory — *Failure to give such opportunity — Does not vitiate trial. Narayanswami* v. *State of Maharashtra*, (1971) 2 SCC 182: 1971 SCC (Cri) 507: AIR 1971 SC 1789: 1971 Cri LJ 1301.

Bench Strength **2**. Coram: **K.S. Hegde** and *A.N. Grover*, JJ. [Date of decision: 30-4-1971]

Followed in Mahila Vinod Kumari v. State of M.P., (2008) 8 SCC 34

[9114] — S. 479-A — Scope — Not intended for cases of flagrant offences

Where the offence consists of intentionally giving false evidence "in any stage of judicial proceeding" it is no doubt true that as under S. 476 it is the Court which disposes of such judicial proceeding which primarily has to act under S. 479-A. There does not appear to be any real distinction between S. 476 and S. 479-A as to the Court which can take action. Under S. 476 the action may proceed suo motu or on application while under S. 479-A, no application seems to be contemplated. But there is nothing in this provision which makes a distinction between flagrant offences and offences which are not flagrant or between serious offences and offences which are not serious. *Shabir Hussain Bholu* v. *State of Maharashtra*, AIR 1963 SC 816, 820: 1963 Supp (1) SCR 501: (1963) 1 Cri LJ 803.

Bench Strength **3**. Coram: *Syed Jafer Imam*, *N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 28-9-1962]

[9115] — S. 479-A — Scope and applicability of — Mere falsity of statements made not enough — *They should have been made "intentionally" — Official in the department swearing on the instructions of his superiors, held, cannot be said to have made the statements intentionally — CrPC, 1973, S. 344*

That the facts stated are not true is not enough for sanctioning the prosecution. An essential prerequisite of S. 479-A is that the court must form the opinion that the witnesses had made the statement complained of "intentionally".

Again under S. 479-A, CrPC, not only is it necessary that the court must form the opinion that the witness had intentionally given false evidence, but it is further necessary that the court must come to the conclusion that for the eradication of the evils of perjury and in the interests of justice it is expedient that the witness should be prosecuted for the offence which appears to have been committed by him. *Mohd. Ibrahim* v. *B. Rama Rao*, (1976) 2 SCC 33: 1976 SCC (Cri) 233: AIR 1976 SC 1822: 1976 Cri LJ 1385.

Bench Strength **2**. Coram: **Y.V. Chandrachud** and *A.C. Gupta*, JJ. [Date of decision: 28-11-1975]

[9116] — S. 479-A — Scope and applicability to a case where trial held with the aid of Jury — *Section applies to such a trial*

Though it is for the jury to give its verdict regarding the guilt or the innocence of the accused it is open to the Judge to accept or reject the verdict and therefore, it is necessary for him to record a short judgment either accepting or rejecting the verdict. Where he rejects the verdict the law requires him to refer the case to the High Court under S. 307, CrPC. In either case he gets an opportunity of recording the kind of finding which is required by S. 479-A(1). *Shabir Hussain Bholu* v. *State of Maharashtra*, AIR 1963 SC 816: 1963 Supp (1) SCR 501: (1963) 1 Cri LJ 803.

Bench Strength **3**. Coram: *Syed Jafer Imam*, *N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 28-9-1962]

[9117] — S. 479-A — Application of special procedure prescribed under S. 479-A, CrPC, 1898 to prosecution under S. 195, IPC and cognate sections of Chap. XI, IPC — *Penal Code, 1860, S. 193*

The act of intentionally giving false evidence in any stage of a judicial proceeding and the act of fabricating false evidence for the purpose of being used in any stage of a judicial proceeding mentioned in S. 479-A of the Code of Criminal Procedure are the acts which are made punishable under S. 193 of the Indian Penal Code and cognate sections in Chap. XI. It will be unreasonable to read into S. 479-A the meaning that where a person who appears to have committed an offence under S. 193 of the Indian Penal Code — by giving false evidence or fabricating false evidence — appears to have committed some other offence also, say, forgery, for the very purpose of fabricating false evidence, complaint for such other offence also can be made under S. 479-A of the Code of Criminal Procedure. Section 479-A has no application to prosecution for offences other than an offence under S. 193 and cognate sections in Chap. XI and that as regards other offences Ss. 476, 477, 478 and 479 continue to apply even after the enactment of S. 479-A. *Raghubir Prosad Dudhewalla* v. *Chamanlal Mehra*, (1964) 3 SCR 980: (1964) 1 Cri LJ 489, 490.

Bench Strength **3**. Coram: *P.B. Gajendragadkar, K.N. Wanchoo* and **K.C. Das Gupta**, JJ. [Date of decision: 10-5-1963]

See also AIR 1964 SC 725: 1964 (1) Cri LJ 555 and AIR 1964 SC 816: 1963 (1) Cri LJ 803

[9118] — Ss. 479-A, 476 and 479 — Prosecution for false evidence — Cases covered by S. 479-A — *Ss. 476 & 479 are wholly inapplicable*

Bearing in mind the non-obstante clause at the commencement of S. 479-A and the provisions of sub-section (6) it would follow that only the provisions of sub-section (1) of S. 479-A must be resorted to by the Court for the purpose of making a complaint against a person for intentionally giving false evidence or for intentionally fabricating false evidence at any stage of the proceeding before it. The provisions of Ss. 476 to 479 are totally excluded where an offence is of the kind specified in S. 479-A(1).

So having failed to act under S. 479-A the court cannot resort to S. 476. *Shabir Hussain Bholu* v. *State of Maharashtra*, AIR 1963 SC 816: 1963 Supp (1) SCR 501: (1963) 1 Cri LJ 803.

Bench Strength **3**. Coram: *Syed Jafer Imam, N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 28-9-1962]

[9119] — Ss. 479-A and 476 — Prosecution for false evidence — Complaint under S. 479-A stating that the witness made contradictory statements before the committing Magistrate and Sessions Court — *Judge not able to form an opinion which of the two statements was false — Committal proceedings are part of the judicial proceedings culminating in the decision of Sessions Court — Complaint under S. 479-A is valid*

No doubt, the evidence recorded before the committing Magistrate can be transferred in certain circumstances to the record of the trial and taken into consideration in the same way in which evidence tendered at the trial can be taken into consideration. In view of these features which characterise the commitment proceedings Supreme Court is of opinion that those proceedings can be regarded as part of the same judicial proceeding which culminated in the decision of the Court of Session. Upon that view it would follow that even when the Sessions Judge is unable to say which of the two contradictory statements is false or even where he is of opinion that the statement before the committing Magistrate is false it is for him and him alone to act under S. 479-A(1). *Shabir Hussain Bholu* v. *State of Maharashtra*, AIR 1963 SC 816: 1963 Supp (1) SCR 501: (1963) 1 Cri LJ 803.

Bench Strength **3**. Coram: *Syed Jafer Imam, N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 28-9-1962]

[9120] — Ss. 479-A and 476 to 479 — Perjury — Object and effect of S. 479-A — *Not applicable to one not a witness — Operates as bar to proceedings under S. 476 — Prosecution for perjury — Prima facie deliberate falsehood essential — Long lapse of time — Effect on proceedings. Chajoo Ram* v. *Radhey Shyam*, (1971) 1 SCC 774: 1971 SCC (Cri) 331: AIR 1971 SC 1367: 1971 Cri LJ 1096.

Bench Strength **3**. Coram: *S.M. Sikri, C.J.* and *P. Jaganmohan Reddy* and **I.D. Dua**, JJ. [Date of decision: 23-3-1971]

— S. 479-A(1) *See* Ss. 476, 479-A(1) and (6)

[9121] — S. 479-A(1) — Complaint by Court against witness giving false evidence — "Opportunity of being heard" occurring in the sub-section — *Question whether opportunity given or not — Opportunity given before judgment in the case was delivered — Contended that it did not amount to compliance of S. 479-A about giving of an opportunity of being heard — Supreme Court not deciding whether or not there was sufficient compliance — Held, point is not only arguable but also a substantial and important one. Narayan Swami* v. *State of Maharashtra*, AIR 1968 SC 609: (1968) 2 SCR 88: 1968 Cri LJ 657, 659: (1968) 68 ITR 221, 225.

Bench Strength **2**. Coram: *V. Bhargava* and **C.A. Vaidialingam**, JJ. [Date of decision: 26-10-1967]

[9122] — S. 479-A(1) — Offence falling under S. 471 IPC — Not covered by S. 479-A(1) CrPC 1898 — *S. 479-A(1) CrPC may be resorted to only in case which falls within first para of S. 193 IPC — Penal Code, 1860, Ss. 471, 463 and 193*

Section 479-A(1) has a limited operation: it applies only to the prosecution of a witness appearing before the Court, who has intentionally given false evidence in any stage of the judicial proceeding or has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceeding. The sub-section may be resorted to only in a case which falls within the first paragraph of S. 193 of the Indian Penal Code and allied Ss. 194 and 195 — when it is committed by a witness appearing before the Court. An offence punishable under S. 471 Indian Penal Code being one of fraudulently or dishonestly using as genuine any document which the accused knows or has reason to believe to be a forged document, does not fall within the category contemplated by S. 479(1) of the Code of Criminal Procedure and therefore the authority of the Court to act under S. 476 of the Code is not impaired by sub-section (6) of S. 479-A.

It is true that some of the ingredients of the act of fabricating false evidence which is penalised under S. 193 Indian Penal Code and of making a false document and thereby committing forgery within the meaning of Ss. 463 and 464 Indian Penal Code are common. A person by making a false entry in any book or record or by making any document containing a false statement may, if the prescribed conditions of S. 463 are fulfilled, commit an offence of forgery. But the important ingredient which constitutes fabrication of false evidence within the meaning of S. 192 Indian Penal Code beside causing a circumstance to exist or making a false document — to use a compendious expression — is the intention that the circumstance so caused to exist or the false document made may appear in evidence in a judicial proceeding, or before a public servant or before an arbitrator, and lead to the forming of an erroneous opinion touching any point material to the result of the proceeding. The offences of forgery and of fabricating false evidence for the purpose of using it in a judicial proceeding are therefore distinct, and within the description of fabricating false evidence for the purpose specified in S. 479-A, Criminal Procedure Code, the offence of forgery is not included. In any event the offence penalised under S. 471, Indian Penal Code can never be covered by sub-section (1) of S. 479-A. Therefore for taking proceeding against a person who is found to have used a false document dishonestly or fraudulently in any judicial proceeding resort may only be had to S. 476, CrPC. *Babu Lal* v. *State of U.P.*, AIR 1964 SC 725: (1964) 4 SCR 957: (1964) 1 Cri LJ 555, 557.

Bench Strength **5**. Coram: *P.B. Gajendragadkar, K. Subba Rao, K.N. Wanchoo*, **J.C. Shah** and *Raghubar Dayal*, JJ. [Date of decision: 18-9-1963]

See also 1964 (1) Cri LJ 489: (1964) 3 SCR 980 and AIR 1963 SC 816: 1963 (1) Cri LJ 803

[9123] — S. 479-A(1) — Only provision for making complaint for intentionally giving false evidence

Bearing in mind the non-obstante clause at the commencement of S. 479-A and the provisions of sub-section (6) it would follow that only the provisions of sub-section (1) of S. 479-A must be resorted to by the Court for the purpose of making a complaint against a person for intentionally giving false evidence or for intentionally fabricating false evidence at any stage of the proceeding before it. *Shabir Hussain Bholu* v. *State of Maharashtra*, AIR 1963 SC 816, 819: 1963 Supp (1) SCR 501: (1963) 1 Cri LJ 803.

Bench Strength **3**. Coram: *Syed Jafer Imam, N. Rajagopala Ayyangar* and **J.R. Mudholkar**, JJ. [Date of decision: 28-9-1962]

[9124] — Ss. 479-A(1) and (5) — Complaint against a witness for perjury — Opportunity for hearing — *No finding recorded by Appellate Court making an order under sub-section (5) that the witness has intentionally given a false statement etc., etc, — No opportunity given to the witness to be heard — Order is illegal*

The High Court, when it ordered a complaint to be made did not record a finding that the appellant had intentionally given any false evidence or that it was expedient to proceed against him for the eradication of perjury and in the interest of justice. The appellant was also not given a proper hearing as referred by S. 479-A (5).

Held :

The order appealed against having been made in breach of the express provisions of sub-sections (1) and (5) of S. 479-A is illegal. *B.K. Pal Chaudhry* v. *State of Assam*, AIR 1960 SC 133: (1960) 1 SCR 945: 1960 Cri LJ 174.

Bench Strength **3**. Coram: *S.K. Das*, **A.K. Sarkar** and *M. Hidayatullah*, JJ. [Date of decision: 7-10-1959]

[9125] — Ss. 479-A(1) and (5) — Complaint against a witness for perjury — Order by Appellate Court under sub-section (5) — *No opportunity of being heard given to the witness as required by sub-section (5) — Order is illegal*

In a case where complaint is made under sub-section (5) of S. 479-A by Appellate Court, the terms of both sub-sections (1) and (5) have to be complied with. The combined effect of these sub-sections is to require the Court intending to make a complaint, to record a finding that in its opinion a person appearing as a witness has intentionally given false evidence and that for the eradication of the evils of perjury and in the interests of justice, it is expedient that such witness should be prosecuted for the offence and to give the witness proposed to be proceeded against, an opportunity of being heard as to whether a complaint should be made or not. *B.K. Pal Chaudhry* v. *State of Assam*, AIR 1960 SC 133: (1960) 1 SCR 945: 1960 Cri LJ 174.

Bench Strength 3. Coram: *S.K. Das*, **A.K. Sarkar** and *M. Hidayatullah*, JJ. [Date of decision: 7-10-1959]

[9126] — S. 479-A(1) — Finding to determine prima facie case not binding

The finding required to be made by S. 479-A (1) is only of a prima facie nature; it cannot be a finding which would have any force at the trial upon the complaint made pursuant to that finding. Further, this notion of avoiding prejudice would not justify a clear breach of the terms of the section. *B.K. Pal Chaudhry* v. *State of Assam*, AIR 1960 SC 133, 136: (1960) 1 SCR 945: 1960 Cri LJ 174.

Bench Strength 3. Coram: *S.K. Das*, **A.K. Sarkar** and *M. Hidayatullah*, JJ. [Date of decision: 7-10-1959]

— **S. 479-A(5)** *See also* Ss. 479-A(1) and (5)

[9127] — S. 479-A(5) — Court can decide not to make complaint after hearing

The statute by providing in sub-section (5) of S. 479-A that no order directing a complaint shall be lodged without giving the person affected thereby an opportunity of being heard, intended that after giving that hearing it would be open to the Court to decide not to make a complaint. Otherwise there would be no sense in directing that a hearing should be given. Now, the Court may, after giving that hearing, decide not to make a complaint either for the reason that the Court was satisfied that no false evidence was given by the witness concerned or that such evidence was not intentionally false, or lastly, that it was not expedient in the interests of justice or to eradicate the evils of perjury, to make the complaint. *B.K. Pal Chaudhry* v. *State of Assam*, AIR 1960 SC 133, 136: (1960) 1 SCR 945: 1960 Cri LJ 174.

Bench Strength 3. Coram: *S.K. Das*, **A.K. Sarkar** and *M. Hidayatullah*, JJ. [Date of decision: 7-10-1959]

— **S. 479-A(6)** *See* Ss. 476, 479-A(1) and (6)

[9128] — S. 479-A(6) — Bar of — To offences under Ss. 193 and 195, IPC — *Case under S. 325, IPC, investigated by appellant A ending in acquittal — Magistrate holding that B was falsely implicated and filing a complaint against A and others under Ss. 193, 195, 211 and 120-B, IPC — Held, complaint barred by S. 479-A(6), IPC. Ajaib Singh* v. *Joginder Singh*, AIR 1968 SC 1422: (1969) 1 SCR 145: 1969 Cri LJ 4, 5, 6.

Bench Strength 2. Coram: **S.M. Sikri** and *V. Ramaswami*, JJ. [Date of decision: 30-4-1968]

[9129] — Ss. 480, 482 and 484 — Powers under

The Court is competent under S. 482, CrPC, to forward any case offending its dignity to a Magistrate having jurisdiction to try it, if it considers that the offender deserves a higher punishment than what can be inflicted under S. 480. Again the Court is entitled under S. 484, to discharge the offender on his submitting an apology, although it has already adjudged him to punishment under S. 480 or forward his case for trial under S. 482. *Bathina Ramakrishna Reddy* v. *State of Madras*, AIR 1952 SC 149: 1952 SCR 425: 1952 Cri LJ 832.

Bench Strength 5. Coram: *Patanjali Sastri, C.J.* and *M.C. Mahajan*, **B.K. Mukherjea**, *S.R. Das* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 14-2-1952]

— **S. 482** *See* Ss. 480, 482 and 484

— **S. 484** *See* Ss. 480, 482 and 484

— **S. 488** *See also* Ss. 490 and 488

[9130] — S. 488 — Expression 'unable to maintain itself' — *CrPC, 1973, S. 125*

A comparative study of the old and new provisions would show that while in S. 488 the condition "unable to maintain itself" apparently attached only to the child and not to the wife, in S. 125, this condition has been expressly made applicable to the case of wife. *Bhagwan Dutt* v. *Kamla Devi*, (1975) 2 SCC 386: 1975 SCC (Cri) 563: AIR 1975 SC 83: (1975) 2 SCR 483: (1975) MLJ (Cri) 81.

Bench Strength 3. Coram: *Y.V. Chandrachud*, **R.S. Sarkaria** and *A.C. Gupta*, JJ. [Date of decision: 17-10-1974]

[9131] — S. 488 — Scope of — "Corresponding provisions of the new Code", and S. 484(2)(b), CrPC, 1973 held, does not mean identical provisions — *S. 125, Criminal Procedure Code, 1973, corresponds to Section 488, Criminal Procedure Code, 1898, despite the disentitlement of maintenance under the new provision to a major child who does not suffer from any infirmity — General Clauses Act, 1897, S. 24, distinguished — Judicial orders and sentences, as against statutory instru-*

ments, which have attained finality, held, do not have to answer the test of being consistent with the provisions of the new Code — Order under S. 488, Criminal Procedure Code, 1898 would therefore continue after the coming into force of CrPC, 1973 subject however to change or cancellation under S. 127, Criminal Procedure Code, 1973 because of change in the circumstances — CrPC, 1973, Ss. 484(2)(b), 125 and 127. Jagir Singh v. Ranbir Singh, (1979) 1 SCC 560: 1979 SCC (Cri) 348: AIR 1979 SC 381: 1979 Cri LJ 318: (1979) 16 ACC 74.

Bench Strength 2. Coram: *Jaswant Singh* and **O. Chinnappa Reddy**, JJ. [Date of decision: 5-11-1978]

[9132] — S. 488 — Limited/restricted estate given to female Hindu towards her maintenance under a compromise entered in proceedings under S. 488 CrPC, 1898 after commencement of the Act — *Held, as soon as the property came in her possession, the limited estate was transformed into absolute estate by operation of sub-section (1) of S. 14 notwithstanding the fact the property was acquired under an instrument of compromise containing limitations or restrictions — Sub-section (2) of S. 14 is not attracted when property is acquired in lieu of right of maintenance — Hindu Succession Act, 1956, S. 14 — CrPC, 1973, S. 125. Nazar Singh v. Jagjit Kaur,* (1996) 1 SCC 35: AIR 1996 SC 855.

Bench Strength 2. Coram: **B.P. Jeevan Reddy** and *S.B. Majmudar*, JJ. [Date of decision: 13-11-1995]

[9133] — S. 488 — Not repealed by Hindu Adoptions and Maintenance Act, 1956 — Scope of the provisions

There is no inconsistency between the Hindu Adoption and Maintenance Act and S. 488, CrPC. Both can stand together and the scope of the two laws is different. Section 488 is only a summary remedy available to persons of all religions and has no relation to the personal law of the parties. Section 4(*b*) of the Maintenance Act does not repeal or affect the provision contained in S. 488, CrPC. *Nanak Chand v. Chandra Kishore Aggarwal,* (1969) 3 SCC 802: 1970 SCC (Cri) 127: AIR 1970 SC 446: 1970 Cri LJ 522.

Bench Strength 2. Coram: **S.M. Sikri** and *V. Ramaswami*, JJ. [Date of decision: 20-5-1969]

[9134] — S. 488 — "Child", meaning of — Whether Includes major child as well

The word 'child' in S. 488, CrPC does not mean a minor son or daughter and the real limitation is contained in the expression "unable to maintain itself". *Nanak Chand v. Chandra Kishore Aggarwal,* (1969) 3 SCC 802: 1970 SCC (Cri) 127: AIR 1970 SC 446: 1970 Cri LJ 522.

Bench Strength 2. Coram: **S.M. Sikri** and *V. Ramaswami*, JJ. [Date of decision: 20-5-1969]

[9135] — S. 488 — Claim of maintenance — Procedure — Preliminary enquiry not contemplated — *Enquiry to be held after notice to the respondent*

Section 488 of the Code does not contemplate a preliminary enquiry before issuing a notice, but lays down that all evidence under that Chapter should be taken in the presence of the respondent or his pleader, indicating thereby that one enquiry only should be held after notice. *Nand Lal Misra v. Kanhaiya Lal Misra,* AIR 1960 SC 882: (1960) 3 SCR 431: 1960 Cri LJ 1246.

Bench Strength 2. Coram: **K. Subba Rao** and *J.C. Shah*, JJ. [Date of decision: 1-4-1960]

[9136] — S. 488 — Maintenance of wives, children and parents — Purpose — Measure of social justice to prevent vagrancy and destitution — *CrPC, 1973, S. 125* (Paras 18 to 25). *Chanmuniya v. Virendra Kumar Singh Kushwaha,* (2011) 1 SCC 141.

Bench Strength 2. Coram: *G.S. Singhvi* and **A.K. Ganguly**, JJ. [Date of decision: 7-10-2010]

Jagir Kaur v. Jaswant Singh, AIR 1963 SC 1521: (1963) 2 Cri LJ 413; Nanak Chand v. Chandra Kishore Aggarwal, (1969) 3 SCC 802: 1970 SCC (Cri) 127; Capt. Ramesh Chander Kaushal v. Veena Kaushal, (1978) 4 SCC 70: 1978 SCC (Cri) 508; Vimala v. Veeraswamy, (1991) 2 SCC 375: 1991 SCC (Cri) 442; Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556: 1985 SCC (Cri) 245, relied on

[9137] — S. 488 — Does not confer an absolute right on a neglected wife — *Exercise of Magistrate's discretion under. Bhagwan Dutt v. Kamla Devi,* (1975) 2 SCC 386: 1975 SCC (Cri) 563: AIR 1975 SC 83: (1975) 2 SCR 483: (1975) MLJ (Cri) 81.

Bench Strength 3. Coram: *Y.V. Chandrachud*, **R.S. Sarkaria** and *A.C. Gupta*, JJ. [Date of decision: 17-10-1974]

[9138] — S. 488 — "Wife" — Interpretation — Long cohabitation without valid marriage — Entitlement of such woman to maintenance — *Considering that there was divergence of judicial opinion on interpretation of word "wife" in S. 125 CrPC, 1973, matter referred to larger Bench in light of Protection of Women from Domestic Violence Act, 2005, which gave wide interpretation to terms like "domestic abuse" and "domestic relationship" which included live-in relationship and entitles such women to reliefs under 2005 Act — Opinion expressed that a broad and expansive interpretation should be given to term "wife" to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a precondition for maintenance under S. 125 CrPC, so as to fulfil true spirit and essence of the beneficial provision of maintenance under*

S. 125 — Protection of Women from Domestic Violence Act, 2005, S. 3 Expln. 1 cl. (iv), Ss. 21, 22 and 26 — Constitution of India, Art. 141 — Words and Phrases — "Wife" — CrPC, 1973, S. 125 (Paras 26 to 42). *Chanmuniya* v. *Virendra Kumar Singh Kushwaha*, (2011) 1 SCC 141.

Bench Strength **2**. Coram: *G.S. Singhvi* and **A.K. Ganguly**, JJ. [Date of decision: 7-10-2010]

Dwarika Prasad Satpathy v. Bidyut Prava Dixit, (1999) 7 SCC 675: 1999 SCC (Cri) 1345; Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav, (1988) 1 SCC 530: 1988 SCC (Cri) 182; Savitaben Somabhai Bhatiya v. State of Gujarat, (2005) 3 SCC 636: 2005 SCC (Cri) 787; Marvin v. Marvin, (1976) 18 Cal 3d 660, considered

[9139] — S. 488 — Maintenance petition — Procedure — *Magistrate holding preliminary enquiry before issuing notice to the respondent — Rejecting the petition on the ground that there was no prima facie case — Procedure is illegal — Enquiry must have been held after notice*

The appellant, a minor, through his mother filed a petition for maintenance against the respondent. The Magistrate without issuing a notice to the respondent held an enquiry and after holding that there was no prima facie case rejected the petition.

Held :

The procedure adopted being against the provisions of S. 488(6) that all evidence should be taken in the presence of the respondent or his pleader was illegal. The appellant was not given full opportunity to establish his case in the manner prescribed by law. *Nand Lal Misra* v. *Kanhaiya Lal Misra*, AIR 1960 SC 882: (1960) 3 SCR 431: 1960 Cri LJ 1246.

Bench Strength **2**. Coram: **K. Subba Rao** and *J.C. Shah*, JJ. [Date of decision: 1-4-1960]

[9140] — S. 488 — Nature — Not inconsistent with S. 23 of the Hindu Adoptions and Maintenance Act, 1956. *Bhagwan Dutt* v. *Kamla Devi*, (1975) 2 SCC 386: 1975 SCC (Cri) 563: AIR 1975 SC 83: (1975) 2 SCR 483: (1975) MLJ (Cri) 81.

Bench Strength **3**. Coram: *Y.V. Chandrachud*, **R.S. Sarkaria** and *A.C. Gupta*, JJ. [Date of decision: 17-10-1974]

See also (1969) 3 SCC 802.

[9141] — S. 488 — Nature of order passed under — *Effect on civil proceedings*

The order passed in an application filed under S. 488 of the Code of Criminal Procedure is a summary order which does not finally determine the rights and obligations of the parties thereto. It is an order made in a proceeding under a provision enacted with a view to provide a summary remedy for providing maintenance, and for preventing vagrancy. The decision of the Criminal Court that there was a marriage between Barbara and Sethurathinam and that it was a valid marriage will not operate as decisive in any civil proceeding between the parties for determining those questions. The Civil Court in hearing the proceeding initiated by the husband will decide it on the evidence which may be produced before the Court uninfluenced by the decision of the High Court as to the factum of the ceremony of marriage or as to the alleged conversion of the wife to Hinduism before her marriage or as to the validity of a marriage between a Hindu male and a Christian female. *S. Sethurathinam Pillai* v. *Barbara*, (1971) 3 SCC 923: 1972 SCC (Cri) 171.

Bench Strength **5**. Coram: **J.C. Shah**, *K.S. Hegde*, *A.N. Grover*, *A.N. Ray* and *I.D. Dua*, JJ. [Date of decision: 25-3-1970]

[9142] — Ss. 488 and 489(1) — Determination of amount of maintenance payable to wife — *Wife's income — Discretion of Magistrate*

The mere fact that the language of S. 488(1) does not expressly make the inability of a wife to maintain herself a condition precedent not the maintainability of her petition, does not imply that while determining her claim and fixing the amount of maintenance, the Magistrate is debarred from taking into consideration the wife's own separate income or means of support. There is a clear distinction between a wife's locus standi to file a petition under S. 488 and her being entitled, on merits, to a particular amount of maintenance thereunder.

Proof of preliminary condition attached to a neglected child will establish only his competence to file the petition but his entitlement to maintenance, particularly the fixation of its amount, will still depend upon the discretion of the Magistrate. As the Magistrate is required to exercise that discretion in a just manner, the income of the wife, also, must be put in the scales of justice as against the means of the husband.

The object of these provisions being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs and requirements of the wife for such moderate living can be fairly determined, only if her separate income also is taken into account together with the earnings of the husband and his commitments. Besides there is a definite indication in the language of the associate

S. 489(1), that the financial resources of the wife are also a relevant consideration in making such a determination.

The "circumstances" contemplated by S. 489(1) must include financial circumstances and in that view, the inquiry as to the change in the circumstances must extend to a change in the financial circumstances of the wife.

Hence in determining the amount of maintenance under S. 488(1), the Magistrate is competent to take into consideration the separate income and means of the wife. *Bhagwan Dutt* v. *Kamla Devi*, (1975) 2 SCC 386: 1975 SCC (Cri) 563: AIR 1975 SC 83: (1975) 2 SCR 483: (1975) MLJ (Cri) 81.

Bench Strength 3. Coram: *Y.V. Chandrachud*, **R.S. Sarkaria** and *A.C. Gupta*, JJ. [Date of decision: 17-10-1974]

— S. 488(1) *See* Ss. 531 and 488(1)

[9143] — S. 488(3) — Wife filing application for maintenance on ground that her husband contracted a second marriage — *Cl. (3) of S. 488 justifies wife's refusal to live with her husband in such a case — Held — Husband is under legal obligation to maintain her — CrPC, 1973, S. 125(3) Expl. Deochand* v. *State of Maharashtra*, (1974) 4 SCC 610: 1974 SCC (Cri) 646: AIR 1974 SC 1488.

Bench Strength 3. Coram: *A.N. Ray, C.J.* and **Y.V. Chandrachud** and *V.R. Krishna Iyer*, JJ. [Date of decision: 4-4-1974]

[9144] — S. 488(8) — Jurisdiction — Interpretation of — Meaning of "resides", "is" and "last resided" — *Proceedings under the section to be taken at a place where the husband or father resides, permanently or temporarily, or where he last resided in any district in India or where he happens to be at the time the proceedings are initiated. Jagir Kaur* v. *Jaswant Singh*, AIR 1963 SC 1521: (1964) 2 SCR 73: (1963) 2 Cri LJ 413.

Bench Strength 3. Coram: **K. Subba Rao**, *Raghubar Dayal* and *J.R. Mudholkar*, JJ. [Date of decision: 13-2-1963]

[9145] — S. 488(8) — Wife and daughter's petition — Jurisdiction — *Respondent born in India — Married the petitioner in India — Later migrated to Africa — Owned property in Ludhiana District, Punjab — When petition filed, resided in District Ludhiana — The respondent last resided in Ludhiana and the petition was maintainable in the Court of a Magistrate in Ludhiana District*

Where the respondent husband was born in India, married the petitioner wife in India, migrated to Africa, later took the petitioner wife to Africa where the daughter petitioner was born, sent back both the petitioners, to Ludhiana District in India, acquired property in Ludhiana District and when the petition was filed he was in Ludhiana District, the petition under S. 488 was maintainable in Ludhiana District. *Jagir Kaur* v. *Jaswant Singh*, AIR 1963 SC 1521: (1964) 2 SCR 73: (1963) 2 Cri LJ 413.

Bench Strength 3. Coram: **K. Subba Rao**, *Raghubar Dayal* and *J.R. Mudholkar*, JJ. [Date of decision: 13-2-1963]

— S. 489(1) *See also* Ss. 488 and 489(1)

[9146] — S. 489(1) — Word 'circumstances' — Meaning of

The 'circumstances' contemplated by S. 489(1) must include financial circumstances and in that view, the inquiry as to the change in the circumstances must extend to a change in the financial circumstances of the wife. *Bhagwan Dutt* v. *Kamla Devi*, (1975) 2 SCC 386: 1975 SCC (Cri) 563: AIR 1975 SC 83: (1975) 2 SCR 483: (1975) MLJ (Cri) 81.

Bench Strength 3. Coram: *Y.V. Chandrachud*, **R.S. Sarkaria** and *A.C. Gupta*, JJ. [Date of decision: 17-10-1974]

[9147] — Ss. 490 and 488 — Order under the section obtained before partition from a place that came to lie within Pakistan after partition — *The order is enforceable and executable in India after the partition*

Where the order was a competent order of a domestic tribunal when it was made and could then have been enforced in the Courts within India, in the absence of any specific bar the order cannot lose its Indian nationality simply because the place in which it was born was later made foreign territory.

Where there is specific legislation, effect must be given to it. But where, as here, there is nothing, then in the absence of a specific bar an order which was good and competent when it was made and which was passed by a Tribunal which was domestic at the date of its making and which could, at that date, have been enforced in an Indian Court, does not lose its efficacy by reason of the partition. *Kishore Lal* v. *Shanti Devi*, AIR 1953 SC 441: 1953 Cri LJ 1923, 1924.

Bench Strength 3. Coram: *Fazl Ali, M.C. Mahajan* and **Vivian Bose**, JJ. [Date of decision: 18-9-1951]

[9148] — S. 491 — Challenge on grounds in S. 491, CrPC, 1898 other than in cl. (1)(b) not barred — *Constitution of India, Art. 359*

Per majority

It is only in regard to that class of cases falling under S. 491(1)(*b*) where the legality of the detention is challenged on grounds which fell under Art. 359(1) and the Presidential Order that the bar would operate. In all other cases falling under S. 491(1) the bar would be inapplicable and proceedings taken on behalf of the detenu will have to be tried in accordance with law. These categories of pleas have been mentioned by way of illustration, and so they should not be read as exhausting all the pleas which do not fall within the purview of the Presidential Order. *Makhan Singh Tarsikka* v. *State of Punjab*, AIR 1964 SC 381, 400: (1964) 4 SCR 797: (1964) 1 Cri LJ 269.

Bench Strength 7. Coram: **P.B. Gajendragadkar**[1], *A.K. Sarkar*[1], **K. Subba Rao**[2], *K.N. Wanchoo*[1], *M. Hidayatullah*[1], *K.C. Das Gupta*[1] and *J.C. Shah*[1], JJ. [Date of decision: 2-9-1963]

[9149] — S. 491 — Constitution of India, Art. 372

Per Ray, C.J.

There was no statutory right to enforce the right to personal liberty other than that in S. 491 of the Criminal Procedure Code before the commencement of the Constitution which could be carried over after its commencement under Art. 372. *ADM* v. *Shivakant Shukla*, (1976) 2 SCC 521: AIR 1976 SC 1207: 1976 Cri LJ 945.

Bench Strength 5. Coram: **A.N. Ray, C.J.**[1] and **H.R. Khanna**[5], **M.H. Beg**[2], **Y.V. Chandrachud**[3] and **P.N. Bhagwati**[4], JJ. [Date of decision: 28-4-1976]

[9150] — S. 491 (after amendment in 1923) — Enforcement of right to personal liberty — *Right to obtain a direction in the nature of habeas corpus*

Per Ray, C.J.

After the amendment of S. 491 of the Code of Criminal Procedure in 1923 the right to obtain a direction in the nature of a habeas corpus became a statutory right to a remedy in India. After 1923 it was not open to any party to ask for a writ of habeas corpus as a matter of common law. Also Art. 21 is not a common law right. There was no pre-existing common law remedy to habeas corpus. Further, no common law right which corresponds to a fundamental right can exist as a distinct right apart from the fundamental right.

The provisions of S. 491 of the Criminal Procedure Code have been repealed recently as being superfluous in view of Art. 226. Even if the section existed today it could not be exercised as a separate right distinct from the fundamental right, the enforcement of which is suspended by the Presidential Order. There was no statutory right to enforce the right to personal liberty other than that in S. 491 of the Criminal Procedure Code before the commencement of the Constitution which could be carried over after its commencement under Art. 372.

Per Khanna, J.

Constitutional recognition of the remedy of writ of habeas corpus did not obliterate or abrogate the statutory remedy of writ of habeas corpus under S. 491, CrPC, 1898. Although the remedy of writ of habeas corpus is not now available under the new Code of Criminal Procedure, 1973, the same remedy is still available under Art. 226 of the Constitution. *ADM* v. *Shivakant Shukla*, (1976) 2 SCC 521: AIR 1976 SC 1207: 1976 Cri LJ 945.

Bench Strength 5. Coram: **A.N. Ray, C.J.**[1] and **H.R. Khanna**[5], **M.H. Beg**[2], **Y.V. Chandrachud**[3] and **P.N. Bhagwati**[4], JJ. [Date of decision: 28-4-1976]

[9151] — S. 491 — A woman who has attained majority is free to stay in any place she likes without constraint by her parents or alleged husband — *Constitution of India — Article 32 — Particular writs — Habeas corpus, Arts. 32 and 226 — Habeas corpus — Constitution of India, Art. 21. Gian Devi* v. *Supdt., Nari Niketan, Delhi*, (1976) 3 SCC 234: 1976 SCC (Cri) 387.

Bench Strength 3. Coram: **H.R. Khanna**, *Y.V. Chandrachud* and *P.K. Goswami*, JJ. [Date of decision: 27-8-1974]

[9152] — S. 491 — Habeas corpus — Rejection of application under S. 491, CrPC does not operate as res judicata to a petition under Art. 32 — *Constitution of India — Article 32. Ajit Kumar Kaviraj* v. *Distt. Magistrate*, (1975) 3 SCC 264: 1974 SCC (Cri) 872: AIR 1974 SC 1917: (1975) 2 SCR 21: 1974 Cri LJ 1304.

Bench Strength 2. Coram: *P. Jaganmohan Reddy* and **P.K. Goswami**, JJ. [Date of decision: 6-9-1974]

[9153] — S. 491 — Habeas corpus application under — *T.N. Revenue Recovery Act, 1864 (2 of 1864), S. 48 — Constitution of India, Arts. 14, 19, 31 and 22 — IT Act, 1961, S. 46(2)*

A sum of Rs 70,000 was due from the petitioner for arrears of income tax for assessment years 1943-44, 1945-46 to 1948-49 some amount was realised by the Collector in pursuance of a certificate issued by the Income Tax Officer under S. 46(2) of he Income Tax Act, and by the Income Tax Officer himself under S. 46(5-A) of the Act. Still Rs 61,668 remained outstanding. The petitioner sold certain properties of his between

18-11-1947 and 25-3-1948 for Rs 23,100, soon after the notice of demand was served on him on 6-11-1947. He had closed his old business at Cannanore in August 1947 and set up a new firm in 1948 at Telichery. The Collector had reason to believe that the petitioner "was wilfully withholding payment of arrears of tax and had been guilty of fraudulent conduct in order to evade payment o tax". The Collector, accordingly, issued a warrant of arrest under S. 48 of the Madras Revenue Recovery Act, 1864, and lodged the petitioner in Central Jail, Cannanore. The petitioner moved a writ of *habeas corpus* under S. 491 CrPC. It was contended that S. 46(2) of the Income Tax Act merely authorised the Collector to recover the amount of arrears of Income Tax, but it did not give him any authority to arrest the defaulter. The act of arrest was not a mode of recovery of the arrears of tax, but it was a punishment for failure to pay.

Held :

The authority given to the Collector by S. 46(2) of the Income Tax Act is to recover the arrears of tax as if it were an arrears of land revenue. The preamble of the Madras Revenue Recovery Act, 1864 states that the laws relating to the collection of the public revenue should be consolidated and simplified and S. 5 provides for the manner in which the arrears of revenue may recovered. It reads, "whenever revenue may be in arrear it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by the sale of the defaulter's movable and immovable property, or by execution against the person of the defaulter in manner hereinafter provided." This section clearly sets out the mode of recovery of arrears of revenue, that is to say, either by the sale of the movable or immovable property of the defaulter, or by execution against his person in the manner provided by the Act. Section 48 provides that when arrears of revenue cannot be liquidated by the sale of the property of the defaulter then the Collector, if he has reason to believe that the defaulter is wilfully withholding payment of the arrears or has been guilty of fraudulent conduct in order to evade payment of tax, can lawfully cause the arrest and imprisonment of the defaulter. This section read with S. 5 makes it abundantly clear that the arrest of the defaulter is one of the modes by which the arrears of revenue can be recovered, to be resorted to if the said arrears cannot be liquidated by the sale of the defaulter's property. There is not a suggestion in the entire section that the arrest is by way of punishment for mere default. Where an arrest is made under S. 48 after complying with its provisions, the arrest is not for any offence committed or a punishment for defaulting in any payment. The mode of arrest is no more than a mode for recovery of the amount due.

There is nothing in S. 48 of the Act which requires the Collector to give the defaulter an opportunity to be heard before arresting him. It is true that the Collector must have reason to believe that the defaulter is wilfully withholding payment or has been guilty or fraudulent conduct in order to evade payment. The Collector, therefore, must have some material upon which he bases his belief — a belief which must be rational belief — and a Court may look into that material in appropriate cases in order to find out if the conditions laid down in the section have been fulfilled or not. From the affidavits filed in the High Court by the Collector and the Income Tax Officer it is quite clear that there was material upon which the Collector could base his belief that the respondent was wilfully withholding payment of the arrears of tax and had been guilty of fraudulent conduct in order to evade payment. The Collector was, therefore, justified in arresting the respondent.

Having regard to the previous decisions of the Supreme Court in *A.K. Gopalan* v. *State of Madras*, 1950 SCR 88; *State of Punjab* v. *Ajaib Singh*, 1953 SCR 254; and *Purushottam Govindji Hallai* v. *B.M. Desai, Additional Collector of Bombay*, 1955 28 ITR 891 (SC), neither S. 48 of the Madras Revenue Recovery Act, 1864 nor S. 46(2) of the Income Tax Act violates Arts. 14, 19, 21 and 22 of the Constitution. *Collector of Malabar* v. *Erimmal Ebrahim Hajee*, AIR 1957 SC 688: 1957 SCR 970: (1957) 2 MLJ (SC) 115: (1957) 32 ITR 124: 1957 Cri LJ 1030.

Bench Strength **5**. Coram: *S.R. Das, C.J.* and **Syed Jafer Imam**, *S.K. Das, P. Govinda Menon* and *A.K. Sarkar*, **JJ.** [Date of decision: 11-4-1957]

(1954) 26 ITR 509, reversed

[9154] — S. 491 — Habeas Corpus — Custody of infants — *Practice of Courts has always been to exercise the power to deliver the custody of infants to mothers*

Section 491 is expressly concerned with directions of the nature of a habeas corpus. The English principles applicable to the issue of a writ of habeas corpus, therefore, apply here. In fact the Courts in this country have always exercised the power to direct under S. 491 in a fit case that the custody of an infant be delivered to the applicant i.e. mother. *Gohar Begum* v. *Suggi*, AIR 1960 SC 93: (1960) 1 SCR 597: 1960 Cri LJ 164, 167, 168.

Bench Strength **3**. Coram: *Syed Jafer Imam*, **A.K. Sarkar** and *K.N. Wanchoo*, **JJ.** [Date of decision: 27-8-1959]

[9155] — S. 491 — Habeas Corpus — Illegal or improper detention — Mohammedan mother's application for custody of her illegitimate daughter — *Respondent entitled in law to detain the custody of the child — Illegitimate father undertaking to bring up the child as his own in case custody restored to mother appellant — Application under the section is maintainable*

Under the Mohammedan law which applies to the case the appellant is entitled to the custody of the child who is her illegitimate daughter no matter who the father of the child is. The respondent has no legal right whatsoever to the custody of the child. Her refusal to make over the child to the appellant therefore resulted in an illegal detention of the child within the meaning of S. 491. The terms of S. 491 would clearly be applicable to the case and the appellant entitled to the order she asked.

'*A*' the illegitimate father of the child has acknowledged the paternity of the child. So in law the child can claim to be maintained by him. She has no such right with the respondent. There is no single reason how the interest of the child would be better served if she was left in the custody of the respondent and not with the appellant. *Gohar Begum* v. *Suggi*, AIR 1960 SC 93: (1960) 1 SCR 597: 1960 Cri LJ 164, 167, 168.

Bench Strength **3**. Coram: *Syed Jafer Imam*, **A.K. Sarkar** and *K.N. Wanchoo*, JJ. [Date of decision: 27-8-1959]

[9156] — S. 491 — Habeas Corpus — Mohammedan can proceed under Guardians and Wards Act for getting custody of her minor daughter — The provisions of the Act do not bar an application under S. 491

The Mohammedan appellant has a right to proceed under the Guardians and Wards Act for recovering the custody of her daughter. But she had also a clear right to an order for the custody of the child under S. 491 of the CrPC. The fact that she had a right under the Guardians and Wards Act is no justification for denying her the right under S. 491. *Gohar Begum* v. *Suggi*, AIR 1960 SC 93: (1960) 1 SCR 597: 1960 Cri LJ 164, 167, 168.

Bench Strength **3**. Coram: *Syed Jafer Imam*, **A.K. Sarkar** and *K.N. Wanchoo*, JJ. [Date of decision: 27-8-1959]

[9157] — S. 491 — Habeas Corpus — Writ by the High Court — Disobedience will amount to contempt of Court even if the order was illegal — *Only defence open is inability to comply*

Even if the direction was inexpedient, an order had been made for bringing before the Court and it had to be complied with unless the appellant could plead and prove his inability to comply with it. The question whether the Court ought, on the materials present before it, to have called upon the appellant to bring 'K' in Court is something which does not enter into the obedience of the order made. A direction given by the High Court in a proceeding for a writ of habeas corpus for the production of the body of a person has to be carried out and if disobeyed the contemner is punishable by attachment and imprisonment. A valid excuse will, however, be that it is impossible to obey the order. When the Court did make an order for the production of 'K' even if another Court would have taken some other steps it had to be carried out unless it was impossible for the appellant to comply with it. High Court's commitment for contempt was justified because the High Court rightly reached the conclusion that the appellant having the knowledge of the whereabouts of 'K' and having the custody of her through another was wilfully and deliberately disobeying the direction of the Court. In so far as the offence of contempt is concerned there was a manifest disobedience of the order and the High Court could punish it brevi manu by ordering the appellant to be detained in prison. The High Court's powers for punishment of contempt have been preserved by the Constitution and they are also inherent in a Court of Record. The learned Judges were perhaps in error in describing it as contempt in facie curiae. That is contempt of a different sort. This was contempt by disobedience of an order of the High Court which is sometimes a civil contempt punishable under the CPC and sometimes a criminal contempt punishable by imprisonment. *Mohd. Ikram Hussain* v. *State of U.P.*, AIR 1964 SC 1625: (1964) 5 SCR 86: (1964) 2 Cri LJ 590, 598: (1964) All Cri R 252.

Bench Strength **2**. Coram: **M. Hidayatullah** and *K.C. Das Gupta*, JJ. [Date of decision: 9-10-1963]

[9158] — S. 491 — Writ of Habeas Corpus — Husband's writ for regaining custody of his wife is maintainable — *Writ not ordinarily demanded when facts have first to be established*

The writ of habeas corpus issues not only for release from detention by the State but also for release from private detention. At Common Law a writ of habeas corpus was available to the husband for regaining the custody of his wife if she was wrongfully detained by anyone from him without her consent. What amounts to wrongful detention of the wife is, of course, a question for the Court to decide in each case and different circumstances may exist either entitling or disentitling a husband to this remedy. There was also no material irregularity vitiating the order for inexpediency is not the same thing as irregularity and all that has been pointed out is that the High Court acted without sufficient enquiry and deliberation. We shall say something about this because this criticism is perhaps justified.

Exigence of the writ at the instance of a husband is very rare in English Law, and in India the writ of habeas corpus is probably never used by a husband to regain his wife and the alternative remedy under S. 100 of the CrPC is always used. Then there is the remedy of a civil suit for restitution of conjugal rights. Husbands take recourse to the latter when the detention does not amount to an offence and to the former if it does. In both these remedies all the issues of fact can be tried and the writ of habeas corpus is probably not demanded in similar cases if issues of fact have first to be established. This is because the writ of habeas corpus is festinum remedium and the power can only be exercised in a clear case. It is of course singularly inappropriate in cases where the petitioner is himself charged with a criminal offence in respect of the very person for whose custody he demands the writ.

A writ of habeas corpus at the instance of a man to obtain possession of a woman alleged to be his wife does not issue as a matter of course. Though a writ of right, it is not a writ of course especially when a man seeks the assistance of the Court to regain the custody of a woman. Before a court accedes to this request it must satisfy itself at least prima facie that the person claiming the writ is in fact the husband and further whether valid marriage between him and the woman could at all have taken place. *Mohd. Ikram Hussain* v. *State of U.P.*, AIR 1964 SC 1625: (1964) 5 SCR 86: (1964) 2 Cri LJ 590, 598: (1964) All Cri R 252.

Bench Strength 2. Coram: **M. Hidayatullah** and *K.C. Das Gupta*, JJ. [Date of decision: 9-10-1963]

[9159] — S. 491 — Writ of Habeas Corpus — By a husband for custody of wife — Some circumstances remaining undetermined before the writ was filed — *In habeas corpus proceedings Court can order inquiry into facts*

The writ nisi in this case for the production of '*K*' should have been preceded by some more enquiry. It is wrong to think that in habeas corpus proceedings the Court is prohibited from ordering an inquiry into a fact. All procedure is always open to a court which is not expressly prohibited and no rule of the Court has laid down that evidence shall not be received, if the court requires it. No such absolute rule was brought to our notice. It may be that further evidence would have borne out what '*M*' stated and then the order could always be passed for the production of '*K*' but if the evidence did not bear out what '*M*' alleged then the order which the appellant disobeyed and for which he has to suffer imprisonment would never have been passed. *Mohd. Ikram Hussain* v. *State of U.P.*, AIR 1964 SC 1625: (1964) 5 SCR 86: (1964) 2 Cri LJ 590, 598: (1964) All Cri R 252.

Bench Strength 2. Coram: **M. Hidayatullah** and *K.C. Das Gupta*, JJ. [Date of decision: 9-10-1963]

[9160] — S. 491(1)(b) — Bar under Art. 359, Constitution of India applies to proceedings under S. 491(1)(b), CrPC, 1898 for habeas corpus — *Constitution of India, Art. 359*

Per majority

The argument that Art. 359(1) and the Presidential Order issued under it do not apply to the proceedings under S. 491(1)(*b*) cannot be sustained. The prohibition contained in the said article and the Presidential Order will apply as much to proceedings under S. 491(1)(*b*) as to those under Art. 226(1) and Art. 32(1).

So the proceedings taken on behalf of the appellants before the respective High Courts challenging their detention on the ground that the impugned Act and the Rules are void because they contravene Arts. 14, 21 and 22 are incompetent for the reason that the fundamental rights which are alleged to have been contravened are specified in the Presidential Order and all citizens are precluded from moving any Court for the enforcement of the said specified rights.

Per Subba Rao, J. (dissenting)

The rights, substantive as well as procedural, conferred under Part III and Art. 226 on the one hand and under S. 491 of the Code on the other, are different. Under Arts. 32 and 226, and affected party can approach the Supreme Court or the Court, as the case may be, only in the manner prescribed under Art. 32(2) or Art. 226 i.e. by way of writs and orders mentioned therein; he must ask the court for the enforcement of his fundamental rights. The relief implies that he must establish that he has a fundamental right that his fundamental right has been infringed by the State and, therefore, the Court should give the appropriate relief for the enforcement of that right. Both the right as well as the procedure are the creatures of the Constitution. Whereas S. 491 of the Code assumes the existence of the "rule of law" and confers a power on the High Court to direct persons in illegal detention to be set at liberty. It is not bound by any technical procedures envisaged by the Constitution. If a person approaches the High Court alleging that he or some other person has been illegally detained, the Court calls upon the detaining authority to sustain the validity of the action. The onus of proof lies on the custodian to establish that the person is detained under a legal process; but if it fails to establish that the person is detained under law, the said person may be released. It is true that the detaining authority will have to satisfy the court that the law under which the detention is made is a valid one. It may also be true that in scrutinising the validity of that law the court has to go into the question whether the law offends any of the fundamental rights mentioned in Part III of the Constitution. But that circumstance does not by any process of involved reasoning make the said proceeding one initiated in exercise of the right to move the High Court for the enforcement of the petitioner's fundamental right. The distinction between the two lies in the fact that one is an enforcement of a petitioner's fundamental right and the other, a decision on the unconstitutionality of a law because of its infringement of fundamental rights generally.

The absolute discretionary jurisdiction conferred under S. 491 of the Code cannot be put on a par with the jurisdiction conferred under Art. 226 of the Constitution hedged in by constitutional limitations. Section 491 of the Code does not contemplate any right to move a court by any affected party, but the court can exercise the statutory power whenever it thinks fit, if the fact of illegal detention of a person is brought to its notice.

The expression "right to move any Court for the endorsement of such of the rights conferred by Part III" could legitimately refer only to the right to move under Art. 32 or Art. 226 of the Constitution for the said specific relief and could not be applied without doing violence to the language used to the exercise of the statutory power conferred on the High Courts under S. 491 of the Code. If that be so, the expression "all proceedings pending in any Court for the enforcement of the rights" used in the second limb of Art. 359 must also necessarily refer to proceedings initiated in exercise of the right to move envisaged in the first limb of the article. *Makhan Singh Tarsikka* v. *State of Punjab*, AIR 1964 SC 381, 397, 39: (1964) 4 SCR 797: (1964) 1 Cri LJ 269.

Bench Strength 7. Coram: **P.B. Gajendragadkar**[1], *A.K. Sarkar*[1], **K. Subba Rao**[2], *K.N. Wanchoo*[1], *M. Hidayatullah*[1], *K.C. Das Gupta*[1] and *J.C. Shah*[1], JJ. [Date of decision: 2-9-1963]

— **S. 492** *See* Ss. 4(1)(t) and 492

[9161] — S. 493 — Scope

Section 493 dispenses with the necessity of the Public Prosecutor having to file any written authority, when he is in charge of a particular case. That section clearly deals with a particular case and refers to the Public Prosecutor being in charge of that particular case. Under those circumstances, he is not required to file any written authority. That S. 493 deals with a single specified case and that it applies only to the Public Prosecutor, who is actually in charge of that case is also made clear by the later part of S. 493. That is to the effect that if the Public Prosecutor is in charge of a particular case and, in that particular case, a private person, instructs a pleader to prosecute any person, the Public Prosecutor alone is entitled to conduct the prosecution and the pleader appearing in that case for the private person is only to act under his instructions. The expression 'any person in any such case', occurring in the later part of S. 493, clearly leads to the conclusion that both the Public Prosecutor and the private person, through a pleader, are prosecuting the same case. Hence, that S. 493 deals with a particular case. *State of Punjab* v. *Surjit Singh*, AIR 1967 SC 1214, 1217: (1967) 2 SCR 347: 1967 Cri LJ 1084.

Bench Strength 5. Coram: *K. Subba Rao, C.J.* and *J.C. Shah*, *S.M. Sikri*, *V. Ramaswami* and **C.A. Vaidialingam**, JJ. [Date of decision: 6-1-1967]

— **S. 494** *See also* Ss. 337 and 494

[9162] — S. 494 — Scope

Section 494 itself assumes the withdrawal by a Public Prosecutor of a charge competently made and before a court competent to entertain the application for withdrawal. *Mohd. Safi* v. *State of W.B.*, AIR 1966 SC 69, 73: (1965) 3 SCR 467: 1966 Cri LJ 75.

Bench Strength 3. Coram: *A.K. Sarkar*, **J.R. Mudholkar** and *R.S. Bachawat*, JJ. [Date of decision: 25-3-1965]

[9163] — S. 494 — Scope — Reasons for seeking permission — Duty of the Court when granting permission — Considerations to apply — *Consent of State Government to withdraw from prosecution — Whether proper*

A reading of S. 494 would show that it is the Public Prosecutor who is incharge of the case that must ask for permission of the Court to withdraw from the prosecution of any person either generally or in respect of one or more of the offences for which he is tried. This permission can be sought by him at any stage either during the enquiry or after committal or even before the judgment is pronounced. The section does not, however, indicate the reasons which should weigh with the public prosecutor to move the Court for permission nor the grounds on which the Court will grant or refuse permission. Though the section is in general terms and does not circumscribe the power of the Public Prosecutor to seek permission to withdraw from the prosecution the essential consideration which is implicit in the grant of the power is that it should be in the interest of administration of justice which may be either that it will not be able to produce sufficient evidence to sustain the charge or that subsequent information before prosecuting agency would falsify the prosecution evidence or any other similar circumstance which it is difficult to predicate as they are dependent entirely on the facts and circumstances of each case.

Nonetheless it is the duty of the Court also to see in furtherance of justice that the permission is not sought on grounds extraneous to the interest of justice or that offences which are offences against the State go unpunished merely because the Government as a matter of general policy or expediency unconnected with its duty to prosecute offenders under the law, directs the Public Prosecutor to withdraw from the prosecution and the Public Prosecutor merely does so at its behest.

It appears to us that the wide and general powers which are conferred under S. 494 on the Public Prosecutor to withdraw from the prosecution though they are subject to the permission of the Court have to be exercised by him in relation to the facts and circumstances of that case in furtherance of, rather than as a hindrance to the object of law and justified on the material in the case which substantiate the grounds alleged, not necessary from those gathered by the judicial method but on other materials which may not be strictly on legal or admissible evidence. The Court also while considering the request to grant permission under the said section should not do so as a necessary formality — the grant of it for the mere asking. It may do so only if it is satisfied on the materials placed before it that the grant of it subserves the administration of justice and that permission was not being sought covertly with an ulterior purpose unconnected with the vindication of the law which the executive organs are in duty bound to further and maintain. *M.N. Sankarayarayanan Nair* v. *P. V. Balakrishnan*, (1972) 1 SCC 318: 1972 SCC (Cri) 55: AIR 1972 SC 496: 1972 Cri LJ 301.

Bench Strength **2**. Coram: **P. Jaganmohan Reddy** *D.G. Palekar*, J. [Date of decision: 26-11-1971]

[9164] — S. 494 — Scope — Applicability to committal proceedings — *Application by Public Prosecutor for withdrawal under the section lies in the committal stage also*

The phrase "in other cases before the judgment is pronounced" in S. 494, CrPC, would, in the context, clearly apply to all cases other than those tried by jury. Now, there can be no doubt that at least as regards these other cases, when the consent for withdrawal is given by the Court, the result is either a discharge or an acquittal, according to the stage to which that case has reached, having regard to the two alternatives (*a*) and (*b*) of S. 494, CrPC. It follows that at least in every class of cases other than those tried by jury, the withdrawal can be at any stage of the entire proceedings. This would include also the stage of preliminary inquiry in a sessions case triable without a jury. The wording is perfectly wide and general and would apply to all classes of cases which are capable of terminating either in a discharge or in acquittal, according to the stage at which the section is invoked.

Various legislative changes from time to time with reference to S. 494 of the CrPC and the definition of the word 'inquiry' confirm the view that S. 494 of the CrPC is wide enough to cover every kind of inquiry and trial and that the word 'trial' in the section has not been used in any limited sense. *State of Bihar* v. *Ram Naresh Pandey*, AIR 1957 SC 389: 1957 SCR 279: 1957 Cri LJ 567, 71, 74.

Bench Strength **3**. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 31-1-1957]

[9165] — S. 494 — Withdrawal from the prosecution on political reasons, if otherwise proper, held, valid — *Ultimate discretion on Public Prosecutor though Government may give its suggestions, advice or guidance to him — Court's jurisdiction under, is supervisory and it has only to see if the PP has applied his independent mind in the broader interest of public justice and for that purpose can ascertain the reasons for the withdrawal move but cannot reappreciate the grounds of the same — CrPC, 1973, S. 321. Rajender Kumar Jain* v. *State*, (1980) 3 SCC 435: 1980 SCC (Cri) 757: AIR 1980 SC 1510: 1980 Cri LJ 1084: (1980) 17 ACC 201.

Bench Strength **2**. Coram: *V.R. Krishna Iyer* and **O. Chinnappa Reddy**, JJ. [Date of decision: 2-5-1980]

[9166] — S. 494 — Foreign practice — Analogy of the English practice would be misleading as an aid to the construction of S. 494 — *Foreign decisions and foreign laws. State of Bihar* v. *Ram Naresh Pandey*, AIR 1957 SC 389, 394: 1957 SCR 279: 1957 Cri LJ 567.

Bench Strength **3**. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 31-1-1957]

[9167] — S. 494 — Enabling provision — Interpretation of Statutes — Particular statutes or provisions — Enabling provision

Section 494, CrPC is an enabling one and vests in the Public Prosecutor the discretion to apply to the Court for its consent to withdraw from the prosecution of any person. The consent, if granted, has to be followed up by his discharge or acquittal, as the case may be. The section gives no indication as to grounds on which the Public Prosecutor may make the application, or the considerations on which the Court is to grant its consent. There can be no doubt, however, that the resultant order, on the granting of the consent, being an order of 'discharge' or 'acquittal' would attract the applicability of correction by the High Court under Ss. 435, 436 and 439 or 417, CrPC. The function of the Court therefore, in granting its consent may well be taken to be a judicial function. It follows that in granting the consent the Court must exercise a judicial discretion. But it does not follow that the discretion is to be exercised only with reference to material gathered by the judicial method. Otherwise the apparently wide language of S. 494, CrPC would become considerably narrowed down in its application. *State of Bihar* v. *Ram Naresh Pandey*, AIR 1957 SC 389, 392: 1957 SCR 279: 1957 Cri LJ 567.

Bench Strength 3. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 31-1-1957]

[9168] — S. 494 — "In the cases before judgment is pronounced"

The phrase "in other cases before the judgment is pronounced" in S. 494, Criminal Procedure Code, would, in the context, clearly apply to all cases other than those tried by jury. Now, there can be no doubt that at least as regards these other cases, when the consent for withdrawal is given by the Court, the result is either a discharge or an acquittal, according to the stage to which that case has reached, having regard to the two alternatives (*a*) and (*b*) of S. 494, Criminal Procedure Code. It follows that at least in every class of cases other than those tried by jury, the withdrawal can be at any stage of the entire proceedings. This would include also the stage of preliminary inquiry in a sessions case triable without a jury. The wording is perfectly wide and general and would apply to all classes of cases which are capable of terminating either in a discharge or in acquittal, according to the stage at which the Section is invoked. *State of Bihar* v. *Ram Naresh Pandey*, AIR 1957 SC 389: 1957 SCR 279: 1957 Cri LJ 567.

Bench Strength 3. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 31-1-1957]

[9169] — S. 494 — Interpretation — Withdrawal from prosecution of a case started on a private complaint — Effect and competence — *Complaint filed by a private party and prosecuted by him — Public Prosecutor, who is in charge of a particular case and is actually conducting the prosecution can file an application under the section — Public Prosecutor's application in a case started on private complaint and prosecuted by the complainant not maintainable*

The reasonable interpretation of S. 494 is that it is only the Public Prosecutor, who is in charge of a particular case and is actually conducting the prosecution, that can file an application under that section, seeking permission to withdraw from the prosecution. If a Public Prosecutor is not in charge of a particular case and is not conducting the prosecution, he will not be entitled to ask for withdrawal from prosecution, under S. 494 of the Code.

The expression withdrawn from the prosecution of any person, occurring in S. 494, contemplates that the Public Prosecutor, who files the application for withdrawal under that section, must be the Public Prosecutor, who is already incharge of that particular case, in which the application is filed.

Section 494 indicates the stage at which the Public Prosecutor can file an application for withdrawal; and it also deals with the effect of such withdrawal. In cases tried by jury the application must be filed before the return of the verdict and, in all other cases, before the judgment is pronounced. The effect of such withdrawal is also indicated in cls. (*a*) and (*b*) of S. 494. *State of Punjab* v. *Surjit Singh*, AIR 1967 SC 1214: (1967) 2 SCR 347: 1967 Cri LJ 1084, 89, 91.

Bench Strength 5. Coram: *K. Subba Rao, C.J.* and *J.C. Shah, S.M. Sikri, V. Ramaswami* and **C.A. Vaidialingam**, JJ. [Date of decision: 6-1-1967]

[9170] — S. 494 — "Judgment" — Whether a committal order is "judgment" for the purposes of the section — Committal order is a judgment

"Judgment" is a word of general import and means only "judicial determination or decision of a Court". There is no reason to think in the context of this section that it is not applicable to an order of committal which terminates the proceeding so far as the inquiring Court is concerned. It may be, that in the context of Chap. XXVI of the Code 'judgment' may have a limited meaning. In any view, even if 'judgment' in this context is to be understood in a limited sense, it does not follow that an application during preliminary inquiry, which is necessarily prior to judgment in the trial, is excluded. *State of Bihar* v. *Ram Naresh Pandey*, AIR 1957 SC 389: 1957 SCR 279: 1957 Cri LJ 567, 71, 74.

Bench Strength 3. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 31-1-1957]

[9171] — S. 494 — Nature of power — Whether the Section is in pari materia with S. 333, CrPC

The power contained in the section gives a general executive direction to withdraw from the prosecution subject to the consent of the Court which may be determined on many possible grounds and is therefore wide and uncontrolled by any other provision in the Code nor is it in pari materia with S. 333 which enables the Advocate General at any stage in a trial by the High Court and before the return of the verdict to inform the Court if he thinks fit on behalf of the Government that he will not further prosecute the defendant upon the charge and on such information being given the case against the accused comes to an end. This power of entering a nolle prosequi under S. 333, Criminal Procedure Code, is not dependent upon any permission of the Court. *M.N. Sankarayarayanan Nair* v. *P. V. Balakrishnan*, (1972) 1 SCC 318: 1972 SCC (Cri) 55: AIR 1972 SC 496: 1972 Cri LJ 301.

Bench Strength 2. Coram: **P. Jaganmohan Reddy** *D.G. Palekar*, J. [Date of decision: 26-11-1971]

[9172] — S. 494 — Occurrence leading to the prosecution case arising out of labour union trouble — Industrial peace and harmony subsequently prevailing — *Held, prosecution justified in withdrawing the cases*

Ultimately every offence has a social or economic cause behind it and if the State feels that the elimination or eradication of the social or economic cause of the crime would be better served by not proceeding with the prosecution, the State should clearly be at liberty to withdraw from the prosecution. *State of Orissa* v. *Chandrika Mohapatra*, (1976) 4 SCC 250: 1976 SCC (Cri) 584: AIR 1977 SC 903: 1977 Cri LJ 773.

Bench Strength 2. Coram: **P.N. Bhagwati** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 23-8-1976]

[9173] — S. 494 — Permission to withdraw from prosecution — When should not be refused — *CrPC, 1973, S. 321*

It would certainly not subserve the interests of justice to direct retrial of the respondents despite the settlement arrived at, after a lapse of nearly 18 years. Such a course would give rise to unnecessary industrial unrest for no reason whatever.

The Public Prosecutor may withdraw from the prosecution of a case not merely on the ground of paucity of evidence but also in order to further the broad ends of public justice which may include appropriate social, economic and political purposes. The ultimate guiding consideration while granting a permission to withdraw from the prosecution must always be the interest of administration of justice. The court must satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes. *State of Punjab* v. *Union of India*, (1986) 4 SCC 335: 1986 SCC (Cri) 441: AIR 1987 SC 188.

Bench Strength 2. Coram: *A.P. Sen* and *B.C. Ray*, JJ. [Date of decision: 24-9-1986]

[9174] — S. 494 — Scope — Withdrawal from prosecution — Application of the Public Prosecutor — Powers and duty of the court — *Before passing an order and discharging or acquitting the accused the Court must satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised — Application on the ground of inadequacy of evidence — Not necessary for the Court to record evidence before allowing the application — Evidence already on record may be taken into consideration — In the absence of any evidence, whatsoever, it is not an improper exercise of discretion for the Court to grant consent before evidence is taken — Court's function in deciding such an application is a judicial function*

Section 494, CrPC gives no indication as to the grounds on which the Public Prosecutor may make the application, or the considerations on which the Court is to grant its consent. There can be no doubt, however, that the resultant order, on the granting of the consent, being an order of 'discharge' or 'acquittal' would attract the applicability of correction by the High Court under Ss. 435, 436 and 439 or 417, CrPC. The function of the Court, therefore, in granting its consent may well be taken to be a judicial function. It follows that in granting the consent the Court must exercise a judicial discretion. But it does not follow that the discretion is to be exercised only with reference to material gathered by the judicial method. Otherwise the apparently wide language of S. 494, CrPC would become considerably narrowed down in its application. The judicial function, implicit in the exercise of the judicial discretion for granting the consent would normally mean that the Court has to satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised, or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes. Section 494 cannot be taken to place on the Court the responsibility for a prima facie determination of a triable issue. For instance the discharge that results therefrom need not always conform to the standard of "no prima facie case" under Ss. 209(1) and 253(1), CrPC, or of "groundlessness" under

Ss. 209(2) and 253(2), CrPC. This is not to say that a consent is to be lightly given on the application for the Public Prosecutor, without a careful and proper scrutiny of the grounds on which the application for consent is made. The application for consent may legitimately be made by the Public Prosecutor for reasons not confined to the judicial prospects of the prosecution. If so, it is clear that, what the Court has to determine, for the exercise of its discretion in granting or withholding consent, is not a triable issue on judicial evidence. It is not correct that where the application is on the ground of inadequacy of evidence requiring judicial consideration, it would be manifestly improper for the Court to consent withdrawal before recording the evidence and taking it into consideration. This does not, however, mean that such evidence as may already have been recorded by the time the application is made is not to be looked into and considered in such cases, in order to determine the impropriety of the withdrawal as amounting to abuse or an improper interference with the normal course of justice. *State of Bihar* v. *Ram Naresh Pandey*, AIR 1957 SC 389: 1957 SCR 279: 1957 Cri LJ 567, 71, 74.

Bench Strength **3**. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 31-1-1957]

[9175] — S. 494 — Taking accomplice evidence

Section 337 of the CrPC has already been held not to offend Art. 14 and the matter of taking accomplice evidence outside S. 337 by using S. 494 or otherwise is not very different. *Laxmipat Choraria* v. *State of Maharashtra*, AIR 1968 SC 938, 947: (1968) 2 SCR 624: 1968 Cri LJ 1124.

Bench Strength **2**. Coram: **M. Hidayatullah** and *C.A. Vaidialingam*, JJ. [Date of decision: 14-12-1967]

[9176] — S. 494 — Withdrawal from prosecution after case committed to Sessions, held, results in acquittal — *Hence accused not liable to be prosecuted again in view of S. 300 of the new Code of 1973 — By virtue of S. 484 of the new Code the pending trial even after April 1, 1974 governed by the old Code. State of Karnataka* v. *K.H. Annegowda*, (1977) 1 SCC 417: 1977 SCC (Cri) 106: AIR 1977 SC 357: 1977 Cri LJ 220: (1977) 2 SCR 350.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *A.C. Gupta*, JJ. [Date of decision: 8-12-1976]

[9177] — S. 494 — Withdrawal of the prosecution — Rule for according permission restated — *Held, expediency cannot, but lack of evidence can be, good ground for withdrawal — High Court not justified in suo motu interfering with accord of consent by magistrate based on his examination of the case-diary. State of Orissa* v. *Chandrika Mohapatra*, (1976) 4 SCC 250: 1976 SCC (Cri) 584: AIR 1977 SC 903: 1977 Cri LJ 773.

Bench Strength **2**. Coram: **P.N. Bhagwati** and *S. Murtaza Fazal Ali*, JJ. [Date of decision: 23-8-1976]

— S. 495 *See also* Ss. 198 and 495

[9178] — S. 495 — Permission to continue prosecution after complainant's death — Right of legal heirs of deceased complainant — *Held, they can file petition under S. 302 CrPC, 1973 seeking the said permission — If any such permission is sought for by the said heirs, the same has to be considered in its perspective by the court dealing with the matter — CrPC, 1973, Ss. 256 and 302* (Para 7). *Balasaheb K. Thackeray* v. *Venkat*, (2006) 5 SCC 530: (2006) 2 SCC (Cri) 630: (2006) 102 Cut LT 323: (2006) 3 KLT 509.

Bench Strength **2**. Coram: **Arijit Pasayat** and *C.K. Thakker*, JJ. [Date of decision: 5-7-2006]

Ashwin Nanubhai Vyas v. State of Maharashtra, (1967) 1 SCR 807: AIR 1967 SC 983: 1967 Cri LJ 943; Jimmy Jahangir Madan v. Bolly Cariyappa Hindley, (2004) 12 SCC 509: 2004 SCC (Cri) Supp 317, followed

— S. 496 *See* Ss. 4(1)(f) and 496

See also Ss. 561-A and 496

See also Ss. 561-A, 498 and 496

[9179] — Ss. 496, 497 and 498 — Scope

Sections 496, 497 and 498 of the CrPC are not exhaustive of powers of the Court in regard to terms and conditions of bail particularly when the High Court under S. 561-A of the CrPC deals with cases of the type. *Hazari Lal Gupta* v. *Rameshwar Prasad*, (1972) 1 SCC 452: 1972 SCC (Cri) 208: AIR 1972 SC 484: (1972) 2 SCR 666: 1972 Cri LJ 298.

Bench Strength **2**. Coram: **A.N. Ray** and *D.G. Palekar*, JJ. [Date of decision: 2-12-1971]

[9180] — Ss. 496 and 497 — Grant of bail in case of bailable and non-bailable offences

In the matter of admission to bail, the CrPC makes a distinction between bailable and non-bailable offences. The grant of bail to a person accused of a non-bailable offence is discretionary under S. 497 of the Code and the person released on bail may again be arrested and committed to custody by an order of the High Court, the Court of Session and the Court granting the bail. Under S. 498 of the Code, the High Court and the Court of Session may release any person on bail and by a subsequent order cause any person so admitted to bail to be arrested and committed to custody. A person accused of a bailable offence is treated differently; at any time while under detention without a warrant and at any stage of the proceedings before the Court before which he is brought, he has the right under S. 496 of the Code to be released on bail. *Ratilal Bhanji Mithani* v. *Asstt. Collector of Customs*, AIR 1967 SC 1639, 1640: (1967) 3 SCR 926: 1967 Cri LJ 1576.

Bench Strength **5**. Coram: *K.N. Wanchoo, C.J.* and **R.S. Bachawat**, *J.M. Shelat*, *V. Bhargava* and *G.K. Mitter*, JJ. [Date of decision: 4-5-1967]

[9181] — Ss. 496 and 561-A — Bailable offence — Cancellation of bail — *Bail cancelled by the High Court under S. 561-A in a bailable offence — S. 496 ceases to apply and the accused cannot under S. 496 claim to be released on bail*

The effect of the order passed under S. 561-A, just like effect of an order passed under S. 497(5) and S. 498(2), would not be only that the bail is cancelled but that the accused is ordered to be arrested and committed to custody. The order committing the accused to custody is a special order passed by a criminal Court of competent jurisdiction. His commitment to custody thereafter is not by reason of the fact that he is alleged to have committed a bailable offence at all; his commitment to custody is the result of a judicial order passed on the ground that he has forfeited his bail and that his subsequent conduct showed that, pending the trial, he cannot be allowed to be at large. Now where a person is committed to custody under such an order, it would not be open to him to fall back upon his rights under S. 496, for S. 496 would in such circumstances be inapplicable to his case. It may be that there is no specific provision for the cancellation of the bond and the re-arrest of a person accused of a bailable offence; but that does not mean that S. 496 entitles such an accused person to be released on bail, even though it may be shown that he is guilty of conduct entirely subversive of a fair trial in the Court. *Talab Haji Hussain* v. *Madhukar Purshottam Mondkar*, AIR 1958 SC 376: 1958 SCR 1226: 1958 Cri LJ 701, 705, 70.

Bench Strength **3**. Coram: *N.H. Bhagwati*, *J.L. Kapur* and **P.B. Gajendragadkar**, JJ. [Date of decision: 7-2-1958]

[9182] — Ss. 496 and 561-A — Bailable offence — Cancellation of bail — *High Court has inherent power to cancel bail even in a bailable offence*

The High Court has, under S. 561-A, CrPC, inherent power to cancel the bail granted to a person accused of a bailable offence under S. 496, IPC. This inherent power conferred on High Courts under S. 561-A has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself. Procedure whether criminal or civil, must serve the higher purpose of justice, and it is only when the ends of justice are put in jeopardy by the conduct of the accused that the inherent powers are and should be exercised. *Talab Haji Hussain* v. *Madhukar Purshottam Mondkar*, AIR 1958 SC 376: 1958 SCR 1226: 1958 Cri LJ 701, 705, 70.

Bench Strength **3**. Coram: *N.H. Bhagwati*, *J.L. Kapur* and **P.B. Gajendragadkar**, JJ. [Date of decision: 7-2-1958]

[9183] — Ss. 496 and 561-A — Cancellation of bail by High Court

The Code makes no express provision for the cancellation of a bail granted under S. 496. Nevertheless, if at any subsequent stage of the proceedings, it is found that any person accused of a bailable offence is intimidating, bribing or tampering with the prosecution witnesses or is attempting to abscond, the High Court has the power to cause him to be arrested and to commit him to custody for such period as it thinks fit. This jurisdiction springs from the overriding inherent powers of the High Court and can be invoked in exceptional cases only when the High Court is satisfied that the ends of justice will be defeated unless the accused is committed to custody.

This inherent power of the High Court exists and is preserved by S. 561-A of the Code. The person committed to custody under the orders of the High Court cannot ask for his release on bail under S. 496, but the High Court may by a subsequent order admit him to bail again. *Ratilal Bhanji Mithani* v. *Asstt. Collector of Customs*, AIR 1967 SC 1639, 1640: (1967) 3 SCR 926: 1967 Cri LJ 1576.

Bench Strength **5**. Coram: *K.N. Wanchoo, C.J.* and **R.S. Bachawat**, *J.M. Shelat*, *V. Bhargava* and *G.K. Mitter*, JJ. [Date of decision: 4-5-1967]

[9184] — Ss. 496 to 502 — Bail — Nature and exercise of judicial discretion in the exercise of — Principles and considerations before the Court — *CrPC, 1973, Ss. 436, 437 and 439. Babu Singh* v. *State of U.P.*, (1978) 1 SCC 579: 1978 SCC (Cri) 133: AIR 1978 SC 527: 1978 MLJ (Cri) 465: (1978) 2 SCR 777: 1978 Cri LJ 651.

Bench Strength **2**. Coram: **V.R. Krishna Iyer** and *D.A. Desai*, JJ. [Date of decision: 31-1-1978]

— S. 497 *See* Ss. 496 and 497
See also Ss. 496, 497 and 498
See also Ss. 496 to 502

[9185] — Ss. 497 and 498 — Bail — Nature and relative scope of the sections — *When may the Sessions Court and when the High Court be approached for cancellation of bail, pointed out —*

Matters to be considered before cancelling bail — Effect of S. 397(3), Criminal Procedure Code, 1973 — CrPC, 1973, Ss. 437 and 439(1) & (2). Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118: 1978 SCC (Cri) 41: AIR 1978 SC 179: 1978 Cri LJ 129.

Bench Strength 2. Coram: **P.K. Goswami** and *V.D. Tulzapurkar*, JJ. [Date of decision: 6-12-1977]

— S. 498 *See* Ss. 496, 497 and 498

See also Ss. 496 and 502

See also Ss. 497 and 498

See also Ss. 561-A, 498 and 496

[9186] — S. 498 — Bail — Pendency of investigation — *Apprehension of accused's tampering with the evidence, and further indulgence in similar activities — Allegation of abscondence — No materials placed to show apprehension — Grant of bail — Justification of*

Held, while we are impressed with the extraordinary nature of the facts of this case and that the investigation should proceed fairly and efficiently, it is impossible to say that no bail should be granted to the respondents during the pendency of the whole of the investigation. ... There must be absolute certainty of leaving the country before a court would detain an accused indefinitely during the whole period of investigation. If this consideration is kept aside, the only consideration would be the reasonable apprehension that evidence would be tampered with. No material has been placed before us to show that we should come to a finding different from that of the High Court. *State of Maharashtra* v. *Nainmal Punjaji Shah*, (1969) 3 SCC 904: 1970 SCC (Cri) 170.

Bench Strength 2. Coram: **S.M. Sikri** and *G.K. Mitter*, JJ. [Date of decision: 31-10-1969]

[9187] — S. 498 — Court should be satisfied only about a prima facie case and need not go into its merits — *Where the accused are policemen, court should keep in mind the possibility of intimidation of witnesses and tampering with the documents by such accused to prove themselves innocent — CrPC, 1973, S. 439. Niranjan Singh* v. *Prabhakar Rajaram Kharote*, (1980) 2 SCC 559: 1980 SCC (Cri) 508: AIR 1980 SC 785: 1980 Cri LJ 426: 1980 MLJ (Cri) 573.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *A.P. Sen*, JJ. [Date of decision: 10-3-1980]

[9188] — S. 498 — 'Custody' — Meaning of — *Held, includes physical surrender by the accused before the court and submission to its directions — CrPC, 1973, S. 439*

In the context of S. 439, 'custody' is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court. A person is in custody within the meaning of S. 439 when he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. In the present case the accused, did physically submit before the Sessions Judge and therefore, the jurisdiction to grant bail arose. *Niranjan Singh* v. *Prabhakar Rajaram Kharote*, (1980) 2 SCC 559: 1980 SCC (Cri) 508: AIR 1980 SC 785: 1980 Cri LJ 426: 1980 MLJ (Cri) 573.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *A.P. Sen*, JJ. [Date of decision: 10-3-1980]

Affirmed in State of Haryana v. Dinesh Kumar, (2008) 3 SCC 222

[9189] — S. 498 — Once bail is refused, Magistrate, held, not entitled to stay issuance of non-bailable warrant to enable the accused to move to higher court — *CrPC, 1973, S. 439. Niranjan Singh* v. *Prabhakar Rajaram Kharote*, (1980) 2 SCC 559: 1980 SCC (Cri) 508: AIR 1980 SC 785: 1980 Cri LJ 426: 1980 MLJ (Cri) 573.

Bench Strength 2. Coram: **V.R. Krishna Iyer** and *A.P. Sen*, JJ. [Date of decision: 10-3-1980]

[9190] — S. 498 — Bail in a case under S. 120-B IPC and Ss. 3 and 5 Indian Official Secrets Act — Nature of offence must also be taken into account — *Case against the accused about military affairs for which maximum punishment was 14 years — Not a fit case in which the High Court should have enlarged the accused on bail*

Among other considerations, which a court has to take into account in deciding whether bail should be granted in a non-bailable offence, is the nature of the offence; and if the offence is of a kind in which bail should not be granted considering its seriousness, the Court should refuse bail even though it has very wide powers under S. 498 of the CrPC. Now S. 3 of the Act erects an offence which is prejudicial to the safety or interests of the State and relates to obtaining, collecting, recording or publishing or communicating to any other person any secret official code or password or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy. Obviously, the offence is of a very serious kind affecting the safety or the interests of the State. Further the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment, or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, it is punishable with fourteen years' imprisonment. The case against the respondent is in relation to the military affairs of the Government, and 'prima facie' therefore, the respondent if convicted would be liable up to fourteen years' imprisonment. In these circumstances considering the nature of the offence, it seems to us that this is not a case where discretion, which undoubtedly vests in the Court, under S. 498 of the CrPC, should have been exercised in favour of the respondent. *State* v. *Captain Jagjit Singh*, AIR 1962 SC 253: (1962) 3 SCR 622: (1962) 1 Cri LJ 215.

Bench Strength **3**. Coram: **K.N. Wanchoo**, *K.C. Das Gupta* and *J.C. Shah*, JJ. [Date of decision: 14-9-1961]

[9191] — S. 498 — Bail in non-bailable offence — Considerations that a court is to take into account

The Court while considering a bail application under S. 498, CrPC should take into account the various considerations such as, nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public or the State, and similar other considerations which arise when a court is asked for bail in a non-bailable offence. It is true that under S. 498 of the CrPC, the powers of the High Court in the matter of granting bail are very wide; even so where the offence is non-bailable, various considerations such as those indicated above have to be taken into account before bail is granted in a non-bailable offence. *State* v. *Captain Jagjit Singh*, AIR 1962 SC 253: (1962) 3 SCR 622: (1962) 1 Cri LJ 215.

Bench Strength **3**. Coram: **K.N. Wanchoo**, *K.C. Das Gupta* and *J.C. Shah*, JJ. [Date of decision: 14-9-1961]

[9192] — S. 498(1) — Bail in a case under S. 120 IPC and Ss. 3 and 5, Official Secrets Act — *Court while dealing with a bail application must decide if the offence is bailable or non-bailable — If in doubt, must proceed as if the offence was non-bailable*

Whenever an application for bail is made to the Court, the first question that it has to decide is whether the offence for which the accused is being prosecuted is bailable or otherwise. In case the Court thought that it would not be proper to express an opinion at that stage on the question whether the offence in the case fell under S. 5 of the Indian Official Secrets Act which was a bailable offence or under S. 3 which is not bailable, it should have dealt with the application on the assumption that the offence was under S. 3 and therefore non-bailable. *State* v. *Captain Jagjit Singh*, AIR 1962 SC 253: (1962) 3 SCR 622: (1962) 1 Cri LJ 215.

Bench Strength **3**. Coram: **K.N. Wanchoo**, *K.C. Das Gupta* and *J.C. Shah*, JJ. [Date of decision: 14-9-1961]

— S. 499 *See* Ss. 496 and 502

See also Ss. 502 and 499

See also Ss. 561-A and 499

[9193] — S. 499 — Scope — Date of acceptance of bond — *Surety bond filed on a particular date with an affidavit about sufficiency of the property mentioned in the bond — Counsel also certifying about it — Court sending the bond to Tahsil for verification — Bond shall be deemed to be accepted on the date it was filed*

Where the surety while furnishing the surety bond filed an affidavit stating therein that the property mentioned in the bond was of sufficient valuation and a vakil also certified that the surety possessed sufficient property, and the Magistrate sent the bond to the Tahsil for verification, the bond shall be deemed to be accepted on the date on which it was filed, subject to further orders on the receipt of the Tahsil report.

The provisions of S. 500, CrPC contemplate that the accused is to be released on the execution of the bonds which should be accepted on their face value in the first instance. Section 501, CrPC provides for the issue of a warrant of arrest of the person so released on bail if it is subsequently found that though mistake framed or otherwise insufficient surety had been accepted or if they afterwards became insufficient. Therefore the formal acceptance of the bond on a later date by the Magistrate does not in any way affect surety's liability on that bond from the date it was filed. *Bekaru Singh* v. *State of U.P.*, AIR 1963 SC 430: (1963) 1 SCR 55: (1963) 1 Cri LJ 335, 38.

Bench Strength **2**. Coram: *J.L. Kapur* and **Raghubar Dayal**, JJ. [Date of decision: 26-3-1962]

[9194] — Ss. 499 and 514 — A surety bond executed in favour of "King Emperor Qaisar-e-Hind" in the year 1953, held, cannot be read, by virtue of Cl. 4 of the 1947 Order, to mean the Government — *Adaptation of Existing Indian Laws Order, 1947, Cl. 4*. *State of Uttar Pradesh* v. *Mohammed Sayeed*, AIR 1957 SC 587: 1957 SCR 770: 1957 BLJR 569: 1957 ALJ 685: 1957 Cri LJ 888.

Bench Strength **3**. Coram: *N.H. Bhagwati*, **Syed Jafer Imam** and *A.K. Sarkar*, JJ. [Date of decision: 26-3-1957]

[9195] — S. 499 and Sch. V, Form 42 — Bond by surety is distinct from that by the accused himself — *Hence, even if by mistake no personal bond is executed by the accused, held, the sureties can be made liable to forfeiture on the accused's failure to appear. Ram Lal* v. *State of U.P.*, (1979) 2 SCC 192: 1979 SCC (Cri) 418: AIR 1979 SC 1498: 1979 ALJ 899: 1980 Cri LJ 826: 1979 MLJ (Cri) 518: (1979) 16 ACC 145.

Bench Strength **2**. Coram: *S. Murtaza Fazal Ali* and **O. Chinnappa Reddy**, JJ. [Date of decision: 5-3-1979]

[9196] — S. 499 and Sch. V Form XIII — Form of bond — *Surety executing the bond, but no bond executed at the back of this form by the accused — The bond is effective*

The mere fact that Form No. XII, Sch. V, CrPC permits the contents of the two bonds one to be executed by the accused and the other by the surety, together, does not mean that both these bonds should be on the same sheet of paper. Where the surety 'B' executes a bond on such a form, and the accused did not execute his bond at its back, but executed it at the back of the form on which another surety executed the bond the surety bond of the 'B' is also effective. *Bekaru Singh* v. *State of U.P.*, AIR 1963 SC 430: (1963) 1 SCR 55: (1963) 1 Cri LJ 335, 36.

Bench Strength **2**. Coram: *J.L. Kapur* and **Raghubar Dayal**, JJ. [Date of decision: 26-3-1962]

— Ss. 500 to 502 *See* Ss. 496 and 502

[9197] — Ss. 502 and 499 — Scope of — Surety applying for cancellation of surety bond — *Court accepting a fresh surety without complying with the provisions of S. 502 — Provisions of S. 502 are not conditions precedent to the acceptance of fresh bond — There is no illegality and the bond of previous surety stands cancelled and fresh bond takes its place*

These provisions of S. 502 are meant for the continuity of the surety bond on the basis of which an accused has been released on bail till such time that the accused is before the Court and for taking further action in case the accused desires to offer another security in place of the one who is to be discharged. They are not conditions precedent for the acceptance of a fresh surety in place of the earlier one.

Where 'S' the surety of the accused, applied for the discharge of his surety bond, no order was passed on the application on that date and two days after 'B' filed a fresh surety bond which was accepted by the Court, the Court committed no wrong. Bond of 'S' stood cancelled and 'B's took its place. *Bekaru Singh* v. *State of U.P.*, AIR 1963 SC 430: (1963) 1 SCR 55: (1963) 1 Cri LJ 335, 38.

Bench Strength **2**. Coram: *J.L. Kapur* and **Raghubar Dayal**, JJ. [Date of decision: 26-3-1962]

[9198] — S. 503 — Issue of commission under — Application, if rightly rejected

Held, the application for the issue of commission under S. 503, CrPC, not being made out and not in good faith was a misconceived one and was rightly rejected. *Mohd. Husain Umar Kochra* v. *K.S. Dalipsinghji*, (1969) 3 SCC 429: 1970 SCC (Cri) 99: AIR 1970 SC 45: 1970 Cri LJ 9.

Bench Strength **3**. Coram: *S.M. Sikri*, **R.S. Bachawat** and *K.S. Hegde*, JJ. [Date of decision: 31-3-1969]

[9199] — S. 503 — Commission for examination of witness — Essential witnesses examined on commission without proper reasons — Effect — *Accused cannot be held to have fair trial. Dharamanand Pant* v. *State of U.P.*, AIR 1957 SC 594: 1957 SCR 321: 1957 Cri LJ 894, 898.

Bench Strength **4**. Coram: *B. Jagannadhadas*, *Syed Jafer Imam*, **P. Govinda Menon** and *J.L. Kapur*, JJ. [Date of decision: 30-1-1957]

[9200] — Ss. 503 and 506 — Commission to examine witnesses — In what circumstance should be issued — *Court should first make some effort to find out whether normal practice would not be followed and it is after the impossibility of such a process is ascertained that a commission should be issued — The mere fact that proceedings have got protracted for an extraordinary length of time probably for the reason that higher officers concerned were not prepared to take the matter seriously can by itself be no ground for issuing a commission. Dharamanand Pant* v. *State of U.P.*, AIR 1957 SC 594: 1957 SCR 321: 1957 Cri LJ 894, 898.

Bench Strength **4**. Coram: *B. Jagannadhadas*, *Syed Jafer Imam*, **P. Govinda Menon** and *J.L. Kapur*, JJ. [Date of decision: 30-1-1957]

[9201] — Ss. 503 and 506 — Examination of witness on commission — *Witnesses in criminal cases should not be examined on commission except in extreme cases of delay, expense or inconvenience and in particular procedure by way of interrogation should be resorted in unavoidable situations*

As a general rule it may be said that the important witnesses on whose testimony the case against the accused person has to be established, must be examined in court and usually the issuing of a commission should be restricted to formal witnesses or such witnesses who could not be produced without an amount of delay or inconvenience unreasonable in the circumstances of the case. In short, witnesses in a criminal case should not be examined on commission except in extreme cases of delay, expense or inconvenience and in particular the procedure by way of interrogatories should be resorted in unavoidable situations. The discretion to be used by the Magistrate is a judicial one and should not be lightly or arbitrarily exercised. *Dharamanand Pant* v. *State of U.P.*, AIR 1957 SC 594: 1957 SCR 321: 1957 Cri LJ 894, 898.

Bench Strength **4**. Coram: *B. Jagannadhadas*, *Syed Jafer Imam*, **P. Govinda Menon** and *J.L. Kapur*, JJ. [Date of decision: 30-1-1957]

[9202] — S. 503 (before amendment by Act 26 of 1955) — Issue of commission for examination of witnesses — Procedure detailed — District Magistrate acting as a forwarding authority and not passing a proper order on Magistrate's application for issuing a commission — Effect — *Evidence so taken would be improper and cannot be used against the accused — Entire proceedings are vitiated and the evidence of the witnesses taken on commission will have to be excluded*

Before the enactment of S. 97 of Act 26 of 1955 no Magistrate other than a District Magistrate or a Presidency Magistrate could issue a commission and if any such subordinate Magistrate finds it expedient, necessary or essential to have a witness examined on commission, he has to apply to the District Magistrate who will either issue the commission himself or reject the application. The District Magistrate in issuing the commission, or rejecting the request is acting judicially and his orders are subject to supervision and control by the appellate or revisional Court.

Where the District Magistrate has simply acted as a forwarding agency for sending the commission issued by the trying Magistrate and when the essential pre-requisites for the validity of the issuing of a commission has not been complied with, the evidence so taken would be improper and could not be used against the accused. This is a defect which goes to the root of the matter and is vital in content. Thus the entire proceedings are vitiated and the evidence of the witnesses taken on commission will have to be completely eschewed from the record. *Dharamanand Pant* v. *State of U.P.*, AIR 1957 SC 594: 1957 SCR 321: 1957 Cri LJ 894, 898

Bench Strength **4**. Coram: *B. Jagannadhadas*, *Syed Jafer Imam*, **P. Govinda Menon** and *J.L. Kapur*, JJ. [Date of decision: 30-1-1957]

[9203] — S. 504(3) — Examination of witness in foreign country — *Presence of defence lawyer essential*

In every criminal trial the accused is entitled to have the witnesses examined in his presence and if a departure is made and witnesses cannot be brought to Court for one reason or the other whether due to the action of the accused or the inaction or want of diligence on the part of the prosecution, and they have to be examined on commission beyond the frontiers of this country, it is incumbent upon the prosecution and the Court in ensuring a fair and impartial trial to afford to the accused the same facilities for employment of a lawyer, the payment of his to and fro air fare to the place where the Commission will examine witnesses and his daily expenses while he is engaged in the work of the Commission. *Ratilal Bhanji Mithani* v. *State of Maharashtra*, (1971) 1 SCC 523: 1971 SCC (Cri) 231: AIR 1971 SC 1630: 1971 Cri LJ 1188.

Bench Strength **2**. Coram: *S.M. Sikri, C.J.* and **P. Jaganmohan Reddy**, J. [Date of decision: 4-2-1971]

[9204] — Ss. 504(3) and 508-A — Notifications, dated 9-9-1969, issued under S. 504(3) — *Procedure for issuing commissions to the courts of Federal Republic of West Germany notified — Reciprocal arrangements between the Government of India and the Federal Republic of West Germany for examination of witnesses not complete — No notification under S. 508-A specifying the Courts issued — Notification, dated 9-9-1969, is ineffective — No extension of time to be granted*

The provisions contained in Ss. 504 and 508-A of the Code of Criminal Procedure contain complementary provisions for reciprocal arrangements between the Government of India and the Government of a foreign country for commission from Courts in India to specified Courts in the foreign country for examination of witnesses residing in that country vice versa.

No notification under S. 508-A of the Code of Criminal Procedure has been published specifying the courts in the Federal Republic of West Germany by whom commissions for examination of witnesses residing in India may be issued. The notification, dated September 9, 1969, in the present case under S. 504 of the Code of Criminal Procedure is not based upon any existing complete arrangement between the Government of India and the Government of the Federal Republic of West Germany for examination of witnesses residing in West Germany. The notification, dated September 9, 1969, is ineffective for two reasons. First, there is no reciprocal arrangement between the Government of India and the Government of the Federal Republic of West Germany as contemplated in Ss. 504 and 508-A of the Code of Criminal Procedure. Secondly, the notification under S. 504 is nullified and repelled by the affidavit evidence adduced on behalf of the State that no arrangement between the two countries has yet been made.

When the court finds that there is no arrangement in existence, no order for extension of time shall be granted. *Ratilal Bhanji Mithani* v. *State of Maharashtra*, (1972) 3 SCC 793: 1972 SCC (Cri) 861: AIR 1972 SC 1567: 1972 Cri LJ 1055.

Bench Strength 5. Coram: *S.M. Sikri, C.J.* and *J.M. Shelat*, **A.N. Ray**, *I.D. Dua* and *H.R. Khanna*, JJ. [Date of decision: 11-4-1972]

— S. 506 *See* Ss. 503 and 506

— S. 508-A *See* Ss. 504(3) and 508-A

— S. 510 *See* Ss. 162, 270-A and 510

See also Ss. 257 and 510

[9205] — S. 510 — Scope and application — Proof of person having consumed illicit liquor — Adoption of procedure other than prescribed in S. 129-A, Bombay Act, 1949 — Is permissible — S. 510, CrPC applies to a trial under S. 66, Bombay Act, 1949 — *Bombay Prohibition Act, 1949 (25 of 1949), Ss. 66(1)(b) and (2), 129-A and 129-B. Ukha Kolhe* v. *State of Maharashtra*, AIR 1963 SC 1531: (1964) 1 SCR 926: (1963) 2 Cri LJ 418: 1964 Mah LJ 246: 65 Bom LR 793.

Bench Strength 5. Coram: *B.P. Sinha, C.J.*[1] and *P.B. Gajendragadkar*[1], *K.N. Wanchoo*[1], **K.C. Das Gupta**[2] and **J.C. Shah**[1], JJ. [Date of decision: 11-2-1963]

[9206] — S. 510 — Chemical examiner — Duty regarding details of blood stains found on exhibits — *Should if possible indicate the number of blood stains and extent of each stain — Failure may lead to miscarriage of justice*

The Chemical Examiner's duty is to indicate the number of blood stains found by him on each exhibit, and the extent of each stain unless they are too minute or too numerous to be described in detail.

Merely to say that blood was detected on an exhibit, as this report states, is not enough. It may well lead to a miscarriage of justice compelling Judges to acquit when they would have convicted had the report been more revealing. *Prabhu Babaji Navle* v. *State of Bombay*, AIR 1956 SC 51: 1956 Cri LJ 147.

Bench Strength 3. Coram: **Vivian Bose**, *B. Jagannadhadas* and *B.P. Sinha*, JJ. [Date of decision: 19-9-1955]

[9207] — S. 510 — Expression "duly submitted" — Meaning — *Medical Officer collecting blood specimen and handing over to the police officer — Specimen held "duly submitted"*

Where the blood specimen was collected by a Medical Officer and handed over to the Police Officer on demand by him and ultimately submitted to the Chemical Examiner for his examination, it would be regarded as "duly submitted" under S. 510, CrPC. *Ukha Kolhe* v. *State of Maharashtra*, AIR 1963 SC 1531: (1964) 1 SCR 926: (1963) 2 Cri LJ 418: 1964 Mah LJ 246: 65 Bom LR 793.

Bench Strength 5. Coram: *B.P. Sinha, C.J.*[1] and *P.B. Gajendragadkar*[1], *K.N. Wanchoo*[1], **K.C. Das Gupta**[2] and **J.C. Shah**[1], JJ. [Date of decision: 11-2-1963]

[9208] — S. 510 — Fingerprint — Report by Director of Finger Print Bureau — *Report can be used without examining person giving such report. H.P. Admn.* v. *Om Prakash*, (1972) 1 SCC 249: 1972 SCC (Cri) 88: AIR 1972 SC 975: (1972) 2 MLJ 16 (SC): 1972 Cri LJ 606.

Bench Strength 2. Coram: **P. Jaganmohan Reddy** and *D.G. Palekar*, JJ. [Date of decision: 7-12-1971]

[9209] — S. 510 — Only a sample to be sent

It was wholly unnecessary to send all the bottles recovered by the police in the presence of panches and which contained the same stuff for purpose of analysis. *Vijendrajit Ayodhya Prasad Goel* v. *State of Bombay*, AIR 1953 SC 247, 248: 1953 Cri LJ 1097.

Bench Strength 3. Coram: **M.C. Mahajan**, *Vivian Bose* and *B. Jagannadhadas*, JJ. [Date of decision: 13-3-1953]

[9210] — S. 510 — Reports of Chemical Examiner and Imperial Serologist — Major difference of opinion in — Duty of prosecution

In ordinary circumstances there would have been nothing wrong in taking reports of the Imperial Serologist and the Chemical Examiner on record as permitted by the Criminal Procedure Code. When however there is a major difference of opinion in the reports, the duty to explain the difference is on the prosecution and the mere production of the report does not, under the circumstances, prove anything which can weigh against the accused. *Tulsiram Kanu* v. *State*, AIR 1954 SC 1: 1954 Cri LJ 225.

Bench Strength 3. Coram: **Harilal J. Kania, C.J.** and *Patanjali Sastri* and *S.R. Das*, JJ. [Date of decision: 29-1-1951]

[9211] — S. 510-A — Police Officer taking fingerprints of accused not examined — He however submitting an affidavit — *Held, to be* *admissible evidence — Evidence Act, 1872, S. 45 — CrPC, 1973, S. 296. Shankaria* v. *State of Rajasthan*, (1978) 4 SCC 453: 1979 SCC (Cri) 74: AIR 1978 SC 1399: 1978 Cri LJ 1414.

Bench Strength **3**. Coram: **R.S. Sarkaria**, *N.L. Untwalia* and *P.S. Kailasam*, JJ. [Date of decision: 26-4-1978]

— S. 514 *See also* Ss. 499 and 514

[9212] — S. 514 — Applicability of — *Action under S. 514 could be taken only when the bond is taken by the Court under the provision of the Code such as S. 91 — Bond by Procurement Inspector ineffective*

The language of this section is perfectly clear. The power to forfeit and the imposition of the penalty provided for in the later parts of the section arises only if the preliminary conditions are satisfied. *Rameshwar Bhartia* v. *State of Assam*, AIR 1952 SC 405: 1953 SCR 126: 1953 Cri LJ 163, 166.

Bench Strength **2**. Coram: **N. Chandrasekhara Aiyar** and *N.H. Bhagwati*, JJ. [Date of decision: 23-10-1952]

[9213] — S. 514 — Forfeiture — *In 1953 surety bond executed in favour of "the King Emperor Qaisare-Hind" — Is not bond executed under the CrPC — Bond cannot be forfeited under the section*

Since 26-1-1950 no bond executed in favour of the Empress of India could be said to be a bond executed under the Code of Criminal Procedure.

The bond which the respondent had executed was to forfeit to the King Emperor a certain sum of money if he made default in procuring the attendance of the accused before the Court. He did not execute a bond by which he bound himself to forfeit the said sum either to the Government of the Union of India or that of the State of Uttar Pradesh. The bond executed by him in 1953 was a bond unknown to the law of the Republic of India under the Code of Criminal Procedure at the time of its execution. Section 514, CrPC, empowers a court to forfeit a bond which has been executed under the provisions of that Code and since the bond executed by the respondent is not one under the Code of Criminal Procedure, resort could not be had to the provisions of S. 514 of the Code to forfeit the same. *State of Uttar Pradesh* v. *Mohammed Sayeed*, AIR 1957 SC 587: 1957 SCR 770: 1957 BLJR 569: 1957 ALJ 685: 1957 Cri LJ 888.

Bench Strength **3**. Coram: *N.H. Bhagwati*, **Syed Jafer Imam** and *A.K. Sarkar*, JJ. [Date of decision: 26-3-1957]

[9214] — S. 514 — Forfeiture of bond — Show-cause notice is obligatory for proceedings under the section — Absence of such notice vitiates the proceedings

Provisions of S. 514, CrPC show that before a surety becomes liable to pay amount of the bond forfeited it is necessary to give notice why the amount should not be paid and if he fails to show sufficient cause only then the Court can proceed to recover the money. Where show-cause notice is not given the proceedings are not in accordance with law and should therefore be quashed. *Ghulam Mehdi* v. *State of Rajasthan*, AIR 1960 SC 1185: 1960 Cri LJ 1527.

Bench Strength **2**. Coram: *Syed Jafer Imam* and **J.L. Kapur**, JJ. [Date of decision: 21-4-1959]

[9215] — S. 514 — Forfeiture of surety bond

The terms of the surety bond being penal in nature should be very strictly construed — Forfeiture on breach of the very undertaking specified and not any other. *State of Bihar* v. *M. Homi*, AIR 1955 SC 478: (1955) 2 SCR 78: 1955 Cri LJ 1017.

Bench Strength **3**. Coram: *Vivian Bose*, *B. Jagannadhadas* and **B.P. Sinha**, JJ. [Date of decision: 24-3-1955]

[9216] — S. 514 — Forfeiture of surety bond — *Sureties undertaking to produce an accused whose sentence was suspended pending the disposal of his appeal by the Privy Council in the event of his conviction being maintained — In the meantime the jurisdiction of the Privy Council being transferred to Federal Court — Later Supreme Court maintaining the sentence and the accused migrating to Pakistan — The Court concerned has no jurisdiction to initiate proceedings against the sureties under S. 514*

The sureties bound themselves for payment of the amount only in case the accused failed to surrender to the Court concerned within three days of the receipt of the notice of the order or judgment of the Judicial Committee if by the said order or judgment the sentence is upheld either partly or wholly. In view of the clear provision in the bond the terms of which being penal in nature must be very strictly construed, it cannot be said that the contingencies contemplated by the parties has occurred. There was no judgment or order of the Judicial Committee upholding either in part or in whole the sentence against the accused. As the terms of the bond so construed cannot be said to have been fulfilled the penalty stipulated has not been incurred. There is no substance in the contention of the appellant that in the events which had happened there could be no judgment or order of the Judicial Committee and therefore the judgment of the Supreme Court, which by virtue of the constitutional changes had come by the jurisdiction vested in the Privy Council, should be deemed to be the judgment or order contemplated by the parties to the surety bond; firstly, because there is no terms in the bond to the effect that the surety will be bound by any judgment or order given by such other court as may succeed to the jurisdiction then vested in the Judicial Committee of the Privy Council to hear the appeal preferred by the accused against his conviction by the courts in India: and, secondly, because there is no room, while construing the penal clause of a surety bond, for the application of a legal fiction as suggested on behalf of the appellant. *State of Bihar* v. *M. Homi*, AIR 1955 SC 478: (1955) 2 SCR 78: 1955 Cri LJ 1017.

Bench Strength 3. Coram: *Vivian Bose*, *B. Jagannadhadas* and **B.P. Sinha**, JJ. [Date of decision: 24-3-1955]

[9217] — S. 514 — Forfeiture of surety bonds — *Bonds by respondent in favour of accused — Sureties assuring attendance of accused before Magistrate's court on 12-3-1964 — Accused appearing on due date but date extended up to 16-4-1964 — Magistrate issuing circular order directing accused to file applications in miscellaneous court — Accused not appearing on 16-4-1964 — Bond forfeited — Effect of circular order — Terms of bond cannot be varied unilaterally — Accused not bound to appear on 16-4-1964 — Forfeiture not justified — Surety bonds — Explained. State of Maharashtra* v. *Dadamiya Babumiya Sheikh*, (1972) 3 SCC 85: 1972 SCC (Cri) 405: AIR 1971 SC 1722: 1971 Cri LJ 1274.

Bench Strength 3. Coram: *S.M. Sikri, C.J.* and *P. Jaganmohan Reddy* and **I.D. Dua**, JJ. [Date of decision: 6-5-1971]

[9218] — S. 514 — Plea against forfeiture — *Plea that the court had no jurisdiction to forfeit the bond not taken either in the court of the Magistrate who forfeited the bond or in revision — The plea cannot be taken in revision before the High Court — Validity of the order of forfeiture — To be decided on the construction of the surety bond. Ramesh Chandra* v. *State of U.P.*, (1971) 3 SCC 689: 1972 SCC (Cri) 30: AIR 1972 SC 16: 1972 Cri LJ 5: 1972 ALJ 971.

Bench Strength 2. Coram: **A.N. Ray** and *D.G. Palekar*, JJ. [Date of decision: 14-10-1971]

[9219] — Ss. 514 and 523 — Bond given to a police officer — If can be enforced and security forfeited — *S. 523 and U.P. Police Regulations, Regulation 165 — Effect of — CrPC, 1973, S. 446*

Though S. 523, CrPC, read with Regulation 165 of U.P. Police Regulations authorises the police to seize the property and to make a summary order of the custody of the property, but neither S. 523 nor R. 165(*ii*) authorises the police officer to take a bond from the person to whom the property is entrusted. The policy of the law appears to be that the execution of the bond involves a civil liability and, therefore, it is in the fitness of things that it should be executed before a court.

Section 514 clearly shows that a bond for the production of the property seized by the police must be executed before the Court, although a bond for the appearance of any person before the Court can be taken by the police under S. 170(2) of the Code of Criminal Procedure. This section also clearly enjoins that a bond can be forfeited only if it is executed before a court or before a Presidency Magistrate or a Magistrate of the first class.

Since in the present case the bond was not one as contemplated by S. 514, it could not be forfeited.

Even under the new Criminal Procedure Code, 1973 there is no express provision which empowers the police to get a bond from the person to whom the property seized is entrusted.

No observation is being made regarding any other liability of the appellant under the law. *Anwar Ahmad* v. *State of U.P.*, (1976) 1 SCC 154: 1975 SCC (Cri) 785: AIR 1976 SC 680: (1976) 1 SCR 779: 1976 Cri LJ 620.

Bench Strength 2. Coram: *V.R. Krishna Iyer* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 12-9-1975]

— S. 516-A *See* Ss. 523 and 516-A

— S. 517 *See also* Ss. 10 and 517

[9220] — S. 517 — Bond taken by ADM — Propriety. *Debabrata Bandhopadhyaya* v. *State of W.B.*, AIR 1969 SC 189: (1969) 1 SCR 304: 1969 Cri LJ 401.

Bench Strength 3. Coram: **M. Hidayatullah, C.J.** and *V. Ramaswami* and *C.A. Vaidialingam*, JJ. [Date of decision: 2-7-1968]

[9221] — S. 517 — Disposal of property — Property subject-matter of theft case lost while in custody of police — Liability of State to pay compensation to owner — *CrPC, 1973, S. 452*

In the instant case, it is not the case of the State that the property was lost in spite of due care and caution having been taken by it or due to circumstances beyond its control. The articles were alleged to have been kept in the guardroom of the police station and except the formality of a report that they were lost having been lodged no other action was taken by the State against the concerned police officers who were responsible for the custody. Therefore the State cannot successfully resist the application filed by the appellant and the value of the property must be paid to the appellant by the State.

Only the value of the articles recovered and seized by the police is due. Therefore Court must look for material showing value of the articles seized.

In the present case the appellant is entitled not only to the value of the goods but also the costs throughout. *Basavva Kom Dyamangouda Patil* v. *State of Mysore*, (1977) 4 SCC 358: 1977 SCC (Cri) 598: AIR 1977 SC 1749: 1977 Cri LJ 1141: 1977 MLJ (Cri) 486.

Bench Strength 3. Coram: *P.N. Bhagwati*, *R.S. Sarkaria* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 19-4-1977]

[9222] — S. 517 — Held, Court's discretion to "make such order as it thinks fit" regarding disposal of the property is judicial and therefore the order must be based on reason and justice — *Appellant acquitted of charge under S. 302, Indian Penal Code having caused death by licensed gun in self-defence — He never used or attempted to use the gun for commission of any offence in the past — In absence of any special circumstances, the trial Court, held, not justified in arbitrarily ordering for confiscation of the gun without giving any reason and opportunity of hearing to the appellant — CrPC, 1973, S. 452(1). N. Madhavan* v. *State of Kerala*, (1979) 4 SCC 1: 1979 SCC (Cri) 883: AIR 1979 SC 1829: 1979 Cri LJ 1197.

Bench Strength 3. Coram: **R.S. Sarkaria**, *P.N. Shinghal* and *O. Chinnappa Reddy*, JJ. [Date of decision: 7-8-1979]

[9223] — S. 517 — Indemnity bond — Use of — Taken in the name of the State Government, if proper

There is nothing in the words of S. 517, CrPC which excluded the use of an indemnity bond.

The Sessions Judge did not order that the bond should be taken in the name of any particular court. A bond in the name of the Government of West Bengal substantially (if not wholly) complied with the order of the Sessions Judge. *Debabrata Bandhopadhyaya* v. *State of W.B.*, AIR 1969 SC 189, 192: (1969) 1 SCR 304: 1969 Cri LJ 401.

Bench Strength 3. Coram: **M. Hidayatullah, C.J.** and *V. Ramaswami* and *C.A. Vaidialingam*, JJ. [Date of decision: 2-7-1968]

[9224] — S. 517 — Money recovered from accused found not belonging to complainant — *Not to be returned to complainant*

Where in a trial for theft the accused was acquitted on the findings that no offence was committed in respect of the sum recovered from the accused and that it did not belong to the complainant, but the High Court in revision ordered the money to be awarded to the complainant.

Held :

That unless it was found that an offence was committed in respect of the said sum there was no jurisdiction to the High Court to order the payment of the amount to the complainant. Such an order of the High Court cannot be sustained under the clear provisions of S. 517, CrPC unless by due procedure of law the acquittal of the accused is changed into a conviction. *Pushkar Singh* v. *State of M.B.*, AIR 1953 SC 508: 1954 Cri LJ 153.

Bench Strength 3. Coram: *Fazl Ali*, **M.C. Mahajan** and *Vivian Bose*, JJ. [Date of decision: 18-9-1951]

[9225] — S. 517 — Production before Court — Includes Court's order regarding custody of articles

The production before the Court does not mean physical custody or possession by the Court but includes even control exercised by the Court by passing an order regarding the custody of the articles. The object and scheme of the various provisions of the Criminal Procedure Code is that the subject-matter of an offence seized by the police ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. A seizure of the property by the police amounts to a clear entrustment of the property to a government servant and should be restored to the original owner after the necessity to retain it ceases. The property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case the police always acts under the control of the Court and has to take orders from it, at every stage of an enquiry or trial. *Basavva Kom Dyamangouda Patil* v. *State of Mysore*, (1977) 4 SCC 358: 1977 SCC (Cri) 598: AIR 1977 SC 1749: 1977 Cri LJ 1141: 1977 MLJ (Cri) 486.

Bench Strength 3. Coram: *P.N. Bhagwati*, *R.S. Sarkaria* and **S. Murtaza Fazal Ali**, JJ. [Date of decision: 19-4-1977]

[9226] — S. 517 — Scope of the power under S. 517 — S. 61-E of the Bombay District Police Act, 1890

Section 517 contains a general provision for disposal of the property in the circumstances mentioned in the latter part of the section.

The power of the Court no doubt extends to confiscation of property in the custody of the Court but it is not every case in which the Court must necessarily pass an order of confiscation irrespective of the circumstances of the case. It is possible to conceive of cases where the subject-matter of the offence may be property which under the law relating to that offence is liable to be confiscated as a punishment on conviction.

Confiscation is not the only mode of disposal under S. 517 and is singularly inappropriate in a case where the accused is prosecuted for an offence and a fine of Rs 100. It was certainly open to the Court to order the property to be delivered to the person claiming to be entitled to its possession. *Suleman Issa* v. *State of Bombay*, AIR 1954 SC 312, 314: 1954 SCR 976, 981: 1954 Cri LJ 881.

Bench Strength **5**. Coram: *M.C. Mahajan, C.J.* and *B.K. Mukherjea, S.R. Das, Vivian Bose* and **Ghulam Hasan**, JJ. [Date of decision: 11-3-1954]

[9227] — Ss. 517 and 520 — Return of seized property — Necessity to hear the parties adversely effected by the order — Parties adversely affected must be heard before the order is passed

Though Ss. 517 and 520, CrPC are silent and do not expressly require issue of any notice to the parties adversely affected by the order, there is in the eye of the law a necessary implication that the parties adversely affected should be heard before the Court makes an order for the return of the seized property. *State Bank of India* v. *Rajendra Kumar Singh*, AIR 1969 SC 401: (1969) 2 SCR 216: 1969 Cri LJ 659, 61, 62.

Bench Strength **3**. Coram: *J.C. Shah*, **V. Ramaswami** and *A.N. Grover*, JJ. [Date of decision: 25-9-1968]

[9228] — Ss. 517 and 520 — Return of seized property — "Rights to possess" occurring in S. 517 — Meaning of — *Bank having received currency notes in ordinary course of business, not knowing that the notes were involved in commission of offence — Police seizing the notes during the investigation of an offence. Held, High Court not justified in ordering the delivery of notes to the person who delivered the same to the Bank — Bank had "the right to possess" within the language of S. 517 — Bank entitled to an order for the return of notes to it*

The High Court was in error in directing the return of the currency notes to '*A*' and '*B*'. The reason is that the property in coins and currency notes passes by mere delivery and it is that clearest exception to the rule nemo dat quod non habet. This exception was engrafted in the interest of commercial necessity. But the exception only applies if the transferee of the coin or currency notes takes in good faith for value and without notice of a defect in the title of the transferor.

The High Court should have directed the return of the said currency notes to the appellant which had the "right to possess" the currency notes within the language of S. 517 of the Code of Criminal Procedure. *State Bank of India* v. *Rajendra Kumar Singh*, AIR 1969 SC 401: (1969) 2 SCR 216: 1969 Cri LJ 659, 61, 62.

Bench Strength **3**. Coram: *J.C. Shah*, **V. Ramaswami** and *A.N. Grover*, JJ. [Date of decision: 25-9-1968]

— S. 520 *See* Ss. 517 and 520

[9229] — S. 522 — Appellate Court has power to make order for restoration of possession of immovable property even after disposing of the appeal — *Where no time-limit prescribed order must be made within a reasonable time — "While disposing of the appeal, reference or revision" — Meaning of — CrPC, 1973, S. 456(2)*

The appellate or revisional court acting under S. 456(2) will have jurisdiction or power to pass the order for restoration of possession at any time. There is no limitation on the power to the effect that such order must be incorporated in the body of the judgment disposing of the appeal, reference or revision; but it has to be exercised with discretion within reasonable time of the disposal of the appeal, reference or revision. *H.P. Gupta* v. *Manohar Lal*, (1979) 2 SCC 486: 1979 SCC (Cri) 530: AIR 1979 SC 443: 1979 Cri LJ 199: 1979 MLJ (Cri) 322: (1978) 15 ACC 427.

Bench Strength **2**. Coram: **V.D. Tulzapurkar** and *R.S. Pathak*, JJ. [Date of decision: 3-11-1978]

— S. 523 *See also* Ss. 514 and 523

[9230] — S. 523 — Seizure of goods in possession of petitioner without authority of law — Constitutionality of — Application under S. 523, CrPC — When does not bar remedy under Art. 226 — *Constitution of India — Arts. 226, 19 & 31*

Where the Indian Police at the instance of the Jammu and Kashmir Police seized the goods in possession of the petitioner in India and the seizure was not under any authority of law as it was not made under the orders of any magistrate, nor did Ss. 51, 95, 98 and 165, CrPC apply to the case and the Indian Police was not authorised to make any investigation for no report of any offence committed by the petitioner had been made to the Indian Police and the whole affair was a hole and corner affair between the Officers of the Kashmir Police and of the Indian Police without any reference to any Magistrate.

Held:

That the seizure of the goods from the possession of the petitioner amounted to an infringement of his fundamental rights both under Arts. 19 and 31 of the Constitution and relief should be granted to him under Art. 226 of the Constitution.

Held, further, that the contention that, as the petitioner made an application under S. 523, CrPC to the Magistrate Art. 226 could not be availed of, could not be sustained for S. 523 would not apply to the facts and circumstances of the case, and the Magistrate had no jurisdiction to return the goods to the petitioner. *Wazir Chand* v. *State of H.P.*, AIR 1954 SC 415: (1955) 1 SCR 408: 1954 Cri LJ 1029.

Bench Strength **5**. Coram: **M.C. Mahajan, C.J.** and *B.K. Mukherjea, Vivian Bose, N.H. Bhagwati* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 22-4-1954]

[9231] — S. 523 — Application under S. 523, CrPC does not bar the remedy under Art. 226 of the Constitution. *Wazir Chand* v. *State of H.P.*, AIR 1954 SC 415: (1955) 1 SCR 408: 1954 Cri LJ 1029.

Bench Strength **5**. Coram: **M.C. Mahajan, C.J.** and *B.K. Mukherjea, Vivian Bose, N.H. Bhagwati* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 22-4-1954]

[9232] — S. 523 — Order of High Court for return of sums of monies and documents becoming final — *In the absence of a criminal case or a valid order of assessment by the Income Tax authorities, such property could not be retained and must be returned — There must be an authority of law under which money can be kept — Revenue cannot keep the money on the plea that there will be a demand — CrPC, 1973, S. 457. J.R. Malhotra* v. *Addl. Sessions Judge*, (1976) 1 SCC 430: 1976 SCC (Cri) 48: AIR 1976 SC 219: (1976) 2 SCR 993: 1976 Tax LR 130.

Bench Strength **4**. Coram: **A.N. Ray, C.J.** and *M.H. Beg, R.S. Sarkaria* and *P.N. Shinghal*, JJ. [Date of decision: 11-12-1975]

[9233] — Ss. 523 and 516-A — Ss. 6-A and 7, Essential Commodities Act, 1955, Held, do not exclude criminal court's jurisdiction under Ss. 523 and 516-A, CrPC, 1898 — *CrPC, 1973, Ss. 451 and 457 — Essential Commodities Act, 1955, Ss. 6-A and 7*

Having regard to the language used in Ss. 6-A and 7 of the Essential Commodities Act it must be held that the criminal court's jurisdiction to entertain an application under S. 523 read with S. 516-A CrPC, 1898 is not completely ousted. *State of M.P.* v. *Rameshwar Rathod*, (1990) 4 SCC 21: 1990 SCC (Cri) 522: AIR 1990 SC 1849: 1990 Cri LJ 1756.

Bench Strength **2**. Coram: **Sabyasachi Mukharji, C.J.** and *K.N. Saikia*, J. [Date of decision: 10-7-1990]

— S. 526 *See* Ss. 435, 439 and 526
See also Ss. 439, 561-A, 526 & 267

[9234] — S. 526 — Transfer of case under — Scope of powers of Special Judges — *Special Judge having no territorial jurisdiction convicting accused after the case being transferred by High Court from another Criminal Court under S. 526 of CrPC, to him — Validity of conviction — Criminal Law (Amendment) Act, 1952, S. 8*

The order of the Special Judge convicting the appellant cannot be quashed merely on the ground that he had no territorial jurisdiction to try this case. In view of S. 531 on the Code of Criminal Procedure, the order of the Special Judge, Patna, is not to be set aside on the ground of his having no territorial jurisdiction to try this case, when no failure of justice has actually taken place. *Ram Chandra Prasad* v. *State of Bihar*, AIR 1961 SC 1629, 1631: (1962) 2 SCR 50, 53, 54: (1962) 2 Cri LJ 811.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 18-4-1961]

[9235] — S. 526 — Applicability to Special Judge — *Criminal Law Amendment Act, 1952 — S. 8(3)*

By virtue of S. 8(3) the provisions of S. 526 of the Criminal Procedure Code empowering the High Court to transfer any case from a criminal Court subordinate to it to any other Court competent to try it, apply to the case before any Special Judge. *Ram Chandra Prasad* v. *State of Bihar*, AIR 1961 SC 1629, 1631: (1962) 2 SCR 50, 53-54: (1962) 2 Cri LJ 811.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 18-4-1961]

[9236] — S. 526 — Bias or prejudice — Nature of. *Manak Lal* v. *Dr. Prem Chand Singhvi*, AIR 1957 SC 425: 1957 SCR 575.

Bench Strength **3**. Coram: *T.L. Venkatarama Aiyar, S.K. Das* and **P.B. Gajendragadkar**, JJ. [Date of decision: 6-2-1957]

[9237] — S. 526 — Likelihood of prejudice to accused by reason of transfer. *K.V. Krishnamurthy Iyer* v. *State of Madras*, AIR 1954 SC 406: 1954 Cri LJ 1024.

Bench Strength **3**. Coram: **M.C. Mahajan**, *N. Chandrasekhara Aiyar* and *N.H. Bhagwati*, JJ. [Date of decision: 6-10-1952]

[9238] — S. 526 — Transfer of a case already going on for two and a half years — *Propriety. K.V. Krishnamurthy Iyer* v. *State of Madras*, AIR 1954 SC 406: 1954 Cri LJ 1024.

Bench Strength **3**. Coram: **M.C. Mahajan**, *N. Chandrasekhara Aiyar* and *N.H. Bhagwati*, JJ. [Date of decision: 6-10-1952]

[9239] — S. 526 — Transfer of appeal to High Court — Scope — High Court can transfer on its own motion — *No prejudice to the appellant in case he had an opportunity of being heard*

Sub-section (3) of S. 526 states expressly that the high Court may act on its own initiative in passing such an order. In this particular case the High Court had the further circumstance that it had earlier issued a rule for enhancement of sentence, without knowing perhaps that an appeal had been filed to the Sessions Judge of Delhi a few days earlier. When this latter circumstance was brought to the notice of the High Court, it thought it expedient for the ends of justice to transfer the appeal to the High Court. It was open to the High Court to act on its own initiative and the appellant can make no grievance of the order of transfer on the ground of prejudice, because the appellant was fully heard both as to the correctness of his conviction and the propriety of the sentence originally passed against him by the learned Magistrate. *Romesh Chandra Arora* v. *State*, AIR 1960 SC 154: (1960) 1 SCR 924, 934: 1960 Cri LJ 177, 81.

Bench Strength **3**. Coram: **S.K. Das**, *A.K. Sarkar* and *M. Hidayatullah*, JJ. [Date of decision: 6-10-1959]

[9240] — Ss. 526 and 531 — Applicability to offences exclusively triable by Special Judge under this section — *Criminal Law (Amendment) Act, 1952, S. 7*

The provisions of S. 526 of the Criminal Procedure Code empowering the High Court to transfer any case from a criminal Court subordinate to it to any other court competent to try it, apply to the case before any Special Judge. In view of S. 531 of the Code of Criminal Procedure, the order of the Special Judge, Patna, is not to be set aside on the ground of his having no territorial jurisdiction to try this case, when no failure of justice has actually taken place. *Ram Chandra Prasad* v. *State of Bihar*, AIR 1961 SC 1629, 1631: (1962) 2 SCR 50, 53, 54: (1962) 2 Cri LJ 811.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 18-4-1961]

[9241] — Ss. 526 and 531 — Transfer of certain pending cases — Applicability of S. 10, 1952 Act in view of Ss. 526 and 531 CrPC — *Criminal Law (Amendment) Act, 1952, S. 10*

Section 10 simply provides that the cases triable by a Special Judge under S. 7 and pending before a Magistrate immediately before the commencement of the Act shall be forwarded for trial to the Special Judge having jurisdiction over such cases. There is nothing in this section which leads to the non-application of S. 531 of the Criminal Procedure Code. The order of the Special Judge convicting the appellant cannot be quashed merely on the ground that he had no territorial jurisdiction to try this case. *Ram Chandra Prasad* v. *State of Bihar*, AIR 1961 SC 1629, 1632: (1962) 2 SCR 50, 54, 55: (1962) 2 Cri LJ 811.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 18-4-1961]

[9242] — S. 526(1) — Transfer of cases by High Court — High Court is competent to transfer a case from the Court of Magistrate to the Court of Session

Per majority

The language of cl.(*ii*) of S. 526(1) CrPC is wide enough to provide for an order transferring a case from the Court of a Magistrate to a Court of Session as both the Courts are subordinate to the High Court and the Court of Session is a Court superior in jurisdiction to that of a Magistrate.

The High Court is competent under S. 526(1)(*ii*) of the Code to transfer a case from the Court of a Magistrate to the Court of the Sessions Judge.

There is no difficulty in the Court of Session trying the case transferred to it in accordance with the provisions of Ch. XXIII which deals with the procedure of trials before High Courts and Courts of Session. The Court of Session has to follow the procedure laid down in this Chapter so far as that be applicable to the cases to be tried by it. This is clear not only from the heading of the Chapter but also from the provisions of S. 268 which require all trials before a Court of Session to be either by jury or by the Judge himself, and of S. 270 which require the public prosecutor to conduct the prosecution in every trial before a Court of Session.

When the Sessions Court receives a case on transfer by the High Court it is not to consider whether it should proceed or not with the case. It has to proceed with the case as it has been transferred to it by the High Court. There is, therefore, no occasion for the Court of Session to take cognizance of the offence in the sense that it has to determine whether the proceeding should be initiated in connection with the offence or not. The proceedings have been already initiated by the Magistrate and have been simply transferred to it. It has simply to proceed with the inquiry or trial as the case may be as the case has been made over to it by the High Court. It is only when the Sessions Court considers the commitment to be good in law that it proceeds with the trial of the case. It is in this context that the Sessions Court has to take cognizance of the offence as a Court of original jurisdiction and it is such a cognizance which is referred to in S. 193. Therefore the further proceedings by the Court of Session in a case transferred to it by the High Court are not barred by S. 193 of the Code.

Per Ramaswami, J.

The High Court is not competent to transfer the Criminal case from the file of the Sub-divisional Magistrate's Court to that of the Additional Sessions Judge, Delhi, under the provisions of S. 526(1)(*ii*) of the Criminal Procedure Code. *P.C. Gulati* v. *Lajya Ram*, AIR 1966 SC 595, 597, 59: (1966) 1 SCR 560, 564: 1966 Cri LJ 465, 68, 69.

Bench Strength **3**. Coram: *A.K. Sarkar*[1], **Raghubar Dayal**[1] and **V. Ramaswami**[2], JJ. [Date of decision: 19-8-1965]

[9243] — S. 527 — Proceedings for contempt before High Court — Whether can be transferred by Supreme Court to other High Court under S. 527, CrPC — *Constitution of India, Art. 215*

A High Court's power to institute proceedings for contempt and punish where necessary is a special jurisdiction and the Code of Criminal Procedure cannot be called in aid in such cases. Therefore, the Supreme Court is not entitled under S. 527, CrPC to transfer such proceedings from one High Court to another.

If the Code of Criminal Procedure does not apply, then there is no other power which the Supreme Court can exercise in this regard. The Constitution by Art. 215 gives every High Court the right and the power to punish a contempt of itself. The Supreme Court cannot deprive a High Court of the right which is so vested in it. It has no more power to do that than has a legislature. As for transfer of proceedings from one Judge to another, there is no original jurisdiction which the Supreme Court can exercise. It is not a fundamental right and so Art. 32 has no application. *Sukhdev Singh* v. *Teja Singh*, AIR 1954 SC 186, 190: 1954 SCR 454, 464: 1954 Cri LJ 460.

Bench Strength **3**. Coram: *B.K. Mukherjea*, **Vivian Bose** and *N.H. Bhagwati*, JJ. [Date of decision: 25-11-1953]

[9244] — S. 527 — Appointment of Special Judge — Transfer of case by Supreme Court — *Criminal Law (Amendment) Act, 1952, S. 7*

No doubt sub-section (1) of S. 7, lays down that the trial of an offence specified in sub-section (1) of S. 6 must be by a Special Judge only but that condition can be fully met by transferring the case to another Special Judge. Indeed S. 527, CrPC itself contemplates that the transfer should be to a court of equal or superior jurisdiction and we presume that there are Special Judges in every State of India. The selection of a Special Judge causes no difficulty.

Nor can S. 7(2) be literally understood.

There is no comparison between the first sub-section and the second sub-section of S. 7. The condition in the second sub-section of S. 7 is not of the same character as the condition in the first sub-section. The first sub-section creates a condition which is a sine qua non for the trial of certain offences. That condition is that the trial must be before a Special Judge. The second sub-section distributes the work between Special Judges and lays emphasis on the fact that trial must be before a Special Judge appointed for the area in which the offence is committed. This second condition is on par with the distribution of work territorially between different Sessions Judges and Magistrates. An order of transfer must by the very nature of things sometimes result in taking the case out of the territory and the provisions of the Code which are preserved by the third sub-section of S. 8 must supervene to enable this to be done and the second sub-section of S. 7 must yield.

Supreme Court in exercise of its jurisdiction and power under S. 527 of the Code of Criminal Procedure can transfer a case from a Special Judge sub-ordinate to one High Court to another Special Judge subordinate to another High Court. *Gurcharan Das Chadha* v. *State of Rajasthan*, AIR 1966 SC 1418, 1422: (1966) 2 SCR 678, 684: 1966 Cri LJ 1071.

Bench Strength **3**. Coram: *P.B. Gajendragadkar*, *C.J.* and **M. Hidayatullah** and *V. Ramaswami*, JJ. [Date of decision: 24-11-1965]

[9245] — S. 527 — Jurisdiction — Question of inherent jurisdiction must be decided before merits are considered

Questions of inherent jurisdiction must always be decided before the merits are considered because to dismiss the petition after consideration of merits itself involves an assumption of jurisdiction. *Gurcharan Das Chadha* v. *State of Rajasthan*, AIR 1966 SC 1418, 1420: (1966) 2 SCR 678, 681: 1966 Cri LJ 1071, 75.

Bench Strength **3**. Coram: *P.B. Gajendragadkar*, *C.J.* and **M. Hidayatullah** and *V. Ramaswami*, JJ. [Date of decision: 24-11-1965]

[9246] — S. 527 — Petition of transfer of cases from the Court of Magistrate in Punjab to some Magistrate out of the State — *Petitioner making serious allegations against the State Government, Chief Minister of Punjab and Superintendent of*

Police in an affidavit — Allegations neither admitted nor denied by a counter affidavit — Supreme Court to accept the allegations made in petitioner's affidavit — Enough allegation present to show that certain strong parties were opposed to the petitioner — Cases fit to be transferred to a Court out of Punjab State

In the absence of any specific denial on the part of the State, the Chief Minister and the Superintendent of Police concerned, Supreme Court must reluctantly go by the affidavit filed by the petitioner. In proceedings of this kind, it should be known that the Court does not examine witnesses in support of allegations of fact made by either side. Ordinarily, the Court acts upon the affidavit of one side or that of the other. But if one side omits to make an affidavit in reply the affidavit of the other side remains uncontroverted.

The question really is whether the petitioner can be said to entertain reasonably an apprehension that he would not get justice. One of the highest principles in the administration of law is that justice should not only be done but should be seen to be done. In the present case, there is enough allegation to show that certain strong parties are opposed to the petitioner in various ways. Whether they would exercise any influence upon the magistracy and whether magistracy would be able to withstand such a pressure, if made, is not germane to the present petition. Therefore, the petitioner has, by his affidavit, made out sufficient circumstances from which it can be inferred that he does entertain, and entertain reasonably, an apprehension that he would not get justice in these cases. Therefore the case is one in which the interest of justice demand that the cases should be transferred outside the State of Punjab. *Hazara Singh Gill* v. *State of Punjab*, AIR 1965 SC 720, 721: (1964) 4 SCR 1, 4: (1965) 1 Cri LJ 639.

Bench Strength 3. Coram: *A.K. Sarkar*, **M. Hidayatullah** and *J.C. Shah*, JJ. [Date of decision: 10-5-1963]

[9247] — S. 527 — Supreme Court Rules, 1966 — Or. 36 — Transfer application — *Apprehension of respondent that petitioner-accused being an influential person would tamper prosecution witnesses not supported by evidence — Transfer allowed — Respondent can at any stage complain to appropriate court if and when there are good grounds to support his apprehension. A.K.K. Nambiar* v. *Desraj*, (1973) 3 SCC 873: 1973 SCC (Cri) 555: AIR 1973 SC 203: 1973 Cri LJ 270.

Bench Strength 3. Coram: **K.S. Hegde**, *A.N. Grover* and *G.K. Mitter*, JJ. [Date of decision: 18-4-1972]

[9248] — S. 527 — Transfer application being moved against the Magistrate — Magistrate himself filing an affidavit on behalf of the Delhi Admn. — *Deponent Magistrate adopting, in the affidavit, an argument which might be urged by the complaint at the trial — Delhi Admn.'s act in requesting the Magistrate to file an affidavit and Magistrate's conduct in accepting the request disapproved — Case considered fit to be transferred. Kaushalya Devi* v. *Mool Raj*, (1964) 4 SCR 884, 889-90: (1964) 1 Cri LJ 233, 236.

Bench Strength 5. Coram: **P.B. Gajendragadkar**, *K. Subba Rao*, *K.N. Wanchoo*, *N. Rajagopala Ayyangar* and *J.R. Mudholkar*, JJ. [Date of decision: 4-9-1963]

[9249] — S. 527 — Transfer of a criminal case by the Supreme Court — Ground for — *Bitterness of local communal feelings and tenseness of atmosphere in the area — Is good ground for transfer. G.X. Francis* v. *Banke Bihari Singh*, AIR 1958 SC 309, 310: 1958 Cri LJ 569.

Bench Strength 3. Coram: *Syed Jafer Imam*, *J.L. Kapur* and **Vivian Bose**, JJ. [Date of decision: 4-12-1957]

[9250] — S. 527 — Transfer of case — Desirability of — *Supreme Court Rules, 1966 — Or. 36*

Held, where the petitioner is not unreasonably afraid to go to a place where trial is proceeding and the complainant has made it clear in no uncertain terms by his writings and conduct that he wants the accused at the place of trial with an ulterior motive, it is a fit case to be transferred to a court in a different place. *Sesamma Phillip* v. *P. Phillip*, (1973) 1 SCC 405: 1973 SCC (Cri) 349: AIR 1973 SC 875: 1973 Cri LJ 648.

Bench Strength 5. Coram: *S.M. Sikri, C.J.* and *A.N. Ray*, **D.G. Palekar**, *M.H. Beg* and *S.N. Dwivedi*, JJ. [Date of decision: 18-1-1973]

[9251] — S. 527 — Transfer of criminal cases by Supreme Court — Grounds — *'A' earlier acquitted by a magistrate in a criminal case — Is not a good ground to transfer a subsequent criminal case started on the complaint of 'A' from the Court of that magistrate*

A was convicted by a magistrate and in appeal was acquitted by an appellate Magistrate. Later A filed a complaint against some persons in the court of the Magistrate who earlier acquitted him in appeal. In a transfer application filed before the Supreme Court this was one of the grounds taken.

Held :

An apprehension based on such a ground is not reasonable. Such accusations should be discouraged and the Supreme Court would be extremely slow to allow a transfer on such a ground. The ground is rejected outright even without calling upon the explanation of the magistrate. *G.X. Francis* v. *Banke Bihari Singh*, AIR 1958 SC 309: 1958 Cri LJ 569.

Bench Strength **3**. Coram: *Syed Jafer Imam, J.L. Kapur* and **Vivian Bose**, JJ. [Date of decision: 4-12-1957]

[9252] — S. 527 — Transfer of Criminal Trial — Principles governing — *There should be reasonable apprehension in accused's mind that justice will not be done — Accused not required to prove that justice will inevitably fail — Mere allegation that there is apprehension that justice will not be done not enough — Apprehension to be shown to be reasonable*

A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained, but must appear to the Court to be a reasonable apprehension.

Nothing has been said which will show that there is in any manner an interference direct or indirect with the investigation of the offences alleged against him or the trial of the case before the Special Judge, Bharatpur. A general feeling that some persons are hostile to the petitioner is not sufficient. There must be material from which it can be inferred that the persons who are so hostile are interfering or are likely to interfere either directly or indirectly with the course of justice. Of this there is no trace either in his petition or in the arguments which were advanced. Nor does the petitioner allege anything against the Special Judge who is trying the case. Therefore the case is not fit for being transferred. *Gurcharan Das Chadha* v. *State of Rajasthan*, AIR 1966 SC 1418, 1423: (1966) 2 SCR 678, 686: 1966 Cri LJ 1071, 1075.

Bench Strength **3**. Coram: *P.B. Gajendragadkar, C.J.* and **M. Hidayatullah** and *V. Ramaswami*, JJ. [Date of decision: 24-11-1965]

[9253] — S. 527 — Transfer of Criminal trial pending before a Court of Special Judge created by Criminal Law (Amendment) Act, 1952 — *Power of Supreme Court to transfer*

No doubt sub-section (1) of S. 7, lays down that the trial of an offence specified in sub-section (1) of S. 6 must be by a Special Judge only but that condition can be fully met by transferring the case to another Special Judge. Indeed S. 527 itself contemplates that the transfer should be to a court of equal or superior jurisdiction and it is presumed that there are Special Judges in every State of India.

The condition that an offence specified in S. 6(1) shall be tried by a Special Judge for the area within which it is committed merely specifies which of several Special Judges appointed in the State by the State Government shall try it. The provision is analogous to others under which the jurisdiction of Magistrates and Sessions Judges is determined on a territorial basis. Enactments in the CrPC intended to confer territorial jurisdiction upon Courts and Presiding Officers have never been held to stand in the way of transfer of criminal cases outside those areas of territorial jurisdiction. The order of transfer when it is made under the powers given by the Code invests another officer with jurisdiction although ordinarily he would lack territorial jurisdiction to try the case. The order of Supreme Court, therefore, which transfers a case from one Special Judge subordinate to one High Court to another Special Judge subordinate to another High Court creates jurisdiction in the latter in much the same way as the transfer by the High Court from one Sessions Judge in a Session Division to another Sessions Judge in another Session Division.

The Supreme Court in exercise of its jurisdiction and power under S. 527 of the CrPC can transfer a case from a Special Judge subordinate to one High Court to another Special Judge subordinate to another High Court. *Gurcharan Das Chadha* v. *State of Rajasthan*, AIR 1966 SC 1418, 1422: (1966) 2 SCR 678, 684: 1966 Cri LJ 1071.

Bench Strength **3**. Coram: *P.B. Gajendragadkar, C.J.* and **M. Hidayatullah** and *V. Ramaswami*, JJ. [Date of decision: 24-11-1965]

[9254] — S. 527 (as amended by Act 23 of 1952) — Transfer of a criminal case — *Attempted murder of the Chief Justice of Mysore High Court — Appeal in Mysore High Court — Is a fit case when the appeal should be transferred to some other High Court*

For any sound and reputable system of administration of justice it is as important that justice should appear to be done as that it is, in fact, done, and it is no reflection on the independence and impartiality of the learned Judges of the Mysore High Court to say that the ends of justice plainly require in the circumstances of this case that this appeal should be transferred to a court outside the State of Mysore. *L.S. Raju* v. *State of Mysore*, AIR 1953 SC 435: 1953 Cri LJ 1833.

Bench Strength **3**. Coram: *Patanjali Sastri, C.J.* and *B.K. Mukherjea* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 29-5-1952]

[9255] — S. 528 — Scandalising the Court — Applicability of S. 228 of IPC — Exclusion of jurisdiction — *Contempt of Courts Act, 1971, S. 2(c)(i)*

Is filing a transfer application under S. 528, CrPC before a Magistrate and stating therein allegations attacking and scandalising the Judge and insult and an interruption to judicial proceedings and is S. 228, IPC applicable?

It depends on the circumstances of each case. If the application was filed in the office before the officer in charge of the court office, there can be no offence under S. 228, IPC. But if it was filed in open Court and counsel or party narrated the scurrilous grounds or read it, it can be termed as an insult to Court and an interruption to its proceedings. If S. 228 applied, then the High Court has no jurisdiction to entertain contempt proceedings by virtue of S. 3(2) of the Contempt of Courts Act, 1952. *State of M.P.* v. *Revashankar*, AIR 1959 SC 102: 1959 SCR 1367: 1959 MPLJ 251: 1959 Cri LJ 251.

Bench Strength **3**. Coram: *Syed Jafer Imam*, **S.K. Das** and *J.L. Kapur*, JJ. [Date of decision: 24-9-1958]

[9256] — S. 528 — Scope of powers of Magistrate

On receiving complaint against the Sub-Divisional Magistrate the Magistrate acting under S. 528 was entitled to use his powers under that section if the allegations contained therein were substantiated. It is usual to send such applications to the court concerned for its remarks and that is precisely what he did, and as soon as the remarks were received and he was satisfied that the allegations were baseless, he declined to withdraw the case.

It is difficult to see how such an action on the part of the District Magistrate, done in the normal course of the discharge of his duties as such Magistrate, could be held to interfere with the course of administration of justice or to create prejudice of any kind against the complainant in the proceedings under S. 145, CrPC. There is nothing in S. 528, CrPC, which disables a Magistrate from taking action unless he is set in motion by the petition of one of the parties and nothing in the Code prevents any person from bringing facts to the notice of the District Magistrate which might suggest to that Magistrate that it was advisable to see whether the Magistrate should remain in charge of a particular case. *Rizwan-Ul-Hasan* v. *State of U.P.*, AIR 1953 SC 185, 187: 1953 SCR 581, 587: 1953 Cri LJ 911.

Bench Strength **2**. Coram: **M.C. Mahajan** and *S.R. Das*, JJ. [Date of decision: 5-2-1953]

[9257] — S. 528(6) — Extra-judicial confession — When admissible — Recorded by Village Administrative Officer, a Village Headman, held, admissible — *R. 72 of Criminal Rules of Practice and Orders, 1931 of Madras High Court, absolutely prohibiting Village Magistrates from recording any confession or statement of an accused after commencement of police investigation, has become redundant since a Village Headman cannot be treated as a Village Magistrate under CrPC, 1973 — Scope of power and function of Village Headman stated — CrPC, 1973, Ss. 40, 162 and 164 — Madras High Court Criminal Rules of Practice and Orders, 1931, R. 72 — Madras Village Police Regulations, 1816 — Regn. 10 — Madras Village Police Regulations, 1821 — Regn. 6 — Evidence Act, 1872, S. 24. Sivakumar* v. *State*, (2006) 1 SCC 714: (2006) 1 SCC (Cri) 470: AIR 2006 SC 653: (2006) 37 AIC 70 (SC): 2006 Cri LJ 536.

Bench Strength **2**. Coram: **S.B. Sinha** and *P.P. Naolekar*, JJ. [Date of decision: 8-12-2005]

Raja v. State, (1995) 2 LW (Cri) 513, overruled

Pregada Balanagu v. Krosuru Kotayya, AIR 1937 Mad 578: 38 Cri LJ 950; Lakshmanan, Re, (1971) 1 MLJ 242, approved

— S. 529 *See* Ss. 190(1)(a) and (b) & 529

See also Ss. 337(1), 10(2), 529 and Sch. III, Part V, Entry 7(a)

[9258] — S. 529 — Pardon granted bona fide

A pardon granted bona fide is fully protected by the provisions of S. 529 of Criminal Procedure Code. *State of U.P.* v. *Kailash Nath Agarwal*, (1973) 1 SCC 751: 1973 SCC (Cri) 698: AIR 1973 SC 2210: 1973 Cri LJ 1196.

Bench Strength **3**. Coram: *A. Alagiriswami*, *I.D. Dua* and **C.A. Vaidialingam**, JJ. [Date of decision: 16-3-1973]

[9259] — S. 529(c) — Application to Special Judge

Section 529(*c*) applies to Magistrates and would not apply to a Special Judge whose jurisdiction arises not on his taking cognizance under S.

190 of the CrPC but on the case for an offence specified in the Schedule being distributed to him by the State Government by notification. The defect of jurisdiction cannot be cured by S. 529(*e*) of the CrPC. The Special Judge was consequently not a court of competent jurisdiction and the proceedings before him were null and ineffectual. *Bhajahari Mondal* v. *State of W.B.*, AIR 1959 SC 8, 13: 1959 SCR 1276, 128: 1959 Cri LJ 98.

Bench Strength **2**. Coram: *Syed Jafer Imam* and **J.L. Kapur**, JJ. [Date of decision: 11-9-1958]

[9260] — Ss. 529(g), 337 and 338 — Irregularities which do not vitiate proceedings — Grant of pardon to approver by Chief Judicial Magistrate after committal of proceedings to the Court of Session is without jurisdiction — *Such irregularity not a curable irregularity within S. 460(g) — Position under corresponding provision of old Code indicated — CrPC, 1973, Ss. 460(g), 306, and 307. A. Devendran* v. *State of T.N.*, (1997) 11 SCC 720: AIR 1998 SC 2821.

Bench Strength **2**. Coram: *G.N. Ray* and **G.B. Pattanaik**, JJ. [Date of decision: 21-10-1997]

[9261] — Ss. 530(p) and 29 — Irregularity vitiating proceeding — U.P. Private Forest Act, 1948 (6 of 1949) — S. 15(2)

In view of the clear words of S. 29(1), the trial of these cases ought to have been before a court designated in S. 15(2) and as the trial was before a Magistrate who was not empowered to try the offence the proceedings were rightly declared void under S. 530(*p*) of the CrPC. *State of U.P.* v. *Sabir Ali*, AIR 1964 SC 1673, 1676: (1964) 7 SCR 435, 440: (1964) 2 Cri LJ 606.

Bench Strength **2**. Coram: **M. Hidayatullah** and *N. Rajagopala Ayyangar*, JJ. [Date of decision: 24-3-1964]

— S. 531 *See* Ss. 526 and 531

See also Ss. 537 and 531

[9262] — S. 531 — Case of lack of territorial jurisdiction of Special Judge — S. 531 Applicable — Ss. 7 & 10 of Criminal Law Amendment Act, 1952 no bar

In view of S. 531 of the Code of Criminal Procedure, the order of the Special Judge, Patna is not to be set aside on the ground of his having no territorial jurisdiction to try this case, when no failure of justice has actually taken place. *Ram Chandra Prasad* v. *State of Bihar*, AIR 1961 SC 1629, 1632: (1962) 2 SCR 50, 54: (1962) 2 Cri LJ 811.

Bench Strength **2**. Coram: *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 18-4-1961]

[9263] — S. 531 — Prejudice caused to be shown

The mere fact that proceedings were taken in a wrong place would not vitiate the trial unless it appears that this has occasioned a failure of justice. *Mangaldas Raghavji Ruparel* v. *State of Maharashtra*, AIR 1966 SC 128, 130: (1965) 2 SCR 894, 897: 1966 Cri LJ 106.

Bench Strength **5**. Coram: *K.N. Wanchoo*, *M. Hidayatullah*, *J.C. Shah*, **J.R. Mudholkar** and *S.M. Sikri*, JJ. [Date of decision: 8-2-1965]

[9264] — S. 531 — Whether prohibits investigation into injustice caused by wrongful assumption of jurisdiction when such question is not pleaded — *Not decided*

No opinion need be expressed on the question whether by virtue of S. 531 of the Code of Criminal Procedure the High Court was prohibited from investigating the question, in the absence of a plea, that assumption of jurisdiction had occasioned the failure of justice. *K.A.A. Brinnand* v. *Bijoyanand Patnaik*, (1971) 3 SCC 943: 1972 SCC (Cri) 191.

Bench Strength **3**. Coram: **J.C. Shah**, *K.S. Hegde* and *A.N. Grover*, JJ. [Date of decision: 27-2-1970]

[9265] — Ss. 531 and 488(1) — Scope of S. 531 — *Magistrate before whom petition for maintenance was filed and who addressed himself to the question of territorial jurisdiction, recorded and considered the evidence and came to the finding that the petition was maintainable in his Court, held, should be given benefit of S. 531 if that finding is set aside*

Section 531 relates to a defect of jurisdiction which may relate *(i)* to the power of the Court to try such matter or *(ii)* to its territorial jurisdiction. While the former goes to the root of the matter and any transgression of it makes the entire trial void, the latter is not of a peremptory character and is curable under S. 531 of the Code.

Section 531 does not entitle a magistrate, who is not a magistrate of the class referred to in sub-section (1) of S. 488, to proceed with an application for maintenance. So where a magistrate has the "power" to try a particular application under S. 488, and the controversy relates solely to his territorial jurisdiction, there should, ordinarily, be no reason why S. 531 of the Code should not be applicable to the order made by him.

The true meaning of S. 531 is that while it will not uphold an order passed in proceedings wilfully taken in a wrong place, or enable a magistrate to confer jurisdiction on himself when he knows that he has no such jurisdiction, there is no reason why a magistrate who is otherwise duly empowered to make an order under sub-section (1) of S. 488 of the Code, cannot proceed with an application under that sub-section for the purpose of deciding whether he has the territorial jurisdiction to entertain the application and to decide the application on the merits if he finds that he has the territorial jurisdiction. Section 531 cannot thus be said to be inapplicable to a case where there is a controversy as to the district where the proceeding should be held, the parties lead evidence in support of their respective contentions about the correct place of the proceeding, and the magistrate finds it necessary (after taking note of the entire evidence on the controversy) to arrive at a decision on the basis of the balance of probabilities. In other words, there is no reason why, in such a case, S. 531 should not be applicable merely because the magistrate, while considering the evidence relating to jurisdiction, unwittingly makes a reference to S. 531 in passing and not for the purpose of assuming jurisdiction under it.

The Magistrate in the present case addressed himself to the question of jurisdiction, recorded detailed evidence on it, considered the evidence in his order and reached the conclusion that the application was maintainable in his court. Section 531 cannot, therefore, be rendered inapplicable merely because an objection was raised by the respondent "right at the first instance".

It may be that, in a given case, it may be advisable for a magistrate to confine the evidence of the parties, in the first instance, to any preliminary objection relating to jurisdiction, and to decide the controversy on the merits thereafter.

Where the Magistrate, as in the present case, directed that evidence be given on the whole case including the question of jurisdiction, the defendant cannot unilaterally reserve the right to file a written reply on the merits later on. And since no defence on merits was at all entered into the defendant cannot now plead inapplicability of S. 531.

By refraining to produce his evidence on merits the defendant has no justification to raise the question of prejudice or failure of justice.

The respondent cannot in fact be heard to raise the question of prejudice when on the uncontroverted and well-established facts the Magistrate found that the respondent was a person who had sufficient means and had neglected to maintain his wife. *Raj Kumari Vijh* v. *Dev Raj Vijh*, (1977) 2 SCC 190: 1977 SCC (Cri) 294: AIR 1977 SC 1101: (1977) 2 SCR 997: 1977 Cri LJ 940.

Bench Strength 3. Coram: *P.N. Bhagwati*, *A.C. Gupta* and **P.N. Shinghal**, JJ. [Date of decision: 15-2-1977]

— S. 533 *See* Ss. 164 and 533

See also Ss. 364(3) and 533

[9266] — S. 533 — Magistrate recording the confession not examined by the prosecution — *Criticism of defence against this conduct of prosecution is not proper — Magistrate rightly not called and it would have been undesirable for the prosecution to have produced him. Kashmira Singh* v. *State of M.P.*, AIR 1952 SC 159: 1952 SCR 526: 1952 Cri LJ 839, 840.

Bench Strength 3. Coram: *Fazl Ali*, *B.K. Mukherjea* and **Vivian Bose**, JJ. [Date of decision: 4-3-1952]

[9267] — Ss. 533 and 164 — Relative scope

A statement would not have been "duly made" unless the procedure for making it laid down in S. 164 had been followed. What S. 533 therefore, does is to permit oral evidence to be given to prove that the procedure laid down in S. 164 had in fact been followed when the Court finds that the record produced before it does not show that that was so. If the oral evidence establishes that the procedure had been followed, then only can the record be admitted. Therefore, far from showing that the procedure laid down in S. 164 is not intended to be obligatory, S. 533 really emphasises that that procedure has to be followed. The section only permits oral evidence to prove that the procedure had actually been followed in certain cases where the record which ought to show that does not on the face of it do so. *State of U.P.* v. *Singhara Singh*, AIR 1964 SC 358, 362: (1964) 4 SCR 485, 492: (1964) 1 Cri LJ 263 (2).

Bench Strength 3. Coram: **A.K. Sarkar**, *M. Hidayatullah* and *J.C. Shah*, JJ. [Date of decision: 16-8-1963]

See also (1963) 3 SCR 749: (1964) 1 Cri LJ 566

— S. 533(1) *See* Ss. 164(2), 364(3) and 533(1)

— S. 535 *See* Ss. 223, 535 and 537

See also Ss. 225, 221, 537 and 535

See also Ss. 232, 233 to 250, 535 and 537

[9268] — S. 535 — Absence of prejudice — Conviction upheld. *Mobarik Ali Ahmed* v. *State of Bombay*, AIR 1957 SC 857: 1958 SCR 328: 1957 Cri LJ 1346.

Bench Strength 3. Coram: **B. Jagannadhadas**, *Syed Jafer Imam* and *P. Govinda Menon*, JJ. [Date of decision: 6-9-1957]

[9269] — S. 535 — Oral statement of Magistrate as to confession

Once the investigation had started any non-confessional statement made by the accused also required to be recorded in the manner indicated in that section and if no such record had been made by the Magistrate, the Magistrate would not be competent to give oral evidence of such statement having been made by the accused. *Rao Shiv Bahadur Singh* v. *State of V.P.*, AIR 1954 SC 322, 333: 1954 SCR 1098, 110: 1954 Cri LJ 910.

Bench Strength 3. Coram: **N.H. Bhagwati**, *B. Jagannadhadas* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 5-3-1954]

[9270] — Ss. 535, 537 and S. 149, IPC — Charge for offence under S. 149, IPC — *Failure to mention knowledge or likelihood of commission of offence — Whether caused failure of justice*

In the case under appeal the charge did not refer to any knowledge or likelihood of the offence of murder. It would no doubt have been better if in the charge knowledge of likelihood of the offence of murder in prosecution of the common object had been specifically mentioned. Such a course would have given proper notice and opportunity to the accused persons to meet the specific charge. But failure to do so does not, in our view, by itself necessarily and automatically render illegal the conviction based on the conclusion that the members of the unlawful assembly must have known that the offence of murder was likely to be committed in prosecution of the common object. Mention of S. 149 in the charge might generally be considered to be wide enough to include the charge based on the second part of this section. The matter would, however, have to be considered on the facts and circumstances of each case for determining as to whether the general nature of the charge has prejudiced the accused and, therefore, occasioned failure of justice. *State of Assam* v. *Barga Dewani*, (1970) 3 SCC 236: 1971 SCC (Cri) 54.

Bench Strength 3. Coram: *S.M. Sikri*, *K.S. Hegde* and **I.D. Dua**, JJ. [Date of decision: 17-9-1970]

[9271] — Ss. 535 and 537 — Accused charged with Ss. 302/149, IPC convicted under S. 302 — *Whether curable*

In the present case there was an illegality and not an irregularity curable by the provisions of Ss. 535 and 537, CrPC. *Nanak Chand* v. *State of Punjab*, AIR 1955 SC 274, 279, 28: (1955) 1 SCR 1201, 121: 1955 Cri LJ 721.

Bench Strength 3. Coram: *S.R. Das*, *N.H. Bhagwati* and **Syed Jafer Imam**, JJ. [Date of decision: 25-1-1955]

See also AIR 1955 SC 419: 1955 Cri LJ 1004

[9272] — Ss. 535 and 537 — Failure of justice — Is a question of fact and benefit of doubt will go to the accused. *Willie (William) Slaney* v. *State of M.P.*, AIR 1956 SC 116, 128-29: (1955) 2 SCR 1140: 1956 Cri LJ 291.

Bench Strength 5. Coram: *S.R. Das*[1], **Vivian Bose**[1], *B. Jagannadhadas*[2], **Syed Jafer Imam**[3] and **N. Chandrasekhara Aiyar**[2], JJ. [Date of decision: 31-10-1955]

[9273] — Ss. 535 and 537 — Nature and scope — Defect in following procedure curable if no prejudice caused. *Chittaranjan Das* v. *State of W.B.*, AIR 1963 SC 1696, 1699: (1964) 3 SCR 237, 246: (1963) 2 Cri LJ 534.

Bench Strength 3. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 22-4-1963]

[9274] — S. 536 — Cannot cure violation of Art. 14 — *Constitution of India — Art. 14. Dhirendra Kumar* v. *Superintendent and Remembrancer of Legal Affairs, Govt. of W.B.*, AIR 1954 SC 424, 428: (1955) 1 SCR 224, 234: (1954) 2 MLJ 128: 1954 Cri LJ 1036.

Bench Strength 5. Coram: **M.C. Mahajan** and *B.K. Mukherjea*, *Vivian Bose*, *N.H. Bhagwati* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 20-4-1954]

[9275] — S. 536 — Scope of — Notification withdrawing jury trial revoking previous notification granting the same — *It being bad under S. 269 & Art. 14 — Whether S. 536 applies*

Section 536 postulates irregularities at the trial after the commencement of the proceedings but it does not concern itself with a notification made under S. 269(1) which travels beyond the limits of that section or which contravenes Art. 14 of the Constitution. The chapter of the CrPC in which this section is included, deals with mere procedural irregularities in the procedure committed by a court and envisages that when an objection is taken, the Court is then enabled to cure the irregularity. *Dhirendra Kumar* v. *Superintendent and Remembrancer of Legal Affairs, Govt. of W.B.*, AIR 1954 SC 424, 428: (1955) 1 SCR 224, 234: (1954) 2 MLJ 128: 1954 Cri LJ 1036.

Bench Strength 5. Coram: **M.C. Mahajan** and *B.K. Mukherjea*, *Vivian Bose*, *N.H. Bhagwati* and *T.L. Venkatarama Aiyar*, JJ. [Date of decision: 20-4-1954]

[9276] — S. 536 — Trial without jury of offence triable by jury — Objection not taken in the trial Court — *Is not open in the Appellate Court. Chandi Prasad Singh* v. *State of U.P.*, AIR 1956 SC 149: (1955) 2 SCR 1035: 1956 Cri LJ 322, 325: (1956) 1 MLJ (SC) 88: 1956 ALJ 153.

Bench Strength 2. Coram: *Vivian Bose* and **T.L. Venkatarama Aiyar**, JJ. [Date of decision: 7-12-1955]

— S. 537 *See* Ss. 161, 207-A and 537
See also Ss. 203 and 537
See also Ss. 222(2), 235(1) and 537
See also Ss. 222(2) proviso, 225 and 537
See also Ss. 223, 535 and 537
See also Ss. 225, 221, 537 and 535
See also Ss. 225 and 537

See also Ss. 232, 233 to 250, 535 and 537
See also Ss. 233 to 239 and 537
See also Ss. 233, 239 and 537
See also Ss. 233 and 537
See also Ss. 234, 235 and 537
See also Ss. 237 and 537
See also Ss. 241 and 537
See also Ss. 251-A, 252, 253 and 537
See also Ss. 271 and 537
See also Ss. 297, 423 and 537
See also Ss. 297 and 537
See also Ss. 342 and 537
See also Ss. 347(1), 208 and 537
See also Ss. 356(1) and 537
See also Ss. 360 and 537
See also Ss. 361 and 537
See also Ss. 367(1) and 537
See also Ss. 423(1)(a) and 537
See also Ss. 535 and 537
See also Ss. 535, 537 and 149
See also Ss. 540 and 537

[9277] — S. 537 — Error or irregularity in a sanction for prosecution — *Held, prosecution not vitiated unless a failure of justice has been occasioned thereby — Merely because the defence raised this objection at the earliest opportunity not sufficient to vitiate the trial — Position under old Code compared — CrPC, 1973, S. 465*

In the corresponding provision under the old Code of 1898 the words "or any error or irregularity in any sanction for the prosecution" were absent. Legal position under the old Code, as settled by the decisions of various courts, was that any defect in sanction was not curable and hence the prosecution itself would have been void.

Parliament advisedly incorporated the words "any error or irregularity in any sanction for the prosecution" in Section 465 of the present Code as they wanted to prevent failure of prosecution on the mere ground of any error or irregularity in the sanction for prosecutions. An error or irregularity in a sanction may, nevertheless, vitiate the prosecution only if such error or irregularity has occasioned failure of justice.

Sub-section (2) of Section 465 of the Code is not a carte blanche for rendering all trials vitiated on the ground of the irregularity of sanction if objection thereto was raised at the first instance itself. The sub-section only says that "the court shall have regard to the fact" that objection has been raised at the earlier stage in the proceedings. It is only one of the considerations to be weighed but it does not mean that if objection was raised at the earlier stage, for that very reason the irregularity in the sanction would spoil the prosecution and transmute the proceedings into a void trial. *Kalpnath Rai* v. *State*, (1997) 8 SCC 732: AIR 1998 SC 201.

Bench Strength **2**. Coram: *M.K. Mukherjee* and **K.T. Thomas**, JJ. [Date of decision: 6-11-1997]

[9278] — S. 537 — Suppression of Immoral Traffic in Women and Girls Act, 1956, S. 15(2) — Non-compliance with S. 15(2) — Result of

Sub-section 15(2) enjoins on the Special Public Officer to call upon two or more respectable inhabitants of the locality (one of whom shall be a woman) to attend and witness the search. The word used "shall call upon" is mandatory. The Panch witnesses not being of the locality is clear contravention of the sub-section. The court held that though investigating agencies should not disregard this provision, yet the defect or illegality has no direct bearing upon the competency or the procedure relating to cognizance or trial of an offence unless as laid down in S. 537 of the Code of Criminal Procedure, the irregularity or illegality has resulted in miscarriage of justice. As no prejudice has been shown to have been caused to the accused in the trial on this account, the conviction was confirmed. The principles that govern searches under S. 165, CrPC, were held to be applicable to searches under this Act also. *Bai Radha* v. *State of Gujarat*, (1969) 1 SCC 43: AIR 1970 SC 1396: 1970 Cri LJ 1279.

Bench Strength **3**. Coram: *J.C. Shah, V. Ramaswami* and **A.N. Grover**, JJ. [Date of decision: 20-11-1968]

[9279] — S. 537 — Accused charged under S. 5(2), Prevention of Corruption Act read with S. 34, IPC — *Convicted by High Court under S. 5(2), Prevention of Corruption Act — S. 537 applies — Conviction is not bad in the absence of prejudice and failure of justice*

Where the accused was charged under S. 5(2), Prevention of Corruption Act read with S. 34, IPC and was convicted under S. 5(2) of the Act there was no prejudice to the accused or failure of justice where the accused had clear knowledge from the inception that the prosecution case against him was that he committed an offence under S. 5(2) of the Act and he had every opportunity and indeed he made a sustained effort throughout the trial to defend himself against the said accusation. *Major E.G. Barsay* v. *State of Bombay*, AIR 1961 SC 1762: (1962) 2 SCR 195: (1961) 2 Cri LJ 828.

Bench Strength **2**. Coram: **K. Subba Rao** and *Raghubar Dayal*, JJ. [Date of decision: 24-4-1961]

Willie Slaney, AIR 1956 SC 116: 1956 Cri LJ 291, followed

[9280] — S. 537 — Accused charged under Ss. 307/149, IPC — Ingredients of — *S. 149, IPC, not specified in the charge — No failure of justice — Defect is curable under S. 537. Teeka* v. *State of U.P.*, AIR 1961 SC 803: (1962) 1 SCR 75: (1961) 1 Cri LJ 859, 862: 1961 All Cri R 198: 1961 MPC 441.

Bench Strength 2. Coram: **K. Subba Rao** and *Raghubar Dayal*, JJ. [Date of decision: 15-2-1961]

[9281] — S. 537 — Amendment of — Scope of S. 537, CrPC, made wider, covering cases of misjoinder of charges. *Banwari* v. *State of U.P.*, AIR 1962 SC 1198: 1962 Supp (3) SCR 180: (1962) 2 Cri LJ 278, 283.

Bench Strength 3. Coram: *J.L. Kapur, A.K. Sarkar* and **Raghubar Dayal**, JJ. [Date of decision: 14-2-1962]

[9282] — S. 537 — Appeal to Supreme Court — Constitution of India, Art. 134(1)(c) — *Complaint describing K as an accused — Not clear in complaint as to who was really meant to be prosecuted — No failure of justice shown — Plea that K cannot be treated as an accused — Not taken in High Court — Cannot be permitted to be raised in Supreme Court*

The complaint no doubt was not clear as to who was really meant to be prosecuted but it described K as an accused. Under the Explanation to S. 537 of the CrPC no error, omission or irregularity in the complaint should have led to a reversal of the finding that K was guilty unless there was a failure of justice. The objection that he was not named as an accused throughout the complaint and that he was thus not an accused could have been raised at the trial but it was not. On the contrary, K entered a plea of not guilty on his own behalf and also stood examination as an accused. It is obvious that he was regarded as the accused and he understood his own position. The objection could not be entertained in revision in the High Court as it was belated and the defect, if any, had not occasioned a failure of justice. *State of W.B.* v. *Motilal Kanoria*, AIR 1966 SC 1586, 1593: (1966) 3 SCR 933, 946: 1966 Cri LJ 1210, 1214.

Bench Strength 5. Coram: *P.B. Gajendragadkar, C.J.* and *K.N. Wanchoo*, **M. Hidayatullah**, *J.C. Shah* and *S.M. Sikri*, JJ. [Date of decision: 15-3-1966]

[9283] — S. 537 — Breach of every provision of Criminal Procedure Code does not invalidate the trial — *Irregularities occurring in the course of trial can be cured by S. 537*

It would be relevant to state that the breach of every provision of the Code does not necessarily make trial invalid. If the criminal trial is conducted substantially in the manner prescribed by the Code but some irregularity occurs in the course of such conduct, the irregularity can be cured under S. 537, and nonetheless so because the irregularity involves, as must nearly always be the case, a breach of one or more of the very comprehensive provisions of the Code. *Kadiri Kunhahammad* v. *State of Madras*, AIR 1960 SC 661: 1960 Cri LJ 1013.

Bench Strength 3. Coram: **P.B. Gajendragadkar**, *A.K. Sarkar* and *K. Subba Rao*, JJ. [Date of decision: 27-1-1959]

[9284] — S. 537 — Charge for offence read with S. 34, IPC — Conviction for the substantive offence only replaced. *Jaikrishnadas Manohardas Desai* v. *State of Bombay*, AIR 1960 SC 889: (1960) 3 SCR 319: 1960 Cri LJ 1250.

Bench Strength 3. Coram: *Syed Jafer Imam, K.N. Wanchoo* and **J.C. Shah**, JJ. [Date of decision: 16-3-1960]

[9285] — S. 537 — Charge under S. 302 r/w S. 149, IPC — Conviction under S. 302 r/w S. 34 upheld. *Jagir Singh* v. *State of Punjab*, AIR 1968 SC 43: (1967) 3 SCR 256: 1968 Cri LJ 89.

Bench Strength 2. Coram: **R.S. Bachawat** and *J.M. Shelat*, JJ. [Date of decision: 21-3-1967]

[9286] — S. 537 — Commission of an offence under S. 5(2) of the Prevention of Corruption Act, 1947 disclosed during the course of investigation — *Investigation continued after taking permission under S. 5-A of Corruption Act, 1947 — Defect is cured by S. 537 and no interference in appeal is called for. H.N. Rishbud* v. *State of Delhi*, AIR 1955 SC 196: (1955) 1 SCR 1150: 1955 Cri LJ 526, 533, 53.

Bench Strength 3. Coram: *B.K. Mukherjea, Vivian Bose* and **B. Jagannadhadas**, JJ. [Date of decision: 14-12-1954]

See also AIR 1964 SC 33: (1964) 1 Cri LJ 16

[9287] — S. 537 — Defect in investigation — Burden to show prejudice — Relevance of early objection

If cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial.

When the breach of a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such reinvestigation as the circumstances of an individual case may call for.

Even if the trial had proceeded to conclusion and the accused had to make out that there was in fact a failure of justice as the result of such an error, explanation to S. 537, CrPC indicates that the fact of the objection having been raised at early stage of the proceedings is a pertinent factor. To ignore the breach in such a situation when brought to the notice of the Court would be virtually to make a dead letter of the peremptory provision which has been enacted on grounds of public policy for the benefit of such an accused. *H.N. Rishbud* v. *State of Delhi*, AIR 1955 SC 196, 204: (1955) 1 SCR 1150, 116: 1955 Cri LJ 526.

Bench Strength **3**. Coram: *B.K. Mukherjea*, *Vivian Bose* and **B. Jagannadhadas**, JJ. [Date of decision: 14-12-1954]

[9288] — S. 537 — Disobedience to an express provision as to a mode of trial not to be regarded as a mere irregularity. *Magga* v. *State of Rajasthan*, AIR 1953 SC 174: 1953 SCR 973: 1953 Cri LJ 892.

Bench Strength **2**. Coram: **M.C. Mahajan** and *S.R. Das*, JJ. [Date of decision: 16-2-1953]

[9289] — S. 537 — Effect of amendment by Act 26 of 1955 — Saves misjoinder of charges if no failure of justice is occasioned — Misjoinder of charges — *No failure of justice — Defect curable by S. 537*

After the amendment there is no scope for contending that misjoinder of charges is not saved by S. 537 of the Criminal Procedure Code if it has not occasioned a failure of justice.

Section 537, CrPC, prohibits the revisional or the Appellate Court from setting aside a finding, sentence, or order passed by a court of competent jurisdiction on the ground of misjoinder of charges unless it has occasioned a failure of justice. *Birichh Bhujan* v. *State of Bihar*, AIR 1963 SC 1120, 1128: 1963 Supp (2) SCR 328: (1963) 2 Cri LJ 190, 192.

Bench Strength **4**. Coram: *Syed Jafer Imam*, **K. Subba Rao**, *N. Rajagopala Ayyangar* and *J.R. Mudholkar*, JJ. [Date of decision: 20-11-1962]

[9290] — S. 537 — Explanation — Scope

Explanation to S. 537 requires a court to take into consideration the fact whether any objection on the score of irregularity could have been raised at an earlier stage. *Bhagwan Singh* v. *State of Punjab*, AIR 1952 SC 214, 216: 1952 SCR 812, 818: 1952 Cri LJ 1131.

Bench Strength **2**. Coram: *Fazl Ali* and **Vivian Bose**, JJ. [Date of decision: 30-4-1952]

[9291] — S. 537 — Failure of justice — Prejudice — Objection not taken in lower Courts and in grounds of appeal — *Is not fatal, but weighs against the accused. K.C. Mathew* v. *State of Travancore-Cochin*, AIR 1956 SC 241, 243, 24: (1955) 2 SCR 1057, 106: 1956 Cri LJ 444.

Bench Strength **3**. Coram: **Vivian Bose**, *T.L. Venkatarama Aiyar* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 15-12-1955]

[9292] — S. 537 — Fairness or unfairness of trial owing to irregularities in investigation — Question of — Not affecting merits — Supreme Court's inability to examine

Supreme Court was unable to enter into the question of the fairness or unfairness of the trial due to certain irregularities in investigation because it did not affect the merits of the matter. *Gajanand* v. *State of U.P.*, AIR 1954 SC 695: 1954 Cri LJ 1746.

Bench Strength **3**. Coram: *M.C. Mahajan, C.J.* and *Vivian Bose* and **Ghulam Hasan**, JJ. [Date of decision: 18-3-1954]

[9293] — S. 537 — Illegal investigation — *Question whether illegal investigation resulted in prejudice to the accused not decided by High Court — Criminal proceedings not liable to be quashed — Case remanded to High Court*

An illegal investigation does not vitiate the trial. The High Court erred in quashing the proceedings against the respondent solely on the ground of illegal investigation. In order to set aside the conviction it must be shown that there has been miscarriage of justice as a result of bad and irregular investigation. *State of A.P.* v. *P.V. Narayana*, (1971) 1 SCC 483: 1971 SCC (Cri) 186: AIR 1971 SC 811: 1971 Cri LJ 676.

Bench Strength **2**. Coram: **S.M. Sikri, C.J.** and *P. Jaganmohan Reddy*, J. [Date of decision: 9-2-1971]

[9294] — S. 537 — Inadequate compliance with S. 342. *Bimbadhar Pradhan* v. *State of Orissa*, AIR 1956 SC 469: 1956 SCR 206: 1956 Cri LJ 831: (1956) 2 MLJ (SC) 13.

Bench Strength **3**. Coram: **B.P. Sinha**, *Syed Jafer Imam* and *N. Chandrasekhara Aiyar*, JJ. [Date of decision: 13-3-1956]

See also AIR 1956 SC 536: 1956 Cri LJ 940

[9295] — S. 537 — Irregularity in investigation — Irregularity in not following mandatory provision not material unless results in miscarriage of justice

Where cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the preceding investigation will not vitiate the result unless miscarriage of justice has been caused thereby and the accused has been prejudiced. Assuming in favour of the appellant, that there was an irregularity in the investigation and that S. 5-A of the Act, was not complied with in substance, the trial by the Special Judge cannot be held to be illegal unless it is shown that miscarriage of justice has been caused on account of illegal investigation.

If objection as to irregularity is not taken at trial stage the case is governed by *H. N. Rishbud* v. *State of Delhi*, (1955) 1 SCR 1150 and not by *State of M.P.* v. *Mubarak Ali*, (1959) Supp 2 SCR 201. *Muni Lal* v. *Delhi Admn.*, (1971) 2 SCC 48: 1971 SCC (Cri) 407: AIR 1971 SC 1525: 1971 Cri LJ 1153.

Bench Strength 2. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 30-3-1971]

[9296] — S. 537 — Irregularity in the trial — *Where trial conducted substantially in the manner prescribed by the Code of CrPC but some irregularity occurred in the course of such conduct the irregularity can be cured under the section. Gurbachan Singh* v. *State of Punjab*, AIR 1957 SC 623: 1957 Cri LJ 1009, 1012.

Bench Strength 3. Coram: *B. Jagannadhadas*, *Syed Jafer Imam* and **P. Govinda Menon**, JJ. [Date of decision: 24-4-1957]

[9297] — S. 537 — Irregularity not affecting course of justice

The investigation in the present case by the Deputy Superintendent of Police cannot be considered to be in any way unauthorised or contrary to law. In this connection it may not be out of place also to point out that the function of investigation is merely to collect evidence and any irregularity or even illegality in the course of collection of evidence can scarcely be considered by itself to affect the legality of the trial by an otherwise competent court of the offence so investigated. *A.C. Sharma* v. *Delhi Admn.*, (1973) 1 SCC 726: 1973 SCC (Cri) 608: AIR 1973 SC 913: (1973) 3 SCR 477: 1973 Cri LJ 902.

Bench Strength 3. Coram: *A. Alagiriswami*, **I.D. Dua** and *C.A. Vaidialingam*, JJ. [Date of decision: 5-2-1973]

[9298] — S. 537 — Judgment not signed

As soon as the judgment is delivered, that becomes the operative pronouncement of the Court. The law then provides for the manner in which it is to be authenticated and made certain. The rules regarding this differ but they do not form the essence of the matter and if there is irregularity in carrying them out it is curable. Thus, if a judgment happens not to be signed and is inadvertently acted on and executed, the proceedings consequent on it would be valid because the judgment, if it can be shown to have been validly delivered, would stand good despite defects in the mode of its subsequent authentication. *Surendra Singh* v. *State of U.P.*, AIR 1954 SC 194, 197: 1954 SCR 330, 337: 1954 Cri LJ 475.

Bench Strength 3. Coram: *B.K. Mukherjea*, **Vivian Bose** and *N.H. Bhagwati*, JJ. [Date of decision: 16-11-1953]

[9299] — S. 537 — Misjoinder of charges — Plea taken before High Court — *Court to consider whether prejudice has in fact been caused to the accused. State of A.P.* v. *Cheemalapati Ganeswara Rao*, AIR 1963 SC 1850: (1964) 3 SCR 297: (1963) 2 Cri LJ 671.

Bench Strength 3. Coram: *K. Subba Rao*, *Raghubar Dayal* and **J.R. Mudholkar**, JJ. [Date of decision: 23-4-1963]

[9300] — S. 537 — Mistake by police officer during investigation — If covered — *Failure to submit police case diary — U.P. Police Regulation — R. 109*

The CrPC in laying down the omissions or irregularities which either vitiate the proceedings or not does not anywhere specifically say that a mistake committed by a police officer during the course of the investigation can be said to be an illegality or irregularity. Investigation is certainly not an inquiry or trial before the Court and the fact that there is no specific provision either way in Chapter XLV with respect to omissions or mistakes committed during the course of investigation except with regard to the holding of an inquest is a sufficient indication that the legislature did not contemplate any irregularity in investigation as of sufficient importance to vitiate or otherwise form any infirmity in the inquiry or trial. *Niranjan Singh* v. *State of U.P.*, AIR 1957 SC 142, 148: 1956 SCR 734, 744: 1957 Cri LJ 294.

Bench Strength 4. Coram: *N.H. Bhagwati*, *Syed Jafer Imam*, *S.K. Das* and **P. Govinda Menon**, JJ. [Date of decision: 3-10-1956]

[9301] — S. 537 — Non-compliance with S. 342 — Effect

Every error or omission in compliance with S. 342 does not necessarily vitiate the trial. Errors of that type fall within the category of curable irregularity and the question whether the trial has been vitiated depends in each case upon the degree of error and upon whether prejudice has been or is likely to have been caused to the accused. *Makan Jivan* v. *State of Gujarat*, (1971) 3 SCC 297: 1971 SCC (Cri) 587: AIR 1971 SC 1797: 1971 Cri LJ 1310.

Bench Strength 2. Coram: **K.S. Hegde** and *A.N. Grover*, JJ. [Date of decision: 30-4-1971]

[9302] — S. 537 — Omission to mention S. 34, IPC, in charge — Held, no prejudice caused as accused knew they were being tried in pursuance of common intention to commit the murder. *Rawalpenta Venkalu* v. *State of Hyderabad*, AIR 1956 SC 171: 1956 Cri LJ 338.

Bench Strength **3**. Coram: *Vivian Bose*, *B. Jagannadhadas* and **B.P. Sinha**, JJ. [Date of decision: 7-10-1955]

[9303] — S. 537 — Prejudice to the accused — How to judge — Courts should look to the substance and not to the technicalities — *The main concern of the Court should be to see if the accused had a fair trial, whether he knew what he was being tried for, whether main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. Gurbachan Singh* v. *State of Punjab*, AIR 1957 SC 623: 1957 Cri LJ 1009, 1012.

Bench Strength **3**. Coram: *B. Jagannadhadas*, *Syed Jafer Imam* and **P. Govinda Menon**, JJ. [Date of decision: 24-4-1957]

[9304] — S. 537 — Separate charge not framed — No prejudice caused — *Irregularity cured by S. 537. Kanta Prashad* v. *Delhi Admn.*, AIR 1958 SC 350: 1958 SCR 1218: 1958 Cri LJ 698.

Bench Strength **2**. Coram: *B.P. Sinha* and **Syed Jafer Imam**, JJ. [Date of decision: 6-2-1958]

[9305] — Ss. 537, 156 and 157 — Irregularities in investigation when detrimental

The question is not whether in investigating an offence the police have disregarded the provisions of the Act, but whether the accused has been prejudiced by such disregard in the matter of his defence at the trial. It is, therefore, necessary for the accused to throw a reasonable doubt that the prosecution evidence is such that it must have been manipulated or shaped by reason of the irregularity in the matter of investigation, or that he was prevented by reason of such irregularity from putting forward his defence or adducing evidence in support thereof. But where the prosecution evidence in support thereof. But where the prosecution evidence has been held to be true and where the accused had full say in the matter, the conviction cannot obviously be set aside on the ground of some irregularity or illegality in the matter of investigation: there must be a sufficient nexus, either established or probabilized, between the conviction and the irregularity in the investigation. *State of U.P.* v. *Bhagwant Kishore Joshi*, AIR 1964 SC 221, 226: (1964) 3 SCR 71, 83: (1964) 1 Cri LJ 140: (1964) 1 LLJ 60.

Bench Strength **3**. Coram: **K. Subba Rao**[1], *Raghubar Dayal*[1] and **J.R. Mudholkar**[2], JJ. [Date of decision: 17-4-1963]

[9306] — Ss. 537, 236 and 237 — Conviction under S. 420, IPC instead of S. 409, IPC upheld. *Sunil Kumar Paul* v. *State of W.B.*, AIR 1965 SC 706: (1964) 7 SCR 70: (1965) 1 Cri LJ 630.

Bench Strength **3**. Coram: *K. Subba Rao*, *K.C. Das Gupta* and **Raghubar Dayal**, JJ. [Date of decision: 6-3-1964]

[9307] — Ss. 537, 236 and 337 — High Court altering conviction under S. 299, Calcutta Municipal Act to S. 300 of the Act — *There is no prejudice or failure of justice*

It has not been shown that the appellant had, in any way, been prejudiced in the trial of the case as a result of the alteration in the section, that is to say, that he was deprived of some opportunity to make a proper defence to the prosecution if the right section had been named in the notice or in the charge, if any. Nor has he been able to show that he was misled as a result of any such technical error. *Nani Gopal Biswas* v. *Municipality of Howrah*, AIR 1958 SC 141, 143: 1958 SCR 774, 780: 1958 Cri LJ 271, 272.

Bench Strength **2**. Coram: **B.P. Sinha** and *Vivian Bose*, JJ. [Date of decision: 29-10-1957]

[9308] — Ss. 537 and 197 — Defect of not obtaining sanction not curable. *Shreekantiah Ramayya Munipalli* v. *State of Bombay*, AIR 1955 SC 287: (1955) 1 SCR 1177: 1955 Cri LJ 857.

Bench Strength **3**. Coram: *B.K. Mukherjea* and *S.R. Das*, **Vivian Bose**, JJ. [Date of decision: 22-12-1954]

[9309] — Ss. 537 and 208 — Denial of opportunity to accused to lead evidence in defence under S. 208 — Held, cannot be cured

Breach of S. 208 is of such a character that the Court will presume that there has been prejudice to the accused by the mere fact of the breach.

If the accused is denied the opportunity of leading that evidence which he has a right to do under S. 208, that the denial of such right is sufficient to cause prejudice to the accused and S. 537 would have no application to a case of this kind. The possibility that the accused may not have produced defence if asked by the magistrate whether he would do so, is of no consequence. *Chhadamilal Jain* v. *State of U.P.*, AIR 1960 SC 41, 46: (1960) 1 SCR 736, 747, 74: 1960 Cri LJ 145.

Bench Strength **4**. Coram: *Syed Jafer Imam*, *J.L. Kapur*, *A.K. Sarkar* and **K.N. Wanchoo**, JJ. [Date of decision: 14-9-1959]

[9310] — Ss. 537 and 222(2) — Charge contravening proviso to S. 222(2) — Charge, held, curable. *State of Bombay* v. *Umarsaheb Buransaheb Inamdar*, AIR 1962 SC 1153: 1962 Supp (2) SCR 711: (1962) 2 Cri LJ 259.

Bench Strength **3**. Coram: *S.K. Das*, *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 23-1-1962]

[9311] — Ss. 537 and 225 — Alternation of charge from S. 165-A, IPC, to Ss. 161/109, IPC, no illegality. *Om Prakash* v. *State of U.P.*, AIR 1960 SC 409: 1960 Cri LJ 544.

Bench Strength 2. Coram: *A.K. Sarkar* and **M. Hidayatullah**, JJ. [Date of decision: 15-9-1959]

[9312] — Ss. 537 and 342 — Non-examination or defective examination no ground for interference unless prejudice caused

Mere non-examination or defective examination under S. 342 is not a ground for interference unless prejudice is established. *Bibhuti Bhusan Das Gupta* v. *State of W.B.*, AIR 1969 SC 381, 385: (1969) 2 SCR 104, 111: 1969 Cri LJ 654.

Bench Strength 3. Coram: *S.M. Sikri*, **R.S. Bachawat** and *K.S. Hegde*, JJ. [Date of decision: 16-9-1968]

[9313] — Ss. 537 and 350 — Trial before a Special Judge appointed under the Criminal Law (Amendment) Act, 1952 — *Conviction by a successor Judge upon the evidence recorded by his predecessor — S. 350 not applicable to the trial — Trial is illegal — Defect cannot be cured under S. 537*

Where the Special Judge proceeds with the trial of a case from the stage at which his predecessor left it and convicted the accused, it was not a case of irregularity but want of competency. The trial offends the cardinal principles of law. Therefore S. 537 of the Code has no application. It cannot be called in aid to make what was incompetent competent. *Pyare Lal* v. *State of Punjab*, AIR 1962 SC 690, 694: (1962) 3 SCR 328, 336: (1962) 1 Cri LJ 688, 690: (1962) 1 LLJ 637.

Bench Strength 3. Coram: *B.P. Sinha, C.J.* and **A.K. Sarkar** and *J.R. Mudholkar*, JJ. [Date of decision: 30-8-1961]

[9314] — Ss. 537 and 361 — Breach of S. 361 curable if no prejudice caused. *Shivanarayan Kabra* v. *State of Madras*, AIR 1967 SC 986: (1967) 1 SCR 138: (1967) 1 MLJ (SC) 159: 1967 Cri LJ 946.

Bench Strength 3. Coram: **V. Ramaswami**, *V. Bhargava* and *Raghubar Dayal*, JJ. [Date of decision: 23-8-1966]

[9315] — Ss. 537 and 531 — Mode of committing crime not stated — Charge not vague — S. 409, IPC

The charge is with respect to one offence, though the mode of committing it is not stated precisely. If it be complained that the charge framed under S. 409, IPC, is vague because it does not specifically state one particular mode in which the offence was committed, the vagueness of the charge will not make the trial illegal, especially when no prejudice is caused to the accused. *R.K. Dalmia* v. *Delhi Admn.*, AIR 1962 SC 1821, 1832: (1963) 1 SCR 253, 274: (1962) 2 Cri LJ 805: (1962) 32 Comp Cas 699.

Bench Strength 3. Coram: *S.K. Das*, *K. Subba Rao* and **Raghubar Dayal**, JJ. [Date of decision: 5-4-1962]

— **S. 537(b)** *See* Ss. 225, 233, 337 and 537(b)

See also Ss. 297 and 537(b)

[9316] — S. 537(b) — Misdirection in charge to Jury — *Verdict of jury not to be set aside unless it is established that there has been a serious misdirection occasioning in failure of justice. Mushtak Hussein* v. *State of Bombay*, AIR 1953 SC 282, 284: 1953 SCR 809, 815: 1953 Cri LJ 1127, 1129.

Bench Strength 3. Coram: **M.C. Mahajan**, *Vivian Bose* and *B. Jagannadhadas*, JJ. [Date of decision: 30-3-1953]

[9317] — S. 537(b) — Misjoinder of parties — Plea not raised in trial Court — *Leads to the presumption that no prejudice caused — Trial not vitiated even if there is misjoinder. Mangaldas Raghavji Ruparel* v. *State of Maharashtra*, AIR 1966 SC 128, 130: (1965) 2 SCR 894, 897: 1966 Cri LJ 106.

Bench Strength 5. Coram: *K.N. Wanchoo*, *M. Hidayatullah*, *J.C. Shah*, **J.R. Mudholkar** and *S.M. Sikri*, JJ. [Date of decision: 8-2-1965]

— **S. 537(d)** *See* Ss. 297 and 537(d)

— **S. 537(2)** *See* Ss. 297 and 537(2)

[9318] — S. 539-B — Judge's view or observations not evidence. *Pritam Singh* v. *State of Punjab*, AIR 1956 SC 415, 424: 1956 Cri LJ 805.

Bench Strength 3. Coram: **N.H. Bhagwati**, *T.L. Venkatarama Aiyar* and *B.P. Sinha*, JJ. [Date of decision: 4-11-1955]

[9319] — S. 539-B — Local inspection by the presiding officer — *Held, the actual place of occurrence must be examined — Such examination must be for the purpose of properly appreciating the evidence on record. State of U.P.* v. *Het Ram*, (1976) 3 SCC 672: 1976 SCC (Cri) 502: AIR 1976 SC 2124: 1976 Cri LJ 1644.

Bench Strength 2. Coram: *R.S. Sarkaria* and **P.N. Shinghal**, JJ. [Date of decision: 3-2-1976]

— **S. 540** *See also* Ss. 432 and 540

[9320] — S. 540 — Witnesses can be recalled or resummoned for re-examination though power under this section cannot be exercised to fill up lacuna in prosecution case — Bar against filling "lacuna in prosecution case" as laid down in

1991 Supp (1) SCC 271 — Meaning of — *Oversight or mistakes during conducting of case cannot be understood as lacuna and so can be corrected — Lacuna is the inherent weakness or a latent wedge in the matrix of prosecution case — CrPC, 1973, S. 311. Rajendra Prasad* v. *Narcotic Cell*, (1999) 6 SCC 110: 1999 SCC (Cri) 1062: AIR 1999 SC 2292: 1999 Cri LJ 3529.

Bench Strength **2**. Coram: **K.T. Thomas** and *M.B. Shah*, JJ. [Date of decision: 12-7-1999]

Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595, explained and followed

Jamatraj Kewalji Govani v. State of Maharashtra, AIR 1968 SC 178: (1967) 3 SCR 415; Ram Chander v. State of Haryana, (1981) 3 SCC 191: 1981 SCC (Cri) 683, followed

[9321] — S. 540 — Duty of prosecution to produce eyewitnesses — Prosecution has to decide which witness he should examine to unfold his story — *If eyewitnesses are deliberately withheld inference against the prosecution can be drawn — Court not to draw a list of eyewitnesses not examined and examine them under S. 540, CrPC — However eyewitnesses can be examined under S. 540, CrPC in the interest of justice — Penal Code, S. 302. Darya Singh* v. *State of Punjab*, AIR 1965 SC 328: (1964) 3 SCR 397: (1965) 1 Cri LJ 350.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 25-4-1963]

[9322] — S. 540 — Applicability — Applies to proceedings under S. 207-A, CrPC. *State of W.B.* v. *Tulsidas Mundhra*, 1963 Supp (1) SCR 1, 8-9: (1964) 1 Cri LJ 443, 446.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.C. Das Gupta* and *J.R. Mudholkar*, JJ. [Date of decision: 11-9-1962]

[9323] — S. 540 — Court's discretion under

In addition to S. 73, there are two other provisions resting on the same principle, namely, S. 165, Evidence Act and S. 540, Criminal Procedure Code, 1898, which between them invest the court with a wide discretion to call and examine anyone as a witness, if it is bona fide of the opinion that his examination is necessary for a just decision of the case. *State (Delhi Admn.)* v. *Pali Ram*, (1979) 2 SCC 158: 1979 SCC (Cri) 389: AIR 1979 SC 14: 1979 Cri LJ 17: 1979 MLJ (Cri) 250.

Bench Strength **2**. Coram: **R.S. Sarkaria** and *O. Chinnappa Reddy*, JJ. [Date of decision: 26-9-1978]

[9324] — S. 540 — Power of court to summon, examine, recall and re-examine any witness or person present — Nature, scope and applicability of — *Provision in two parts, first part being discretionary and the second one being obligatory — Power is in the widest terms exercisable at any stage so long as court is in seisin of the proceeding — But accused entitled to fair and reasonable opportunity to rebut the evidence brought on record against him pursuant to exercise of such power — Power not unguided but has to be exercised fairly, bona fide, non-arbitrarily, with circumspection and in the exigency of the situation when it appears, in the facts and circumstances, to be essential for a just decision of the case — On facts High Court's order recalling a witness for examination and issuing summons to two more witnesses for examination caused no prejudice to the accused and hence the order valid — CrPC, 1973 — S. 311. Mohanlal Shamji Soni* v. *Union of India*, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595: AIR 1991 SC 1346: (1991) 2 GLH 11.

Bench Strength **2**. Coram: **S. Ratnavel Pandian** and *K. Jayachandra Reddy*, JJ. [Date of decision: 22-2-1991]

Mir Mohd. Omar v. State of W.B., (1989) 4 SCC 436: 1989 SCC (Cri) 750, distinguished

Channu Lal v. Rex, AIR 1949 All 692: 51 Cri LJ 199: 1950 AWR 147; Rengaswami Naicker v. Muruga Naicker, AIR 1954 Mad 169: 1954 Cri LJ 123: (1952) 2 MLJ 497; Shugan Chand v. Emperor, AIR 1925 Lah 531: 26 Cri LJ 1035: 26 PLR 312; Queen v. Assanoollah, 13 SWR (Cri) 15, approved

[9325] — S. 540 — Discretion of trial Court to exercise the power in the interests of justice

The powers of the Court under S. 540 can and ought to be exercised in the interests of justice whenever the Court feels that the interests of justice so require, but that does not justify the contention that the failure of the Court to have exercised its powers under S. 540 has introduced a serious infirmity in the trial itself. *Darya Singh* v. *State of Punjab*, AIR 1965 SC 328, 333: (1964) 3 SCR 397, 408: (1965) 1 Cri LJ 350.

Bench Strength **3**. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 25-4-1963]

[9326] — S. 540 — Objection by a party to recording fresh evidence — *Duty of Court*

If a criminal court feels that the evidence of a particular witness is necessary in the interest of justice, then a witness should be examined as court witness, defence objection notwithstanding. Parties cannot control the Court's discretion to have before it further evidence if it is considered necessary for finding the truth for promoting the cause of justice. Justice would fail not only by unjust conviction of the innocent but also by acquittal of the guilty for unjustified failure to produce available evidence. *Nageshwar Shri Krishna Ghobe* v. *State of Maharashtra*, (1973) 4 SCC 23: 1973 SCC (Cri) 664: AIR 1973 SC 165: 1973 Cri LJ 235: 1973 Bom LR 483: (1973) 2 SCR 377.

Bench Strength **3**. Coram: *J.M. Shelat*, **I.D. Dua** and *H.R. Khanna*, JJ. [Date of decision: 19-9-1972]

[9327] — S. 540 — Power of Court under — No limitation as to stage to which trial may have reached. *Amar Chand Agarwalla* v. *Shanti Bose*, (1973) 4 SCC 10: 1973 SCC (Cri) 651: AIR 1973 SC 799: 1973 Cri LJ 577.

Bench Strength 3. Coram: *A. Alagiriswami*, *I.D. Dua* and **C.A. Vaidialingam**, JJ. [Date of decision: 22-12-1972]

[9328] — S. 540 — Power to summon witnesses — Judicial Officers should not ordinarily be called as witnesses

The power under S. 540 has to be exercised sparingly and only when the ends of justice so demand. The higher the power the more careful should be its exercise. There may be proper and suitable cases where the examination of the Sessions Judge or the trial court may be very necessary but this must be indeed a very rare occasion where all other remedies are exhausted. *Rameshwar Dayal* v. *State of U.P.*, (1978) 2 SCC 518: 1978 SCC (Cri) 311: AIR 1978 SC 1558: 1978 ALJ 1011: (1978) 15 ACC 276.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 15-2-1978]

[9329] — S. 540 — Scope — Accused must be afforded the opportunity to rebut the evidence taken under

The right to adduce evidence in rebuttal is one of the inevitable steps in the defence of a case by the accused and a refusal of the same amounts not only to an infraction of the provisions of the Criminal Procedure Code but also of the principles of natural justice and offends the famous maxim audi alteram partem. The words "just decision of the case" in S. 540 would become meaningless and without any significance if a decision is to be arrived at without a sense of justice and fairplay. *Rameshwar Dayal* v. *State of U.P.*, (1978) 2 SCC 518: 1978 SCC (Cri) 311: AIR 1978 SC 1558: 1978 ALJ 1011: (1978) 15 ACC 276.

Bench Strength 2. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 15-2-1978]

[9330] — S. 540 — Scope and applicability — Evidence Act, 1872 — S. 165 — Scope and applicability — *Ss. 540 and 165 between them confer a wide discretion on the Court to act in the interest of justice — Powers under S. 540 are without limitation, the only limitation being that the Court is bona fide of the opinion that the step must be taken for the just decision of the case — Powers of court under S. 540 detailed*

Section 540 CrPC and S. 165, Evidence Act, between them confer jurisdiction on the Judge to act in aid of justice. Section 540, CrPC, gives a power to the court to summon a material witness or to examine a person present in Court or to recall a witness already examined. It confers a wide discretion on the Court to act as the exigencies of justice require. Another aspect of this power and complementary to it is to be found in S. 165 of the Indian Evidence Act.

Section 540 is intended to be wide as the repealed use of the word 'any' throughout its length clearly indicates. The section is in two parts. The first part gives a discretionary power but the latter part is mandatory. The use of the word 'may' in the first part and of the word 'shall' in the second firmly establishes this difference. Under the first part which is permissive, the Court may act in one of three ways: (*a*) summon any person as a witness, (*b*) examine any person present in Court although not summoned, and (*c*) recall or re-examine a witness already examined. The second part is obligatory and compels the Court to act in these three ways or any one of them, if the just decision of the case demands it. As the section stands there is no limitation on the power of the Court arising from the stage to which the trial may have reached, provided the Court is bona fide of the opinion that for the just decision of the case, the step must be taken. It is clear that the requirement of just decision of the case does not limit the action to something in the interest of the accused only. The action may equally benefit the prosecution. There are, however, two aspects of the matter which must be distinctly kept apart. The first is that the prosecution cannot be allowed to rebut the defence evidence unless the prisoner brings forward something suddenly and unexpectedly.

In our criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in Court or to recall a witness already examined, and makes this the duty and obligation of the Court provided the just decision of the case demands it. In other words, where the Court exercises the power under the second part, the inquiry cannot be whether the accused has brought anything suddenly or unexpectedly but whether the Court is right in thinking that the new evidence is needed by it for a just decision of the case. If the Court has acted without the requirements of a just decision, the action is open to criticism but if the Court's action is supportable as being in aid of a just decision the action cannot be regarded as exceeding the jurisdiction. *Jamatraj Kewalji Govani* v. *State of Maharashtra*, AIR 1968 SC 178, 181: (1967) 3 SCR 415: 1968 Cri LJ 231, 234.

Bench Strength 3. Coram: **M. Hidayatullah**, *S.M. Sikri* and *C.A. Vaidialingam*, JJ. [Date of decision: 4-4-1967]

[9331] — S. 540 — Trial Court not exercising its power where witnesses won over. *Masalti* v. *State of U.P.*, AIR 1965 SC 202: (1964) 8 SCR 133: (1965) 1 Cri LJ 226.

Bench Strength **4**. Coram: **P.B. Gajendragadkar, C.J.** and *K.N. Wanchoo, K.C. Das Gupta* and *Raghubar Dayal*, JJ. [Date of decision: 4-5-1964]

[9332] — S. 540 — Where the whole truth was not brought out by the prosecution witnesses the Court could on its own call those eyewitnesses not called by the prosecution but named in the FIR. *Partap* v. *State of U.P.*, (1976) 2 SCC 798: 1976 SCC (Cri) 303: AIR 1976 SC 966: 1976 Cri LJ 697.

Bench Strength **3**. Coram: **M.H. Beg**[2], *P.N. Bhagwati*[1] and **R.S. Sarkaria**[1], JJ. [Date of decision: 10-9-1975]

[9333] — Ss. 540, 337 and 338 — Criminal Law Amendment Act, 1962, S. 8(2) — S. 540 does not govern Ss. 337, CrPC or S. 8(2) of Act 1952

Section 540, CrPC, only confers powers on the Court to summon material witnesses at any stage of any inquiry or trial or other proceeding under the Code. That power is not to be confused with the power to tender pardon to an accused. The consideration for summoning witnesses as court witnesses are somewhat different from the considerations on which a tender of pardon should be made. It is no doubt necessary to bear in mind the interest of justice in either case but there the common factor ceases and other considerations arise. It is not, therefore, possible to read S. 540 with Ss. 337 and 338 of the Code or with S. 8(2) of the Criminal Law Amendment Act. *Lt. Commander Pascal Fernandes* v. *State of Maharashtra*, AIR 1968 SC 594, 598-99: (1968) 1 SCR 695, 703: 1968 Cri LJ 550, 554.

Bench Strength **3**. Coram: **M. Hidayatullah**, *V. Bhargava* and *C.A. Vaidialingam*, JJ. [Date of decision: 28-9-1967]

[9334] — Ss. 540 and 428 — Only such witnesses to be called by the High Court who are necessary for a just decision of the case — *Rejection of oral request by accused for examination of two witnesses not bad where those witnesses had in their statements to the police supported the prosecution case and having turned hostile were unhelpful to the case — CrPC, 1973, Ss. 311 and 391*. *Abdul Latif* v. *State of U.P.*, (1978) 1 SCC 466: 1978 SCC (Cri) 123: AIR 1978 SC 472: 1978 Cri LJ 639: 1978 ALJ 362: 1978 MLJ (Cri) 472: (1978) 2 SCR 611.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *P.N. Shinghal*, JJ. [Date of decision: 24-1-1978]

[9335] — Ss. 540 and 537 — Examination of witness by prosecution instead of Court — Irregularity curable under S. 537

The Sessions Court has power to examine witnesses who were not examined before the Committing Magistrate because of S. 540 of the Criminal Procedure Code, and if the witness is treated as a prosecution witness and examined by the prosecuting Counsel instead of by the Court itself that at best would be an irregularity curable by S. 537. The proper time to object to such a procedure would be at the trial itself and as the appellant was represented in the Sessions Court by two counsel it is too late to object to such a venial irregularity in this Court. *Bhagwan Singh* v. *State of Punjab*, AIR 1952 SC 214, 215: 1952 SCR 812, 815: 1952 Cri LJ 1131.

Bench Strength **2**. Coram: *Fazl Ali* and **Vivian Bose**, JJ. [Date of decision: 30-4-1952]

[9336] — Ss. 540-A and 205 — Examination of Pleader

Sections 205 and 540-A do not expressly mention that the pleader cannot be examined under S. 342, but this does not lead to the inference that the pleader can be so examined. On the other hand, Ss. 353, 360, 361 and 366 expressly provide that the pleader may represent the accused for certain purposes, but from this fact alone no inference can be drawn that the pleader cannot represent the accused for purposes of S. 342 or other sections. It is from the scheme, purpose and language of S. 342 that we are driven to the conclusions that the examination under the section must be of the accused person and not his pleader. *Bibhuti Bhusan Das Gupta* v. *State of W.B.*, AIR 1969 SC 381, 385: (1969) 2 SCR 104, 110: 1969 Cri LJ 654.

Bench Strength **3**. Coram: *S.M. Sikri*, **R.S. Bachawat** and *K.S. Hegde*, JJ. [Date of decision: 16-9-1968]

[9337] — S. 545(1)(bb) — High Court imposing fine in addition to sentence imposed by Sessions Judge — *Propriety*

The High Court has relied upon the language of the amended S. 545(1)(*bb*) in order to impose the sentence of fine suo motu on the two appellants in addition to the sentences imposed by the Sessions Judge.

Having regard to the circumstances in the present case, the High Court had no legal justification for enhancing the sentences imposed by the Sessions Judge on the respective appellants. The question of sentence is a matter of discretion for the trial Court and it is well settled that when the discretion has been properly exercised on accepted legal principles an appellate Court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgment.

In a matter of enhancement there should not be interference when the sentence of the trial Court imposes substantial punishment. Interference is only called for when it is manifestly inadequate. *Shivajirao* v. *State of Maharashtra, Cr. A. No. 173 of 1968*

Bench Strength **3**. Coram: *Shah*, **Ramaswami** and **Grover**, JJ. [Date of decision: 4-12-1968]

[9338] — S. 545(1)(bb) [as amended by Act 26 of 1955] — Power of Court to award compensation to victim or dependants of victim of crime — *Only in cases where fine could be imposed on accused — Position compared with that under Criminal Procedure Code, 1973, S. 357(3) where the Court may award compensation even in cases where court imposes a sentence of which fine does not form part — Matters to be considered in awarding compensation pointed out — CrPC, 1973, S. 357(3). Sarwan Singh* v. *State of Punjab*, (1978) 4 SCC 111: 1978 SCC (Cri) 549: AIR 1978 SC 1525: 1978 Cri LJ 1598.

Bench Strength **2**. Coram: *Jaswant Singh* and **P.S. Kailasam**, JJ. [Date of decision: 30-8-1978]

[9339] — Ss. 548 and 251-A — Nature and scope of S. 14, OSA, 1923 — *Held, neither contains any non-obstante clause, nor affects the inherent power of holding proceedings in camera, nor takes away accused's right to get copies under S. 548, Criminal Procedure Code or copies of statements recorded by magistrate or statement of witnesses recorded by police or documents obtained by police during investigation envisaged under Criminal Rr. 308 and 310 framed under Criminal Procedure Code — Accused's lawyer also entitled to take notes of such statements in extenso and cannot be compelled to show his register containing the notes by virtue of privilege under S. 126, Evidence Act, 1872 — CrPC, 1973, Ss. 363(5) and 207 — Official Secrets Act, 1923, S. 14. Supdt. & Remembrancer of Legal Affairs* v. *Satyen Bhowmick*, (1981) 2 SCC 109: 1981 SCC (Cri) 342: AIR 1981 SC 917: (1981) 2 SCR 661: 1981 Cri LJ 341.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A. Varadarajan*, JJ. [Date of decision: 15-1-1981]

[9340] — S. 549 — Court-Martial and ordinary court — *Trial and conviction of military personnel under S. 376, IPC, by ordinary court — No strict compliance with procedure under S. 126 of Army Act, 1950 (46 of 1950), and Criminal Courts and Court-Martial Rules, 1952 — Validity of trial. Joginder Singh* v. *State of H.P.*, (1971) 3 SCC 86: 1971 SCC (Cri) 269: AIR 1971 SC 500: 1971 Cri LJ 511.

Bench Strength **2**. Coram: *J.M. Shelat* and **C.A. Vaidialingam**, JJ. [Date of decision: 30-11-1970]

[9341] — S. 549 — Rules framed by Central Government under — Rules 3, 4, 5 and 8 — Rules apply when proceedings already instituted in an ordinary criminal Court — *Rule 3 applies where investigation completed by Civil Police and charge-sheet submitted before a Magistrate — Rule 5 not applicable when case not brought before the Magistrate*

The rules framed by the Central Government under S. 549 of the Criminal Procedure Code apply to a case where the proceedings against the petitioner have already been instituted in an ordinary criminal Court having jurisdiction to try the matter and not at a stage where such proceedings have not been instituted. The petitioner was not brought before the Magistrate and charged with the offences for which he was liable to be tried by the Court martial within the meaning of R. 3 and so the situation contemplated by R. 5 has not arisen and the requirements of that rule are therefore not attracted. It is manifest that R. 3 only applies to a case where the police had completed investigation and the accused is brought before the Magistrate after submission of a charge-sheet. The provisions of this rule cannot be invoked in a case where the police had merely started investigation against a person subject to military, naval or air force law. *Som Datt Datta* v. *Union of India*, AIR 1969 SC 414, 419-20: (1969) 2 SCR 177, 187: 1969 Cri LJ 663.

Bench Strength **5**. Coram: *M. Hidayatullah, C.J.* and *J.C. Shah*, **V. Ramaswami**, *G.K. Mitter* and *A.N. Grover*, JJ. [Date of decision: 20-9-1968]

[9342] — S. 549 — Scope — Conflict with Court-Martial in matter of jurisdiction — *Army Act, 1950, Ss. 125, 126*

Section 549 of the Code of Criminal Procedure empowers the Central Government to make rules as to the case in which persons subject to military, naval or air force law be tried by a Court to which the Code of Criminal Procedure applies or by Court-Martial. When any such person is brought before the Magistrate and charged with an offence for which he is liable to be tried either by a Court or by Court-Martial, the Magistrate shall have regard to such rules and shall in appropriate cases deliver him together with the statement of the offence of which he is accused to the Commanding Officer for the purpose of being tried by Court-Martial.

There are nine rules under S. 549 of the Code of Criminal Procedure. These rules are called Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1952. *Lt. Col. S.K. Kashyap* v. *State of Rajasthan*, (1971) 2 SCC 126: 1971 SCC (Cri) 452: AIR 1971 SC 1120: 1971 Cri LJ 832.

Bench Strength **2**. Coram: *C.A. Vaidialingam* and **A.N. Ray**, JJ. [Date of decision: 2-3-1971]

[9343] — S. 549 — R. 3 of the Rules framed under S. 549 — Scope and application — *Special Judge not a Magistrate under R. 3 — R. 3 does not apply to the trial of an army personnel by a Special Judge. Major E.G. Barsay* v. *State of Bombay*, AIR 1961 SC 1762, 1773-7: (1962) 2 SCR 195, 217: (1961) 2 Cri LJ 828.

Bench Strength 2. Coram: **K. Subba Rao** and *Raghubar Dayal*, JJ. [Date of decision: 24-4-1961]

[9344] — S. 549(1) — Army Act, 1950, S. 125

Section 549(1) should be construed in the light of S. 125 of the Army Act. Both the provisions have in mind the object of avoiding a collision between the ordinary criminal court and court-martial. So both of them should receive a similar construction. *Delhi Special Police Establishment* v. *Lt. Col. S.K. Loraiya*, (1972) 2 SCC 692: 1973 SCC (Cri) 1101: AIR 1972 SC 2548: 1973 Cri LJ 33: (1973) 1 SCR 1010.

Bench Strength 3. Coram: *J.M. Shelat*, *D.G. Palekar* and **S.N. Dwivedi**, JJ. [Date of decision: 24-8-1972]

[9345] — S. 549(1) — Criminal Courts and Courts Martial (Adjustment of Jurisdiction) Rules, 1952 — R. 3 and Criminal Procedure Code, S. 549(1) — *Mandatory nature*

In this case the procedure specified in R. 3 was not followed by the Special Judge, Gauhati before framing charges against the respondent. Section 549(1), Criminal Procedure Code, and R. 3 are mandatory. Accordingly the charges framed by the Special Judge against the respondent cannot survive. *Delhi Special Police Establishment* v. *Lt. Col. S.K. Loraiya*, (1972) 2 SCC 692: 1973 SCC (Cri) 1101: AIR 1972 SC 2548: 1973 Cri LJ 33: (1973) 1 SCR 1010.

Bench Strength 3. Coram: *J.M. Shelat*, *D.G. Palekar* and **S.N. Dwivedi**, JJ. [Date of decision: 24-8-1972]

[9346] — S. 549(1) — Scope — Accused is liable to be tried either by a court to which the Code applies or by a Court-Martial

Section 549(1), Criminal Procedure Code, is designed to avoid the conflict of jurisdiction in respect of the offence triable both by the ordinary criminal court and the court-martial. The clause "for which he is liable to be tried either by the court to which this code applies or by a court-martial" qualifies the preceding clause "when any person is charged with an offence" in S. 549(1). Accordingly, the phrase "is liable to be tried either by a court to which this Code applies or a court-martial" imports that the offence for which the accused is to be tried should be an offence of which cognizance can be taken by an ordinary criminal court as well as a court-martial, the phrase is intended to refer to the initial jurisdiction of the two courts to take cognizance of the case and not to their jurisdiction to decide it on merits. It is admitted that both the ordinary criminal court and the court-martial have concurrent jurisdiction with respect to the offences for which the respondent has been charged by the Special Judge. *Delhi Special Police Establishment* v. *Lt. Col. S.K. Loraiya*, (1972) 2 SCC 692: 1973 SCC (Cri) 1101: AIR 1972 SC 2548: 1973 Cri LJ 33: (1973) 1 SCR 1010.

Bench Strength 3. Coram: *J.M. Shelat*, *D.G. Palekar* and **S.N. Dwivedi**, JJ. [Date of decision: 24-8-1972]

[9347] — S. 549(1) — Criminal Courts and Court-martial (Adjustment of Jurisdiction) Rules, 1952 — Rr. 3 and 4 — Applicable to a proceeding before Special Court in State of W.B. also — *Ss. 8(3-A) and 11 of Criminal Law (Amendment) Act, 1952 would operate in that State by virtue of S. 13 of W.B. Criminal Law Amendment (Special Courts) Act, 1949 and there is no conflict between the two Acts — Constitution of India, Art. 245. Supdt. & Remembrancer of Legal Affairs* v. *Usha Ranjan Roy Choudhury*, 1986 Supp SCC 190: 1986 SCC (Cri) 311: AIR 1986 SC 1655: 1986 Cri LJ 1248.

Bench Strength 2. Coram: *V. Balakrishna Eradi* and **M.P. Thakkar**, JJ. [Date of decision: 21-5-1986]

[9348] — S. 549(1) — "Special Judge" if a magistrate under — *Criminal courts and Court-martial (Adjustment of Jurisdiction) Rules, 1952, Rr. 3 and 4 — Criminal Law (Amendment) Act, 1952, Ss. 8(3-A) and 11*

Having regard to the provision contained in S. 8(3-A) of the Criminal Law (Amendment) Act of 1952 as it now stands it is clear that a Special Judge is deemed to be a magistrate for the purpose of the Rules framed under S. 549(1) of the Code of Criminal Procedure with the end in view to eschew the conflict between court-martial on the one hand and the ordinary criminal courts on the other. Therefore, the procedure embodied in S. 549(1), CrPC and rules framed thereunder are applicable not only to the court presided over by a magistrate but also to a judge presiding over a Special Court also known as Special Judge in W.B. *Supdt. & Remembrancer of Legal Affairs* v. *Usha Ranjan Roy Choudhury*, 1986 Supp SCC 190: 1986 SCC (Cri) 311: AIR 1986 SC 1655: 1986 Cri LJ 1248.

Bench Strength 2. Coram: *V. Balakrishna Eradi* and **M.P. Thakkar**, JJ. [Date of decision: 21-5-1986]

[9349] — S. 551 — Additional Inspector General of Police ordering investigation and registration of a case and Dy. Superintendent of Police,

C.I.D. preparing First Information Report and investigating the case — *Procedure not illegal*

It is true that the investigation has been entrusted to certain officers of Criminal Investigation Department. The Additional Inspector General of Police, CID and Deputy Superintendent of Police CID could, however exercise powers of investigation under S. 551, CrPC, because they were officers superior in rank to an officer in charge of a police station. *R.P. Kapur* v. *Pratap Singh Kairon*, AIR 1961 SC 1117, 1121: (1961) 2 SCR 143, 154: (1961) 2 Cri LJ 161.

Bench Strength **5**. Coram: **S.K. Das**, *M. Hidayatullah, K.C. Das Gupta, J.C. Shah* and *N. Rajagopala Ayyangar*, JJ. [Date of decision: 28-10-1960]

[9350] — S. 556 — Scope

Every member of a tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.

In dealing with cases of bias attributed to members constituting tribunals, it is necessary to make a distinction between pecuniary interest and prejudice so attributed. It is obvious that pecuniary interest, however small it may be in a subject-matter of the proceedings, would wholly disqualify a member from acting as a judge. But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. "The principle", says Halsbury, "*nemo debet esse judex in causa propria sua* precludes a justice, who is interested in the subject-matter of a dispute, from acting as a justice therein". *Manak Lal* v. *Dr. Prem Chand Singhvi*, AIR 1957 SC 425, 429: 1957 SCR 575, 580.

Bench Strength **3**. Coram: *T.L. Venkatarama Aiyar, S.K. Das* and **P.B. Gajendragadkar**, JJ. [Date of decision: 6-2-1957]

[9351] — S. 556 — "Personal interest" — Meaning of — *Magistrate sanctioning prosecution — Later the same person trying the case as Additional District Magistrate — Trial is not vitiated*

The question whether a Magistrate is personally interested or not has essentially to be decided on the facts in each case. Pecuniary interest, however small, will be a disqualification, but as regards other kinds of interest, there is no measure or standard except that it should be a substantial one, giving rise to a real bias, or a reasonable apprehension on the part of the accused of such bias.

Where a prosecution is directed, it means that the authority who gives the direction is satisfied in his own mind that the case must be initiated. Sanction is in the nature of a permission, while a direction is in the nature of a command.

The question whether the bar under S. 556 comes into play depends upon the facts and circumstances of each particular case, the dividing line being a thin one somewhat but still sufficiently definite and tangible, namely, the removal of a legal impediment by the grant of sanction and the initiation of criminal proceedings as the result of a direction. Where the Additional Deputy Commissioner who decided the case earlier sanctioned the prosecution as a District Magistrate the trial is not vitiated by reason of the provisions of S. 556, CrPC. *Rameshwar Bhartia* v. *State of Assam*, AIR 1952 SC 405, 407: 1953 SCR 126, 131: 1953 Cri LJ 163, 165.

Bench Strength **2**. Coram: **N. Chandrasekhara Aiyar** and *N.H. Bhagwati*, JJ. [Date of decision: 23-10-1952]

— S. 559 *See also* Ss. 476 and 559

[9352] — S. 559 — Scope

Since substitution of this section by CrPC (Amendment) Act, 1923, a successor in office of a Magistrate can file a complaint under S. 476, CrPC, in respect of an offence under S. 195, IPC, committed before his predecessor.

Section 559 applies to all Magistrates and there is no reason why the plain terms of the section should be cut down to limit it, as suggested by the learned Counsel for the appellant, to Magistrates whose Courts are permanent. It seems to us further clear that sub-section (2) has not the effect of limiting S. 559(1). Section 559(2) applies when there is a doubt as to who the successor is, and that doubt can be resolved in the manner laid down in sub-section (2). The sub-section does not mean, as contended by the learned Counsel, that until a successor is determined under sub-section (2) there is no successor for the purposes of sub-section (1). If there is no doubt about who the successor is, then that person can exercise the powers under sub-section (1). *Ajaib Singh* v. *Joginder Singh*, AIR 1968 SC 1422, 1424: (1969) 1 SCR 145, 148: 1969 Cri LJ 4.

Bench Strength 2. Coram: **S.M. Sikri** and *V. Ramaswami*, JJ. [Date of decision: 30-4-1968]

— S. 561-A *See* Ss. 154, 156, 439 and 561-A

See also Ss. 156, 439 and 561-A
See also Ss. 215, 561-A and 207
See also Ss. 369, 424, 430 and 561-A
See also Ss. 435 and 561-A
See also Ss. 439 and 561-A
See also Ss. 439, 561-A, 526 & 267
See also Ss. 496 and 561-A

[9353] — S. 561-A — Preservation of power under — *Constitution of India — Art. 21*

When the Constitution or any enacted law has embraced and confirmed the inherent powers and jurisdiction of the High Court which previously existed, that power and jurisdiction has the sanction of an enacted "law" within the meaning of Art. 21. The inherent powers of the High Court preserved by S. 561-A of the Code of Criminal Procedure are thus vested in it by "law" within the meaning of Art. 21. *Ratilal Bhanji Mithani* v. *Asstt. Collector of Customs*, AIR 1967 SC 1639, 1642: (1967) 3 SCR 926, 931: 1967 Cri LJ 1576.

Bench Strength 5. Coram: *K.N. Wanchoo, C.J.* and **R.S. Bachawat**, *J.M. Shelat*, *V. Bhargava* and *G.K. Mitter*, JJ. [Date of decision: 4-5-1967]

[9354] — S. 561-A — Scope of High Court's power under — *High Court can, under its inherent power, quash proceedings pending before the Sessions Judge on ground of insufficiency of evidence — CrPC, 1973, S. 482. State of Karnataka* v. *L. Muniswamy*, (1977) 2 SCC 699: 1977 SCC (Cri) 404: AIR 1977 SC 1489: (1977) 3 SCR 113: 1977 Cri LJ 1125.

Bench Strength 3. Coram: **Y.V. Chandrachud**, *P.K. Goswami* and *P.N. Shinghal*, JJ. [Date of decision: 3-3-1977]

Distinguished in Divine Retreat Centre v. State of Kerala, (2008) 3 SCC 542

[9355] — S. 561-A — Inherent power of court to recall a witness. *Mohd. Husain Umar Kochra* v. *K.S. Dalipsinghji*, (1969) 3 SCC 429: 1970 SCC (Cri) 99: AIR 1970 SC 45: 1970 Cri LJ 9.

Bench Strength 3. Coram: *S.M. Sikri*, **R.S. Bachawat** and *K.S. Hegde*, JJ. [Date of decision: 31-3-1969]

[9356] — S. 561-A — Inherent power to postpone hearing of appeal

The court has inherent powers to postpone the hearing of the appeal until such time as the appellant should be found to be of sound mind. *Vivian Rodrick* v. *State of W.B.*, (1969) 3 SCC 176: 1970 SCC (Cri) 33.

Bench Strength 3. Coram: *J.M. Shelat*, *V. Bhargava* and **C.A. Vaidialingam**, JJ. [Date of decision: 30-4-1969]

[9357] — S. 561-A — Power of High Court to quash proceedings — Whether exercise of such power barred by S. 164 of U.P. Municipalities Act

Section 164 of the U.P. Municipalities Act cannot operate to deprive the High Court of its jurisdiction under S. 561-A, CrPC to quash proceedings relating to a levy which is ultra vires the taxing power of the Municipal Board under the Municipalities Act. *Municipal Board* v. *Brij Mohan Chandra*, (1970) 2 SCC 901: 1970 SCC (Cri) 580: AIR 1971 SC 439: 1971 Cri LJ 415.

Bench Strength 3. Coram: *S.M. Sikri*, *V. Bhargava* and **I.D. Dua**, JJ. [Date of decision: 26-10-1970]

[9358] — S. 561-A — "State Government" — Meaning of — State Government can petition the High Court under S. 561-A, CrPC, 1898 — *General Clauses Act, 1897, S. 3(60). State of U.P.* v. *Mohd. Naim*, AIR 1964 SC 703: (1964) 2 SCR 363: (1964) 1 Cri LJ 549.

Bench Strength 4. Coram: **S.K. Das**, *A.K. Sarkar*, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 15-3-1963]

[9359] — S. 561-A — Order of the High Court quashing the proceedings on the basis of facts contained in the respondent's application but without giving any reasons — Propriety of. *State of U.P.* v. *K.K. Gupta*, (1970) 3 SCC 4: 1970 SCC (Cri) 354: AIR 1970 SC 1279: 1970 Cri LJ 1142.

Bench Strength 2. Coram: **A.N. Ray** and *I.D. Dua*, JJ. [Date of decision: 10-3-1970]

[9360] — S. 561-A — An accused while undergoing sentence of imprisonment cannot send a petition under S. 561-A to Registrar of the High Court by post but through Jail Superintendent — *Bombay Jail Manual (1955 Edition), Ch. XXXIX, R. 1416 — Bombay High Court Appellate Side Rules, 1960, Ch. XXVI — R. 25. Iqbal Ismail Sodawala* v. *State of Maharashtra*, (1975) 3 SCC 140: 1974 SCC (Cri) 764: AIR 1974 SC 1880: (1975) 1 SCR 710: 1974 Cri LJ 1291: (1975) 12 ACC 27.

Bench Strength 2. Coram: **H.R. Khanna** and *Y.V. Chandrachud*, JJ. [Date of decision: 13-8-1974]

[9361] — S. 561-A — Appellant cannot challenge orders to which he agreed and later complied. *Hazari Lal Gupta* v. *Rameshwar Prasad*, (1972) 1 SCC 452: 1972 SCC (Cri) 208: AIR 1972 SC 484: (1972) 2 SCR 666: 1972 Cri LJ 298.

Bench Strength **2**. Coram: **A.N. Ray** and *D.G. Palekar*, JJ. [Date of decision: 2-12-1971]

[9362] — S. 561-A — Application for expunction of certain remarks made against a Distt. Magistrate (appellant) in High Court's order — *Held, following tests, laid down in Mohd. Naim's case [(1964) 2 SCR 367] satisfied in the present case*

(*i*) Whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;

(*ii*) Whether there is evidence on record bearing on that conduct justifying the remarks; and

(*iii*) Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve. *R.K. Lakshmanan* v. *A.K. Srinivasan*, (1975) 2 SCC 466: 1975 SCC (Cri) 654: AIR 1975 SC 1741: 1975 Cri LJ1545.

Bench Strength **3**. Coram: *Y.V. Chandrachud, P.N. Bhagwati* and **R.S. Sarkaria**, JJ. [Date of decision: 1-8-1975]

[9363] — S. 561-A — Application to High Court for recording additional evidence dismissed without hearing the applicant — Practice held wrong and unjust by Supreme Court. *Ram Narain* v. *State of Rajasthan*, (1973) 3 SCC 805: 1973 SCC (Cri) 545: AIR 1973 SC 1188: (1973) 3 SCR 463: 1973 Cri LJ 914.

Bench Strength **3**. Coram: *A. Alagiriswami*, **I.D. Dua** and *C.A. Vaidialingam*, JJ. [Date of decision: 31-1-1973]

[9364] — S. 561-A — Delay as a ground for quashing the prosecution — *Case registered for cheating on 30-12-1958 and charge-sheet filed in court on 20-11-1959 — But for separate offences single charge framed by Magistrate — High Court accepting revision on July 27, 1977 and remanding for separate charges — Appeal by State to Supreme Court — Held, in view of the inordinate delay in commencing the trial it would be a travesty of justice to permit the prosecution to continue — Hence prosecution quashed — Penal Code, 1860, S. 420 — CrPC, 1973, S. 482. State of U.P.* v. *Parshottam*, 1991 Supp (2) SCC 124: 1991 SCC (Cri) 1016: AIR 1991 SC 1015: 1991 Cri LJ 741.

Bench Strength **2**. Coram: *Kuldip Singh* and *K. Ramaswamy*, JJ. [Date of decision: 21-11-1990]

[9365] — S. 561-A — High Court — Inherent power — Extent of — *Proceedings based on First Information Report by complainants — Bail — Release of accused after furnishing security and surrendering passport — Application by accused under S. 561-A to quash proceedings and modify restrictions on him — Power of High Court*

In exercising jurisdiction under S. 561-A of the Criminal Procedure Code the High Court can quash proceedings if there is no legal evidence or if there is no impediment to the institution or continuance of proceedings but the High Court does not ordinarily enquire as to whether the evidence is 'reliable or not'. Where again, investigation into the circumstances of an alleged cognizable offence is carried on under the provisions of the Criminal Procedure Code the High Court does not interfere with such investigation because it would then be the impeding investigation and jurisdiction of statutory authorities to exercise power in accordance with the provisions of the Criminal Procedure Code. *Hazari Lal Gupta* v. *Rameshwar Prasad*, (1972) 1 SCC 452: 1972 SCC (Cri) 208: AIR 1972 SC 484: (1972) 2 SCR 666: 1972 Cri LJ 298.

Bench Strength **2**. Coram: **A.N. Ray** and *D.G. Palekar*, JJ. [Date of decision: 2-12-1971]

[9366] — S. 561-A — High Court not justified in going into the merits of the case when exercising inherent jurisdiction — *CrPC, 1973, S. 482. Supdt. and Remembrancer of Legal Affairs* v. *Ashutosh Ghosh*, (1979) 4 SCC 381: 1979 SCC (Cri) 991: AIR 1979 SC 1195.

Bench Strength **2**. Coram: **S. Murtaza Fazal Ali** and *A.D. Koshal*, JJ. [Date of decision: 16-1-1979]

[9367] — S. 561-A — High Court's power to expunge remarks — *Is competent in exceptional cases to expunge remarks made by it or lower Court*

The High Court can in the exercise of its inherent jurisdiction expunge remarks made by it or by a lower Court if it be necessary to do so to prevent abuse of the process of the Court or otherwise to secure the ends of justice; the jurisdiction is however of an exceptional nature and has to be exercised in exceptional cases only. *State of U.P.* v. *Mohd. Naim*, AIR 1964 SC 703, 707: (1964) 2 SCR 363, 373: (1964) 1 Cri LJ 549, 553.

Bench Strength **4**. Coram: **S.K. Das**, *A.K. Sarkar, K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 15-3-1963]

See also AIR 1967 SC 903: (1967) 1 SCR 454

[9368] — S. 561-A — Inherent power of High Court — Can be exercised only for either of the three purposes specifically mentioned in the section

It is obvious that this inherent power can be exercised only for either of the three purposes specifically mentioned in the section. This inherent power cannot naturally be invoked in respect of any matter covered by the specific provisions of the Code. It cannot also be invoked if its exercise would be inconsistent with any of the specific provisions of the Code. It is only if the matter in question is not covered by any specific provisions of the Code that S. 561-A can come into operation, subject further to the requirement that the exercise of such power must serve either of the three purposes mentioned in the said section. *Talab Haji Hussain* v. *Madhukar Purshottam Mondkar*, AIR 1958 SC 376, 381: 1958 SCR 1226, 123: 1958 Cri LJ 701, 705, 70.

Bench Strength 3. Coram: *N.H. Bhagwati*, *J.L. Kapur* and **P.B. Gajendragadkar**, JJ. [Date of decision: 7-2-1958]

[9369] — S. 561-A — Inherent power of High Court — Scope and nature — Power to quash proceedings — *Ordinarily High Court would be reluctant to quash criminal proceedings at an interlocutory stage — The rule is not inflexible and the power can be exercised in some categories of cases. R.P. Kapur* v. *State of Punjab*, AIR 1960 SC 866, 869: (1960) 3 SCR 388, 392, 39: 1960 Cri LJ 1239, 1242.

Bench Strength 3. Coram: **P.B. Gajendragadkar**, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 25-3-1960]

***Followed in** Sunita Jain v. Pawan Kumar Jain, (2008) 2 SCC 705*

***Applied in** Baijnath Jha v. Sita Ram, (2008) 8 SCC 77*

[9370] — S. 561-A — Inherent powers of High Court — Includes the expunging of adverse remarks made in a judgment against a person, neither a party nor a witness, even after the judgment becomes final. *Raghubir Saran* v. *State of Bihar*, AIR 1964 SC 1, 5, 9-10: (1964) 2 SCR 336, 344, 35: (1964) 1 Cri LJ 1, 3, 4: (1964) 2 MLJ (SC) 21.

Bench Strength 3. Coram: **K. Subba Rao**[1], *Raghubar Dayal*[2] and **J.R. Mudholkar**[2], JJ. [Date of decision: 14-3-1963]

[9371] — S. 561-A — Inherent powers of High Court — No new powers conferred by insertion of this section by 1923 amendment — *Inherent powers explained*

This provision was introduced in the Code when it was extensively amended in the year 1923. But it does not confer and was not intended to confer any new powers on the High Courts. The Courts exist not only for securing obedience to the law of the land but also for securing the ends of justice in its widest sense. All Courts, including the High Courts, can exercise such powers as the laws of the land confer upon them as well as such inherent powers to do justice as are reserved expressly or are not taken away by a statute.

Inherent powers of the High Court of a State are the powers which must, by reason of its being the highest Court in the State having general jurisdiction over civil and criminal Courts in the State, inhere in that Court. The powers in a sense are an inalienable attribute of the position it holds with respect to the Courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. *Raghubir Saran* v. *State of Bihar*, AIR 1964 SC 1: (1964) 2 SCR 336: (1964) 1 Cri LJ 1, 3, 4: (1964) 2 MLJ (SC) 21.

Bench Strength 3. Coram: **K. Subba Rao**[1], *Raghubar Dayal*[2] and **J.R. Mudholkar**[2], JJ. [Date of decision: 14-3-1963]

[9372] — S. 561-A — Inherent powers of High Court — Scope and applicability — *Cannot be invoked in regard to matters directly covered by specific provisions of the Code. Khushi Ram* v. *Hashim*, AIR 1959 SC 542: 1959 Cri LJ 658.

Bench Strength 3. Coram: *N.H. Bhagwati*, *J.L. Kapur* and **P.B. Gajendragadkar**, JJ. [Date of decision: 6-2-1958]

[9373] — S. 561-A — New plea — *Held, contention of law not urged in application under S. 561-A to the High Court can be allowed to be taken at the stage of arguments — CrPC, 1973, S. 482. Deepak Sarkar* v. *State of Bihar*, (1977) 1 SCC 494: 1977 SCC (Cri) 128: AIR 1977 SC 1665: 1977 Cri LJ 1437.

Bench Strength 3. Coram: **P.N. Bhagwati**, *A.C. Gupta* and *P.N. Shinghal*, JJ. [Date of decision: 9-12-1976]

[9374] — S. 561-A — Petition under — Competency of — *Matter still at investigation stage — Merit of allegations in the FIR — Wrongful removal of bus in spite of resistance offered by driver, conductor etc. — Police starting investigation on the basis of FIR and arresting appellant and one 'P' but later releasing them on bail — While no charge-sheet or complaint laid in Court and matter still pending at the stage of police verification, both the accused filing two separate petitions under S. 561-A challenging the police proceedings — Court dismissing appellant's petition but allowing that of 'P' and quashing proceedings against him — Held — High Court in its inherent jurisdiction could not at that stage appraise evidence in the case and enquire as to whether jurisdiction set out in the FIR was reliable or not — Petition under S. 561-A was liable to be dismissed as premature and incompe-*

tent — FIR prima facie did disclose the commission of a cognizable offence by the appellant and his companions. Jehan Singh v. *Delhi Admn.*, (1974) 4 SCC 522: 1974 SCC (Cri) 558: AIR 1974 SC 1146: (1974) 3 SCR 794.

Bench Strength **2**. Coram: *M.H. Beg* and **R.S. Sarkaria**, JJ. [Date of decision: 27-3-1974]

[9375] — S. 561-A — Powers of the High Court to quash proceedings to prevent abuse of the process of any court or to secure ends of justice — *Application by accused very delayed and towards end of trial — Propriety of quashing such proceedings*

Inherent jurisdiction can be exercised to quash proceedings in a proper case, either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Where the case of the complainant has almost come to an end and a couple of prosecution witnesses remain to be examined and one witness under S. 540, CrPC and the accused did not challenge the order of the Magistrate allowing the prosecution to examine the two prosecution witnesses nor did he challenge the order of the Magistrate to examine one more witness under S. 540, the power of the High Court to exercise its inherent jurisdiction to quash the proceedings does not come within the ambit of the principles laid down by the Supreme Court. *Amar Chand Agarwalla* v. *Shanti Bose*, (1973) 4 SCC 10: 1973 SCC (Cri) 651: AIR 1973 SC 799: 1973 Cri LJ 577.

Bench Strength **3**. Coram: *A. Alagiriswami, I.D. Dua* and **C.A. Vaidialingam**, JJ. [Date of decision: 22-12-1972]

[9376] — S. 561-A — Scope — *Not applicable where specific provisions provided by the Code, such as S. 369 — CrPC, 1973, S. 482*

Inherent power, which S. 561-A purports to save, cannot relate to any of the matters specifically dealt by the Code and as such cannot be invoked to exercise powers which would be inconsistent with any of the specific provisions of the Code. The saving of inherent power is only for giving effect to orders passed under the Code, to prevent abuse of the process of any court or otherwise to secure the ends of justice.

So if S. 369 is understood as applying to judgments on appeal by the High Court, S. 561-A cannot be invoked for enabling the court to review its own order which is specifically prohibited by S. 369. *State of Orissa* v. *Ram Chander Agarwala*, (1979) 2 SCC 305: 1979 SCC (Cri) 462: AIR 1979 SC 87: 1979 Cri LJ 33.

Bench Strength **2**. Coram: *Jaswant Singh* and **P.S. Kailasam**, JJ. [Date of decision: 5-10-1978]

[9377] — S. 561-A — Scope — High Court's power to deal with matters not dealt in the Code

The inherent power of the High Court mentioned in S. 561-A, Criminal Procedure Code, can be exercised only for either of the three purposes specifically mentioned in the section. The inherent power cannot be invoked in respect of any matter covered by the specific provisions of the Code. It cannot also be invoked if its exercise would be inconsistent with any of the specific provisions of the Code. It is only if the matter in question is not covered by any specific provisions of the Code that S. 561-A can come into operation. No legislative enactment dealing with procedure can provide for all cases that can possibly arise and it is an established principle that the Courts should have inherent powers, apart from the express provision of law, which are necessary to their existence and for the proper discharge of the duties imposed upon them by law. This doctrine finds expression in S. 561-A which does not confer any new powers on the High Court but merely recognises and preserves the inherent powers previously possessed by it. *Pampapathy* v. *State of Mysore*, AIR 1967 SC 286, 289: 1966 Supp SCR 477, 482: 1967 Cri LJ 287.

Bench Strength **3**. Coram: *M. Hidayatullah*, **V. Ramaswami** and *J.M. Shelat*, JJ. [Date of decision: 28-7-1966]

[9378] — S. 561-A — Scope — High Court's power to entertain the application again in a changed set of circumstances — *CrPC 1973, S. 482*

Section 561-A preserves the inherent power of the High Court to make such orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must therefore exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked.

The High Court was, in the circumstances, entitled to entertain the subsequent application of Respondents 1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice.

The facts and circumstances obtaining at the time of the subsequent application of Respondents 1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over one and a half years. It was for this reason that, despite the earlier order, the High Court proceeded to consider the subsequent application of Respondents 1 and 2 for the purpose of deciding whether it should exercise its inherent jurisdiction under S. 561-A. This the High Court was perfectly entitled to do and there is no jurisdictional infirmity in the order of the High Court. Even on the merits, the order of the High Court was justified as no prima facie case appeared to have been made out against Respondents 1 and 2. *Supdt. and Remembrancer of Legal Affairs* v. *Mohan Singh*, (1975) 3 SCC 706: 1975 SCC (Cri) 156: AIR 1975 SC 1002: 1975 Cri LJ 812.

Bench Strength **2**. Coram: *P. Jaganmohan Reddy* and **P.N. Bhagwati**, JJ. [Date of decision: 8-10-1974]

[9379] — S. 561-A — Scope — Judge making remarks against Police Department of the State — *State Government is aggrieved party and is competent to invoke inherent powers of the High Court under the section. State of U.P.* v. *Mohd. Naim*, AIR 1964 SC 703: (1964) 2 SCR 363: (1964) 1 Cri LJ 549, 553.

Bench Strength **4**. Coram: **S.K. Das**, *A.K. Sarkar*, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 15-3-1963]

[9380] — S. 561-A — Scope — Judge making sweeping and general observations against the entire police force of State — Considerations to weigh with a Judge making disparaging remarks explained — *Held, High Court should have exercised its inherent powers and expunged the remarks. State of U.P.* v. *Mohd. Naim*, AIR 1964 SC 703, 707: (1964) 2 SCR 363, 374, 37: (1964) 1 Cri LJ 549, 553.

Bench Strength **4**. Coram: **S.K. Das**, *A.K. Sarkar*, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 15-3-1963]

[9381] — S. 561-A — Scope — Merely safeguards the existing powers of the High Court — *No new powers conferred by the section*

Section 561-A confers no new powers on a High Court. It merely safeguards all existing inherent powers possessed by a High Court necessary (among other purposes) to secure the ends of justice. The section provides that those powers which the Court inherently possesses shall be preserved lest it be considered that the only powers possessed by the Court are those expressly conferred by the Code and that no inherent powers had survived the passing of the Code. *State of U.P.* v. *Mohd. Naim*, AIR 1964 SC 703, 705: (1964) 2 SCR 363, 370: (1964) 1 Cri LJ 549, 55.

Bench Strength **4**. Coram: **S.K. Das**, *A.K. Sarkar*, *K.N. Wanchoo* and *K.C. Das Gupta*, JJ. [Date of decision: 15-3-1963]

[9382] — Ss. 561-A, 498 and 496 — Bail — Cancellation of — *There is no distinction between bailable and non-bailable offences in regard to the effect of prejudicial conduct of an accused subsequent to his release on bail*

If a fair trial is the main objective of the criminal procedure, any threat to the continuance of a fair trial must be immediately arrested and the smooth progress of a fair trial must be ensured, and this can be done, if necessary, by the exercise of inherent power. The classification of offences into bailable and non-bailable on which are based the different provisions as to the grant of bail would not, in our opinion, have any material bearing in dealing with the effect of subsequent conduct of accused persons on the continuance of a fair trial itself. If an accused person, by his conduct, puts the fair trial into jeopardy, it would be the primary and paramount duty of criminal Courts to ensure that the risk to the fair trial is removed and criminal Courts are allowed to proceed with the trial smoothly and without any interruption or obstruction; and this would be equally true in cases of both bailable as well as non-bailable offences. We, therefore, feel no difficulty in holding that, if, by his subsequent conduct, a person accused of a bailable offence forfeits his right to be released on bail, that forfeiture must be made effective by invoking the inherent power of the High Court under S. 561-A. Omission of legislature to make a specific provision in that behalf is clearly due to oversight or inadvertence and cannot be regarded as deliberate. *Talab Haji Hussain* v. *Madhukar Purshottam Mondkar*, AIR 1958 SC 376, 380: 1958 SCR 1226, 123: 1958 Cri LJ 701, 705, 70.

Bench Strength **3**. Coram: *N.H. Bhagwati*, *J.L. Kapur* and **P.B. Gajendragadkar**, JJ. [Date of decision: 7-2-1958]

[9383] — Ss. 561-A and 426 — Power of High Court to cancel bail

In a proper case the High Court has inherent power under S. 561-A, Criminal Procedure Code, to cancel the order of suspension of sentence and grant of bail to the appellant made under S. 426, Criminal Procedure Code, and to order that the appellant be re-arrested and committed to jail-custody. *Pampapathy* v. *State of Mysore*, AIR 1967 SC 286, 289: 1966 Supp SCR 477, 482: 1967 Cri LJ 287.

Bench Strength **3**. Coram: *M. Hidayatullah*, **V. Ramaswami** and *J.M. Shelat*, JJ. [Date of decision: 28-7-1966]

[9384] — Ss. 561-A and 496 — High Court's power to cancel bail granted under S. 496 — High Court competent to cancel bail under its inherent powers under S. 561-A

The Code makes no express provision for the cancellation of a bail granted under S. 496. Nevertheless, if at any subsequent stage of the proceedings, it is found that any person accused of a bailable offence is intimidating, bribing or tampering with the prosecution witnesses or is attempting to abscond, the High Court has the power to cause him to be arrested and to commit him to custody for such period as it thinks fit. This jurisdiction springs from the overriding inherent powers of the High Court and can be invoked in exceptional cases only when the High Court is satisfied that the ends of justice will be defeated unless the accused is committed to custody. This inherent power of the High Court exists and is preserved by S. 561-A of the Code. The person committed to custody under the orders of the High Court cannot ask for his release on bail under S. 496, but the High Court may by a subsequent order admit him to bail again. *Ratilal Bhanji Mithani* v. *Asstt. Collector of Customs*, AIR 1967 SC 1639, 1640: (1967) 3 SCR 926, 927: 1967 Cri LJ 1576.

Bench Strength **5**. Coram: *K.N. Wanchoo, C.J.* and **R.S. Bachawat**, *J.M. Shelat, V. Bhargava* and *G.K. Mitter*, JJ. [Date of decision: 4-5-1967]

[9385] — Ss. 561-A and 496 — Scope — *High Court cancelling bail of the accused on the ground that he was intimidating and tampering with some German witnesses — High Court also ordering that the accused could apply for bail after 26-6-1967 under the contemplation that by then the witnesses would have been examined — Witnesses not examined till then by laches of the prosecution — Supreme Court while deciding the appeal on 4-5-1967 directed the accused to be released on bail. Ratilal Bhanji Mithani* v. *Asstt. Collector of Customs*, AIR 1967 SC 1639: (1967) 3 SCR 926: 1967 Cri LJ 1576.

Bench Strength **5**. Coram: *K.N. Wanchoo, C.J.* and **R.S. Bachawat**, *J.M. Shelat, V. Bhargava* and *G.K. Mitter*, JJ. [Date of decision: 4-5-1967]

[9386] — Ss. 561-A and 499 — Revisional jurisdiction of High Court — Power to act suo motu where punishment inadequate — Effect of S. 377, CrPC, 1973 — Supreme Court would not interfere with such exercise of power — *Constitution of India — Article 136 — CrPC, 1973, Ss. 482 & 401. Nadir Khan* v. *State (Delhi Admn.)*, (1975) 2 SCC 406: 1975 SCC (Cri) 622: AIR 1976 SC 2205: 1976 Cri LJ 1721.

Bench Strength **1**. Coram: **P.K. Goswami**, J. [Date of decision: 3-6-1975]

— **S. 562** *See also* Ss. 380 and 562 to 564

[9387] — S. 562 — Interpretation of reference to, in subsequent Central statutes after repeal of the 1898 Code and enactment of CrPC, 1973 — *Reference in S. 19 and S. 18, Probation of Offenders Act, 1958 to S. 562 CrPC, 1898 and S. 5(2), Prevention of Corruption Act, 1947 respectively — Must be read such as to refer to the corresponding sections in the respective new Acts in view of S. 8, General Clauses Act, 1897 — Hence, held, benefit under provisions of the Probation of Offenders Act and S. 360 inapplicable to a conviction under S. 13(2), Prevention of Corruption Act — General Clauses Act, 1897, S. 8 — Prevention of Corruption Act, 1947, S. 5(2) — CrPC, 1973, S. 360 — Inapplicability of provisions of, in case of conviction under Ss. 7 and 13(2), Prevention of Corruption Act, 1988 — Prevention of Corruption Act, 1988, S. 13(2)*

In view of the provisions of Section 8 of the General Clauses Act, 1897, the references to Section 562 CrPC, 1898 and Section 5(2) of the Prevention of Corruption Act, 1947 in Sections 19 and 18 of the Probation Act respectively have to be inevitably read as references to their corresponding provisions in CrPC, 1973 and the Prevention of Corruption Act, 1988. Consequently, for the conviction under Section 13(2) of the Act the principles enunciated under the Probation Act cannot be extended at all in view of the mandate contained in Section 18 of the said Act. So far as Section 360 of the Code is concerned, on and from the date of extension and enforcement of the provisions of the Probation Act to Delhi, powers under Section 562 CrPC, 1898 and after its repeal and replacement powers under Section 360 CrPC, 1973, cannot be invoked or applied at all, as has been done in the present case. (Para 11). *State* v. *Ratan Lal Arora*, (2004) 4 SCC 590: 2004 SCC (Cri) 1353: AIR 2004 SC 2364: (2004) 111 DLT 250: 2004 Cri LJ 2105.

Bench Strength **2**. Coram: *Doraiswamy Raju* and **Arijit Pasayat**, JJ. [Date of decision: 26-4-2004]

[9388] — S. 562(1-A) — Interpretation of — "Or any offences under the Indian Penal Code" occurring in the section — Meaning of — *Offences referred not confined to those sections of the IPC where property is directly or indirectly involved — Section capable of dealing with all offences punishable with not more than two years' imprisonment. Akarapu Katta Mallu* v. *Purna Chandra Rao*, AIR 1967 SC 1363: (1967) 2 SCR 309: (1967) 2 MLJ (SC) 65: 1967 Cri LJ 1212.

Bench Strength **3**. Coram: **M. Hidayatullah**, *V. Bhargava* and *G.K. Mitter*, JJ. [Date of decision: 16-12-1966]

— **S. 563** *See* Ss. 380 and 562 to 564

— **S. 564** *See* Ss. 380 and 562 to 564

[9389] — Sch. II — Offence under S. 336, IPC

Even on the basis that the inquiry has to proceed for an offence under S. 336, IPC, the position will be that the summons case procedure will have to be followed. *Cricket Assn. of Bengal* v. *State of W.B.*, (1971) 3 SCC 239: 1971 SCC (Cri) 446: AIR 1971 SC 1925: 1971 Cri LJ 1432.

Bench Strength **2**. Coram: **C.A. Vaidialingam** and *A.N. Ray*, JJ. [Date of decision: 24-3-1971]

[9390] — Sch. III — First Class Magistrate can also gain experience in trial of criminal cases triable by Second Class Magistrate for more than 3 years

As per Sch. III of the Code of Criminal Procedure, 1898 a Magistrate of the First Class is also entitled to exercise all the powers of a Magistrate of the Second Class. It would, therefore, follow that a First Class Magistrate can also gain experience by the trial of cases triable by a Second Class Magistrate. What is of relevance is the gaining of experience in trial of criminal cases for a period of three years and more and at the same time having the powers of a First Class Magistrate and not necessarily the experience of trying cases triable by a First Class Magistrate alone. *Beopar Sahayak (P) Ltd.* v. *Vishwa Nath*, (1987) 3 SCC 693: 1987 SCC (Cri) 641: AIR 1987 SC 2111: 1987 ALJ 1434.

Bench Strength **2**. Coram: *A.P. Sen* and **S. Natarajan**, JJ. [Date of decision: 15-7-1987]

— **Sch. III Part V Entry 7(a)** *See* Ss. 337(1), 10(2), 529 and Sch. III, Part V, Entry 7(a)

— **Sch. V Form VIII** *See* Ss. 96, 98 and Sch. V Form VIII

— **Sch. V Form XIII** *See* S. 499 and Sch. V Form XIII

— **Sch. V Form XVLL** *See* S. 499 and Sch. V Form XVLL

[9391] — Sch. V, Form XXVIII — Form of charge — "On or before" used in the charge — *Whether words are vague — Whether words "on or about" should instead be used*

The words "on or before" used in the charge might cause embarrassment and prejudice to the defence of the accused because he will not be in a position to know what the prosecution actually intends to allege. From a reference of Form XXVIII of Schedule V of the Code of Criminal Procedure, the mode of charging a person is that he 'on or about'... did the act complained of. In view of the forms of the charge given in the Schedule to the Code, it would, therefore, be fair to the appellant if the charge is amended to read 'on or about' instead of 'on or before'. *Gunwantlal* v. *State of M.P.*, (1972) 2 SCC 194: 1972 SCC (Cri) 678: AIR 1972 SC 1756: 1972 Cri LJ 1187.

Bench Strength **3**. Coram: **P. Jaganmohan Reddy**, *K.K. Mathew* and *G.K. Mitter*, JJ. [Date of decision: 3-5-1972]

[9392] — Sch. V, Form XLII — Bond of surety and accused not necessarily to be on the same paper

It is not required by any provision of the Code of Criminal Procedure that all the sureties should execute the bond printed at the back of the form on which the accused executes the personal bond or that the accused must execute as many bonds in identical terms as there are surety bonds by individual sureties. The mere fact that Form XLII, Schedule V, Criminal Procedure Code, prints the contents of the two bonds, one to be executed by the accused and the other by the surety, together, does not mean that both these bonds should be on the same sheet of paper. *Bekaru Singh* v. *State of U.P.*, AIR 1963 SC 430, 433: (1963) 1 SCR 55, 62: (1963) 1 Cri LJ 335.

Bench Strength **2**. Coram: *J.L. Kapur* and **Raghubar Dayal**, JJ. [Date of decision: 26-3-1962]

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